

## WHAT HAPPENS IF STORM DAMAGES THE HOUSE AFTER SALE BUT BEFORE SETTLEMENT?

In Queensland extreme weather events, such as the cyclone and flood impact that much of the state is experiencing at the moment, are a regular occurrence and this raises a serious question around property sales and transfer of risk: “What happens if my house has sold but not yet settled and a cyclone damages or demolishes my house? Does the sale still go ahead and who pays for the damage?”

According to the standard terms of the REIQ Contract of Sale, risk transfers to the buyer at 5pm on the next business day. So, if the contract was signed at 2pm on Monday, 10 April, the risk transfers to the buyer at 5pm on Tuesday, 11 April. If the contract is signed on Saturday, the risk is transferred at 5pm on the following Monday (provided Monday is not a public holiday. If it is, then risk transfers at 5pm on Tuesday).

When we say “risk transfers to the buyer” we mean that risk of damage to the property moves from the seller to the buyer, and thus the responsibility for repairs. Having said this, the seller still has obligation to maintain the property up until settlement.

So, as a buyer when you have been advised that your offer has been accepted and signed by the seller it is prudent to arrange your insurance for the new property immediately. This is a simple process and can usually be handled over the phone with your insurance company.

But what happens if, after your sale contract has gone unconditional, but not yet settled, and the property becomes severely damaged or destroyed by a cyclone or other disaster?

In very limited circumstances under section 64 of the Property Law Act when a residential property is deemed *unfit for human habitation* there is a provision to potentially terminate the sale contract. The buyer must give the appropriate notice to the seller and can potentially do so without penalty and may have all deposits refunded.

Be aware, however, that these circumstances are extremely rare. There is no automatic right to pull out of a contract because the property is damaged or affected by flooding or cyclone after the contract is entered into. Given the legal complexities involved, buyers and sellers should seek legal advice to determine their rights and responsibilities.

In the event the property is damaged and not destroyed and the buyer elects to proceed with the sale it may delay settlement occurring in the previously agreed timeframe while the buyer’s insurers

assess the claim and then carry out the repairs, or the parties may agree to settle and carry out the repairs after the fact.

It is also prudent, if you are a seller, to maintain your insurance as there may be some disagreement between insurers as to who has to cover what.

In areas that are prone to seasonal major storms and cyclones, which is most of Queensland, it is also possible to include storm and cyclone contingency clauses into the contract, by negotiation. Perhaps this is something to consider as we approach what is forecast to be a busier than usual cyclone season.

**-ENDS-**