



Deacons
Australia

Deacons Australia joins
Norton Rose Group

01.01.10

Two major legal practices
Norton Rose Group and Deacons Australia
are joining forces from 1 January 2010

Mandatory Disclosure - Some legal considerations

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Deacons

The intelligent alternative



Overview

- Key disclosure obligations
- Transactional issues
- Preparing for sale/purchase/lease
- Due diligence by incoming purchasers and tenants
- Planning for unplanned events
- ‘Greenwash’
- Green leasing



Key disclosure obligations

- will rest with owner / head tenant
- star rating for base building to be disclosed in all advertising material about the sale / lease
 - When and how?
 - What about off-market transactions?
- BEEC disclosure to all prospective buyers and tenants
 - What about non genuine purchasers?
- Disclosure to central registry
 - Will this include commercially sensitive information?
- Exemptions



Transactional issues

- No grace period
 - anticipate commencement of legislation
 - be ready to comply immediately – eg sale on 2 July 2010
- Otherwise, risk of delays to the sale and lease transactions occurring at time that the legislation commences
- Availability of assessors may also impact on timing



Issues for owners preparing for sale

- Ensure NABERS star rating and BEEC are to hand, and are less than 12 months old
 - Know your base building commitments
- Disclosure material
 - in advertising material and
 - to prospective purchasers / tenants
 - Possibly in Information Memoranda (tender situations)
- Buildings undergoing refurbishment
 - Green building fund grants – transferability?



Due diligence by incoming purchaser/tenant

- Is a NABERS Energy star rating in place?
- How easy will it be to get a star rating?
- Is the necessary data
 - Available?
 - In the right format?
 - Easy to access?
- Building operation/maintenance – retrofitting opportunities to increase energy efficiency?
- Know the base building commitments



Planning for unplanned events

- Insolvency events
 - Unplanned sales/leases
- Good housekeeping to have NABERS Energy star rating in place and kept current
 - minimise delays in getting to market following tenant insolvency
- New requirements from lenders?



‘Greenwash’

- Green energy cannot be included in NABERS Energy rating for mandatory disclosure
- Possible confusion in marketplace for buildings already rated on basis which includes Greenpower?
- Increased scrutiny by ACCC in relation to ‘greenwash’



Green leasing

- What is being promised?
- What can you deliver?
- Understand how your commitments (eg base building hours of operation) impact on rating
- Information needed from tenants
 - ‘lighting details’
 - in circumstances where whole building rating is required, much more detailed tenant information is needed.



Questions

- See our 'Top Ten Legal Tips' flyer
- Visit Property Council resources:
 - www.propertyoz.com.au
 - www.yourbuilding.org



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