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When contracts become binding

There is quite often confusion and debate about when a contract for the sale of residential property becomes binding on the buyer and the seller, particularly when the Contract Date noted on the contract does not reflect the date the parties become bound by the contract.

The law provides that for a contract to become legally binding on the buyer and seller, amongst other things, there must be acceptance of the offer to buy or sell and communication of that acceptance to the other party. Acceptance of an offer may be by way of exchange of a fully signed contract between the parties to the transaction.

Section 365 of the *Property Agents and Motor Dealers Act 2000* clearly sets out when parties are bound by a contract for the sale of residential property. The standard procedure in Queensland is for the buyer to sign a contract setting out all of the terms of the purchase and submit the signed contract as an offer to the seller. If the seller accepts the offer, the seller then signs the contract and returns it to the agent.

At this point, there has been no communication to the buyer of the seller's acceptance of the offer. It is not until the buyer or the buyer's agent, usually the buyer's solicitor, receives a copy of the fully signed contract that the contract becomes binding. For the purposes of the *PAMD Act* the buyer may receive the fully signed copy of the contract, and thereby receive communication of the seller's acceptance, by facsimile.

The time for satisfaction of any conditions of the contract, such as finance approval and building and pest inspections, that run from the date of the contract should start on the date the parties are bound by the contract. Therefore, to avoid confusion and conflict the Contract Date should be noted as the day the parties are bound by the contract, that is the date the buyer receives a fully signed copy of the contract.

Payment of deposits and agent's obligations

The standard REIQ contracts for the sale of residential property provide for the deposit to be paid when the buyer signs the contract or on a specified date. Sellers usually require the deposit to be paid when the buyer signs the contract.

Quite often, the buyer does not pay the deposit until after the due date specified in the contract. If the deposit is not paid on the due date, the buyer is in default of the buyer's obligations under the contract and the seller may affirm or terminate the contract. If the seller chooses to terminate the contract, the seller is entitled to forfeit the deposit and sue the buyer for any damages suffered.

There is an obligation on agents under the *Property Agents and Motor Dealers (Real Estate Agency Practice Code of Conduct) Regulation 2001* ("the Code of Conduct") for agents acting as deposit holders under a contract to inform the client in writing if the deposit is not received by the agent on time.

Under the Code of Conduct agents must not accept late payment of a deposit unless the seller has been informed in writing that the deposit was not received on time and the seller gives written instructions to the agent to accept late payment of the deposit.

If an agent breaches the Code of Conduct in this regard, the seller may have an action against the agent. It is therefore very important to ensure that the deposit is paid on time, and the seller is notified immediately if it is not so that the seller may exercise his or her rights under the contract.

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