



## CPD COURSES

**Blue Mountains**  
Sales & Prop Mgmt  
**Thu 1st Aug**

**Baulkham Hills**  
Sales or Prop Mgmt  
**Thu 8th Aug**

**Northern Beaches**  
Sales & Prop Mgmt  
**Wed 14th Aug**

**Ballina**  
Sales & Prop Mgmt or  
Strata  
**Mon 19th Aug**

**Sydney**  
Strata  
**Wed 21st Aug**

**Gosford**  
Sales & Prop Mgmt  
**Thu 22nd Aug**

**Sydney**  
Sales or Prop Mgmt  
**Fri 23rd Aug**

**Sydney**  
Comm & Retail Leasing  
**Wed 28th Aug**

## Using internet banking to pay deposits on a house

Part of what makes our CPD courses such a rich learning environment is the wealth of practical experience that you, the students, bring to the classroom. But as we swap tales from the frontlines we regularly unearth grey areas in real estate practice that cannot be easily answered on the spot in the classroom. These are issues that require further research and investigation, and often they form the basis of our newsletters to you.

Today's newsletter addresses another one of these tricky questions. Can a purchaser use Internet banking or some other form of electronic funds transfer (EFT) to pay a deposit on a house? Please keep in mind, that we investigate these issues and "hash out the ideas" in an attempt to provide greater clarity – it should not be regarded as legal advice.

Consider this scenario for a real estate agent. During the exchange process in the sale of a house, you agree in writing to take a 0.25% deposit upon exchange of contracts, with the balance of the 10% deposit to be paid at the end of the 5 business day cooling off period. The purchaser signs the contract and tells you that they will put the 0.25% deposit in your trust account electronically. Perhaps they whip out their iPhone and transfer the funds on the spot, or maybe they say they will go home and do it on their computer.

Is this contract legally binding? Or, does it only become binding when the money reaches the trust account? What if it takes a day or two for the funds to be cleared and transferred into the trust account, as is often the case with electronic transfers? What if another purchaser came forward with a higher offer and handed over a cash 0.25% deposit in the meantime – who wins the property – the first to sign with intent to pay, or the first to actually pay?

As always, for questions of a contractual nature the contract should be your first port of call. The standard form sale of land contract in NSW has a prescribed list of terms and conditions. Clause 2.4 and 2.5 of those terms and Conditions stipulate that:

2.4 The purchaser can pay any of the deposit only by unconditionally giving cash (up to \$2,000) or a cheque to the depositholder or to the vendor, vendor's agent or vendor's solicitor for sending to the depositholder.

## **CPD 2 HOUR BREAKFAST SEMINARS**

**Full 12 points!!**

**Sydney**  
Sales/Prop Mgmt  
**Fri 2nd Aug**

**Bankstown**  
Sales/Prop Mgmt  
**Thu 15th Aug**

**Campbelltown**  
Sales/Prop Mgmt  
**Tue 20th Aug**

**Penrith**  
Sales/Prop Mgmt  
**Thu 22nd Aug**

**Parramatta**  
Sales/Prop Mgmt  
**Tue 27th Aug**

**Sydney**  
Strata  
**Tue 17th Sep**

**Wollongong**  
Sales/Prop Mgmt  
**Wed 18th Sep**

**Sydney**  
Business Broking  
**Fri 20th Sep**

2.5 If any of the deposit is not paid on time or a cheque for any of the deposit is not honoured on presentation, the vendor can terminate. This right to terminate is lost as soon as the deposit is paid in full.

These contract terms, which most NSW agents use on a daily basis, clearly give you two options: cash or cheque. Under these standard contract terms, a purchaser cannot pay a deposit by Internet banking or EFT. Of course, these terms could be negotiated and amended prior to exchange to include a clause that enabled the purchaser to pay by electronic transfer. However, it's probably not worth the potential confusion this might cause. Also, you would have to include provisions for what would happen if the funds didn't go through, in the same way that clause 2.5 above provides for a cheque that bounces.

The trickier question is when the contract would become binding if a contract allowed for EFT. As you know, a contract has not been made and is not legally binding before the exchange of contracts and the payment of a deposit. In this situation, much would rest on how you define the word 'payment' in regards to an EFT. If someone owes you money, you only consider yourself 'paid' when that money appears in your account, right? I think we should apply the same logic here. The contract would likely only become binding when the funds are in the depositholder's account. Thus, theoretically it could be possible for the prospective purchaser to be gazumped by a higher offer in the time it takes before their funds reach the trust account.

These are legal grey areas that haven't been widely considered by the courts. However, we strongly recommend that you avoid electronic deposit payments in your agency and stick to cash or cheques. Not only does it probably go against the terms set out in your contract, it probably isn't worth the potential confusion that electronic transfers could create.

Til next time,

Wishing you every success in your business ventures,  
Rosy Sullivan

## **Next Weeks Courses**

Monday July 29 - Tuesday July 30 Sales for Real Estate @ Sydney CBD

Wednesday July 31 - Friday August 2 Cert IV in Finance & Mortgage Broking @ Sydney

Thursday August 1 CPD Sales & Prop Mgmt Breakfast @ Blue Mountains

Friday August 2 2 Hr CPD Sales & Prop Mgmt Breakfast @ Sydney

***Have you visited our website?***

***Find a complete list of the courses we offer as well as detailed course information anytime.***

**[www.acop.edu.au](http://www.acop.edu.au)**

## CERTIFICATE OF REGISTRATION COURSES

**Baulkham Hills**

**Mon 5th – Wed 7th Aug**

**Penrith**

(Dist Ed + 1 day tutorial)

**Fri 16th Aug**

**Sydney**

**Mon 19th – Wed 21st Aug**

**Ballina**

(Dist Ed + 1 day tutorial)

**Tue 20th Aug**

**Newcastle**

(Dist Ed + 1 day tutorial)

**Fri 23th Aug**

**Hurstville**

(Dist Ed + Weekend)

**Sat 31st Aug–Sun 1st Sep**

**Wagga Wagga**

(Dist Ed + 1 day tutorial)

**Wed 4th Sep**

## FINANCE AND MORTGAGE BROKING COURSES

**Cert IV in Finance &  
Mortgage Broking  
Sydney**

**Wed 31st Jul - Fri 2nd Aug**

**Dip of Finance & Mort  
Broking Mgmt**

Upgrade for existing Cert IV holders

**Sydney**

**Mon 5th - Tue 6th Aug**

## Staff Profile

**Megan Sullivan**

**Administration  
Assistant  
(Accounts)**



Megan has been working with the College for just on a year. She had just finished her Certificate IV in Business Administration through the College whilst she was working for a large city legal firm. Her organisational skills and ability to look for detail are well used in her role in managing the payments and invoicing for the College. Megan commutes to our city office every day from the Central Coast, giving her plenty of time for reading and listening to her music – not to mention the many, many, many comments on her Facebook about the rail system and its lateness.

Megan's role in preparing all invoices for the College means that she has a lot of contact with our students through the payment process. Her bubbly personality has meant that she has found it very easy to build up great relationships with many of the students whilst assisting them to finalise their paperwork.

Megan is fixated (understatement) on soccer. She has played since she was 5 and now plays in the Women's Premier League for Gosford City Football Club. Megan is a regular feature in the sports pages of the Central Coast newspapers because of her significant prowess as one of the key players in the team. Megan and her boyfriend have just finalised their travel plans for next year and are going to the Soccer World Cup in Brazil. Her fixation on soccer has further been exacerbated this year with Manchester United in town and the country going just a little bit mad on soccer. Her soccer addiction just edges out her love of animals, in particular, penguins.

To further her love of animals, Megan has just completed a twelve month Certificate in Animal Studies through Taronga Zoo, where she attended classes after work once a fortnight, plus a few weeks of practical sessions. The many stories that she brought to work about her encounters with the animals at the zoo, were many and hilarious. Her study of caged animals has still not stopped her excessive need to be surrounded by penguins!!





You may have gathered from Megan's surname that she is a member of the Sullivan family at the College – and, yes she is Rosy and John's niece (however, she claims that she gets no special treatment because of this family relationship!). And.....she's right – she doesn't.

Some of Megan's behaviours have her tagged by her College workmates as being a little bit strange. Now this could be because she is a Sullivan, or just because she is "Megan". Just to mention a few:

- she must always drink from a straw (weird);
- she doesn't eat chips (weird);
- she doesn't eat nuts (weird);
- she doesn't eat peaches or kiwi fruit because they are furry – hasn't tried them of course (super weird).

Watch the College Facebook page in the next few weeks, as there are sure to be pictures of celebrations for Megan's 21st birthday and they are sure to include the occasional penguin.



***Why not visit our new office and training rooms?***

***Level 2, St Andrew's House  
We are between Sydney Town Hall and St Andrew's Cathedral!***

## **Is it Time You Upgraded to Your Licence?**

ACoP runs a Fast Track program which, in conjunction with Recognition of Prior Learning (RPL) assessment, will enable you to complete your Real Estate Licence qualification in 5 days with take home assessments.

We will also assist you with completion and submission of your licence application to NSW Fair Trading free of charge.

## **Free Assessment**

Send us your resume & copies of any qualification transcripts you may have for a free and confidential preliminary RPL assessment.

### **Next Courses:**

**Baulkham Hills: Monday August 26th - Friday August 30th**

**Sydney CBD: Monday September 30th - Friday October 4th**