COUNTY COURT BUILDING CASES DIVISION

NOTICE TO PRACTITIONERS - 2007

(THIS NOTICE SUPERSEDES PREVIOUS COUNTY COURT BUILDING DIVISION NOTICES)

In 2007 the Judge in charge of the Building Cases Division of the Business List will again be his Honour Judge Frank Shelton. His Honour's Associate is Mr Anthony Bastianon (Tel: 8636 6655 – Fax: 8636 6043). The Building Cases Division has as its aim the early and cost effective determination of cases in the list. The following procedures are intended to ensure that the aim of determining cases by settlement, mediation or judgment within 12 months of commencement is met at the least cost to the parties as is consistent with a just determination of the case in all the circumstances.

This Notice to Practitioners is to be read in conjunction with the provisions of ***Order 34A - Case Management - of the County Court Rules of Procedure in Civil Proceedings*** **1999** and the current **Consolidated Practice Note – Operation and Management of the County Court Civil Lists (Melbourne Registry) dated 20 November, 2002.**

2007 DATES

1. The practice of holding monthly directions hearing days for the disposition of interlocutory matters will continue. It is proposed that the matters will be listed at 9.30 am.
2. For 2007 the Building Cases Division dates proposed are:

Wednesday, 31st January	Tuesday 27 February
Tuesday 27th March	Tuesday 8th May
Tuesday, 29th May	Tuesday, 26th June
Tuesday 31st July	Tuesday 28th August
Tuesday 18th September	Tuesday, 13th November
Tuesday 11th December	

CONSENT MATTERS

3. A consent matter (including an adjournment) is one where the parties consent to all terms.

4. Typed draft consent orders signed by all parties may be delivered, or faxed to his Honour's Associate prior to 12.00 noon on the day preceding the Directions Hearing date. If such a course is followed, his Honour's Associate will advise the parties whether an attendance at the directions hearing is required.

5. The pro-forma draft orders formulated by the Judge in charge of the Damages List and Business List may be accessed via the Internet on **http://www.countycourt.vic.gov.au**
Parties are encouraged to use such forms where possible.

CONTESTED MATTERS

6. Contested matters will be dealt with as advertised in the Law List. Where appropriate the Judge will hear short contested matters in their order. More lengthy contested matters may be put to the end of the list or, alternatively, adjourned to another day. Where it is appropriate to do so his Honour will himself try questions which can be disposed of briefly, and which may assist the resolution of the proceeding. For this purpose he may set aside such other day as may be available. Practitioners should consider whether such a question arises in their proceedings.

MEDIATION

7. Parties to proceedings in the Building Cases Division should anticipate that at the first directions hearing orders for mediation will be made by the Judge. When a mediator is appointed, it shall be the responsibility of the parties to ensure that the mediator is supplied with copies of such documents as are necessary. Usually, and subject to other order, it will be the responsibility of the plaintiff's solicitors to ensure that this is undertaken.

SPECIAL REFEREE

8. Practitioners should consider the appropriateness of the appointment of a special referee pursuant to Rules 34A.22 and 50.01 to 50.06 and be prepared to discuss this at directions hearings. A special referee can be appointed without the consent of the parties.

LIBERTY TO APPLY

9. Parties in the Building Cases Division are granted general liberty to apply and are encouraged to do so if difficulties arise between dates set for directions hearings upon application to his Honour's Associate (not to the County Court Registry) by telephone, by letter or by fax. In an appropriate case an application may be brought before his Honour on short notice. The County Court Registry - Civil Listings (Directions) - may be contacted on telephone no. 8636 6501.

   Where it is appropriate to do so, his Honour will also hear and determine other urgent applications arising out of building projects, notwithstanding that the proceeding has not been entered in the Building Cases Division at the time of the application. Such matters include applications for interlocutory injunctions, applications under the ***Commercial Arbitration Act* 1984** and applications under the ***Building and Construction Industry Security of Payment Act* 2002** (See paragraph 10 below).

APPLICATIONS PURSUANT TO THE *COMMERCIAL ARBITRATION ACT* 1984 OR *BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT* 2002

10. Practitioners who wish to make any application to the Court pursuant to jurisdiction under the ***Commercial Arbitration Act* 1984** or the ***Building and Construction Industry Security of Payment Act* 2002** may do so upon summons to be heard on Directions day, or, if the application is urgent, pursuant to paragraph 9 above.

PROPER PLEADING

11. It is particularly important in a Judge managed list that the real issues between the parties be exposed in the pleadings. For this reason the requirements of Rules 13.02(1)(a), 13.03 and 13.07(1) will be strictly enforced. The attention of pleaders is also drawn to Rule 13.06. Where standard form contracts are pleaded it is sufficient that the term be identified by number. These terms should not be set out in full unless the precise words are of significance.

12. Evasive pleading is not in accordance with the rules.

13. The requirements of Rule 13.10 will be strictly enforced. It is the responsibility of the pleader to include in the pleading all necessary particulars. Unless good cause is shown, the costs of providing further particulars, including any request for these, will be borne by the party in default. However, where all necessary and sufficient particulars have been provided by a party, the taking by other parties of pleading points which are proved to be without merit will attract cost penalties.

COURT BOOK

14. Practitioners are urged to use great care and selectivity in determining what documents are to be included in court books.

DIVISION OF WORK BETWEEN THE BUILDING CASES DIVISION AND THE PRACTICE COURT

15. His Honour Judge Shelton has control of every proceeding in the Building Cases Division and ordinarily any directions hearing or application in a proceeding will be held or made to his Honour: Rule 34A.14(1). However, the following procedures have been adopted concerning the division of responsibility between the Practice Court and the Building Cases Division.

From the commencement of a proceeding until the first entry of appearance by a defendant (whether there is only one defendant or whether there are several defendants), any application in a proceeding is to be made to the Practice Court. Thereafter, i.e. after the first appearance, any application, including an application to vacate a trial date within 60 days of the trial date, is to be made to his Honour Judge Shelton. Practitioners should be aware that this practice varies from the practice in the Business and Damages Lists.

The Associate to the Practice Court judge may be contacted on 0419 384 312. The County Court Registry - Civil Listings (Practice Court) - may be contacted on telephone no. 8636 6503.

CIRCUIT COURTS

16. The Building Cases Division operates in the Melbourne Registry only, but interlocutory applications in building cases in circuit courts may be listed for hearing before the Judge in charge of the Building Cases Division of the Business List.

ORDERS

17. The practice of the Judge's Associate in forwarding orders to the parties, by mail within a few days after their making, shall continue.

SETTING DOWN FOR TRIAL

18. It is intended that the procedure adopted in 2006 of normally fixing a trial date on the occasion of the <u>first</u> directions hearing be continued in 2007. Therefore, it will be necessary for the parties, so far as they are able, to be fully instructed at the Directions Hearing as to:

    (a) availability of witnesses;

    (b) realistic outside estimates of duration of trial; and

    (c) any unavailable hearing dates.

BUILDING CASES USERS' GROUP

19. His Honour meets from time to time with a "Users' Group" representing legal and other practitioners concerned with building disputes. Practitioners wishing to offer suggestions for the more efficient conduct of the Building Cases Division may address themselves to any member of this committee. Members are:

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Associate to his Honour Judge Frank Shelton

12 December, 2006