



# DATA ROOMS IN PROPERTY TRANSACTIONS— *WATCH OUT FOR THE PITFALLS*

It is now commonplace for the vendor and purchaser to use a virtual data room during the tender or due diligence stage of a sale or purchase of property. While the convenience of relying on technology is appealing, there are risks for both parties when providing and receiving information electronically. Here, partner Nicholas Stevens and lawyer Luke Hefferan explain the latest developments.

## RECENT CASE DEVELOPMENT

In a recent case, the Queensland Court of Appeal looked at whether the vendor had satisfied the requirement to give written notice of land contamination under the Environmental Protection Act (Act) by uploading relevant documents to a data room accessible by the purchaser.

The purchaser argued the mere act of uploading documents to a data room did not constitute written notice under the Act, which meant it could rescind the contract. The vendor claimed it had satisfied the notice provisions because it had provided all information relating to the contamination in a folder in the data room which had been downloaded by the purchaser.

The court dismissed the purchaser's arguments on the basis that, while written notice of land contamination was required under the Act, the notice did not need to be in any particular form.

The court said because the purchaser gave consent to receive information electronically and had downloaded the documents in the data room, then written notice had been given to the purchaser. This was despite the purchaser claiming it downloaded the documents in the data room in bulk and was unaware of the specific documents within the data room folders.

## WHAT SHOULD YOU WATCH OUT FOR?

There are risks to both the vendor and the purchaser in accessing and using information in a data room. Depending on the specific notice requirements of the relevant legislation, the mere act of uploading documents to a data room may satisfy vendor disclosure obligations. A purchaser may be deemed to have been given notice of something simply because it accessed or downloaded the relevant document in the data room.

While it is convenient and practical to use a data room to facilitate due diligence investigations, especially for large-scale transactions where there may be substantial documents to be disclosed or reviewed, you should balance the ease and convenience of using a data room against these risks.



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