

GREENS LIST

BARRISTERS



BRETT HARDING

BAR ROLL: 2016 | ADMITTED: 2013

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EXPERTISE

Appellate | Banking & Finance | Commercial Law | Corporations Law & Securities Law | Equity & Trusts Law | Property Law | Public Law & Administrative Law | Wills & Estates Law

PROFILE

Brett practises in commercial law, and has particular expertise in property, banking and finance (mortgages) and compulsory land acquisition law.

He is also a Lecturer in Property Law in the Master of Laws (Juris Doctor) at Monash University.

Before coming to the Bar, Brett was Associate to the Honourable Justices Emerton and Macaulay of the Supreme Court of Victoria, a legal researcher to the Judges of the Supreme Court, and a lawyer at Maddocks.

Practice

Brett primarily appears in the Supreme Court of Victoria in commercial, property, and banking and finance matters, and in the Victorian Civil and Administrative Tribunal (VCAT) in retail and commercial leasing matters. Brett also appears in compulsory land acquisition cases in the Supreme Court and VCAT.

Brett's Supreme Court matters include:

- enforcement of mortgages and guarantees over land;
- mortgagee sales under s 77 of the *Transfer of Land Act 1958* (Vic);
- fraudulent land transfers;
- equitable priority disputes over land;
- contracts for the sale of land (eg. *McHutchison v Asli* [2017] VSC 258 - application to enforce a contract of sale for land where there was a defective section 32 statement);
- removal of caveat applications (eg. *Pollard v Pollard* [2019] VSC 21; *Karan v Nicholas* [2019] VSC 35; *Super Jacobs Pty Ltd v Faalogo* [2019] VSC 778);
- applications for recovery of possession of land under Order 53 of the *Supreme Court (General Civil Procedure) Rules 2015*;
- constructive trust claims over land;
- compulsory acquisition of land under the *Land Acquisition and Compensation Act 1986* (Vic);
- verification of identity provisions under s 87A of the *Transfer of Land Act 1958* (Vic);
- modification and removal of restrictive covenant applications;
- adverse possession claims;
- judicial review;
- appeals from the Victorian Civil and Administrative Tribunal;
- commercial contract disputes;
- freezing orders; and
- receivership, winding up and statutory demand applications.

Brett's VCAT matters include:

- landlord's maintenance and repair obligations under s 52 of the *Retail Leases Act 2003* (Vic) (eg. *Versus (Aus) Pty Ltd v ANH Nominees Pty Ltd* [2017] VCAT 859 - led by Robert Hay QC);
- options to renew under s 28 of the *Retail Leases Act* (eg. *Leonard Joel Pty Ltd v Australian Technical Approvals Pty Ltd* [2017] VCAT 1781 - led by Robert Hay QC);
- occupancy costs under the *Retail Leases Act* (eg. *William Buck (Vic) Pty Ltd v Motta Holdings Pty Ltd* [2018] VCAT 15 - led by Samuel Hopper);
- whether a retail lease was surrendered or abandoned (eg. *Chantelle Enterprises Aust Pty Ltd v Sangster-Greenwood* [2019] VCAT 961);
- sale and division of property proceedings under the *Property Law Act 1958* (Vic);
- compulsory acquisition of land under the *Land Acquisition and Compensation Act 1986* (Vic);
- applications under the *Owners Corporations Act 2006* (Vic);
- interlocutory injunctions for the possession of land; and
- applications under the *Subdivision Act 1988* (Vic).

Other experience

Brett has also advised and appeared for the Victorian Legal Services Commissioner in respect of disciplinary action against legal practitioners where issues of property law arise (eg. *Victorian Legal Services Commissioner v Efron (Legal Practice)* [2019] VCAT 1798).

While Brett worked for Justice Emerton, her Honour regularly heard judicial review applications, appeals on a question of law from lower courts and tribunals, and land valuation disputes. He also coordinated one of the Court's specialist lists - the Valuation, Compensation and Planning List.

Brett has published significant papers in several prominent law journals, such as the *Australian Property Law Journal* and the international *Property Law Review*. Brett's analysis was adopted in the leading property law textbook *Sackville and Neave Australian Property Law* and other major academic articles.

Publications

- Brett Harding, 'Under the Indefeasibility Umbrella: The Covenant to Pay and the 'All-moneys' Mortgage' (2011) 19 *Australian Property Law Journal* 231.
- Brett Harding, 'The Mortgagee's Power of Sale: The Duty Post MBF Investments Pty Ltd v Nolan' (2012) 21 *Australian Property Law Journal* 77.
- Brett Harding, 'Indefeasibility and the Forged All-Moneys Mortgage' (2015) 4.3 *Property Law Review* 223.
- Brett Harding, 'Another Case of the Forged 'All-Moneys' Mortgage' (2015) 89(4) *Australian Law Journal* 289.
- Brett Harding, 'Verification of Identity: As simple as it seems?' (2017) 6.3 *Property Law Review* 195.
- Robert Hay QC and Brett Harding, 'The Use and Abuse of Caveats' (2018) 27 *Australian Property Law Journal* 1.
- Brett Harding, 'Notices of Action: The new de facto caveats clogging up Victoria's land titles' (2018) 92 *Australian Law Journal* 864.
- Brett Harding, 'Too Little Too Late: When to a claim a constructive trust over land' (2019) 27 *Australian Property Law Journal* 101.
- Robert Hay QC and Brett Harding, 'The 'Serious Business' of Lawyers Lodging and Maintaining Caveats Over Land' (2019) 28 *Australian Property Law Journal* 1.

Brett graduated with a Bachelor of Laws (First Class Honours) from Monash University.

He read with Hamish Redd. His senior mentor was Rowena Orr QC.

To get in touch with Brett Harding | or for more information please contact the

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