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PROPERTY BUYERS BE AWARE!

New Foreign CGT withholding tax means you could be liable to pay 10% of the Purchase price to the ATO

From 1 July 2016, Purchasers of property in Australia are required to withhold 10% of the Purchase price unless:

- the market value of the real estate interest being sold is less than \$2 million; or
- the seller obtains a clearance certificate from the ATO.

There are other exemptions also but the general rule for Purchasers of Australian Real Estate is that anyone purchasing real estate valued at more than \$2 million will have to ensure that the seller provides a valid clearance certificate before settlement. The rules are designed to collect tax from foreign residents that make gains from selling taxable Australian property.

Purchaser must ensure their Conveyancing solicitors insist on obtaining a clearance certificate from the Vendor before settlement or they will liable to withhold 10% of the purchase price and unless requirements are met, pay that 10% to the ATO.

Purchasers of property valued at over \$2 million should contact our Property team on **(02) 4627-3333** for advice before entering into any new sales agreement to which these new rules may apply.

ARE YOU THINKING OF SELLING YOUR PROPERTY AND HAVE A POOL?

If you are thinking of selling your property and you have a pool you need to ensure you obtain a certificate of compliance to attach to the contract.

If you do not have a compliance certificate your contract will not be in an exchangeable form and if this goes unnoticed, you may be at risk of giving the purchaser a reason to terminate the contract.

You can arrange a swimming pool inspection through either your local council or a private certifier. In the event your pool is non-compliant, you will have the option of instructing the inspector to issue you with a non-compliance certificate. This non-compliance certificate then needs to be attached to your contract for sale, and the purchaser will have the burden of having to carry out the works within a limited time.

Please note that it is not just pools that require compliance certificates, spas do too, and the compliance certificates are only valid for a limited time period. Contact one of our conveyancing solicitors today to ensure you are not caught up in the new laws relating to the compliance certificates and that you fully understand your rights and responsibilities in relation to buying, selling, or renting a property with a pool.

LOOKING OVER THE FENCE

In a recently reported conveyancing matter, a solicitor was instructed on the purchase of a block of land and proceeded to explain the Contract to the purchaser – pertaining ONLY to the land in question.

Years later, a quarry was approved, right next door to this client's property !!!!

It is an implied term of the Contract that the retainer only requires the solicitor to advise on the property being purchased; not adjoining properties.

BE AWARE that as a purchaser you need to make your own enquiries as to adjoining properties and development thereof. You can make these enquiries of your local Council. Questions of commercial and lifestyle risks are not generally within the solicitor's retainer.

DIVIDING FENCES ACT 1991

Many of you are purchasing "unregistered land" without fences; we thought we would take this chance to remind you of your rights in relation to fencing.

The DFACT 1991 regulates neighbours' responsibilities towards dividing fences and is designed to settle the contentious aspects of sharing a fence. Nothing in the Act prevents neighbours coming to their own agreement about a fence, for example that one owner will pay the whole cost, or coming to an agreement that exceeds the requirements set out in the Act.

The DFACT 1991 applies where a landowner wants an adjoining owner to contribute to the costs of constructing, replacing, repairing or maintaining a dividing fence. It covers issues such as cost-sharing, location and the standard of dividing fences and sets out procedures for carrying out the work and resolving disputes.

It does not apply to public authorities however they are often willing to make some contribution.

The general principle for liability for costs is that adjoining owners are to contribute equally to the fencing work for a dividing fence of a sufficient standard. If an owner wishes to have a fence of a higher standard, that owner is liable for the extra cost above the sufficient standard.

There are several more scenarios, these are just a few to contemplate.

MEEHANS SOLICITORS

171-179 QUEEN ST.,
CAMPBELLTOWN
PHONE: 46 27 3333

OR

2/31 OXFORD ROAD,
INGLEBURN
PHONE: 9829 3333

HELPLINE 0418 37 32 37



(Paul Meehan – Principal)

Visit our website:-

Website: www.meehans.com.au

Email: info@meehans.com.au

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