

HOUSE INSURANCE PENDING PURCHASE

The Liability of a Purchaser

Why should we have to insure something that we don't yet own?? The answer is simply because just as with things that you do own you never can tell when the insurance will be needed and if you are going to try and rely on the vendor's insurance you could end up being sadly left out in the cold. In other words

YOU LOSE!!!

If you refer to clause 17 of the standard terms and conditions of the REIQ contract you will note that it states the property shall be at the **risk of the purchaser from 5.00 PM on the next business day following the signing of the contract** and the vendor, whilst continuing in possession, will use the same with reasonable care. This means that the vendor is only liable for damage caused by their wilful act or neglect. This includes responsibility for acts of third parties who may enter the property with or without the vendor's permission.

Apart from any contractual provisions there is no obligation on the vendor to effect insurance over the property either before or after the contract has been signed.

It also follows that the vendor is not obliged to keep paying premiums or even abide by the terms of his or her policy.

It is true that any insurance policy could be assigned by the vendor to the purchaser but the consent of the insurer must be obtained first and this can be an involved process.

There is however some protection afforded to a purchaser. Where a property is destroyed by fire the vendor is obliged to pay to the Purchaser any proceeds from a claim provided that the purchaser in turn pays to the Vendor a proportion of the part of the premium from the date of the contract.

You should note there is no obligation on the part of the vendor:-

1. to actually insure;
2. to maintain the premium; or
3. to insure to full reinstatement value.

There is another Statutory provision which states that the purchaser may, by notice in writing given not later than the date of completion or possession whichever is the earlier, rescind the contract. This may not help a great deal if the property was "your dream home" as you may wish to be seeking specific performance of the contract Further, this provision only applies to dwelling houses

and units and, only where the property is destroyed or damaged so as to be "unfit for occupation".

From a commercial standpoint therefore, it is not advisable to amend clause 17. The most suitable course for a purchaser is to take out insurance to full reinstatement value in his or her name and in the name of the vendor as unpaid vendor. Cover notes are easily obtained at very little cost (or sometimes free) from most insurers to assist purchasers pending settlement of their transaction.

It should be remembered that the standard terms and conditions of the REIQ contract have been drafted and developed with the combined experience of the REIQ and the Queensland Law Society and the arbitrary changing of clauses and their rights and obligations should not be done lightly.

Remember the corollary to Murphy's law

"If you don't pay the insurance then your house is guaranteed to spontaneously combust prior to settlement and there will be nothing left to settle or insure!"

When obtaining your cover note you may care to consider that you are now obtaining an asset of considerable value and (in most cases) a sizeable mortgage to go with it. It would also be prudent to have your broker review your life, trauma and income protection policies to make sure that you are able to protect and maintain your asset and its future. Should you require assistance with this we are only too happy to refer you to a number of independent brokers who can source the best cover for your circumstances.

