

Conveyancing Voice

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Don't miss out on your CPC!

Drafting Special Conditions in Contracts

Poorly drafted special conditions in real estate contracts not only cause problems for the vendor and purchaser which may lead to litigation, but may also give rise to a claim being made.....

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Connect to the NBN with MyConnect – a really smart move

The National Broadband Network (NBN) is an Australian government funded open-access data network. The purpose of NBN is to improve our broadband service by making it faster and more reliable....

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Drafting Special Conditions in Contracts

Poorly drafted special conditions in real estate contracts not only cause problems for the vendor and purchaser which may lead to litigation, but may also give rise to a claim being made against a conveyancer's PI Insurance or a party suing the conveyancer for damages. It is therefore important that conveyancers who draft special conditions ensure that those special conditions clearly set out the intention and that the special conditions cover the following matters:

1. The date by when the condition must be fulfilled.
2. The party that will pay the cost to fulfil the condition.
3. The party that will be responsible for fulfilling the condition.
4. What is to occur for the condition to be fulfilled.
5. What is to occur if the condition is not fulfilled by the specified date or if a party defaults in undertaking their obligations under the condition.



It is important to check the defined terms in the printed form of the contract being used when drafting special conditions. If

a word is a defined term in the printed form of contract, but is used in the special condition with the intention that it has a different meaning, the special condition may be interpreted completely differently to what was intended.

Consideration should also be given as to whether the special conditions will conflict with the general printed terms in the contract in an unintended way.

An example of a poorly drafted special condition is set out below:

"Subject to a satisfactory building inspection report being obtained by the Purchaser within 7 days"

There are many things wrong with this condition:

- When does the 7 day period commence?
- What does "satisfactory building inspection report" mean? On what grounds may the purchaser determine that the building inspection report is unsatisfactory, eg. if the property contains asbestos or terminate damage or needs rewiring or re-plumbing?
- What are the consequences if the purchaser does not obtain the report within the required time-frame or at all?
- The condition does not provide that the vendor must allow timely access to the property for the building inspection to occur within the 7 day period.
- The condition does not specify that the purchaser must pay the cost of the building inspection report.

A special condition usually gives one or both parties the right to terminate a contract if the condition is not fulfilled. The building inspection report condition is sometimes incorrectly included in contracts as a further term rather than a special condition. A purchaser would want and need a right of termination if a building inspection report includes major structural defects or other serious issues and so it should always be included as a special condition.

Conditions should only be included as further terms when it is intended that neither party will have a right to terminate the contract if the condition is not fulfilled. For example, a further term might be that the vendor is required to effect some repairs before settlement. Warranties to be given by either party should also be included as further terms. A breach of warranty gives a party the right to claim damages against the party giving them but does not give a right of termination of the contract.

If acting for the vendor, it may be wise to include an additional obligation on the purchaser to provide a copy of the building inspection report to the vendor or the vendor's agent promptly following receipt of the report together with, if applicable, the grounds on which the purchaser is terminating the contract. By doing so, the vendor will be able to review the building inspection report and confirm that it has actually identified issues with the property and that the purchaser has not just terminated the contract due to a change of mind.

Developing a precedent set of special condition clauses (preferably reviewed by a reputable solicitor) is best practice. Whilst it is all very easy to keep a set of precedent special conditions from contracts prepared by agents or other conveyancers, it is always best to check that the precedent conditions cover all the matters numbered 1 to 5 above and most importantly, that they make sense and cannot be misinterpreted.

Jenny Raymond
Councillor & Committee Member

Members Reminder : Looking up your events

Members to view events that you have booked into please follow these steps:

1. Go to AICSA website <http://www.aicsa.com.au>
2. Click 'Member login' Button (Centre bottom of page)
3. Login using your user name and password
4. Scroll to bottom of page
5. See list which included 'My Events'
6. Click on 'My Events'
7. The next screen will show you any events you are registered to attend

Megan Whitford
PD and Events Coordinator



Connect to the NBN with MyConnect – a really smart move

The National Broadband Network (NBN) is an Australian government funded open-access data network. The purpose of NBN is to improve our broadband service by making it faster and more reliable. Fibre-optic, fixed wireless and satellite infrastructure are currently being rolled out across Australia to replace our existing broadband service and connect Australia to the NBN. The NBN's corporate plan hopes to complete the project by 2020.

In 2013, SA Power Networks was awarded a three-year contract by NBN Co to roll out fibre optic to areas in Adelaide and regional South Australia that covers around 300,000 premises.

By September 2018, over 9 million premises around Australia will have NBN access or construction underway. South Australia is listed as having 750,000 premises either connected or soon to be connected to the NBN.

Residents of South Australia, particularly in Adelaide and surrounding suburbs are either already connected and experiencing faster more reliable internet, or are very close to being connected to the NBN which is very exciting. NBN in these areas mean that businesses can take full advantage of fast downloads and an operating system that allows multiple people on multiple devices to use the internet at the same time smoothly.

The Adelaide City Council is currently investigating a potential 10gb optical fibre network for Adelaide CBD and North Adelaide that will complement the NBN service. Mayor Martin Haese said that this fibre optic network could put Adelaide on the radar as a destination of choice for large, digital-reliant businesses. It is recommended that residents who work/live in these areas keep an eye out for future news on this project.

All in all, the NBN is a big step in the right direction for Australia. It is a big project, but one that has been in high demand for a long time and should run successfully for decades to come.

You can check when the NBN service will be available in your area by going to www.nbnco.com.au and looking at the network rollout map.



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1300 854 478



Please be aware of Spam Email from Ray White

Members please be advised of a spam email from Ray White that has been sent nation-wide.

The email purports to have a contract attachment, which is a html document accessible via the internet.

Please be aware that the attachment is infected.

AICSA warns against the opening of this attachment or email, and furthermore we advise that it not be opened under any circumstances.

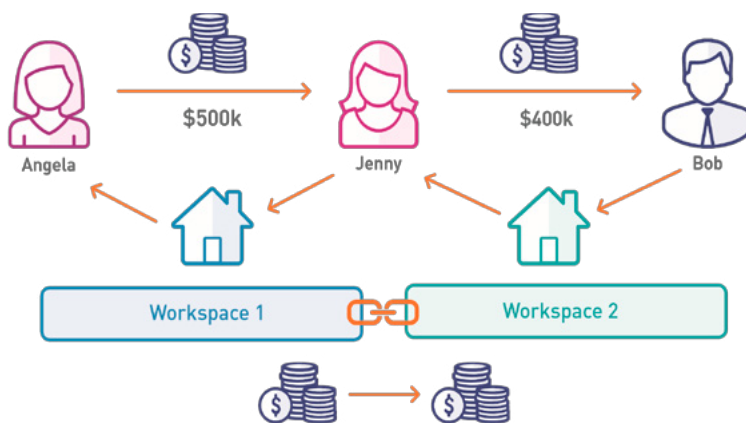


Simultaneous Settlements are fast approaching

Hello SA,

November is shaping as a massive month for your network, with Release 5 of the PEXA platform going to market on 28th, which will see the introduction of Simultaneous Settlement. This new feature will allow up to 10 linked settlements to occur at the same date and time.

This functionality can be used for linked property exchanges where the proceeds from one settlement are required as source funds for another settlement. With Simultaneous Settlements, up to 10 PEXA workspaces can be linked so that financial settlement of each workspace occurs at the same date and time. If one workspace is unable to settle, all workspaces in the chain will be unable to settle.



An example of how Simultaneous Settlement works.

1. Angela is buying a house from Jenny for \$500k.
2. Jenny is using money from her house sale to purchase Bob's house.
3. Jenny is buying Bob's house for \$400k.

Simultaneous settlements have many benefits for users of PEXA:

Transparency - Participants can easily identify if their workplace is part of a Simultaneous Settlement by viewing the Financial Settlement Schedule.

Visibility - Participants can view the progress of linked workspaces and identify early warning signs if any are at risk

Independent Lodgement - If funding is successful but lodgement fails for one workspace, it will not impact any other linked workspace. All lodgements are independent of each other.

Security - If a party in the chain is unable to provide pledged source funds, or electronic payment requests are unavailable at a given Financial Institution, PEXA will, following re-try, ensure none of the linked workspaces proceed to settlement

With December fast approaching, there is no better time than now to get familiar with your online settlement procedures to make the most of the time efficiencies. Get in touch with your PEXA Direct specialist and migrate your PEXA settlements online now before the festive season is upon us!

Till next time, stay cool (or is that warm, hard to tell this year!)

Daniel Roseler
Executive Manager - PEXA

LTO Stakeholder Engagement Meeting

LTO Commercialisation Project Stakeholder Engagement Meeting with Department of Treasury & Finance officials

Please find the Stakeholder Information Package released by the Department of Treasury and Finance with respect to the Sale of the LTO below:

[Stakeholder Information Package](#)

Please find an attached LTO Commercialisation Flyer below:

[Commercialisation Flyer](#)

The Department of Treasury and Finance will meet with Conveyancers to answer questions on the Land Services Commercialisation project.

Interested in attending?

Click the book now button to secure your spot.



[BOOK ONLINE](#)

AICSA Members Christmas Drinks

*Please join the AICSA team for Christmas Celebrations
Drinks & BBQ Generously supported by Australia Post*

DATE: Friday 2nd December 2016

TIME: 4:30pm – 6:30pm

LOCATION: AICSA

Level 3, 255 Pulteney St, Adelaide

We look forward to seeing you there!



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SA**

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Government Gazette Update

DEVELOPMENT ACT 1993, SECTION 25 (17):

CLARE AND GILBERT VALLEYS COUNCIL - DISTRICT TOWNSHIPS AND SETTLEMENTS DEVELOPMENT PLAN AMENDMENT

Preamble

1. The District Townships and Settlements Development Plan Amendment (the Amendment) by the Clare and Gilbert Valleys Council has been finalised in accordance with the provisions of the Development Act 1993.
2. The Minister for Planning has decided to approve the Amendment.

NOTICE

PURSUANT to Section 25 of the Development Act 1993, I-

(a) approve the Amendment; and

(b) fix the day on which this notice is published in the Gazette as the day on which the Amendment will come into operation

Dated 26 October 2016

DEVELOPMENT ACT 1993, SECTION 25 (17):

LIGHT REGIONAL COUNCIL - ROSEWORTHY TOWNSHIP EXPANSION DEVELOPMENT PLAN AMENDMENT

Preamble

1. The Roseworthy Township Expansion Development Plan Amendment (the Amendment) by the Light Regional Council has been finalised in accordance with the provisions of the Development Act 1993.
2. The Minister for Planning has decided to approve the Amendment.

NOTICE

PURSUANT to Section 25 of the Development Act 1993, I-

(a) approve the Amendment; and

(b) fix the day on which this notice is published in the Gazette as the day on which the Amendment will come into operation

Dated 26 October 2016

*John Rau, Deputy Premier,
Minister for Planning*

Bank List updated

The Bank List has been updated with information from Adelaide Bank and Bendigo Bank. [Click here](#) to view the latest version of the Bank List.

News and More

Should you be afraid to say 'I don't know'? (REB)

Admitting you don't have the answer to something, particularly to a client, is often believed to be a sign of weakness. But honesty can be your greatest strength.....

[READ MORE >>](#)

E-conveyancing: Digital revolution transforms property transactions(informit)

South Australia revolutionised property ownership in 1858 with the introduction of the Torrens Titles System....

[READ MORE >>](#)

Apply security updates to Mozilla Firefox: Alert Priority High (Stay Smart Online)

You are advised to update to Mozilla Firefox 50 and Firefox ESR 45.5 to address security vulnerabilities. Details of the updates and security fixes for the popular web browser can be found on the Mozilla Foundation Security Advisories page....

[READ MORE >>](#)

LTO Holiday Season Hours

Over the Holiday Season, the Land Services office will remain open for business from 9:00 am to 5:00 pm, Monday to Friday, closing only on the public holidays listed below:

- Christmas Day – Monday, 26 December 2016
- Proclamation Day – Tuesday, 27 December 2016
- New Year's Day – Monday, 2 January 2017

The following applications will remain accessible during these times, subject to scheduled system maintenance:

- South Australian Integrated Land Information System (SAILIS)
- Electronic Plan Lodgement (EPL)
- Property Location Browser (PLB)

Land Services would like to wish you a safe and enjoyable holiday season

Don't miss out on your CPC!

The Benefits of being CPC Accredited:

- Displaying your CPC certificate in your office and using the CPC acronym on your letterheads, business cards and emails will alert your clients to the fact that you actively pursue excellence in your business;
- Our CPC members are advertised as such on the "Find a Conveyancer" search engine on our website which is used by members of the public when they are looking to appoint a conveyancer;
- *Conveyancers who achieve CPC status are able to claim a discount on their PI Insurance. A reduction in the base premium of \$200 will apply for each CPC or Accreditation Certificate;
- *You may receive a waiver of the excess under the PI Insurance scheme;
- *As an additional benefit each PI policyholder within the scheme is entitled to up to two hours legal advice (through Vero appointed legal counsel) related to the risks insured under the Policy; and
- Expenses for training as well as the GST are tax deductible.

(* Terms and conditions apply).

Please contact Karen on membership@aicsa.com.au for a personalised plan to ensure you achieve CPC status, if not for 2016 then definitely for 2017!

Read
More

Professional Development & Event - Cancellation, Change & Refund Policy

PLEASE NOTE:

No refund will be given unless more than 7 days notice is received by AICSA in writing.

Cancellation may invalidate discount.

Changing between events (including from seminar to recording) after registration and less than 48 hours prior to the event will incur an administration fee of \$25.00 (+ GST).

The AICSA reserves the right to cancel sessions that do not reach the minimum number of participants required (full refunds given).

Diary Dates

2 December - AICSA Members Christmas

Drinks

15 December - LTO Commercialisation Project

Stakeholder Engagement Meeting

23 December - AICSA Office closed

25 Decemeber - XMAS

4 January 2017 - AICSA reopens

Settlement Dates

[Click here](#) for settlement room dates

Frequently Asked Questions on RPA Reforms & EC- Updated

We have an FAQ set up for E-Conveyancing on the AICSA website. You can access them via the link found below;

READ MORE >>

Member Event Photos

Click on the link to view photos from our recent events

[Click Here](#)



AICSA Calendar 2016 (November-December)

DECEMBER

DATE	Event	
2	AICSA Member Christmas Drinks Sponsored by Australia Post	4.30-6.30pm
15	LTO Commercialisation Project Stakeholder Engagement Meeting	3.00-4.30pm
22	AICSA Office Closed for Xmas	
25	Christmas Day!	
31	New Years	

January 2017

DATE	Event	
4	AICSA Office Reopens	

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