

PRIORITY NOTICES IN NSW

In a move to protect buyers of real estate in NSW against real estate fraud the *Real Property Act* 1900 has been amended (effective on 28 November 2016) to enable a person who intends to purchase a property to lodge a priority notice through their solicitor, conveyancer or by their bank.

The priority notice once registered alerts all interested parties to the fact that the completion of a conveyancing transaction is pending. It is designed to remove the risk of someone registering a legal interest on the title between exchange of contracts, settlement and then registration. Once registered it will temporarily stop the registration of other dealings (with some exceptions).

An example of a risk to all buyers is if the vendor owes money to a third party and that party obtains a court order for payment of that debt. The court order can be registered against assets owned by the vendor by way of a writ. The priority notice stops that registration from occurring but does not stop the party from lodging the documents. It is only once the priority notice expires or otherwise is withdrawn that the registration of the writ can occur.

The upshot of registration of a priority notice is that the registrar general of the land and property information cannot *register* most dealings on the title while a priority notice has effect without the consent of the person who lodged the priority notice. Where a priority notice is lodged by the purchaser before the writ, the transfer of the title to the new owner will go through notwithstanding the later writ and the LPI will send a notice to the issue of the writ that the land does not belong to the vendor and cannot be registered.

Priority notices are effective for 60 days and can be extended only once for an additional 30 days if the application for extension is made while the priority notice is still in force. If a second priority notice is lodged by the same party it will only have effect from the lodgement date and is not connected in any way to a former priority notice. If protection is required longer than 90 days, the registration of a caveat would be a more sensible pathway to protection. **Please contact A & T Legal for further advice on caveats if your purchase involves a longer settlement period than 90 days to discuss if issuing a caveat as well as a priority notice is required noting many off the plan contracts prevent a buyer from lodging a caveat¹.**

There are some dealings which will not be prevented by the priority notice such as any dealings in registrable form lodged *before* the notice, the dealings listed on the priority notice such as the transfer of land to the purchaser and any caveats or withdrawal of caveats.

Fees to lodge a priority notice are \$33.80 for LPI & \$8.80 for PEXA and \$14.00 for LPI and \$8.80 for PEXA if an extension is required.

Solicitor's costs to lodge documents are in addition to the fees above. Please refer to our cost agreement which sets out the fees required if you instruct A & T Legal to issue a priority notice or caveat noting that we recommend, at the very least, all buyers lodge a priority notice to prevent new legal interests in the land taking priority over your purchase.

¹ A Priority Notice is different from a Caveat in that a Caveat prohibits the registration of certain dealings pending the perfection of a claimed estate or interest in land, whereas a Priority Notice gives priority to the registration of specified unregistered dealing(s) for a limited period of time.