



**QUINN &  
SCATTINI**

**Lawyers**

## Q & S CONVEYANCING UPDATE

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### LATE PAYMENT OF DEPOSIT

A matter recently came to our attention which illustrates the need for Buyers to pay their deposits promptly and to seek advice if they have already missed the date for payment.

The Contract stated that the balance of deposit was payable by a certain date but the Buyers failed to pay the deposit by that date. The Sellers notified the Buyers that the Buyers had not paid the deposit in time and accordingly were in default of the Contract and that the Sellers reserved their rights.

The Buyers subsequently paid the deposit. Approximately 1 week later, the Sellers notified the Buyers that the Sellers had elected to terminate the Contract and forfeit the deposit. Fortunately for the Buyers, but not for the Agent, the Sellers were willing to refund the deposit to the Buyers on the condition that the Agent did not claim any commission.

The REIQ Contract for houses and land states that the Buyer will be in default should it fail to pay the deposit when required in the Contract. The Seller's remedies, as with any default by the Buyer, is to either:

- (a) affirm the Contract (and sue for specific performance and/or damages); or
- (b) terminate the Contract and forfeit the deposit (and still retain the right to sue the Buyer for damages).

If the Buyer subsequently pays the deposit, then that does not in itself mean that the default is rectified. The Seller can still affirm or terminate the Contract. The Seller would have to give the Buyer an unequivocal waiver to its rights for late payment either by conduct (this is difficult to prove) but preferably in writing.

If a Buyer has missed the date for payment of the deposit, then he should request an extension for payment of the deposit or a waiver of the Sellers rights for late payment.

If the Buyer has already paid the deposit late, then the deposit may be at risk if the Seller chooses to exercise its rights.

When completing Contracts, Agents should consider what time frames for the payment of the deposit are realistic and follow these up with the Buyers

#### **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