Contract of Sale fine print: Conditions buyers must know

legal

By LOUISE AITKEN

BUYING PROPERTY can feel reassuringly familiar: most purchasers expect "subject to finance" and "building and pest" conditions to operate the same way every time.

They don't.

While many contracts start from a standard form, the special conditions (and any amendments to the general conditions) can materially change what you must do, what evidence you must provide, and when you can end the contract, in most cases making it more difficult to end the Contract of Sale.

Below are some of the most common conditions and misconceptions.

Subject to finance

Many purchasers sign a Contract of Sale subject to finance with a "14-day finance condition" and assume that this means they essentially have 14 days to obtain approval and, if approval is not received, they can simply notify the vendor and/or Real Estate Agent and the Contract of Sale will be at an end.

In practice, finance conditions are drafted in many different ways and usually impose further steps to be taken and stricter requirements on the purchaser.

Examples of this include timing obligations which may require the purchaser to immediately apply for their loan after signing the Contract of Sale, or evidence requirements such as a formal decline letter on the lender's letterhead to provide evidence of you being unable to obtain finance approval.

There is also a misconception that a vendor will grant you an extension of the finance condition as required.

The vendor is under no obligation to provide an extension, and in some cases, may ask you to provide evidence that you have immediately applied for the loan and have so far complied with the conditions imposed within the Contract of Sale.

Subject to building and pest inspections

This general condition is now the most widespread condition, which is amended with the special conditions sometimes in ways that restrict a purchaser's rights.

Common changes conveyancers see are:

- Who can carry out the inspection: For example, some contracts restrict inspections to a registered builder or otherwise limit the type of inspector that can provide the required report.
- What defects allow the purchaser to act: The wording matters. Contracts may refer to the following wording: "major defect", "major building defect" or "major structural defect". These terms are not interchangeable. If the condition requires a "major structural defect", but your report identifies only a "major defect", you may not have the contractual right to end the contract.

Another common misconception is that a building and pest clause automatically creates a right to renegotiate price.

In most cases, the condition only provides a right to accept "as is" or end the Contract of Sale.

Subject to the sale of your existing home

This condition is less common, but it does appear in some purchase contracts.

It typically gives the purchaser a set period to sell their current home, with the ability to end the contract if the sale does not proceed in time.

If it is not carefully drafted, it may not clearly deal with key issues such as what "sold" means (contract signed, unconditional, or settled), whether the purchaser must take reasonable steps to sell, how, and when the purchaser can end the contract, and how quickly the deposit must be refunded (and to whom).

If you are buying subject to sale, the clause should be reviewed before you sign, to ensure it reflects your actual needs and timing, and sets out a clear exit pathway if your property does not sell.

If you are planning to purchase, make sure you have your Contract of Sale and Section 32 reviewed.

A Conveyancing Lawyer can provide advice around any conditions in the Contract to ensure the selling of your current home or the purchase of a new one is a smooth process.

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