

RMO

RYAN
MURDOCH
O'REGAN
Lawyers

Property & Development



Deadlines observed. Solutions delivered.

Contents



Property & Development: An Overview.....	1
Broad Acre Or Flat Land Subdivision.....	2
Commercial Property Agreements.....	3
Joint Venture Agreements.....	4
Leases.....	5
Management Rights.....	6
Off-the-Plan Contracts.....	7
Option Agreements.....	8
Planning & Development.....	9
Resumptions.....	10
Retirement Villages.....	11
Strata Title Schemes.....	11
Survey Plans, Easements & Covenants.....	12
Our Proven Experience.....	13
What Our Clients Had To Say.....	14

About Ryan Murdoch O'Regan Lawyers

We are a general law practice which is organised into teams of specialised experts in each of our areas of law.

Our practice area teams are committed to focussing on their area of law to ensure you always have the expertise that you need.

And, unlike some other firms – who focus on only one area of law – we can offer expert solutions for all legal areas, without the need for you to search around.

As a client you can have comfort that irrespective of what problem you may encounter in whatever area of law, our teams in all our practice areas will be able to work in tandem to offer any other specialist solutions you might require – utilising the history we already know about you and / or your business.



Queensland
Law Society
MEMBER

Property & Development: An Overview



We understand that in matters of property Law, you need clear, practical advice and reliable, professional representation.

The Property & Development Team is led by Duncan Murdoch who has over 30 years experience in property law, and each member of our team has considerable experience in property law.

Our Property & Development Team assists clients with all property development matters, be it broad acre subdivision or strata title, and other commercial property.

Our property lawyers advise on large projects, including community and government ventures as well as being able to assist individuals and small to medium enterprises. We can tackle complex issues.

Property law can be complex.

Often, property issues can be confusing. We help our clients demystify perplexing legal issues about property law and work towards real, pragmatic solutions.

For example, we don't shy away from GST issues and can tackle complex issues in the purchasing and selling of all forms of property.

Our Property & Development Team prides itself in offering a personal service. Our emphasis is on being available for our clients and providing pragmatic advice.

We deliver tailored strategies and solutions so you can focus on what matters

Our property lawyers can represent your interests in all property option concerns, large or small, giving you time to explore, thrash-out the details, consider alternatives, arrange finances, plan and negotiate.

We tackle issues head on, provide the answers and deliver the best solutions to any issues.

The plan we will develop for you:

1. Takes into account your individual circumstances – **we listen!**

2. Draws on our experience – **we are the experts!**

3. Helps you achieve the best possible outcome – **you win!**

"Invest in the best. RMO Lawyers"



Duncan Murdoch
Director

Broad Acre Or Flat Land Subdivision



What Is Broad Acre Or Flat Land Subdivision?

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

We have acted for land owners selling land to developers for subdivision, developers wishing to acquire land for subdivision and thereafter selling lots following subdivision as well as for individuals buying from developers.

It is extremely important for the contract for the sale and purchase of the lot to be carefully drafted as it will form the contractual relationship between the parties for the duration of the transaction.

Often the contracts have conditions that flow on from the development approval and/or have building covenants.

All of these issues need thorough investigation.

Lot Sales

The Property & Development Team can 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 team, under the supervision of Duncan Murdoch, Director and Team Leader of the Conveyancing, Property & Business Teams.

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.

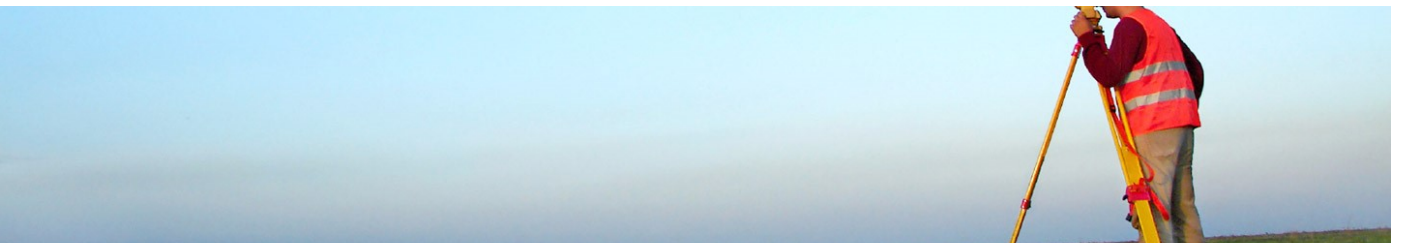
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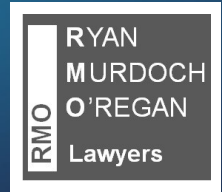
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For example, we don't shy away from GST issues, and can tackle complex issues in the purchasing and selling of all forms of property.

We deliver tailored strategies and solutions so you can focus on what matters.



Commercial Property Agreements



While commercial properties are handled by our Property Team, we mention that 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, and
- Goods and services tax.

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.

This includes brand new residential property and vacant land.

GST on property transactions is a complex area and needs to be dealt with properly from the outset. We can assist, collaborating with your accountant where necessary.



Joint Venture Agreements



New releases of land for both residential and commercial purposes, increased broad acre sub-division and development, the boom in high-rise apartment buildings and the commercialisation of government ventures has meant the increase of joint venture agreements across Queensland.

From Cairns to Coolangatta, property investors, developers and government have combined resources to meet property and infrastructure demands of population growth and business expansion. Ryan Murdoch O'Regan Lawyers offer professional advice on joint venture agreements by an experienced, well-qualified team of property lawyers.

What Is A Joint Venture?

A joint venture can be described as an association of persons or co-venturers, individuals, businesses or corporations, engaged in a common undertaking with the purpose of producing mutual profit or a shared product.

Joint venture agreements cover a multitude of pacts, from family members buying a house together, to entrepreneurs joining resources to create a multi-million dollar development, such as a joint venture shopping centre, a shipping port complex or an urban village.

How Is A Joint Venture Structured?

Joint ventures can be structured in a variety of ways. A joint venture can be set up to include a company, a unit trust, a partnership or another sort of contractual agreement.

Matters such as GST and stamp duty need to be handled with certainty.

Professional insight into issues that may arise ensures that problems are anticipated and avoided.

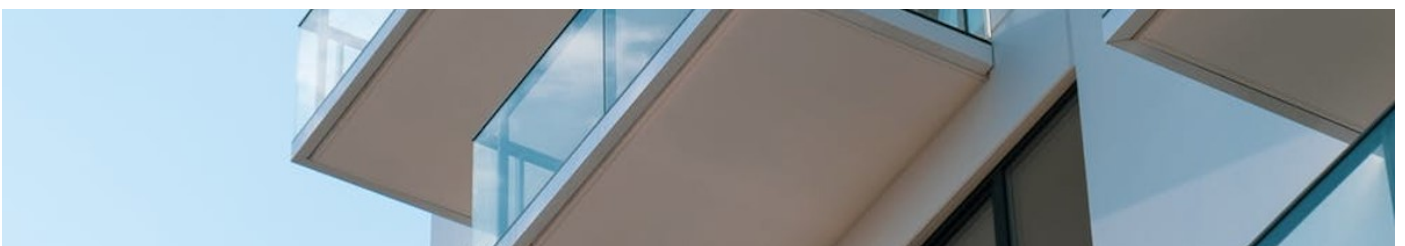
Our Property & Development Team can assist with drafting and advising on joint venture agreements.

Our experienced lawyers are across all the issues for joint venture agreements.

Protect your investment and make sure your joint venture agreement works for you in the short term and long term.

Leave the fine print to our joint venture agreement experts.

We will take care of all of the details leaving you with time to focus on



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.

Commercial, industrial and development leases can involve significant investment.

Under the Act, these leases are term leases and known as ‘development leases’ and ‘special leases’.

A term lease may be issued for up to 50 years.

However, a term lease can be issued for up to 100 years if it is for significant development, a timber plantation or a development that involves existing improvements that in the minister’s opinion have required a high level of investment.

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 1994 (“**the Act**”).

The Act imposes:

- certain disclosure requirements on the grant or assignment of a lease, and
- rules that govern things, such as rent review, outgoings and renewals of leases.

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

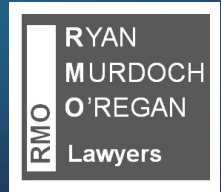
Always seek advice before signing anything.

How We Can Assist You

Our property lawyers can expertly advise you on:

- Advice on the Act and its impact on your lease, risks and your legal obligations,
- Exercising options to renew,
- Lease preparation or review, and
- Lease negotiation,
- Preparation and advice on agreements to lease / offer to lease .

Management Rights



What Are 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, or
- 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.

All registered lot or unit owners are members of the body corporate. The body corporate appoints a committee to run the strata scheme often with the assistance of a professional body corporate manager who looks after the administration issues. Lot or unit owners can apply to become members of the committee.

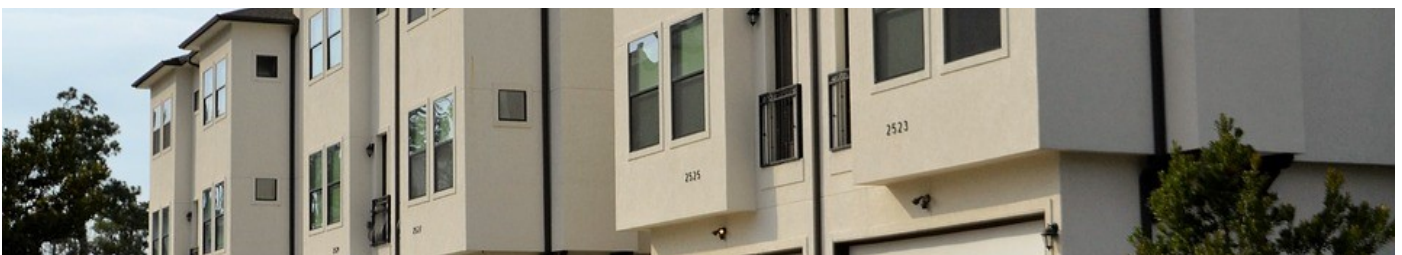
Strata title schemes are funded by the levies that the body corporate issues to the lot or unit owners. These comprise an administration fund levy (which goes towards paying the annual expenses) and a sinking fund levy which is a cash fund built up to cover large or unanticipated expenditure. The body corporate will prepare a budget each year which will normally be presented to lot or unit owners to vote on at each year's annual general meeting.

What Are Management Rights?

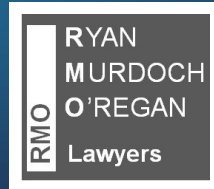
Management rights are the business of running the caretaking duties on behalf of the body corporate and the letting of units on behalf of the unit owners in a community titles scheme.

Not all strata title schemes have an on site manager and/or letting manager.

Often the larger schemes and resort style schemes will have an on site manager and/or letting manager.



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 of land or a strata title unit or townhouse that has not been issued with a separate title on the date that the contract is entered into.

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 1984,*
- *Body Corporate and Community Management Act 1997,*
- *Property Occupations Act 2014,*
- *Electronic Communications (Queensland) Act 2001, and*
- *Foreign Acquisitions and Takeovers Act 1975.*

Failure to comply with these requirements as a seller will mean that the buyer may have a right to terminate the contract.

There are advantages to buying off-the-plan.

From a seller's perspective, the seller can secure pre-sales, which may be a prerequisite of a seller's bank.

From a buyer's perspective, the buyer may be able to secure a new property and possibly enjoy a 'profit' in a rising market.

We provide guidance for buyers and developers, ensuring a seamless process and a win-win outcome for all involved.

We also handle contract preparation, disclosures, and community title schemes with professional care and attention to detail, taking the worry out of off-the plan transactions and avoiding unnecessary court proceedings.



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.

How We Can Assist You

Ryan Murdoch O'Regan Lawyers have many years of experience in handling option agreements in Queensland.

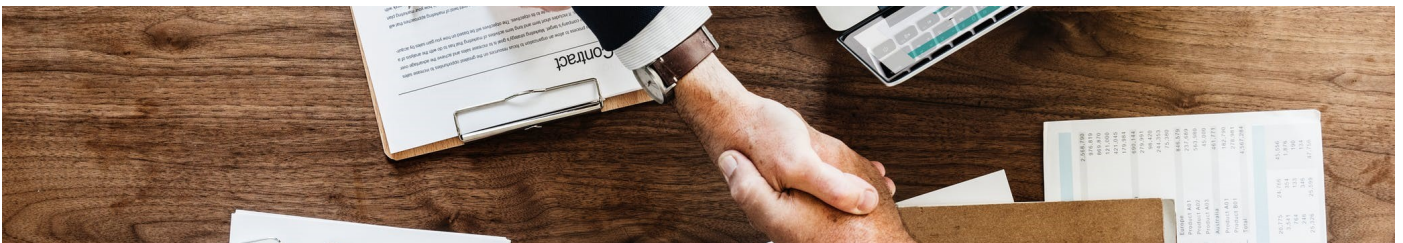
We have represented individuals with the sale and purchase of their homes, as well as large corporations and land developers with options relevant to major projects.

We offer confidential, personal guidance and professional administration of documents, agreements and contracts.

We can be relied on to attend to option agreement specifics in a timely and practical manner, ensuring that wider elements of the project are considered.

Our Property & Development Team can represent your interests in all property option concerns, large or small, giving you time to explore, thrash-out the details, consider alternatives, arrange finances, plan and negotiate.

We get the answers and deliver the best solutions to any option agreement issues.



Planning & Development



We have an in-depth knowledge and understanding of current Queensland planning and development law and policies, including:

- *Sustainable Planning Act 2009,*
- *Acquisition of Land Act 1967,*
- *Land Act 1994, and*
- *Property Law Act 1974.*

We can provide commercial solutions arising from property acquisition and development.

We act for developers as well as those who may be affected by a proposed development.

We can also advise clients about important risk management and compliance issues that arise with such projects.

We also have expertise and experience with transactional issues, advocacy and mediation.

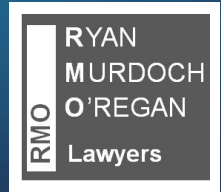
How We Can Assist You

Our Property & Development Team can provide the following legal services:

- preparing and advising on development applications,
- conducting planning appeals,
- advising on infrastructure agreements,
- advising on resumptions and compensation,
- conducting resumption and valuation proceedings in the Land Court,
- advising on local government law,
- development and due diligence,
- preparation of town planning objections and negotiations in relation to the amendment of proposed developments,
- allocation of risk and liability in connection with the acquisition, disposal and development of land,
- environmental compliance,
- tribunal and court proceedings, including merit appeals and legal challenges, and alternate dispute resolution, and
- other areas of law concerning the use, development and management of land and resources and the carrying out of infrastructure projects

We provide a commercially-relevant and cost-effective service for our clients.

Resumptions



In Queensland the *Acquisition of Land Act 1967* ("**the Act**") empowers a constructing authority the right to resume land for a variety of purposes as set out in the Act.

Such purposes are extensively listed but commonly these include resumption of land for:

- new road infrastructure or road widening, or
- new water pipeline infrastructure or drainage.

Notices

The Act states the constructing authority must first give a land owner a notice in the prescribed form, being a "Notice of Intention to Resume". Under the Act the land owner has a right to object to the resumption provided the objection is made within time and there are grounds for objection.

Compensation

Under the Act the land owner is entitled to claim compensation in respect of the resumed land. The constructing authority will issue a compensation claim form for this purpose.

Mortgage

If the land is subject to a mortgage the bank must also consent to any finally agreed compensation amount.

Land Court

Any dispute between a land owner and a constructing authority as regards compensation can be brought before the Land Court for determination.

Assessment Of Compensation

When assessing compensation, the general rule of thumb is that it must be an amount which justly compensates a dispossessed land owner.

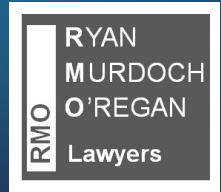
Time Limits

The Act states a land owner must make a claim for compensation within a prescribed time (3 years) after the day the land was taken unless it is reasonable to extend this period.

We recommend you contact one of our experienced property lawyers if you if you have received a notice. That will allow us to ensure you receive appropriate advice and assistance with respect to any objection, compensation claim or appeal.



Retirement Villages



The *Retirement Villages Act 1999* ("**the Act**") defines a retirement village as the "premises where older members of the community or retired persons reside, or are to reside, in independent living units or serviced units, under a retirement village scheme".

Costs

Costs may include:

- initial entry price,
- village operator's legal costs,
- recurring service charges,
- resale and reinstatement fees, and
- exit fees.

The First Step

After expressing interest in a retirement village, the village operator will provide you with a public information document and residence contract.

Independent legal advice on these documents must be obtained from our retirement village lawyers.

Will I Own The Unit?

There are 3 main types of tenure:

- freehold,
- leasehold, and
- licence.

With most retirement villages, you don't own the title like you would with your home. You have a right to occupy the dwelling and as such leasehold is the most common form of tenure with retirement villages.

Cooling-off Period

Once you have signed the contract, there is a 14 day cooling-off period.

Our experienced retirement village lawyers provide you with the best legal advice to allow you to decide whether the retirement village is the right lifestyle choice for you.



Strata Title Schemes



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

- Duplexes,
- Flat land residential communities,
- High rise unit blocks,
- Staged developments,
- Townhouses, and
- Unit blocks (smaller).

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:

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

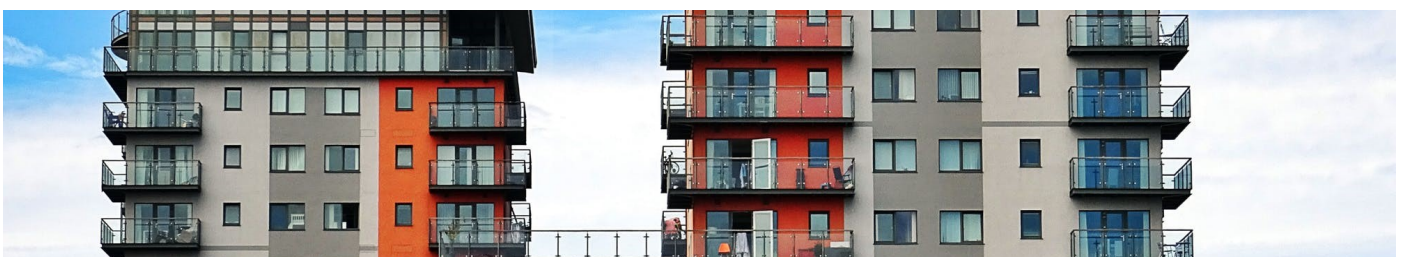
The law relating to strata title schemes is complex and is ever changing.

We have many years of experience in dealing with strata title schemes in Queensland.

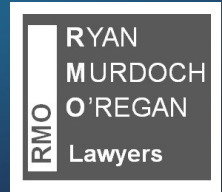
We provide professional, personalised preparation and advice on contracts, by-laws, leases, licenses, covenants, development consents and other strata title issues that might be of concern to residents, owners, developers and investors.

Disputes between lot owners and / or the body corporate can be dealt with under statutory procedures.

Our Commercial Litigation Team have considerable experience assisting clients with these types of disputes.



Survey Plans, Easements & Covenants



Survey Plans

Survey Plans are essential in determining rights and duties in relation to subdivisions and strata title construction. The two most common types of survey plans are:

- The Building Format Plan, and
- The Standard Format Plan.

A Building Format plan deals with the type of subdivision that usually occurs within a building. The boundaries are defined by boundary structures such as walls, floors or ceilings and the boundary is normally the centre of these structures as covered by sections 48C and 49c of the *Land Title Act 1994* ("**the Act**").

A Standard Format Plan defines land horizontally with marks on the ground, usually pegs. An example of where this type of plan might be used could be a townhouse complex, where individual lots have front and back yards. In this instance, the boundaries of lots and common property are defined by bearings and measurements taken when the land is surveyed.

Easements

An easement is a right granted to a person over land i.e. the legal right to use the property or enter the property. Other items such as easements are provided for under the Act. These easements, known as statutory easements, cover a range of situations such as support, shelter and the supply of utility services.

Whilst easements provide for the use of common property or a lot (e.g. in a situation where pipes or cables might need to be re-routed or emergency construction is required), they must not be exercised in a way that unreasonably hinders the use or enjoyment of a lot or common property.

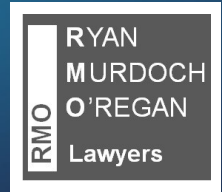
Covenants

In Queensland, the Act provides for statutory covenants, which are written agreements in a prescribed form that may be registered on property title to ensure that the obligation to comply with a covenant is transferred with the transfer of the property.

Landholders and government agencies can use statutory covenants to facilitate a range of issues, including linking separate land titles, ensuring land is used for particular purposes, for example, maintaining residential amenities or reducing conflict over land use.



Our Proven Experience



Our property lawyers have successfully handled many property and development cases for Queensland clients.

An example of our proven experience includes:

Mastering Management Rights, From Pre-Contract To Post-Settlement

Case Reference: 150791

The Situation: Our client was undertaking the purchase of management rights for a townhouse block of 102 townhouses on Brisbane's northside.

After meeting with our client to receive initial instructions, we completed a detailed review of the unit and management rights contract, letting agreement and deeds of variations.

Once we obtained a formal management rights inspection report we provided detailed recommendations and advice on a range of issues, such as renewal rights, replacements and general duties under the agreement.

We then liaised with the body corporate to obtain consent and assignment of the management rights.

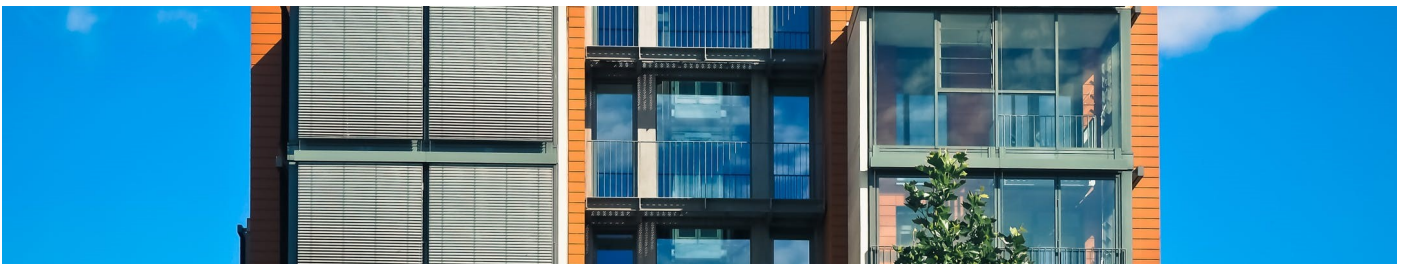
Upon consent being provided by the body corporate we attended to the general conveyance, in order to effect the timely settlement for our client.

This work also involved working with a range of stakeholders, including financiers and accountants to ensure all requirements and obligations were addressed and understood.

The Result: A win for our client. Provided with detailed recommendations and advices, our client was able to make a clear decision regarding their substantial investment with no hidden surprises or compliance issues arising before, during or after settlement, safeguarding our client's investment.

Also, by relying on us for the full suite of services relating to his management rights purchase, from pre-contract to post-settlement, our client was able to be in control at all times.

As every case is different, the cases reported here cannot be taken as an indication of a similar outcome being likely in your case, and these reports are not to be taken as legal advice about your particular situation.



What Our Clients Had To Say



"Thank you for all your help. You have made this process so easy and painless. I really appreciate everything you have done. I will heartily recommend RMO Lawyers to anyone looking to solve property-related issues. CM"

"Very personable and friendly and had a very collaborative approach to dealing with the matters we were addressing. PC"

"Very thorough and efficient. RMO Lawyers guided us through the process and explained things well. CK"

"Provided great service. As someone also working in professional services (accounting), I was pleased with the level of service that I received as a relatively small client. CP"

"Very prompt and efficient. RO"

"Awesome. You cared and had answers ready as required. We were impressed. TF"

"I found Ryan Murdoch O'Regan to be professional, efficient and easy to communicate with. JT"

"WOW!!!! That's really fantastic. You have really looked after us. Thank you so much, we really appreciate it. NR"

"Professional, courteous and with very good knowledge and understanding of the processes involved. PC"

"Pleasure to deal with. Very polite, professional and informative. DS"

"Easy to understand and friendly approach. MN"

"Most prompt and efficient professional we've ever dealt with! We will recommend to others and utilise their services again. They made it such as easy process. SM"

"Thank you for your wonderful support of my mother during this time. She has spoken very highly of your efforts and I am very appreciative of how you have made what can seem a daunting task much more manageable. Thanks for everything. BP"

"A confident, patient solicitor. AK"





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*Individual liability limited by a scheme approved under professional standards legislation.
This is general advice only.*

You should seek specific advice for your particular circumstances.