



Delivering Solutions Since 1974



Q&S CONVEYANCING UPDATE

ISSUE 35, 21 OCTOBER 2009

NOMINEE CONTRACTS

We were recently asked whether nominee contracts are still possible as the person concerned had not seen one for some time. The answer is yes but it is worth revisiting what they are and what is required.

Nominee contracts are often used where the actual buyer (we will call him Mr Smith) does not want the seller to know who he/she is and therefore gets another person to act as his/her agent (we will call him Mr Jones) to enter into the contract on his/her behalf. As a result the buyer named in the contract is Mr Jones and/or nominee where Mr Smith is the unnamed nominee.

For the reasons mentioned below, nominee contracts cannot be used where a buyer does not know the identity of the ultimate buyer e.g. because the buyer is to be a company or trust that has yet to be formed.

If the correct procedure and documentation is not put in place prior to the contract being entered into then there will be double stamp duty payable.

The Office of State Revenue will look for the following criteria to have been fulfilled:-

1. The prior written appointment of the agent by the nominee.
2. The agent enters into the contract pursuant to the appointment.
3. The nominee provides all of the purchase price including the deposit.
4. Stamp duty is paid on the contract (and transfer) by the nominee.
5. There is a transfer by the seller to the nominee

A statutory declaration from the agent and nominee will be needed to support the above.

Unless the necessary steps are taken then the Office of State Revenue will investigate the position which is likely to lead to double stamp duty plus possible interest and penalties.

Duncan Murdoch, Partner
Quinn & Scattini Lawyers

If you would like to ask any question about this or any other similar issue Duncan may be contacted on 3221 1838 between 8.30am to 5pm Monday to Friday.

This update is for your information and interest only. It is not intended to be comprehensive, and it **does not constitute and must not be relied on as legal advice**. You must seek specific advice tailored to your circumstances.

In addition to Residential and Commercial Conveyancing Services, our team of experienced lawyers practice in Business Law, Commercial Litigation, Property Law, Wills & Estates, Criminal Law and Family Law.

Offices at:

Brisbane
Level 28 Central Plaza One
345 Queen Street
Brisbane

Beenleigh
99 George Street
Beenleigh

Caboolture
9 Elliott Street
Corner Morayfield Road
Caboolture

Cleveland
141 Shore Street West
Cleveland

Gold Coast
64 Marine Parade
Southport

Ipswich
55 Limestone Street
Ipswich

Telephone
Freecall 1800 652 969

mail@quinnscattini.com.au
www.quinnscattini.com.au

