

RAINEY COLLINS LAWYERS

Good Practice Tip – Timing is Everything ...

Timing for real estate agents is very important. Lawyer Claire Coe explains.

Chris, a real estate agent, was very excited when he finally received an offer on a house which he had found difficult to sell. He arranged for the purchaser to sign an Agreement for Sale and Purchase that day. The purchaser requested that settlement date be 60 days out from the date of signing the contract as they needed to move out of their existing house and were travelling overseas for a couple of weeks.

Chris therefore entered in the settlement date on the front page of the agreement as “60 working days after the date of this agreement”. The purchasers did not notice the word “working” (and Chris didn’t explain it to them) and happily signed the agreement.

The purchasers moved out of their existing house and went overseas for their two week holiday, thinking they would see their lawyer to sign the mortgage documents the week after and move in (which would be 60 days after signing the Agreement for Sale and Purchase). It wasn’t until they returned from overseas that they lawyer advised them that settlement was actually still another month away as it was 60 *working* days after signing the contract, not days. The vendor was not able to move out any sooner than that and the purchaser’s efforts at requesting an earlier settlement were to no avail. The purchasers had to desperately find alternative accommodation for a month and were not at all impressed with Chris.

Why are timeframes important?

Timeframes in agreements (including in Further Terms of Sale) are absolutely crucial in property transactions. Real estate agents need to ensure that timeframes suit both the vendor and the purchaser and that they understand what those timeframes mean. Had Chris drawn the word “working” to the purchaser’s attention, they would not be in a situation of having to find themselves alternative accommodation for a month.

The difference between days and working days is crucial. Working days exclude weekends and certain public holidays as referred to in the Agreement for Sale and Purchase. The difference between “days” and “working days” is extremely crucial over holiday periods such as Christmas and Easter. When drafting clauses regarding settlement or possession dates or special conditions, you should ensure that you use references to days or working days in accordance with the purchaser or vendor’s instructions and that you explain to them what that means.

Timeframes for LIM Reports ...

Timeframes are also very important with LIM Reports. If you are circling the LIM condition on the front page of the Agreement for Sale and Purchase, it means the purchaser has five working days to obtain the LIM Report and ten working days in which to give notice of any requisitions on the LIM Report to the vendor. You need to make sure both purchaser and vendor are aware of these timeframes and take care not to put a conflicting condition in the Further Terms of Sale regarding the LIM Report.

Other important timeframes to remember ...

Timeframes are also important where the settlement date is only a short period away from the date the agreement was signed. You need to be conscious that a purchaser always has ten working days from the date of the agreement in which to requisition the title to the property. Also bear in mind, when a unit title is being sold, that the vendor's lawyer must make a section 36 certificate available to the purchaser five working days prior to settlement. This can hold up settlement if it is not provided so it is in your best interests to ensure there is adequate time for this to happen.

When drafting conditions it pays to ensure you explain clearly to the purchasers and the vendors the effect of including "working days" or "days" in their agreements. It makes sense in our experience to ensure all parties are on the same page when it comes to confirmation and settlement dates. Ultimately it should save you, your vendors and purchasers a lot of unnecessary stress and potentially can help to avoid you having an unhappy client.