

Q&S CONVEYANCING UPDATE

ISSUE 28, 11 JUNE 2009

INSTALMENT CONTRACTS

We sometimes receive Contracts of Sale where the deposit exceeds 10% of the purchase price. Agents should be aware that where the deposit is more than 10% of the purchase price then the Contract of Sale is an Instalment Contract.

The Property Law Act 1974 ("the Act") defines an Instalment Contract as a Contract for sale of land in terms of which the Buyer is bound to make payment or payments (other than a deposit) without becoming entitled to receive a conveyance in exchange for the payment or payments.

A deposit is defined by the Act as a sum:

1. Not exceeding 10% of the purchase price payable under an Instalment Contract;
2. Paid or payable in one or more payment;
3. Liable to be forfeited and retained by the Seller in the event of a breach of Contract by the Buyer

The main differences between an Instalment Contract and a normal Contract of Sale are as follows:-

1. A Buyer who is not in default under an Instalment Contract can call for the title to be transferred to him once he has paid the amount equal to 1/3 of the purchase price. The amount that is left outstanding under the Instalment Contract must effectively be lent by Seller to the Buyer and secured by a mortgage over the land. This presents difficulty when there is already a mortgage over the land as the Seller's bank will require the existing mortgage to be paid out before the transfer takes place.
2. A Buyer under an Instalment Contract has a caveatable interest in the land being purchased. This type of Caveat prevents registration of any instrument affecting the land until completion of the Instalment Contract and is non-lapsing as it is deemed to be lodged with the consent of the registered owner. This can present difficulties particularly in relation to off the plan Contracts where developers may need to use the land as security to fund the development.
3. If a Buyer is in default in paying an instalment or sum of money (e.g. the balance of the purchase price) then the Seller is required to serve a notice on the Buyer giving them 30 days after the date of service to remedy the default. This can delay settlement.

Instalment Contracts can create unnecessary problems for Sellers and accordingly Agents should take care when specifying the deposit in Contracts and advise Sellers of the implications.

Richie Muir, Solicitor,
Quinn & Scattini Lawyers

If you would like to ask any question about this or any other similar issue Richie may be contacted on 3821 2766 between 8.30am to 5pm Monday to Friday.

*In addition to residential and commercial Conveyancing services,
our team of experienced lawyers practice in Business Law, Commercial Litigation,
Property Law, Wills & Estates, Criminal Law and Family Law.*

Offices at:

Brisbane
Level 28 Central Plaza One
345 Queen Street
Brisbane

Beenleigh
99 George Street
Beenleigh

Caboolture
9 Elliott Street
Corner Morayfield Road
Caboolture

Cleveland
141 Shore Street West
Cleveland

Gold Coast
64 Marine Parade
Southport

Ipswich
55 Limestone Street
Ipswich

Telephone
Freecall 1800 652 969

mail@quinnscattini.com.au
www.quinnscattini.com.au

