

SPECTRUM SPEAKS



Halfway through 2024, and what a start to the year it has been for Spectrum Lawyers.

As mentioned in our last newsletter, at the start of the year we welcomed some new starters: Rebecca, Yousha, and Alyssa. It has been a delight to have them join our team. Rebecca has hit the ground running, expanding on her already substantial building experience to assist with building disputes involving owner corporations, cladding, and plumbing defects. Yousha has seen an expansion in our already busy conveyancing and property area, allowing us to offer our developer clients further services in this space. We are thrilled to have Alyssa as part of our team. She works both on reception and, as a law graduate, has been of great assistance with many research tasks and assisting clients with their enquiries. To celebrate our new team, we enjoyed a pizza-making day and a teppanyaki meal for our mid-year celebration this year.

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The middle of the year has been an exciting time for weddings, with Donna and Fred travelling to Bali for a friend's wedding where Fred was the MC; Maria travelled to Greece to attend two weddings, and Rebecca is heading off to Spain in August for a wedding too! In addition to all the wedding travels, Fred and Donna are also extremely fortunate to be invited by Kulture City to their 10-year gala ball in Alabama in August. We can't wait to share some exciting news about Kulture City adventures in our next newsletter.

The middle of the year also saw us building new networks with Spectrum Lawyers joining Connect in Hoops with Geelong Cats. This has provided us with a unique opportunity to network and work alongside some new businesses. We are excited about some new projects at the end of 2024 and the beginning of 2025, which we will continue to share with you.

As stated previously, Spectrum Lawyers is expanding the areas of law we offer to our clients, with Hannah and Alyssa both practising in family law. For the first time, we have included an article relating to family law (namely binding financial agreements, which are important for many relationships) in our newsletter. Many of the articles featured in this newsletter are based on disputes or issues our clients are facing, so we thought they would be relevant to you.

Again, thank you to all our clients for continuing to be part of our journey. We look forward to continuing to serve and support you.



An Overview of Sales

BY FRED ABU-ELIAS

Selling isn't merely about transactions; it's an intricate dance of persuasion, understanding, and empathy. Whether you're selling a product, service, or idea, the ability to sell effectively is a skill that transcends industries and professions. At its core, selling is about creating and highlighting value. It's about identifying needs, presenting solutions, and convincing others of their benefits. Effective selling involves not just promoting a product but also creating relationships built on trust and mutual benefit.

Successful selling begins with a deep understanding of what you're offering. Clarity about its features, benefits, and unique selling propositions is essential. This foundational knowledge forms the basis of how you communicate value to potential customers.

Communication lies at the heart of selling. It's not just about delivering a sales pitch but about engaging in meaningful conversations. Active listening plays a pivotal role here; understanding the customer's pain points, aspirations, and priorities allows you to tailor your message effectively. The art lies in translating the features of your offering into compelling benefits that resonate with the customer's needs.

Trust is key to successful selling. Building trust involves demonstrating credibility, reliability, and a genuine commitment to customer satisfaction.

Honesty and transparency are non-negotiable. Whether you're selling face-to-face or through digital channels, every interaction should reinforce your integrity and dedication to solving the customer's problems.

The journey of mastering selling is a continuous one. Learning from successes and failures, seeking feedback, and honing your skills are crucial to staying ahead. Whether through formal training programs, mentorship, or self-study, investing in your development as a sales professional pays dividends in the long run.

Selling is both an art and a science—an amalgamation of strategy, communication, empathy, and resilience. It's about creating value, building relationships, and making a meaningful impact. Whether you're a seasoned salesperson or just starting out, embracing the principles of effective selling can elevate your success and transform how you engage with your clients.

In essence, selling isn't just about closing deals; it's about opening doors to possibilities, forging connections, and leaving a lasting impression. Mastering the craft of selling isn't just about what you sell—it's about how you sell it and the value you bring to those you serve.

Contact Fred if you'd like to learn more about the art of connection and selling.

Planning Controls and Overshadowing Regulations in Victoria

BY MARIA FOKIANOS

Before embarking on any building project, it is crucial to understand the intricate web of planning controls that govern land use and development across Victoria. These controls, collectively known as planning permits, dictate when specific approvals are needed and impose various restrictions on aspects such as structure location, height, site coverage, and more.

As professionals in the construction industry, understanding and complying with these regulations are paramount to ensure a smooth, legal, and sound construction process. This article will focus on the requirements around overshadowing a recreational private open space (RPOS).

Understanding Planning Controls

The Building Regulations 2018 (Regs) outline a broad spectrum of regulations to manage urban development and preserve community amenity. Such planning controls are often categorised as "siting, design, and access requirements," addressing fundamental aspects like:

- **Building Location and Height:** Specify where structures can be located on the site and how tall they can be, aiming to prevent overshadowing and maintain visual harmony.
- **Overshadowing, Overlooking, and Privacy:** Regulate building design to minimise overlooking into neighbouring properties and protect privacy.



Navigating the Process

As key stakeholders, it is important to manage these regulations effectively. Start by determining whether a planning permit is required for the proposed development. Generally, this requires consulting the relevant planning scheme for the area, which outlines specific requirements and exceptions applicable to different zones and land uses.

Once planning controls are identified, prepare a thorough submission that addresses all relevant criteria and demonstrates compliance with applicable regulations. This includes detailed plans, reports, and assessments as required by local authorities. The approval process involves review and assessment by planning officers or committees, with opportunities for public consultation in some cases.

Understanding Regulation 83 of the Building Regulations 2018

Regulation 83 of the Regs plays a crucial role in safeguarding access to sunlight for RPOS on adjoining allotments, particularly when new dwellings or extensions are proposed. This regulation ensures that new developments do not unduly overshadow these spaces, thereby preserving the amenity and functionality of residential properties.



If ever faced with a dilemma regarding overshadowing, there is a recent case before the Victorian Civil and Administrative Tribunal that considered this issue using a three-step methodology process:

1. Identifying and accurately recording the existing levels of sunlight (and shadowing) of the affected RPOS.
2. Comparing the data obtained in Step 1 with the requirements of Regulation 83 to identify whether existing sunlight to affected RPOS is less than the requirements of Regulation 83.
3. Determining whether the requirements of Regulation 83 can be met or if an application for report and consent per Regulation 83(3) should be sought.

As per Regulation 83 of the Regs, the required minimum area of sunlight to the affected RPOS, whether under preexisting conditions or subsequent to the new building, is determined by reference to the following aspects:

- **Physical Aspect:** The lesser of 75 percent of the affected RPOS and 40 m² with a minimum dimension of 3 m.
- **Temporal Aspect:** 5 hours of sunlight between 9:00 am and 3:00 pm on 22 September.

Therefore, if an RPOS already lacks sufficient sunlight, any new development must not exacerbate this deficiency. It is crucial to conduct a thorough assessment before commencing any building project, particularly one that may affect neighbouring properties' amenity.

Binding Financial Agreements – An Overview

BY HANNAH SMITH

Imagine you and your partner or spouse have just separated and you want to come to an agreement on how to divide the assets of the relationship. Or perhaps you and your partner are about to move in together and want to ensure you each protect your respective assets in case the relationship doesn't work out. A common question arises: how can you formalise these decisions?

Often, partners or ex-partners will write up their agreement and sign it, believing it is sufficient to ensure their intentions are finalised. Some might even go a step further and write their agreement as a Statutory Declaration. Unfortunately, such "agreements" are neither binding nor enforceable, providing little comfort that property matters will be resolved as intended.

A Binding Financial Agreement (BFA) is a formal way to document such agreements. A BFA is essentially a contract that sets out what will happen to the assets (both individual and joint) in the event of separation. It offers certainty and control over finances and assets, avoiding potentially contentious and unpredictable outcomes of court proceedings. To be binding and enforceable, a BFA must strictly comply with the relevant provisions of the Family Law Act 1975 (Cth).

A BFA can be entered into:

- Before marriage (section 90B),
- During marriage (section 90C),
- After a divorce order is made (section 90UD),
- Before a de facto relationship (section 90UB),
- During a de facto relationship (section 90UC),
- After a de facto relationship ends (section 90UD).

Requirements for a Binding Financial Agreement

Some of the formal requirements for a BFA include:

- The agreement must be in writing.
- It must be signed by all parties.
- Each party must receive independent legal advice before signing, covering the effect of the agreement and its advantages and disadvantages.
- The legal practitioner providing the advice must give a signed statement confirming the advice was provided.
- A copy of the signed statement must be given to the other party or their legal representative.

Parties must make a full and frank disclosure of their financial positions, often involving an exchange of financial documents such as payslips, tax returns, bank statements, superannuation statements, and documents related to businesses, partnerships, and trusts.

Setting Aside a BFA

The court is not involved in drafting and executing BFAs but may need to determine if a BFA should be set aside. The Family Law Act provides circumstances under which a BFA can be set aside, including:

- It was obtained by fraud (including non-disclosure of a material matter).
- It was entered into to defraud or defeat a creditor, or with reckless disregard for a creditor's interest.
- The BFA is void, voidable, or unenforceable.
- Circumstances have changed since the BFA was entered, making it impracticable to carry out the agreement.
- There has been a material change in circumstances (relating to the care, welfare, or development of a child) causing hardship.
- A party has engaged in unconscionable conduct.

Benefits of a BFA

- **Certainty and Control:** Provides certainty and control over individual assets, offering protection and peace of mind. For separated couples, it maintains control over financial affairs and assets.
- **Cost and Time Efficiency:** Helps avoid lengthy and costly court proceedings, reducing emotional and stressful impacts.
- **Preservation of Relationships:** Minimises conflict, preserving an amicable relationship, especially important where children are involved.
- **Tailored Solutions:** Offers flexibility, including provisions around spousal maintenance, superannuation, and the treatment of specific assets.

Risks and Challenges of a BFA

1. **Risk of Invalidity:** Limited circumstances under which a BFA might be challenged and set aside by the court. It is important to ensure the BFA is carefully drafted and complies with the Family Law Act.
2. **Costs of Preparation:** While negotiating and preparing a BFA can be costly, these costs are generally much less than those associated with protracted court proceedings. Think of a BFA as "insurance".
3. **Potential Disputes:** While BFAs aim to reduce disputes, disagreements can still arise, especially if there is a material change in circumstances not considered when the BFA was prepared.

BFAs play a vital role in managing financial relationships in Australia. They offer couples a way to control their financial future, providing certainty, efficiency, and tailored solutions. However, the complexity of drafting a valid BFA and the potential for challenges means that careful consideration and legal advice are essential. By understanding the legal requirements and potential pitfalls, couples can make informed decisions about whether a BFA is right for them and how to structure their agreement to ensure it is robust and fair. As the legal landscape continues to evolve, staying informed and seeking expert legal advice will remain crucial for anyone considering a BFA.



Understanding Patent and Latent Defects in Construction Law

BY REBECCA CONNOLLY

Construction projects in Victoria are governed by intricate laws that regulate the identification, disclosure, and rectification of defects. Among the most critical aspects of construction law are patent and latent defects, each posing unique challenges and legal implications for builders, homeowners, and developers alike.

Defining Patent and Latent Defects

In the realm of construction, defects are broadly categorised into two types: patent and latent. Patent defects are readily observable issues that can be identified through ordinary inspection, such as visible cracks in walls, leaking plumbing, or improperly installed fixtures. Latent defects, on the other hand, are concealed issues that may not be immediately apparent and often manifest only after completion or over time. Examples of latent defects include inadequate foundations, hidden structural weaknesses, or faulty electrical wiring that may not be visible during routine inspections.

Legal Framework in Victoria

Victoria's construction laws, primarily governed by the Building Act 1993 (Vic) and the Domestic Building Contracts Act 1995 (Vic), establish clear guidelines and obligations concerning defects in construction.

Under Section 37B of the Building Act 1993 (Vic), builders are mandated to adhere to



building standards and rectify any defects within specified timeframes. Typically, this defects liability period spans six years for structural defects and two years for non-structural defects. This provision ensures that builders are accountable for the quality and safety of their workmanship over a reasonable period following completion.

The Domestic Building Contracts Act 1995 (Vic) further delineates the responsibilities of builders through Section 8, which requires builders to warrant that their work is performed in a proper and workmanlike manner, suitable for its intended purpose, and compliant with all relevant laws and regulations. Should defects arise that fall under these warranties, builders are obligated to rectify them within a reasonable timeframe specified under the Act.

Disclosure Requirements and Legal Recourse

Transparency and disclosure play crucial roles in managing defects in construction. Section 137B of the Building Act 1993 (Vic) mandates that builders and developers must disclose all known patent and latent defects to homeowners or purchasers. Failure to disclose material defects can result in legal liabilities and claims for damages or rectification.

In cases where defects are discovered post-construction, homeowners and purchasers in Victoria have several legal avenues for recourse:

- **Rectification:** Builders are obliged to rectify defects within the defects liability period as stipulated under the Building Act 1993 (Vic).
- **Compensation:** Homeowners may seek financial compensation for losses incurred due to defects, including repair costs and diminished property value, under provisions outlined in the Domestic Building Contracts Act 1995 (Vic).
- **Contractual Termination:** In situations where defects significantly compromise the integrity or usability of the property, homeowners retain the right to terminate the contract under specified conditions.

Challenges and Considerations

Resolving disputes over patent and latent defects requires careful consideration of contractual obligations, statutory provisions, and the specific circumstances surrounding the defect discovery.

The timing of defect identification and the thoroughness of initial inspections are critical factors that influence liability and the appropriateness of remedies sought.

Conclusion

Understanding the legal implications of patent and latent defects is indispensable for all parties involved in construction projects in Victoria. Following strict building standards, transparent disclosure practices, and proactive defect management are essential for safeguarding rights and ensuring compliance with the law. In conclusion, a thorough grasp of patent and latent defects in construction law not only ensures compliance but also facilitates smoother project outcomes, benefiting both builders and homeowners alike in Victoria's dynamic construction landscape. Given the complexity of construction regulations, seeking professional legal advice is advisable to navigate these intricacies effectively and protect the interests of all parties involved.



First Homebuyers: Tips for a Smooth Property Purchase in Victoria

BY YOUSHA ABDALLAH

Buying your first home is a monumental step filled with excitement and a fair share of challenges. For first-time homebuyers in Victoria, understanding the legal landscape and taking advantage of available concessions and grants can make the journey smoother. This article provides practical legal tips and outlines key schemes that can significantly benefit first-home buyers.

1. Understand the Conveyancing Process

Conveyancing is the legal process of transferring property ownership from the seller to the buyer. It involves several steps, including:

- **Contract of Sale:** Review the contract thoroughly. Ensure it includes all necessary details and conditions.
- **Vendor's Statement:** Also known as the Section 32 statement, it includes crucial information about the property, such as title details, zoning, and any restrictions or easements.
- **Settlement:** The final step where the purchase price is paid, and the title is transferred to the buyer.

2. Take Advantage of First Home Owner Grant (FHOG)

The Victorian Government offers the FHOG to assist first-time buyers. Eligible buyers can receive a grant of \$10,000 for purchasing a new home valued up to \$750,000. In regional Victoria, the grant increases to \$20,000. It's a significant boost that can help cover initial costs.



3. Understand Stamp Duty Concessions

Stamp duty, or land transfer duty, is a significant cost in property transactions. However, first-time buyers in Victoria may be eligible for exemptions or concessions:

- **Full exemption:** For homes valued up to \$600,000.
- **Concession:** For homes valued between \$600,001 and \$750,000.

4. Get a Comprehensive Building Inspection

A building inspection is crucial to identify any potential issues with the property. It helps ensure there are no hidden defects or structural problems that could become costly repairs in the future. A thorough inspection provides peace of mind and can be a negotiation point if issues are found.

5. Secure Financing Early

Getting pre-approval for a home loan can streamline the buying process. It gives you a clear budget and demonstrates to sellers that you are a serious buyer. Shop around for the best mortgage rates and consider speaking to a mortgage broker for expert advice.

6. Engage a Solicitor or Conveyancer

Navigating the legalities of property purchase can be complex. Engaging a solicitor or licensed conveyancer ensures that all legal aspects are handled correctly. They will review contracts, conduct searches, and ensure compliance with all legal requirements, protecting your interests throughout the transaction.

Conclusion

Buying your first home in Victoria is an exciting venture, but it comes with its own set of challenges. Understanding the legal process, taking advantage of government grants and concessions, and seeking professional advice are crucial steps to ensure a smooth and successful purchase. With careful planning and the right support, you can navigate the journey of buying your first home with confidence and ease.

Chat to us for more advice on how you can ensure a smooth process when purchasing your new home.





Spectrum Lawyers provide legal services with legal expertise across the following areas:

Building and construction law

- To assist builders and/or owners efficiently resolve building disputes
- Developing streamline procedures and training to manage the challenges in today's market
- Advising consultants & contractors on their legal obligations under the Building Act & Regulations
- Advising building surveyors on compliance issues
- Debt recovery
- Dispute resolution at private mediations, DBDRV, Tribunal and Courts
- Reviewing building contracts and advising on rights and obligations

Conveyancing

- Assisting clients with the purchase or sale of residential or commercial property

General Counsel Services

- Reviewing and advising on procurement contracts and licenses
- Reviewing and drafting policies and terms and conditions
- Negotiating contractual documents
- Providing training (contract law, Australian Consumer Law, advertising, warranty, etc.)

Probate, Wills and Powers of Attorney

- Administering estates
- Drafting Wills and Powers of Attorney to protect your family and assets

Family Law

- Assist you in matters regarding separation and divorce
- Property and financial settlements
- Children's matters and dispute resolution

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Spectrum Coach are designed to understand your business intimately, which allows us to provide the focused, dedicated support that we hold to high standards to all our clients. We understand that every business is different, and will have different needs. Choose one of our services or choose them all – whatever works for you and your business.

Sales

Without sales, you don't have a business. Our training gives you guidance at a micro level, arming you with specific strategies that are proven to close sales.

Operations

Your front end and back end operations are key to turning a profit. From taking the initial sale to getting to a site start, we have designed processes that are easily adopted to improve efficiencies, increase profits and help you to manage your jobs more effectively.

Design & Drafting

Our extensive design library has a range of plans you can use to sell your new homes which are fully customisable. Our training will equip you with the tools you need to sell these plans based on their respective features and benefits. Need a custom design? We can do that too.

Marketing

You're busy doing what you do best – building homes. Let our in-house team help you market your business so you can do more of what you love. We can guide you through marketing your brand, generating leads, and can even help you build a website. We can also manage your social media, including writing content and posting on your social media pages.

Business Coaching

We get it - running a new homes business is complicated. As the business owner, you have to be across every aspect, and not all of them are going to be your specialty. Our general business coaching gives you a team that are skilled in all areas of business, from construction to finance.

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