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Trusts in contracts

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It is late on Friday afternoon when you receive a call from your client Harry who wants you to attend an auction with him first thing on Saturday morning. You are tired from a stressful week and were looking forward to a quiet weekend but business is business.....

You meet Harry at the auction rooms. He tells you his plan is to buy the property if he can for the kids. The kids are all under 10.

Bidding starts and is heated and quick. Before you know it the hammer goes down and Harry turns to you with a beaming face saying *I've got it!*

Harry says, now remember I'm buying it but it's for the kids. You duly tell the vendor's solicitor that the purchaser is Harry in trust for Christina, Mary and Clarissa.

When you go to work on Monday you start the procedure for the conveyance and write your normal letter to Harry telling him how much everything will cost. The property cost \$2 million so you tell Harry the costs will include stamp duty of \$95,490 on the contract plus \$20 for the duplicate contract and transfer.

Harry is a little startled because he hasn't bought a property for some time and is a bit out of touch. Nevertheless, he eventually fronts up with the cheque. You duly lodge the contract and transfer for stamping in anticipation of settlement.

The sting

To your horror you are told that in addition to normal stamp duty on the contracts and transfer there is also \$95,490 to pay as stamp duty on the declaration of trust in the contract. In other words, duty totalling \$191,000. Then you suddenly remember what you forgot in your haste.

One document can be subject to more than one class of stamp duty if more than one thing happens in the document (section 294). In this case the document not only constitutes an agreement for purchase of land but also creates a trust of the property that did not exist before.

The Commissioner's view on the matter is clearly expressed in paragraph 6 of OSR ruling DUT 31.

Author: Jim Main, JMA Legal June 2010

For further information on this issue, please see the contacts below.

Contacts

Jim Main
Brendan Cockerill

Call 1800 618 869
www.jmalegal.com.au

Canberra

L11/60 Marcus Clarke St,
Canberra ACT 2601
Ph 02 6243 3610
Fax 02 6243 4848

Cootamundra

46 Cooper St,
Cootamundra NSW 2590
Ph 02 6942 1655
Fax 02 6942 3692

Sydney

3 Spring St,
Sydney NSW 2000
Ph 02 8249 4028
Fax 02 8249 4872