

## Q&S CONVEYANCING NEWS

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### “MINING SEARCHES” BUYERS HAVE NO RIGHT TO TERMINATE

The issue of mining has been a hot topic recently after the subsidence at Collingwood Park caused by underground mining. We have noted that buyers of properties in Collingwood Park and in other areas that have had a history of mining, have been concerned with recent developments.

It is recommended that buyers conduct property searches including mining and underground mining searches, which will report any current and historical mining tenures on the property, and in the case of underground mining, if those mines have been filled.

Standard condition 7.7 of the REIQ Contract for houses and residential land (sixth edition) lists several issues adversely affecting a property that property searches may reveal. If these issues have not been disclosed in the Contract of Sale, then the buyer has a right to terminate by notice to the seller no later than 2 business days before the settlement date.

Buyers and Agents should both be aware that the existence of current or historical mining tenures affecting the property that have not been disclosed in the Contract of Sale, does not give the buyer a right to terminate the Contract of Sale pursuant to the above condition.

We suggest that buyers include a special condition in a Contract of Sale that will make the contract subject to the buyer obtaining a satisfactory mining search and that the buyer may terminate if the search is not to the buyer's satisfaction. The following is an example of a special condition that can be used in these circumstances:

#### **“Subject to Mining Search**

*(a) This Contract is subject to and conditional upon the Buyer obtaining a satisfactory search of the Department of Mines and Energies records in respect of current and historical mining tenures within 14 days of the date of the Contract.*

*(b) The Buyer may terminate this Contract by notice in writing on or before 14 days from the date of the Contract, if the mining search is not to the Buyer's satisfaction. If the Buyer elects to terminate, this Contract shall be at an end and the deposit shall be returned forthwith to the Buyer”*

Agents should also inform buyers that these searches should be undertaken in advance where the property for sale is to be sold by way of auction.

#### **Richie Muir, Solicitor**

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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