



The importance of property insurance for buyers during the purchasing process

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It is surprising the number of times buyers overlook the requirement to protect their interest in a property they are purchasing. When a buyer signs an REIQ contract to purchase a property in Queensland, clause 8.1 of the contract provides that the property is at the risk of the buyer from 5:00 pm on the first business day after the contract date. Our initial letters to clients purchasing property always advise them to take out insurance on the property as soon as possible after the contract is fully executed.

Why is property insurance so important as soon as the contract is signed?

The most obvious reason why insurance is required would be in the event of unpredictable and severe weather conditions such as hail damage, flooding, fire etc.

These unpredictable weather occurrences are becoming more and more common. Therefore, it is fundamental that buyers protect themselves by insuring the property they are purchasing rather than risk ending up with a damaged property either in part or in full, at settlement.

In the event of a conditional contract

A conditional contract is a contract where there are still conditions which need to be satisfied, such as finance or building and pest etc.

For example, consider this scenario:

- You have signed a conditional contract for purchase of the property but have not arranged for any insurance;
- Before settlement and when the contract is still conditional, the roof of the property is damaged in a hailstorm;
- You are now faced with purchasing a property which has suffered hail damage.

In this scenario, the vendors **may** still have insurance on the property. Your conveyancer or solicitor may be able to reach out to the vendors to determine if they would be prepared to rectify the damage caused through the vendor's own insurance policy.

The vendor can maintain their right to refuse the request, but for the sake of ensuring that the contract is not terminated due to building and pest or finance issues, the vendors **may** agree to make a claim on their insurance policy.

In the event of an unconditional contract

An unconditional contract is where all the conditions of the contract such as finance, building and pest etc have been either satisfied or waived.

Using the same example above, if the contract is unconditional, it is slightly more complicated as the vendor now does not have any motive to avoid the contract being terminated.

Rather, the vendors can and **may** issue a notice to settle on the settlement date regardless of the condition of the property. Further, the vendor may have cancelled their insurance policy due to the contract being unconditional.

Unit purchases

If you are purchasing a unit as part of a Community Title Scheme, the Body Corporate will most likely already have building insurance and therefore this may not apply to you. Nevertheless, you should still consider purchasing contents insurance to ensure the fittings and fixtures in the unit (not covered by building insurance) are also insured.

The *Property Law Act* – property “unfit for occupation”

Section 64 of *Property Law Act (Qld) 1974* provides that a buyer may revoke a contract and obtain a refund of their deposit if a dwelling is damaged or destroyed either before the settlement date or before the buyer has possession of the property and, as a result of that damage or destruction, the dwelling is now unfit for occupation as a dwelling.

This section has effect regardless of any contractual stipulation such as special conditions contained in the contract.

The term ‘*unfit for occupation*’ is open for interpretation by a court.

Some interpretation of the term ‘*unfit for occupation*’ includes:

- Damage or destruction so significant that no person would be reasonably expected to live in the dwelling;
- A dwelling can still be unfit for occupation if only part of the dwelling is destroyed. For example, in a 1-bathroom house where that one bathroom is destroyed, the dwelling would be unfit for occupation as it cannot be used as a dwelling without a bathroom;
- Temporary damage may not necessarily result in the dwelling being unfit for occupation.;
- A local government notice such as an enforcement notice may be used as evidence to support a property being unfit for occupation.

It is not possible to predict if, when or the extent of damage to a particular property will occur and whether the damage would satisfy the requirements of the *Property Law Act*, so as to allow the buyer to legally terminate the contract under the Act.

Ultimately, in the event of an unconditional contract, if the vendor does not accept that the dwelling is now '*unfit for occupation as a dwelling*' and requires the buyer to proceed with the settlement, the buyer's only option will be to commence proceedings to have the matter determined by the courts.

Hall Payne no longer provides services in property law and conveyancing

If you require assistance with your family law matter, we recommend you contact the relevant Law Society in your State or Territory for a referral:

- **Queensland:** [1300 367 757](tel:1300367757)
- **NSW:** [02 9926 0333](tel:0299260333)
- **Victoria:** [03 9607 9311](tel:0396079311)
- **Tasmania:** [03 6234 4133](tel:0362344133)
- **South Australia:** [08 8229 0200](tel:0882290200)
- **Western Australia:** [08 9324 8600](tel:0893248600)
- **Northern Territory:** [08 8981 5104](tel:0889815104)
- **ACT:** [02 6274 0300](tel:0262740300)

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