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Q&S CONVEYANCING UPDATE

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SENDING NOTICES BY EMAIL

Once a Contract of Sale has been entered into, there are often a number of conditions that either party may need to notify the other party of.

The most common notices are those of finance approval and building & pests inspection. Failure to give proper notice may cause a party to be in default of the Contract and may give the other party the right to terminate etc.

Standard condition 10.4 of the REIQ Contract of Sale for Houses & Residential Land states that notices must be in writing and are effectively given if delivered by post or sent by facsimile. There is no reference to email being an effective way of giving notice.

The Electronic Transaction (Qld) Act 2001 and the Electronic Transactions Act 1999 (Cth) permit the giving of information by email if the recipient consents to it but this only applies to State and Commonwealth laws and does not affect contractual law like that applying to the terms an REIQ Contract.

Although the sending of contractual notices by email is not covered by the above Acts, parties to a Contract should be aware that sending an email to the other party may still be perceived as a formal issue of notice and may create contractual liabilities unless it is made clear that it is not intended to do so.

This may occur as a result of the conduct of the parties particularly if the parties have established a pattern of sending notices by email.

Sending notices by email can be dangerous because it may be difficult to prove delivery and the consent of the recipient.

It is recommended that notices (particularly those involving a financial or other liability) are sent in accordance with the terms of the Contract or if email is consented to then the terms of its use should be agreed in advance (i.e. to whom it is to be sent to & at what time it is taken to be received).

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 8.00am to 5.00pm Monday to Friday or email rmuir@quinnscattini.com.au

This update is for your information and interest only. It is not intended to be comprehensive, and it **does not constitute and must not be relied on as legal advice**. You must seek specific advice tailored to your circumstances.

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