

THE ESSENTIAL FEATURES OF TORRENS TITLE

The nature of Torrens title

The *Real Property Act 1862 (NSW)* introduced Torrens title into NSW and was replaced by the *Real Property Act 1900 (NSW)*.

Under RPA RG shall cause register to be maintained for purpose of s31B

First schedule – name of the current registered proprietor – vendors name previously recorded and where purchaser's name, upon registration is recorded

Second schedule - all other interests to property, interests which are capable of registration – mortgage, leases, restrictive covenants and easements

Dealing must be in registerable form – defined in s39 - , must be accompanied by CT or direction to RG to use relevant certificate s36 (6)

Exchange of contracts

Usually vendor prepares contract for sale of land, as well as counterpart contract. The original is prepared by the vendor and handed to the purchaser at exchange whilst the counterpart is prepared by the purchaser and handed to the vendor at exchange.

- Purchaser may usually put down deposit of 10%
- Exchange takes place when the contracts are exchange not payment
- Upon exchange purchaser obtains unregistrable equitable interest in property – entitled to gain equitable remedy of specific performance of contract. Vendor has similar power as both parties are bound by the contract

Tanwar Enterprises Pty Ltd v Cauchi [2003] – held that the interest acquired by a purchaser on exchange is only an equitable interest insofar as the purchaser is entitled to the equitable remedy of specific performance to the contract.

Black v Garnock [2007] – applies *Tanwar* stating that the interests of the purchaser are equal with the availability of specific performance.

Upon settlement of the contract, or completion, the vendor delivers the executed transfer of the property being sold whilst the purchaser hands the cheque of the balance of the purchase price. The vendor will usually hand the purchaser the certificate of title as well making the purchaser ultimately registered.

Completion of settlement of the contract

The time when the vendor delivers to the purchaser an executed transfer of the property being sold. Purchaser usually simultaneously hands over to vendor bank check for balance of proceeds of sale owed

Vendor also usually gives certificate of title; delivery of all of these allows the purchaser to become registered