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## **CONTRACT**

### **Module 1 – Vendor: Drafting the Contract**

Solicitor's Introduction: As the vendor's solicitor, your primary duty is to prepare a contract for sale that is both legally compliant and strategically advantageous for your client. This process is governed by a strict vendor disclosure regime, and your role is to navigate these requirements while accurately reflecting the transaction.

#### **Part A: The Foundation - Land Titles and Core Concepts**

Before drafting a contract, you must understand the nature of the property you are selling. The type of title dictates the evidence of ownership and the method of transfer.

##### 1. The Nature of "Title"

## Part D: Advising on Revenue and Financial Implications

### 1. Duties (Stamp Duty) – *Duties Act 1997* (NSW)

- **Dutiable Property:** Duty is payable on transfers of NSW land and other dutiable transactions (s 8). The liability arises at the time of transfer, and payment is due within 3 months (s 17, TAA).
- **Calculating Duty:** Use s 32 to calculate. Always check the Revenue NSW website for current rates and thresholds, as they change.
- **Concessions and Grants (Check Current Thresholds Online):**
  - **First Home Buyer Assistance Scheme:** Provides exemptions and concessions for new and existing homes and vacant land below certain value thresholds.
  - **Premium Property Duty:** A higher rate applies to residential land with a dutiable value above a certain threshold (currently \$3,721,000 from 1 July 2025). Applies only to the residential component of mixed-use land.
- **Purchasing Through a Company:** Be aware of landholder duty (Ch 4, Duties Act) . If you buy shares in a company that owns land, and the company is a "landholder" (NSW land holdings  $\geq$  \$2 million), acquiring a significant interest (50% for private, 90% for public) can trigger duty. This is a complex area requiring careful advice.

### 2. Land Tax – *Land Tax Management Act 1956* (NSW)

- **Nature of Tax:** A state tax on the unimproved value of taxable land owned as at 31 December each year.
- **Purchaser's Risk:**
  - Land tax is a first charge on the land (s 47, LTMA). If the vendor has unpaid land tax, Revenue NSW can pursue the new owner, and the charge remains until paid.
  - **Protection:** The vendor is required by law (CSLR, Sch 3) to serve a land tax certificate (under s 47, LTMA) on the purchaser at least 14 days before completion. If the certificate reveals a charge, the purchaser has rights under cl 16.4 of the contract.

### 3. Foreign Resident Capital Gains Withholding (FRCGW) – cl 31

- **The Rule:** For properties with a market value of \$750,000 or more, the purchaser must withhold 12.5% of the purchase price and pay it to the ATO, unless the vendor provides a Clearance Certificate proving they are an Australian resident.
- **Purchaser's Obligation:** The obligation is on the purchaser. If you fail to withhold when required, the ATO can recover the amount from you.
- **Practical Tip:** Ensure the vendor provides the clearance certificate well before completion. Clause 31 provides that the purchaser does not have to complete earlier than

5 days after receiving it. The workspace in the ELNO must be populated with the payment details.

#### 4. GST Withholding for New Residential Premises

- The Rule: For sales of new residential premises or potential residential land, the purchaser must withhold 1/11th of the contract price (or 7% if the margin scheme applies) and pay it directly to the ATO on or before settlement.

### **Part E: Finance and Summary of Risk**

#### 1. Finance

- The Risk: An unconditional contract binds the purchaser to complete. Failure to do so can result in termination, loss of deposit, and liability for damages (cl 9).

### **Summary for Practice: The Purchaser's Pre-Exchange Checklist**

As you approach a purchaser matter, your pre-exchange workflow should be:

1. Take Detailed Instructions: What are they buying, and what will they use it for?
2. Conduct Due Diligence: Order building/pest inspections, valuations, and strata record searches.
3. Review the Contract and Title Search:
  - Verify the vendor's identity and the property description.
  - Identify all easements, covenants, and party walls. Advise on their impact.
  - Review the s10.7 certificate against the client's intended use.
4. Interpret Attached Documents:
  - Review the drainage diagram for sewer locations, access rights, and potential development issues.
5. Advise on Revenue Implications:
  - Calculate duty, check for concessions, and advise on surcharge purchaser duty if applicable.
  - Advise on land tax implications for the client post-purchase.
6. Confirm Financial Arrangements:
  - Ensure the client has formal finance approval.
  - Advise on FRCGW and GST withholding obligations and ensure the client understands their role.
7. Discuss Risk: Remind the client that upon exchange, they are bound. All quality-related risks (subject to limited statutory warranties) pass to them.