



# QUINN & SCATTINI

## Lawyers

### Q & S CONVEYANCING UPDATE

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#### BUILDING CERTIFICATIONS & COUNCIL NOTICES

The *Integrated Planning Act 1997* ("the IPA") requires relevant development works (i.e. building work, plumbing or drainage work, operational work, etc.) to be approved by local authorities and certified by local authority building certifiers or accredited private building certifiers.

Building inspections are carried out to ensure that the development works comply with approved plans and building standards. As it is the homeowner who is ultimately responsible for ensuring that approvals are granted and inspections are carried out, sometimes final inspections have not been done or the certificates have not been lodged with the local authority. If this comes to the local authority's attention, then they may issue an enforcement notice to remedy the development offence.

Clauses 7.4, 7.6 and 7.7 of the REIQ Contract for Houses and Residential Land (Sixth Edition) ("the REIQ Contract") provide remedies for the Buyer of a property if a valid notice has been issued by the local authority. The standard terms of the REIQ Contract state that the Seller warrants that at the Contract Date there are no current notices affecting the property and accordingly if a notice has been issued under the *Building Act 1975* or the IPA then the Buyer is entitled to terminate the Contract by notice to the Seller..

However, problems arise when the development works have not been approved, inspected or certificates lodged and no notices have yet been issued by the local authority. An example of this is when a final inspection of a swimming pool has been undertaken but the homeowner forgets to lodge the certificates with the local authority. It may be difficult to locate the original pool builder or certifier and obtain the plans and certificates. Inspectors who have not been involved in the construction process may be reluctant to inspect and issue final certificates.

The common law says that illegal structures (i.e. those not approved or certified) do not constitute a defect in the Seller's title and accordingly, a Buyer is unable to terminate merely because the local authority has the power to order an illegal structure to be demolished or altered. It is therefore imperative that all Buyers obtain a building report to their satisfaction and make this a condition of the Contract.

If a Buyer discovers problems with a building or development works and is not able to terminate the Contract, then they find themselves in a difficult position. If they notify the local authority of the illegal structure, then the local authority may issue a notice, but as this is after the Contract Date, then the standard terms of the REIQ Contract state that any works or expenditure required to make the illegality good are the responsibility of the Buyer.

In our experience, a search of many local authority databases in South East Queensland or requests to inspect a property (which are often outsourced) will only reveal records of enforcement notices. Moreton Bay Regional Council and Pine Rivers Council in particular are more stringent and send out their council officers to conduct inspections in person.

#### **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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