

Buying a property? What's all the fuss about "cooling off" periods?"

Purchasers are legally entitled to 5 business days in which to make enquiries after exchanging contracts, unless you and the vendor agree otherwise. But how relaxed can you be during a 'cooling off'?

Exchanging contracts with a cooling off period allows you to lock in the vendor to sell the property to you at an agreed price. However there are some potential downsides to exchanging contracts with a cooling off period that you need to know before you proceed:

Unacceptable terms in the contract

The contract may contain some unacceptable terms. Without having your lawyer look at it before you exchange you may not know this. We can ask for changes during the cooling off period BUT the vendor might refuse to renegotiate the terms and you will be stuck with them.

Pressure to get loan approval

If you are borrowing funds to buy the property you should always have your formal loan approval in place before the cooling off period expires. This can put a lot of pressure on you and your bank and it is unwise to proceed on a purchase beyond the cooling off period without formal loan approval.

Problems with the property

The pest/building inspections or contract may disclose something undesirable about the property and the vendor may not be willing to fix it or reduce the price.

Money and time

You incur substantial cost and time in those five business days and if you decide not to proceed, you not only lose your 0.25% deposit but you lose the money incurred on reports and conveyancing costs.

If you exchange with a cooling off period you run the risk of spending money on a property that ultimately may turn out to be unsuitable. If you exchange without a cooling off period then you run the risk of the vendor selling the property to someone else. Only **you** can decide whether a cooling off period is worth the risk.

Caroline Holt

Senior Associate Solicitor
Tel 02 4655 3077
caroline@cmcox.com.au

Appealing against immediate licence suspensions

When members of the public are charged with a low range drink driving offence (0.05 to 0.079), the police generally hand their driver's licence back to them after the charging process has been completed and they are able to continue driving until the sentencing date at Court. When people are charged with high range drink driving (anything above 0.15), licences are immediately suspended at the scene. However, the police have discretion as to whether to immediately suspend the licence of someone charged with a mid-range offence (0.08 to 0.149). The police take a number of factors into account when deciding whether or not to exercise this discretion at the time of the offence, but they most often choose to suspend the licence.

What many members of the public don't know is that they have the right to appeal against this immediate suspension by a police officer to a Magistrate in the Local Court. The matter is listed for hearing and the driver has the right to put forward submissions to show the Court that 'exceptional circumstances' exist which necessitate the return of their licence. We recently acted for a client in such circumstances. He is employed as a professional driver and thus relies on his licence for his livelihood. He had a very good traffic history spanning 30 years and special circumstances also existed surrounding his care of a child. With the right submissions, the support of his employer and a good driving record, the appeal was successful and our client was allowed to continue driving and earning a living until his hearing date.

Give us a call if this has occurred to you as we may be able to help.

Are you driving with the correct licence?

In the past few months, our criminal law solicitors have represented a number of p-plate drivers caught driving with blood alcohol limits below 0.05%, but above the p-plate requirement for a 0% reading. They have thus been charged with a drink driving offence. In a high percentage of those cases, our clients had been able to apply for their open ("black") licence many months before the offence occurred, but "just never got around to it". Had they been driving with open licences in their pockets, they would have been entitled to the higher 0.05% threshold.

Our very strong advice is that all drivers should, as soon as they are legally able to, apply for the next level in the New South Wales licensing regime so as to be afforded the benefits and protections of each stage. Contact one of our criminal law solicitors if you would like more advice about this.

Jillaine Duve

Associate Solicitor
Tel 02 4677 1292
jillaine@cmcox.com.au



Caldwell
Martin
Cox

Solicitors



After nearly 38 years practising as a solicitor, 31 of them with CMC, Peter Martin, former partner of CMC has retired from the legal profession.

Changes to Apprehended Violence Order Law

Apprehended Violence Orders (AVOs) are becoming increasingly common and well known. They are Orders that a Court can grant protecting people against acts of violence or non-physical abuse such as harassment, intimidation, damage or threatened damage to property. Significant changes were made to the law in relation to AVOs with the passing of the Crimes (Domestic and Personal Violence) Act 2007, which commenced on 10 March, 2008. Some of the changes brought about by this new Law are:

- It expands the definition of a "domestic relationship".
- It allows a Police Officer to require a person to disclose his or her identity if the Police Officer reasonably suspects that an AVO has been made against that person (it is important to note that there is no general law that requires anybody to give a Police Officer their personal details, and there must be specific reasons i.e. committing a criminal offence, traffic matter).
- It allows a Police Officer to search for "dangerous implements" that the Police Officer believes may have been used to commit a domestic violence offence.
- It amends the term "intimidation" to include an approach made to a person by telephone text messaging, emailing or other technologically assisted means.
- An assault or similar criminal matter in a domestic relationship will be classed as a "domestic violence offence". The Courts now, upon application by the Police, place a notation of such domestic violence offence on a person's criminal record and are also empowered to make entries for any past offences of a similar nature. The effect of this will be that if the person is in the future charged with a similar offence there will be greater difficulties in the person obtaining bail.

In a recent case in which this firm was involved an AVO was sought, as well as criminal charges, against the person who it was alleged had posted offensive and threatening messages against another person on an internet website known as "Bebo", which is similar to "Facebook" and "Myspace" (and which Wikipedia claims "is an online social media network and an acronym for "Blog early, blog often").

If you believe you have been subject to personal violence, harassment or intimidation you should approach the Police or the Court to seek an AVO. We can assist in representation in private AVO matters.

Similarly, if you have been served with an AVO either sought by a person or by the Police we can assist in arranging legal representation for you at Court.

For further assistance please contact Geoff Lloyd or Caroline Holt of our Camden Office, Jillaine Duve of our Picton Office or Kristy Faida of our Tahmoor Office.

Geoff Lloyd
Associate Solicitor
Tel 02 4655 3077
geoff@cmcox.com.au

Pricing Law changes

If you are in business and you advertise consumer goods or services you should be aware of proposed changes to advertising Laws. Essentially these proposed Laws will require business to specify a prominent "total price" in any advertisement containing a statement about such prices. These changes will apply to all consumer goods and services except financial services. Once the proposed changes take effect it will no longer be possible to:

- Advertise an airline ticket price as \$149.00 plus fees and charges – the total amount including fees and charges will need to be stated.
- Advertise taxation returns prepared for \$59.00 plus GST. The total price with the GST must be stated.
- The Law will also prohibit a motor vehicle for sale by lease finance under the heading "From \$499.00 per month" unless there is a prominent statement of the total price to be paid.

As the new Laws require the total price to be specified in a prominent way it is unlikely that it will be sufficient to use an asterisk with fine print setting out the extra charges. However, the obligation states the total price won't extend to what are known as optional extras such as additional product features or alternative payment means attracting an additional charge e.g. charging a credit card payment surcharge.

There are also provisions in relation to postage and handling charges and delivering charges. Stamp duty will not need to be included as it is regarded as a charge imposed directly on the consumer by the Government.

It is proposed the new Laws will come into effect later in 2008. There are penalties for businesses that breach the Laws and it is likely that the regulators will be examining advertising closely at that time.

If you require further information regarding these matters or business law generally please contact Chris Paul or Geoff Lloyd of our Camden office.

Geoff Lloyd
Associate Solicitor
Tel 02 4655 3077
geoff@cmcox.com.au

Did you know ?

The Partners and Solicitors at Caldwell Martin Cox are experts in many fields of law. Did you know that we offer our professional staff to speak at your community group free of charge on a legal topic of your choice. The most popular recent topics on which our lawyers have spoken relate to Wills, Powers of Attorney and Appointments of Enduring Guardians.

Contact **Jillaine Duve** at our Picton office on 4677 1292 if you would like to book one of our speakers for your next meeting.

Spring 2008

They're mine until I'm paid for them – or are they?

Recently a client asked our advice on how to recover her goods from a company which had just entered liquidation. The goods had been supplied to the company, but were not yet paid for when the insolvency practitioner had been appointed. Our client felt that ownership or title of the goods should remain with her as she had not been paid for them.

Regrettably, in this case, the lack of a signed contract acknowledging that the ownership of the goods supplied transferred only when payment had been received in full, stopped her from recovering the goods. Ultimately the unpaid seller joined the ranks of unsecured creditors and received only a percentage of value of the goods.

An appropriately drafted Retention of Title clause tailored specifically to the client's business needs would have produced the result our client felt entitled to. It would have given the unpaid seller a claim to the goods because they would never have formed part of the assets of the company. Don't let your business documents let you down!

Speak to us about what strategies could be implemented prior to the appointment of an insolvency practitioner, to provide you with the greatest chance of securing your position against a loss arising from the failure of a company.

Kristy Faida

Associate Solicitor
Tel: 02 4681 9203
kristy@cmcox.com.au

Do you know your obligations if you are involved in an accident ?

The first and most important rule is that anyone involved in a 'crash' must stop and give assistance to anyone who is injured. The Australian Road Rules require a driver (or their representative) to give the driver's particulars at the scene of the crash to any other person involved in the crash and to anyone whose property is damaged. In addition, if anyone is killed or injured in the crash, then those particulars must also be given to the police 'as soon as possible' or within 24 hours of the accident. Particulars will include the driver's name and address, the registration details of the vehicle and also the name and address of the owner of the vehicle.

Failure to comply with these rules may lead to fines and/or prosecution at Court. If you would like more advice about this issue, please contact any of our criminal law solicitors at one of our four offices.

Jillaine Duve

Associate Solicitor
Tel 02 4677 1292
jillaine@cmcox.com.au

Saving for your First Home?

The 2008 Federal Budget delivered some exciting news for potential first home owners with the introduction of First Home Saver Accounts. The scheme will assist individuals and families saving for their first homes by providing a government contribution of 17.5% p.a. on the first \$5,000 annually contributed to the account.

There are specific fees and regulations in relation to these accounts. For further information go to www.firsthomesaver.com.au.

Thinking of transferring a share in your property to your spouse?

Normally when transferring a share in a property, stamp duty is payable on the value of that share. However, if a share is being transferred to a husband, wife or de facto partner, no stamp duty is payable. This exemption is only applicable if the property is a private dwelling house or strata unit and is solely or principally used as your principal place of residence. Exemptions do not apply to transfers of shares in investment properties.

We can assist in preparing and lodging the necessary Transfer documents. Please feel free to contact our office for further information.

Belinda Dunkley

Licensed Conveyancer
Tel: 02 4681 9203
belinda@cmcox.com.au

New drink spiking laws

Do you know anyone who thinks it is amusing to give a friend a drink with a much higher level of alcohol than the friend suspects? You may want to tell them that recent amendments to the New South Wales Crimes Act now impose a maximum penalty of 2 years gaol or \$11,000.00 for doing so!



Retirement of Peter Martin

On 11 July 2008 CMC partners, staff, family and friends joined together to farewell Peter Martin on his retirement from the legal profession. Peter joined Pat Caldwell in 1977 becoming a partner that same year. Peter remained a partner until 1992 and continued as a consultant to the firm until June this year. Over his many years with the firm Peter earned the respect of all who worked with him, not only within our firm but other local legal firms and the judiciary. Peter will be very much missed at CMC and we all wish him well in his retirement.

Spring 2008

Who's where and what do they do?

Area of Law	Camden	Narellan	Picton	Tahmoor
Conveyancing	Chris Paul Lyn Harrison	Bill McGookin	Angus Cox Leanne Anderson Belinda Dunkley	
Estate Planning	Chris Paul Caroline Holt	Bill McGookin	Angus Cox Jillaine Duve	Kristy Faida
Family Law	Caroline Holt	Bill McGookin	Jillaine Duve	Kristy Faida
Commercial Leases	Chris Paul		Angus Cox Belinda Dunkley	
Leases, Sale and Purchase of Businesses	Chris Paul Caroline Holt		Angus Cox Belinda Dunkley	
Court Matters /Damages	Caroline Holt Geoff Lloyd		Jillaine Duve	Kristy Faida
Criminal Law	Caroline Holt Geoff Lloyd		Jillaine Duve	Kristy Faida
Debt Recovery	Geoff Lloyd		Jillaine Duve	Kristy Faida
Bankruptcy/Insolvency	Geoff Lloyd			
Unfair Dismissal/ Employment Law	All enquiries to Chris Paul or Geoff Lloyd			
Family Provisions (challenging wills)	All enquiries to Angus Cox			
Personal Injury	All enquiries to Geoff Lloyd			
Workers Compensation	All enquiries to Geoff Lloyd			
Medical Negligence	All enquiries to Geoff Lloyd			

Our services include:

- wills and estate planning
- family law
- property law and conveyancing
- retail/commercial leases
- business law
- criminal law
- civil litigation
- employment law
- mediation and dispute resolution

Electronic Newsletters

If you would like to receive our newsletter by e-mail, please:-

Send an e-mail message to help@cmcox.com.au with the words "Newsletter" in the subject line, and provide your name and details in the message or subscribe from the Reading Room on our website www.cmcox.com.au

On receipt of your reply, we will delete your name from the "hard copy" mail list, and send you future newsletters by e-mail.



■ 28 Hill Street,
CAMDEN NSW 2570
Tel 02 4655 3077 Fax 02 4655 3227

■ 20 Menangle Street West,
PICTON NSW 2571
Tel 02 4677 1292 Fax 02 4677 1442

■ 129 Remembrance Drive,
TAHMOOR NSW 2573
Tel 02 4681 9203 Fax 02 4683 1156

■ Suite 3, Level 1, 320 Camden Valley Way,
NARELLAN NSW 2567
Tel 02 4647 8348 Fax 02 4646 1595

Email: help@cmcox.com.au

Website: www.cmcox.com.au

Liability limited by a scheme approved under Professional Standards Legislation.

This publication has been prepared for the purpose of quick information dissemination to Caldwell Martin Cox clients. Its contents should not be used as a basis for advice or formulating decisions.