



Q & S CONVEYANCING UPDATE

ISSUE 10, 4 AUGUST 2008

WHAT HAPPENS WHEN THE SELLER DIES AFTER THE CONTRACT IS SIGNED BUT BEFORE SETTLEMENT OF THE CONTRACT OF SALE?

We were recently engaged by the attorney of an elderly person to prepare a Contract of Sale for his mother's unit.

Our client was the donee of an enduring power of attorney and his mother, according to her doctors, only had a few weeks left to live.

The attorney was concerned that he might sign a contract for his mother who might die after the contract was signed but prior to settlement and what the problems there would be if this happened.

The REIQ Standard Contract, and most other contracts of sale have a similar clause, which provides a Seller's warranty that at settlement the Seller will be the registered owner of an estate in fee simple in the Lot and will own the rest of the property. This is a fundamental term of the contract of sale and failure to comply can have dire consequences.

If the Seller dies after contract but before settlement then the right to be registered as owner of the property passes to either the personal representative of the deceased or to the beneficiary under the will or upon intestacy.

There are logistical problems occasioned, for example by the death, in issue of the death certificate, and compounded by the fact that in Queensland the usual time to complete a contract is thirty days and usually Time is of the Essence of each contract.

If the Seller dies, thirty days or less is not enough time to record the death and for the change of ownership to be registered.

This gives the Buyer an opportunity to terminate the Contract or affirm the Contract and claim compensation including damages against the Seller for losses such as rental incurred until such time as settlement can be effected

In order to prevent the Contract falling over, we suggested including the following clause which would keep the Contract on foot in the event that the Seller died before settlement:

“(1) If the Seller dies before the Settlement Date, then the following applies:

(a) This Contract is subject to the personal representative of the Seller (“the Personal Representative”) being registered as the registered proprietor of the Property in the Department of Natural Resources and Water pursuant to section 111 of the Land Titles Act 1994 within 180 days from the date of this Contract; or

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(b) If Special Condition 1(a) does not apply, then this Contract is subject to the beneficiary entitled to the Property under the will of the Seller ("the Devisee") being registered as registered proprietor of the Property in the Department of Natural Resources and Water pursuant to section 112 of the Land Titles Act 1994 within 180 days from the date of this Contract; and

(c) Clause 7.4(1)(a) of the Terms of Contract is deleted; and

(d) The Buyer agrees to accept a Form 1 Transfer of the Property executed by the Personal Representative or the Devisee as Transferor at settlement; and

(e) The date of settlement will be the date which is 14 days after the date that the Buyer receives notice from the Seller's solicitor that Special Conditions 1 (a) or 1(b) have been satisfied; and

(f) If Special Conditions 1(a) or 1(b) have not been satisfied by their due dates then this Contract will come to an end, the Deposit will be refunded to the Buyer, and neither party will have any claim against the other apart from any rights either of the parties may have against the other as a result of any breach of this Contract."

While it is always possible that any Seller may die prior to settlement it is not suggested that this clause be utilised for every contract.

But in circumstances where there is known ill health or where the Seller is of advanced years, Agents should be aware that a Buyer may terminate a Contract if the Seller dies before settlement.

Use of an appropriate clause such as the one above can avoid the Contract being terminated, the Seller being sued and becoming unhappy with an Agent and last but not least the loss of commission.

**Richie Muir,
Solicitor
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If you would like to ask any question about this or any other similar issue Richie may be contacted on 38212766 between 8.30am to 5pm Monday to Friday.

Quinn & Scattini Lawyers has offices in Brisbane, Beenleigh, Caboolture, Southport, Ipswich and Cleveland. 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.



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