



## Q & S CONVEYANCING UPDATE

ISSUE 16, 7 NOVEMBER 2008

### ADL - VS - REIQ CONTRACT

The two most common forms of contracts for the sale of residential house and land in Queensland are the REIQ Contracts and the ADL Forms Contracts.

In both Contracts the terms and conditions are drawn predominantly for the benefit of the Seller.

Both Contracts contain provisions that permit the Seller to charge default interest if the Buyer does not settle on the settlement date (see clause 9.6 in the REIQ Contract and clause 16 in the ADL Forms Contract).

Where settlement is delayed by the Buyer the Seller is in most cases still incurring interest on his mortgage and so a clause that makes the Buyer pay the Seller's damages (namely the Seller's interest) is for that reason quite reasonable.

However, clause 24 of the ADL Forms Contract is an innovative and somewhat curious clause which allows the Buyer to charge interest to the Seller where the delay in settlement is due to the Seller. Clause 24 states:

*"If settlement does not take place by the Settlement Date in Item (12) due to delay by the Seller then the Buyer may require to Seller to pay, as liquidated damages on Settlement, Interest on the Balance Purchase Price at the rate set out in Item (21)."*

The REIQ Contract does not give the Buyer the right to charge default interest if the Seller does not settle on the settlement date.

As the Buyer is usually not charged interest on his loan until it is drawn down, the purpose of the ADL Forms Contract clause cannot be to compensate the Buyer for damages (i.e. interest incurred due to delay in settlement). Clause 24's predominant if not sole purpose must be to bring pressure to bear on the Seller to settle in a timely manner and punish the Seller if this doesn't happen.

While there are cases where the Seller delays settlement unreasonably and a penalty for the Buyer may be warranted, in our experience this is the exception and not the rule.

In most cases that we see, delay by the Seller is due to the action or inaction of third parties (e.g. the Seller's Bank who cannot or will not settle on time) rather than reluctance on the part of the Seller to settle (after all Sellers are usually using the settlement proceeds to complete another purchase of some sort).

As Real Estate Agents are predominantly Sellers Agents, we suggest that a clause such as ADL Forms Contract clause 24 is not for the benefit of the Seller and will when invoked by a Buyer lead the Seller to question his Agent as to why he should be paying twice the interest when the delay is not the Sellers fault.

**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



## Q & S CONVEYANCING UPDATE

ISSUE 16, 7 NOVEMBER 2008

### ADL - VS - REIQ CONTRACT

We are not expressing any preference for the REIQ Contract. Each Contract has features that are desirable in particular circumstances.

When we are asked to advise Sellers where the Real Estate Agent is using an ADL Forms Contract we insist that clause 24 be deleted.

#### **Richie Muir, Solicitor, Quinn & Scattini**

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.*

#### 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