



**QUINN &  
SCATTINI**

**Lawyers**

## Q & S CONVEYANCING UPDATE

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### CONDITIONS FOR THE BENEFIT OF THE BUYER

We were recently involved in a matter in which our client was the seller pursuant to a contract of sale for his property subject to the buyer obtaining satisfactory search results from the local council by a nominated date.

The buyer did not give notice that the condition had been fulfilled or waived by the deadline contained in the contract. Our client purported to terminate the contract based on the failure to give this notice.

An argument between the parties ensued and the buyer claimed that the condition was for their benefit only and did not give our client the right to terminate the contract. In the events that followed, both parties were able to come to an agreement but this situation raises some important points.

The law currently states that where a condition is for the benefit of the buyer only, then only the buyer has the right to waive the condition (*Sandra Investments v Booth a case that this firm took to the High Court back in 1983*).

However, if the buyer does not waive (or give notice of the fulfilment of the condition) within the stipulated time (or reasonable time prior to settlement) then the condition becomes one for the benefit of both parties and accordingly both the seller and the buyer may terminate the contract.

If the condition is fulfilled before either party terminates the contract, then the right to terminate ceases (*Sottr v Gundowda*).

Buyers should be aware that they should do all things necessary to satisfy the condition within the time limits or give notice in writing in unambiguous terms if they wish to waive the condition before the stipulated date.

Agents should be aware these conditions should be drawn carefully and have an appropriate time frame .

We have precedents for most of the usual special conditions that are commonly encountered by Buyers and Sellers and are always happy to assist in the preparation of special conditions.

It is an unfortunate fact that over time precedents are used and amended ( constant cutting and pasting can and does alter the meaning and impact of standard precedent clauses). If you need some one to review your precedent clauses please contact us and we will be happy to do so.

#### **Michael Quinn, Partner**

If you would like to ask any question about this or any other similar issue Michael may be contacted on 3211 2495 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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