

Western Australia's only Quality Endorsed Settlement Agency



## Super Spring Special

Valid from 1 September, 2007 until 30th November, 2007

We would be delighted to attend to conveyancing for your clients for the following special rates:

For the **Purchase** of any property \$400k+:

**50% Discount** off the Government Scale plus government and out of pocket expenses

For the **Sale** of any property \$400k+:

**Flat Fee of \$670.00** (including GST) plus government and out of pocket expenses.

Please note that our Super Spring Special is valid for contracts dated September, October and November only. Contracts must be received by our office no later than November 30, 2007.

### Special Conditions:

1. This is not an automatic special price. The Super Spring Special rate must be noted in writing on your covering letter or on the offer and acceptance for these rates to apply.

2. For the special rate to apply – the sale price or purchase price must be \$400,000.00 or more.

P.S. The property is not required to have settlement occur in September/October/November to be eligible for this special, but we do require the contract to be received by us on or before 30/11/07.

Vicki Philipoff Settlements staff are trained to deliver exceptional customer service; we are able to offer these competitive rates confident in the knowledge your settlement will be effected quickly and efficiently.

We are the only Quality Endorsed Settlement Agency in WA-our proven systems and procedures save your client money!

So, until our next edition, please enjoy great business!

Vicki Philipoff

# Don't cost your client twice the stamp duty! Nominee Clauses are Out

**A new ruling by the Office of State Revenue on Transfer of Land Nominee Clauses will dramatically affect the way Real Estate Agents word the Offer and Acceptance contract. Beware: an incorrectly worded nominee contract could cost your client double stamp duty!**

Revenue Ruling SD 36.0 has just been published by the Commissioner of State Revenue and will replace the Commissioner's Practice SD 1.3.

The purpose of this new ruling is to clarify the operation of the Stamp Act (1921) in the transfer of land, where a contract contains a nominee clause indicating that the purchaser named in the contract is acting for another person.

This ruling reflects a change in practice by the Commissioner in no longer accepting that a nominee relationship falls within the agency provisions provided in section 74(3) of the Act without supporting evidence.

As a consequence, buyers are urged not to use nominee or similar clauses which do not clearly indicate the existence of an agency

relationship when entering into contracts on behalf of another person.

Listing the purchaser as "Sue Green and Nominee" for example, will no longer satisfy the Commissioner that an agency relationship exists between the purchaser named in the contract and the nominee.

As a result, the transfer of the property from Sue Green to the nominee will be chargeable with ad valorem conveyance duty as a separate and distinct transaction.

That is, unless there is documentation dated before the sale contract confirming that the purchaser was appointed as agent to purchase the property for the transferee.

The new ruling applies to a transfer instrument subsequent to a contract or agreement, where the contract is executed on or after 1 October 2007.

The stamp duty charges for different agency arrangements are summarised below for your convenience.

For full details about all the changes to the use of nominee clauses, please contact one of our Conveyancing Specialists.

## DUTY CHARGEABLE ON TRANSFERS UNDER AGENCY ARRANGEMENTS

Purchaser Named in Contract	Transferee on Transfer of Land	Is Evidence Required Under Paragraphs 20 & 21 of Revenue Ruling SD 36.0 to Prove Agency?	Duty On Transfer Of Land
Sue Green as agent for John Brown Sue Green on behalf of John Brown	John Brown	No. As the agency relationship is clearly shown in the contract the agency / principal relationship will be accepted	No duty payable on transfer - Sec 74(4)
Sue Green as agent for John Brown and Joe Black	John Brown and Joe Black	No. As the agency relationship is clearly shown in the contract the agency / principal relationship will be accepted	No duty payable on transfer - Sec 74(4)
Sue Green as agent (Agent disclosed but principal not clearly identified)	John Brown	Yes	If Agency Not Proven: Ad valorem duty under section 74(2). or If Agency Proven: Nominal duty \$20 under section 74(3).
Sue Green (Undisclosed agency relationship)	John Brown	Yes	If Agency Not Proven: Ad valorem duty under section 74(2). or If Agency Proven: Nominal duty \$20 under section 74(3).

# Meet Marie Tatham



Marie Tatham (pictured) is our newest Licensed Conveyancer. She's a friendly lady who loves conveyancing and has built up considerable expertise during her time in the industry. But there's more to Marie than meets the eye, as you'll find out when you read her profile.

## 1. Your first job in the industry?

With Steen Specialised Settlements - a pioneer in the industry.

## 2. How long have you been involved in the settlement industry?

On and off for 18 years - having completed a degree and other jobs in between.

## 3. Your greatest personal achievement?

Walking the ridges and passes of the Southern Alps in New Zealand.

## 4. What do you do on Friday nights?

Dance away the stress of the week - Latin and Classic Ballroom at Gillk's

## 5. What is the best thing about your job?

Completing a smooth settlement while giving a professional service and genuinely caring about the client's needs. Plus, there's nothing quite like settlements to keep my brain buzzing.

## 6. What vehicle do you drive?

A 4WD Tucson City, which is smooth in the city and manages the tough terrain of my country property.

## 7. What about hobbies or passions?

Hiking, foreign films, literature and walking my three-legged black Labrador.

## Do you know what to do when the seller is a Pty Ltd Company?

**The Settlement Agents Supervisory Board has recently announced that fixed and/or floating charges over the assets of a company constitute an encumbrance - but only when the sale is for land and improvements.**

When it is only land being sold, the Board considers that the charge is not an encumbrance as defined by the Joint Form of General Conditions for the Sale of Land 2002.

### Search required

The Board advises that, irrespective of the party represented, settlement agents are required to undertake a company search.

This search will identify the full names of the directors and secretary, and the existence of any charges over the company.

If there is a current charge registered over the company, settlement agents must also obtain a search of that charge.

When acting for a buyer, and the property being purchased is land and chattels, the settlement agent is obliged to ensure that the completed ASIC Form 312 is handed over at

settlement or that it is registered with the Australian Securities & Investment Commission (ASIC) together with a cheque for the relevant registration fee.

When acting for a seller, the settlement agent must make contact with the seller and/or the chargee, and arrange for the ASIC Form 312 to be prepared in readiness for settlement.

The chargee should also provide a cheque in payment of the registration fee.

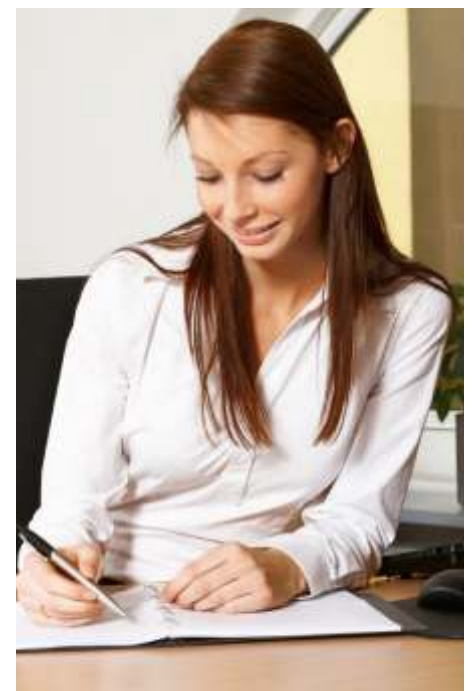
In most situations, the charge held over the company is held by the mortgagee who also holds the mortgage over the title.

### Legal advice

Settlement agents have been advised that they are not permitted to complete the ASIC Form 312 and should recommend that their client seek legal advice regarding completion of the form.

Settlement agents must also ensure that their clients are informed, and kept informed, of their actions regarding securing the release of the charge.

Where any issues arise out of this process, the client must be informed immediately and advised to seek legal advice.



**This newsletter has been printed on an environmentally friendly paper and is recyclable.**

Recycled content... 55% recycled, 45% FSC virgin fibre - ISO 14001 Environmental Accreditation - Elemental Chlorine Free (ECF) - ISO 9072. Pulp is bleached using processes that do not use elemental chlorine gas, reducing significantly the amount of toxins released.

# We carry Stamp Duty ☺

## Brokers & Realtors: Let's set the story straight

**Recent industry scaremongering regarding payment of Stamp Duty may mean you or your clients are reacting to misinformation. Let's concentrate on the facts.**

The Joint Form of General Conditions for the Sale of Land states that "the buyer must deliver the transfer to the seller... a reasonable time before settlement" (see Clause 3.2 of the Conditions of Sale).

The Settlement Agents Supervisory Board (SASB) has determined that "a reasonable time" is at least five business days.

Essentially, a buyer must pay their stamp duty and deliver the stamped Transfer to the seller at least 5 days before settlement.

Failure to do so could strip away the purchaser's protections and remedies under the terms of the sale contract.

### Clients needn't pay for Stamp Duty funding

With stamp duty on a median Perth property now averaging \$19,000 - many buyers are forced to have the stamp duty cost included in their loan.

However, these loan funds are not available until the actual day of settlement, which makes things very difficult.

Either the seller must accept an unstamped Transfer of Land-which removes their protection and remedies (see Section 27 of the Stamp Act) or delay settlement until the Transfer of Land is stamped.

Few people have ready access to the funds required to pay Stamp Duty in advance, this may result in a buyer a) having to borrow from friends or family or b) relinquishing other assets or c) turning to loan sharks/entities of suspect reputation who will advance the funds for the short term at a price.

This is an unnecessary stress for the buyer and it further complicates a process that Vicki Philipoff Settlements can make simple.

### We comply with Trust Account Regulations

Some settlement agents could be carrying the stamp duty for clients by dipping into the Trust Account containing their clients' funds.

This practice is in breach of the Trust Account regulations and puts all their clients at great risk.

Rest assured that Vicki Philipoff Settlements has a separate general purpose account it uses when covering our clients' stamp duty.

And while there are also some settlement agents and funding companies who can arrange to advance clients their stamp duty for a hefty fee, Vicki Philipoff Settlements (VPS) performs this service at no charge.\*

So, before you recommend a settlement agent to your client, check the facts:

- Do they comply with all aspects of the Settlement Agents Act and Trust Account Regulations? VPS does ☑
- Do they carry the buyer's stamp duty obligations at no charge?\* VPS does ☑
- Will the buyer and seller retain all their protections and remedies under the Contract because their stamp duty is paid at least 5 business days in advance? VPS clients do ☑

*\*provided the client is paying standard settlement agent fees*



### Our Super Spring Special means great settlement savings for all your clients - Here's how we compare

When Purchasing	WA Government Scale Fee	Vicki Philipoff Settlements Fee	When Selling	WA Government Scale Fee	Vicki Philipoff Settlements Fee
Strata House Value of \$450,000	\$1,619.00	<b>\$809.50</b>	\$450,000 Strata Title House	\$1,050.00	<b>\$670.00</b>
Green Title House of \$650,000	\$1,866.50	<b>\$933.25</b>	\$650,000 Green Title House	\$1,231.50	<b>\$670.00</b>
Green Title House of \$750,000	\$2,031.50	<b>\$1,015.75</b>	\$750,000 Green Title House	\$1,341.50	<b>\$670.00</b>

# The winning formula



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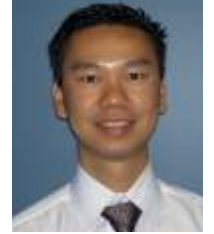
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The information contained within this newsletter is of an advisory nature only. Because of variances in personal situations we advise you to contact us prior to proceeding with formal property settlement matters.