

# Property & Development



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QUINN &  
SCATTINI  
Lawyers

# Our Property Law Team

The Quinn & Scattini Property Law Team is distinct from the Quinn & Scattini Conveyancing Team which deals with residential sales and purchases (known as Cottage Conveyancing).

The Property Law Team deals with all property matters other than Cottage Conveyancing (see below). Each member of the Property Law Team specialises in specific areas of property law.

The Property Law Team is led by Duncan Murdoch who has over 20 years experience in property law matters.

The Property Law Team acts and has acted for a diverse range of clients from large developer companies and government bodies to Mum and Dad property investors. We recognise that each client has differing needs and advice is tailored accordingly.

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**Duncan Murdoch**  
*Director*



# Broad Acre Flat Land Division

Broad acre or flat land subdivision involves the subdivision of a large block of land into smaller lots.

We have acted for both land owners selling land to developers for subdivision and for developers wishing to acquire land for subdivision.

It is extremely important for the contract for the sale and purchase of the lots to be carefully drafted as it will form the contractual relationship between the parties for the duration of the transaction. Because the contract will most likely be subject to the purchaser obtaining the necessary development approvals, the period that the parties are contracted can be quite long.

## Matters that ought to be considered in the contracts include:

- Due diligence
- Finance
- Development approvals
- Registering survey plans
- Length of time for satisfaction of conditions
- Settlement arrangements
- GST



Once the development site purchase has been completed, we can assist with the preparation of easements and covenants (both registrable covenants and contractual covenants) and the registration of such easements and registrable covenants along with the survey plans at the Titles Office. We can also assist with the preparation of off the plan contracts for the sale of the lots to be created following subdivision.

# Strata Title & Management Rights

## Strata Title or Community Title Schemes

Strata title or community title schemes are a way of dealing with shared ownership of property. It can be utilized in a wide range of developments such as:-

- High rise unit blocks
- Smaller unit blocks such as “six packs”
- Duplexes
- Townhouses
- Flat land residential communities
- Staged developments

Strata title or community title schemes have often been favoured by developers as it can provide for certain by-laws that can be important in community living which can be set out in the community management statement. This is binding on both current owners and future owners. Examples of matters covered in these by-laws would include:-

- Ownership of pets
- Maintenance of property
- Appearance of property
- Noise control
- Use of common areas

[Disputes between lot owners and/or the body corporate can be dealt with under statutory procedures.](#)

The law relating to strata title schemes is complex and is ever changing. We can assist in compliance issues in respect of such legislation.

## Management Rights

Management rights are the business of running the caretaking duties on behalf of the body corporate and the letting of units on behalf of the unit owners in a community titles scheme.

It also involves the ownership of a unit within a community titles scheme from which to run the business.

[There are usually two contracts for the sale of management rights – one for the business and one for the unit.](#)

Both the contract for the business and unit should be subject to contemporaneous completion.

In these transactions some of the matters that need to be considered are:-

- Pre-contractual advice and negotiation
- Special conditions
- GST & Transfer duty
- Due diligence investigations
- Licensing
- Body corporate consent

We have acted for buyers, sellers and bodies corporate in providing advice on management rights acquisitions and sales.

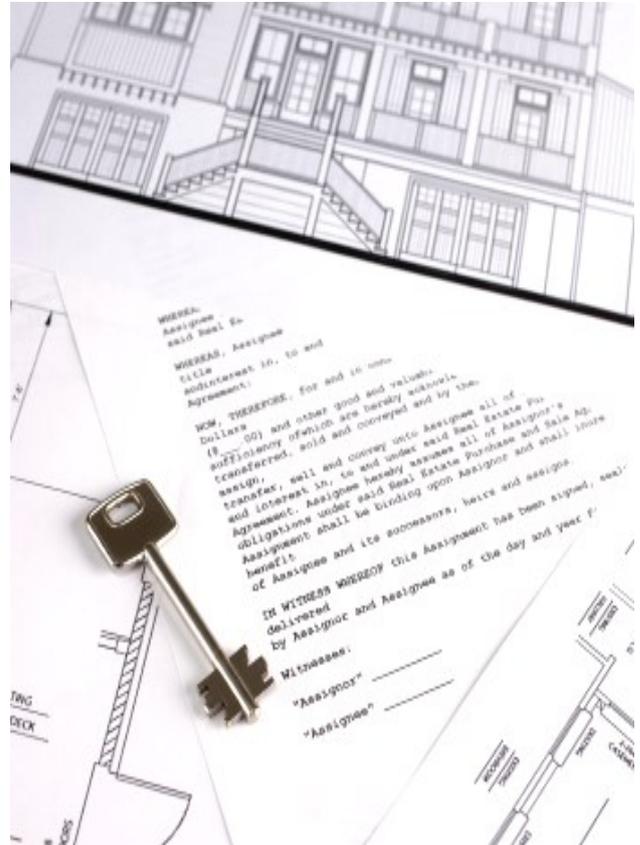
# Off The Plan Contracts

Whether a developer is wishing to undertake a flat land subdivision or create a strata title scheme, the likelihood is that prior to construction starting the developer will have to secure a number of pre-sales. These pre-sales take the form of off the plan contracts.

An off the plan contract is a contract for the sale and purchase of a block of land or a unit for which a separate title has not yet been created. The purchaser is buying the block or unit by reference to a plan as opposed to being able to physically inspect the block or unit.

There are serious pitfalls for developers to be aware of when selling off the plan. Not least of these is the myriad of disclosure requirements that have to be complied with in the interests of consumer protection. Some of the Acts that need to be considered include:-

- Land Sales Act
- Body Corporate and Community Management Act
- Property Agents and Motor Dealers Act
- Electronic Communications (Qld) Act
- Foreign Acquisitions and Takeovers Act



**Failure to comply with the relevant legislation could mean that a buyer can terminate the contract on a technicality.**

**We can assist in compliance issues in respect of such legislation.**

# Survey Plans, Easements, Covenants & Lot Sales

## Survey Plans, Easements & Covenants

Part of the development process involves the registration of survey plans, easements and registrable covenants. It may also involve the partial or total surrender of existing easements.

We have developed a streamlined system to ensure that there is minimal time between the survey plan being sealed by the council and it being lodged for registration. This involves appraising the survey plan at an early date to assess what issues need to be dealt with and ensuring that they are dealt with before receipt of the sealed survey plan. Failure to do this will result in a delay in lodgement for registration and consequent delay in settlement of the sales of the blocks of land or the units.

We have dealt with many local authorities and service providers (such as Energex) and we know what their requirements are. These will vary between local authorities and service providers and so it is not a question of one document suits all.

## Lot Sales

The Property Law Team is set up to assist developers from the purchase of the development site right through to the sale of the subdivided lots or units.

For this reason, all developer lot sales are handled within the Property Law Team under the supervision of Director Duncan Murdoch.

Getting the sale proceeds into the bank will be the top priority of any developer and is also our top priority. We ensure that all things are done to ensure that settlements take place on time and that monies are banked on time.



# Option Agreements

# Joint Venture Agreements

## Option Agreements

An option agreement involves one party granting to another the exclusive right for a set time to buy a property at a set price.

A call option is an option that can only be exercised by the grantee/buyer. A put option is an option that can only be exercised by the grantor/seller.

Option agreements will either be an option agreement (which is just a call option) or a put and call option agreement (which is a call option period followed by a put option period). Which form of option agreement is used is a matter for negotiation.

Often a non-refundable option fee is paid by the grantee/buyer as consideration for the grantor/seller effectively taking the property off the market for the duration of the option period.

There can be certain advantages in using an option agreement as opposed to a conditional contract which can include not knowing who the ultimate purchasing entity will be and delaying the payment of stamp duty. However specific advice needs to be obtained on both of these important issues. We can assist you in this regard.

## Joint Venture Agreements

A joint venture agreement can be described as an association of persons or co-venturers, individuals or companies engaged in a property transaction with a view of making a profit.

In its simplest form it can be an agreement between two parties who each bring something to the table – one is the property owner and one has expertise in property development. They can enter an agreement to regulate their relationship and to agree how to divide the profits. This is known as an unincorporated joint venture.

A joint venture can be a more complex incorporated joint venture involving multiple parties, the formation of a joint venture company, a shareholders agreement, a unit trust with a unit holders agreement and the appointment of a development manager with a management agreement.

Careful consideration of the structuring of the joint venture needs to be made including detailed tax advice. We can assist you in collaboration with your accountant.

# Commercial Property Agreements

Commercial properties by their nature are more complex than your average residential properties. Therefore, the preparation and entering into of a contract for the sale and purchase of a commercial property needs careful consideration.

## What matters should be considered?

- The purchasing entity
- Due diligence
- Commercial leases and tenancies
- Service contracts
- Contamination
- Asbestos
- Physical inspection of the property and its services e.g. air conditioning, lifts and fire equipment
- Planning compliance
- Valuation
- Finance
- GST

As with any property transaction, the contract is the document that binds the parties and will be relied upon in the event of a dispute. It is vital that the contract correctly reflects the intentions of the parties. We can assist with contract preparation and negotiation, due diligence investigations and the completion of the transaction.

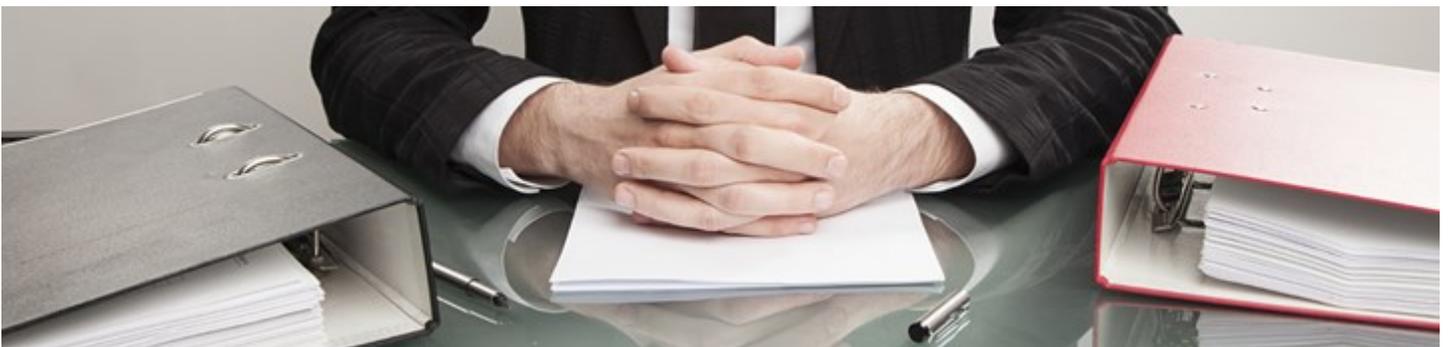
## GST on Property Transactions

Unless the property that is being sold is a second hand residential property then there is likely to be a GST issue with the property transaction that needs to be considered and covered in the contract.

### Essentially the contract will need to stipulate whether any of the following apply:-

- The purchase price is inclusive of GST
- The purchase price is exclusive of GST
- The margin scheme applies
- The sale is the supply of a going concern
- The farmland exemption applies

GST on property transactions is a complex area and needs to be dealt with properly from the outset. We can assist often in collaboration with your accountant.



# Leases & Resumptions

## Leases

Residential leases are normally in a form governed by legislation. However, commercial leases can vary markedly. There is no such thing as a “standard lease.” Leases can vary from 10 pages to 100 pages in length.

Whether you are a landlord or a tenant, a lease needs to be properly negotiated and documented. The lease forms the contractual relationship between a landlord and a tenant. In the event of a dispute then the lease will be the primary document that the parties turn to.

Many commercial leases will be covered by the Retail Shop Leases Act. This Act imposes certain disclosure requirements on the grant or assignment of a lease as well as rules that govern things such as rent review, outgoings and renewals of leases. We can assist as to whether this Act governs your lease and what your rights and obligations are.

Both landlords and tenants should be wary of signing offers to lease as these could in fact be a binding contract to lease. Always seek advice before signing anything.

### We can assist with the following:

- Preparation and advice on agreements to lease/ offer to lease
- Lease preparation or review
- Lease negotiation
- Retail Shop Leases Act advice
- Exercising options to renew

- Rent review
- Lease disputes
- Issue of notices to remedy breaches of lease

## Resumptions

The Acquisition of Land Act empowers the resumption of land for a variety of reasons the most common being for new roads or new pipelines.

With the amount of new infrastructure that the State Government and local governments have already embarked on or are proposing to embark on, we have seen a spike in enquiries from those affected by such infrastructure projects seeking advice on their rights.

A land owner must be served with a Notice of Intention to Resume. A land owner may object to such notice provided that it is made within the relevant objection period and there are grounds for objection.

If there is no objection then the land owner will then be served with a Taking of Land Notice which will confirm that a part or all of the land is to be resumed.

Compensation is normally payable but the amount will vary depending on the circumstances. Disputes are dealt with by the Land Court.

We can assist in advising on whether there are grounds for objection and, if so, making the objection and dealing with compensation issues.



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This is general advice only. You should seek specific advice for your particular circumstances.**