

# Forget the Price, Forget the Option Deed

Why does recording the purchase price in contracts attached to option deeds matter?

## Risk management topics:

Commercial Law

Property and Lending



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Option deeds are widely used in property transactions to provide flexibility for buyers and sellers. They allow parties to secure rights to buy or sell property at a future date under agreed terms. However, as highlighted in the recent Supreme Court of New South Wales decision in *Sun Property and Investment Pty Ltd v Elmasri* [2025] NSWSC 859, failure to properly document critical details, particularly the purchase price on the contract attached to the option deed, can expose parties to significant legal and financial risk.

## Section 66ZI of the Conveyancing Act

Under section 66ZI of the *Conveyancing Act 1919* (NSW), option deeds for residential property must comply with strict statutory requirements.

**One key requirement is that the contract for sale attached to the option deed must include the purchase price.**

The court in *Sun Property v Elmasri* confirmed that merely stating the price in the option deed itself is insufficient. If the attached contract omits the price, the option deed may be rescinded.

In this case, the judge held that:

- The absence of the purchase price on the contract meant that the “required documents” for the purpose of s 66ZI(2) were not attached to the deed, which in turn means that the statutory right of rescission was triggered.
- The call option and the put option were inseverable and therefore the rescission notice was valid and rendered the entire option deed as being void ab initio, requiring repayment of the call option fee.

## Distinction from other cases

The court distinguished this case from *Evolution Living Property Management Pty Ltd v CSP Australia Pty Ltd*, where the put and call options were treated as separate agreements. In *Evolution Living*, rescission under s 66ZI applied only to the call option, leaving the put option intact.

By contrast, in *Sun Property v Elmasri*, the judge found the options were interdependent—the granting of the call option was the substantive consideration for the put option (beyond the nominal \$1 fee). The Court considered that a reasonable businessperson would not expect the put option to survive if the call option was rescinded.

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### Risk implications

The decision illustrates several risks for solicitors and clients:

#### 1. Rescission risk

If the attached contract lacks the purchase price, the option deed may be rescinded, potentially causing loss of call option fees and other costs.

#### 2. Litigation exposure

Disputes over compliance with statutory requirements can lead to costly litigation, as seen in *Elmasri*.

#### 3. Professional liability

Practices may face negligence claims if they fail to ensure compliance with statutory requirements when preparing option deeds.

**The *Elmasri* decision is a timely reminder that technical compliance is not optional—it is fundamental. For solicitors, ensuring that the purchase price is recorded in the attached contract is a simple yet critical step that can prevent rescission, litigation, and claims against solicitors.**

### Risk management tips:



#### — Ensure full compliance with s 66ZI

Confirm that the attached contract for sale includes all mandatory details, including the purchase price.



#### — Use comprehensive checklists

Implement internal compliance checklists for option deeds to verify statutory requirements before execution.



#### — Attach executable contracts

The annexed contract should be complete and include the purchase price.