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Update Summary

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**PROPERTY LAW AND PRACTICE
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UPDATE SUMMARY

Anne Wallace has updated the following commentary:

Taylor v Papantoniou [2024] NSWSC 1192 is included in the commentary on the statutory definition of co-owner. It was held in that case that a receiver and manager of a co-owner's share of the property appointed under a court order with authority to sell the co-owned property is not a "co-owner" within the statutory definition because there was no actual vesting of the property in the receiver under the court order, see [PLA.37.30].

The commentary to s 38 has been revised to include comment on the capital gains position for co-owners and the statutory trustee for sale and to include reference to *Ayshan v Abualadas (No 2)* [2024] NSWSC 824, see [PLA.38.280].

Sinclair v Balanian [2024] NSWCA 144 is noted in the commentary on Deeds. In that case the Court of Appeal of New South Wales upheld the decision at first instance that the parties were individually bound by a "Deed of Settlement" even though it failed to comply with the formalities for creation of a deed because the parties intended to be contractually bound by the agreement. "Parties can intend that a document expressed as a deed take effect as a contract, whether or not they also intend that it operates as a deed:" at [92], see [PLA.46E.360], [PLA.46F.660], [PLA.46H.90].

David & Ros Carr Holdings Pty Ltd v Ritossa [2024] NSWSC 1125 is included in the commentary to s 48(1)(d) as an example of where the court determined that the context required the displacement of the implied term that the plural includes the singular, see [PLA.48.120].

Minor amendments, see [PLA.48.30].

The following cases have been referenced in the commentary to s84A dealing with the effect of a disclaimer of property by a trustee in bankruptcy on a security interest held by a mortgagee over the disclaimed property: *Australia and New Zealand Banking Group Ltd v Queensland, Re McFarlane (a Bankrupt)* [2017] FCA 696; *St George v State of Western Australia* [2020] FCA 397; *Australia and New Zealand Banking Group Ltd v State of Victoria* [2023] FCA 1640 at [16] and *Shire of Carnarvon v State of Western Australia* [2024] FCA 1064, see [PLA.84A.120].

See also [PLA.37.30], [PLA.38.280], [PLA.46E.360], [PLA.48.30], [PLA.48.120], [PLA.84A.120].