

7 June 2009- Changes to the Duties Act 2000 (Vic)

Changes to the *Duties Act 2000* (Vic) have been passed by the legislative assembly. The amendments have implications for property developers, retirement village operators and aged care facility providers who commonly use long-term lease structures.

The Act imposes duty on the grant of a lease (or agreement for lease for which any consideration (other than rent) is paid or agreed to be paid either for the lease or for other rights contained in the lease. The Act provides for:

- No obligation to pay duty within 14 days of settlement (the existing three month limit is retained).
- Leases of caravan sites in registered caravan parks to be used for a primary residence are exempted from duty.
- Leases which create a "residency right" as defined by the Retirement Villages Act 1986 are exempted from duty. According to the Retirement Villages Act residence right means a right of a resident to use residential hostel or hospital accommodation or other services provided for a retirement village (not being a service provided in a residential care facility) which is created or arises by or under a contract whether the right is expressed as an interest in land or a licence or arises because the resident becomes the holder of shares in a company which provides accommodation or services for a retirement village.
- Duty will not apply to ordinary commercial leases where the tenant pays rent and outgoings (including landlord legal fees and insurance premiums and other outgoings).
- Duty will not be imposed on a lease where the lease was granted as a result of the exercise of an option for a further term contained in a lease granted before 21 November 2008 and the lease required payment of consideration for the exercise of the option.

These changes are intended to capture transactions that are structured to avoid duty by using long term leases.

Currently, a lease of land in Victoria is subject to duty in limited circumstances and long term leases have been used to confer the benefits associated with a freehold interest (use and control) on the tenant, without attracting duty.

The bill was passed on June 30 2009. The changes to leases are retrospective to 21 Nov 2008 and the balance of the Act takes effect from today.