



JHK LEGAL

STOP! Don't sign your Contract for Sale of Real Estate before having it Reviewed by a Properly Qualified Lawyer

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It is common practice for real estate agents to negotiate between parties looking to buy and sell property.

As a result, most people are unaware of the importance of having a properly qualified lawyer review a draft contract of sale and provide advice in relation to the terms of the contract before it is signed by the parties.

Commonly, a real estate agent will obtain a buyer's signature on a contract and submit it to the seller. By doing so the buyer makes an "offer" to the seller. The seller accepts the "offer" by countersigning the document and a legally binding contract is formed. Often, it is only at this point that the parties obtain independent legal advice in respect to the transaction.

Contract terms

Real estate contracts establish the property to be transferred, the financial obligations of the parties and outline the timing and key terms of the transaction.

Great care must be taken in the drafting of contract terms to ensure the terms have the intended effect.

Special conditions

It is not uncommon for parties to have specific and individual requirements when buying or selling property. A standard contract of sale is not tailored to reflect the specific requirements or



circumstances of the parties (or the property) and special conditions are often required to reflect this.

It is extremely important to ensure all special conditions are properly drafted. It is quite common for ambiguous and poorly drafted special conditions to make their way into contract documents. An inadequate special condition may lead to confusion, disputes between the parties and possibly even litigation.

Examples of special conditions often included in contracts are:

- purchase of property subject to the buyer's sale of existing home
- seller renting back the property from the buyer for a period of time
- seller being required to undertake repairs or remove items from the property before completion.

Failure to adequately draft special conditions could result in disappointment for the parties to the contract. Unless properly drafted, an incomplete special condition will not delay settlement – and the disappointed party may be put to unnecessary or fruitless expense in trying to pursue the other party after the main transaction (the purchase or sale of the house) is finalised.

Don't Forget: After the parties become legally bound to the contract, any changes to the contract's terms need to be agreed by BOTH parties. It's not easy to fix a deficient contract after the fact, therefore obtaining advice before you sign is extremely important.

Deposits and Instalment contracts

In Queensland, it is standard practice for a deposit to be paid in two instalments. However, the total deposit paid must not exceed 10 percent of the purchase price for an existing lot (or 20 percent for an off the plan lot).

If the total monies paid to the seller before settlement exceeds the prescribed amount an instalment contract may automatically arise (even if the parties did not intend to create one).

Instalment contracts are governed by different laws and significantly change the relationship between the buyer and seller. They can severely impact a seller's right to terminate a contract (even if the buyer defaults), restrict the seller's right to deal with the property and effect the timing of payment of transfer duty (and have many other consequences).

Instalment contracts may also arise with respect to clauses providing for non-refundable deposits or the early release of deposits to the seller before settlement. Accordingly, legal advice should always be obtained before including these clauses in a contract.

Examples of situations where MKP Property Lawyers has been able to assist sellers and buyers

- MKP drafted special conditions on behalf of a buyer to ensure that large items of rubbish on the property were removed prior to completion. If the seller failed to comply by settlement, the buyer was able to delay settlement or have a reduction in the purchase price to allow for the removal of the rubbish.

It may come as a surprise that, without the special condition, in most cases a buyer would not be able to require the seller to remove the rubbish prior to settlement or delay settlement until this was done – unfortunately, the standard form contract of sale in Queensland does not allow for this.

- MKP prepared a special condition for a seller who only wanted to sell their property if their purchase contract settled at the same time. MKP was able to draft suitable conditions that made the sale of the seller’s property subject to the simultaneous settlement of their new property purchase.
- The standard REIQ contract places the responsibility of risk on the buyer. For example, if a storm damages the property prior to settlement the buyer is responsible for the repairs. This is why the buyer must take out insurance over the property by the first business day after the contract date. However, in some circumstances this may not be suitable (for example if there is an unusually long settlement period and the buyer would incur significant costs insuring a property that the seller was still living in). MKP has assisted many buyers in preparing special conditions to address this issue.

How we can help

Many people find the process of buying and selling property one of the most stressful experiences in their lives.

To ensure the process is as straightforward (and stress free) as possible, MKP highly recommend you engage an experienced property lawyer at the outset of the transaction. The experienced people at MKP can advise you of your rights and obligations under the proposed contract, assist you to negotiate and achieve your desired results and help you to eliminate any foreseeable and unnecessary issues. After all, it is best to avoid problems altogether rather than attempt to “fix” them later.