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Purchase of Residential Real Estate by Temporary Residents

By Hayley Gardner

The *Foreign Acquisitions and Takeovers Act 1975* (Cth) requires a foreign person to notify the Treasurer of a proposal to buy or increase an interest in Australian urban land, unless the acquisition is subject to an exemption contained in the *Foreign Acquisitions and Takeovers Regulations 1989* (Cth) ("the Regulations"). The Treasurer then has the power to prohibit certain acquisitions if he determines that they are contrary to the national interest.

In 2009 the Federal Government shifted its focus to the review of large transactions, and the rules applying to residential real estate acquisitions by temporary residents were relaxed. The Regulations were amended to include an exemption for temporary residents so that they did not have to notify the Treasurer when buying certain residential real estate, such as vacant land and houses.

However, in April this year the Federal Government announced a major tightening of the foreign investment rules relating to residential real estate, and this exemption has now been removed. This means that, effective 25 May 2010, temporary residents must notify the Treasurer before buying residential real estate in Australia. Any contract for the acquisition by a foreign person of residential real estate must therefore either have or be subject to obtaining the approval of the Foreign Investment Review Board. The maximum penalty for failing to notify the Treasurer is \$55,000 and/or 2 years imprisonment.

Unconscionable Conduct - Retail Leasing

By Lyndal Draper

It probably won't surprise you to discover that in the Dukemaster Case (*Australian Competition and Consumer Commission v Dukemaster Pty Ltd (2009) FCA 682*), the Federal Court found the following behaviour by a landlord to be unconscionable:

- setting rent at an inflated figure (without any basis for it);
- refusing to negotiate with the tenant in any meaningful way;
- requiring the tenant to respond to proposed lease terms in a very limited time (so the tenant had no opportunity to obtain independent advice);
- speaking to the tenant in English where the landlord knew the tenant spoke little or no English and where the landlord spoke the tenant's native tongue;
- threatening to evict tenants to pressure them to pay increased rent – even though the tenant was disputing the rent;
- presenting tenants with a new lease (on less favourable terms to the tenant) when the tenant was unlikely to notice the change.

When examining whether dealings with tenants are unconscionable, ask:

- Is there a weak party?
- Is the strong party behaving in a way that is morally reprehensible (this must be more than merely unfair)?
- Did the strong party benefit from its conduct?

If the answers to the above are yes, there could be unconscionable conduct and a breach of section 46A of the *Retail Shop Leases Act 1994 (Qld)*.

Reminders

By Hayley Gardner

Did you know...

- **Sustainability Declaration** - When selling residential property, you must have a Sustainability Declaration available.
- **Certificates of Classification** - If you own a commercial building, you must display all Certificates of Classification issued after 1 July 1997.
- **Land Tax** - If you are the landlord of a commercial lease, you can now recover land tax as an outgoing in certain leases.
- **Electric Hot Water Systems** - The State Government is phasing out electric hot water systems. If you own a house or townhouse in a reticulated natural gas area, you must install a "greenhouse efficient" hot water system when the existing electric hot water system needs replacing. If you are unsure whether your property is in a reticulated natural gas area, go to www.dip.qld.gov.au where you will find a postcode and address search tool.
- **First Home Owner Grant** - Eligibility for the First Home Owner Grant scheme has been restricted to homes valued at less than \$750,000 (rather than the previous cap of \$1 million) for all contracts entered into from 31 March 2010.
- **Regional First Home Owner Grant Boost** - The State Government announced in its 2010/2011 budget that it will be introducing a boost of \$4,000 to the First Home Owner Grant from 1 June 2010 to 30 June 2011 for people building or buying new homes outside South East Queensland.

Contact your Flower and Hart commercial and property team member for more information.

The Planning (Urban Encroachment - Milton Brewery) Act 2009 (Qld)

By Hugh Esler

The Planning (Urban Encroachment - Milton Brewery) Act 2009 (Qld) was introduced in February 2009.

The main purpose of the Act is to protect the existing use of the Milton Brewery from criminal and civil law suits related to air emissions, noise and light pollution instituted by new residents of the redeveloped land in the vicinity of the Milton railway station.

The Act places particular obligations on developers, land owners and agents. Consequences of not complying with obligations under the Act include financial penalties, allowing prospective buyers of property the right to terminate a contract before settlement, and the potential for negligence claims or breach of contract.

Before considering any dealing with real property in the Milton Rail Precinct please contact us to ensure compliance with the Planning (Urban Encroachment - Milton Brewery) Act 2009.



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