



**QUINN &
SCATTINI**

Lawyers

Q & S CONVEYANCING UPDATE

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RISK AND INSURANCE

As most of you will be aware, the recent storm has caused damage to many properties in South East Queensland. Whilst acting for a Buyer of a property that has been damaged by the storms an important issue was raised in relation to the risk and insurance on a property under Contract and whose responsibility it was to repair the damage.

At common law, there is no duty on the Seller to maintain insurance and so effectively risk passes to the Buyer upon execution of the Contract. This is reflected in clause 8.1 of the REIQ Contract for Houses and Residential Land (6th Edition) which states that *"the Property is at the Buyer's risk from 5pm on the first Business Day after the Contract Date"*. It is most important that Buyers are aware of this as often they will assume that the risk remains with the Seller until settlement.

Where a Buyer has not obtained his own insurance on the property but the Seller has maintained his own insurance then in some circumstances, the Buyer may claim an interest in the Seller's insurance policy. The provisions of the relevant Acts are very restrictive and have been the subject of much case law concerning their application. Even if the Buyer is entitled to an interest under the Seller's insurance policy, this policy may not be adequate. A Buyer should not rely on this and should obtain his own insurance.

If the dwelling house under Contract is destroyed or damaged so that it is unfit for occupation as a dwelling, section 64 of the *Property Law 1974* may allow the Buyer to terminate the Contract by notice to the Seller before completion or possession. This provision extends only to dwelling houses and not all buildings or improvements that may be on the land.

Clause 8.3 of the REIQ Contract for Houses and Residential Land (6th Edition) states that *"The Seller must use the Property reasonably until settlement. The Seller must not do anything regarding the Property or Tenancies that may significantly alter them or result in later expense for the Buyer"*. We do not consider that this places an obligation on the Seller to deal with the storm damage referred to above. In the matter that we were involved in there was a special condition that required the Seller to keep the property in the same condition at settlement as it was in at the date of the contract. This special condition assisted the Buyer in getting the Seller and his insurers to make the necessary repairs prior to settlement.

The upshot of this is Buyers must take out their own insurance in accordance with the terms of the Contract and should consider inserting a special condition as outlined above. We can assist in preparing such special conditions and to advise Sellers and Buyers where they are unsure of their position following damage to the property.

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.

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