

Q&S CONVEYANCING UPDATE

ISSUE 8, 8 JULY 2008

LAND SALES ACT—UNREGISTERED VACANT LAND DOCUMENTS AT SETTLEMENT OF PROPOSED ALLOTMENT

A recent matter we were involved in highlights the importance for Vacant Land Developers to have a well drawn contract of sale where sale of land is undertaken prior to registration of the plan of subdivision.

Part 2 of the *Land Sales Act 1984* (“the Act”) deals with the sale of proposed allotments (i.e., sale of land that will be registered under the Land Act 1994 or Land Title Act 1994) excluding the sale proposed allotments which constitute a large transaction (i.e., the sale of 6 or more proposed allotments with the same parties in one contract or two or more contract within 24 hours).

Section 10A of the Act provides that a Seller must give the Buyer a registrable instrument of transfer (“the Transfer”) not later than 18 months after the date the Buyer enters into the Contract.

In addition, if the parties entered into a contract prior to the Seller obtaining a sealed plan of sub division, the Seller must give to the Buyer not later than 18 months after the Buyer enters into the contract, copies of the following (“s10A documents”):

- (a) The plan of survey registered with the Department of Natural Resources and Water;
- (b) For operation work – a copy of a plan showing the constructed works;
- (c) A statement, certified by a cadastral surveyor, regarding variations to the disclosure plan.

A contravention of this section will allow the Buyer to terminate the contract by written notice to the Seller before the delivery of the Transfer (i.e., before settlement).

Buyers should be aware that if the Seller delivers the Transfer but omits to deliver one or more of the s10A documents, then the Buyer cannot terminate the Contract.

Sellers should be aware that the Transfer must be capable of immediate registration and that standard solicitors covering letters stating that the Transfer should be held only for stamping pending completion mean that it is not capable of immediate registration (*Begley v Fisigi Pty Ltd (2007)*).

Developers should also be aware that failing to provide a Transfer or a statement certified by a cadastral surveyor within the 18 months is an offence under the Act and carries with it a maximum penalty of 20 units (i.e., \$1,500).

In our matter, the Developer had included a special condition in the contract requiring them to deliver to the Buyer at settlement the s10A documents. Settlement was originally scheduled for 14 days after registration of the plan but this was not possible because the surveyor’s certificate was not available in time for settlement.

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Delays in this situation can be costly for the Developer, especially in circumstances where a large number of lots are to be sold and interest to be paid on any loans.

Section 31 of the Act states that any attempt to contract out of the provisions of the Act is rendered void. Although s10A documents must be provided within 18 months from the date of the contract, the Act does not state that they must be provided at settlement.

However, the Queensland Law Society's Conveyancing Protocol states that the Buyer is entitled to receive s10A documents in exchange for the purchase price at settlement.

In circumstances where these documents may not be available at settlement, we suggest that a Developer's Unregistered Vacant Land Contract is drawn appropriately so that the Developer is not required to deliver s10A documents to the Buyer at settlement.

**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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