

Update: 18 April 2007 Sale of land: rejecting reduced deposits



Fleming Muntz
Solicitors



Summary

A recent Court of Appeal decision is another reason why agents should encourage vendors to reject reduced deposits and accept nothing less than the full 10% deposit of the purchase price on the exchange of contracts for the sale of land.

What's changed?

In a judgement on 23 March 2007 the New South Wales Court of Appeal held that the obligation on a purchaser to pay the balance of the 10% deposit on default is inconsistent with the characteristics of a deposit. This obligation represented a penalty and was therefore not enforceable against the purchaser.

What are the benefits?

There are two benefits to a vendor accepting a full 10% deposit on exchange:

- they hold, and are entitled to the full 10% deposit if there is a default by the purchaser; and
- they avoid the considerable legal costs of commencing legal proceedings to recover the balance of the deposit that may or may not succeed.

If a purchaser is unable to supply a cash deposit, then agents should encourage vendors to demand from the purchaser on exchange, a deposit bond for the full 10% deposit.

What are the problems?

Vendors should be aware of the danger that special conditions in contracts which have the balance of the 10% deposit payable after exchange may be declared a penalty and therefore not enforceable.

If a vendor accepts a reduced deposit on exchange than the vendor may only be entitled to that deposit paid by the purchaser on exchange and not the balance of the 10% deposit if the purchaser defaults under the contract.

How can Fleming Muntz help?

Fleming Muntz can assist you or your clients with any conveyancing matter, be it buying, selling or general advice. Please contact us.

Important fine print

This update is for general information only. It is not a complete guide to the area of law. Competent advice should be obtained before taking any action.

We resent unwanted mail as much as anyone – if you would prefer not to receive any further updates, please telephone us on (02) 6021 2222.

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