



Approvals and No Certificates



Edition: 19th October 2011

Right to Rescission

I have written previously about the Conveyancing (Sale of Land) Regulation 2003. In 2010, a new regulation was put in place, now called the Conveyancing (Sale of lands) Regulation 2010.

Clause 8 of the regulation states that an implied warranty of every contract is set out in Schedule 1. Schedule 1 sets out a number of things including an implied warranty that the building has all approvals and building certificates in place at the time of exchange. That is, all structures on the land have had the development approved and have had a building certificate issued on that property.

Clause 16 sets up a remedy for such a failure. Simply speaking, a purchaser can rescind a contract without penalty, where they discover that any structure on the land is not approved or a building certificate has not been issued. This means that, if a purchaser discovers after settlement that a pergola is not approved, the purchaser can rescind the contract after exchange and the contract is cooled off.

Most properties that a real estate agent sells will have something that is not approved. The only way of stopping the rescission is set out in clause 16 and these things include:

- If there are disclosures in the contract for sale of land;

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- The purchaser knew of the unapproved structure; or
- A building certificate is obtained on the structure.

To protect your purchase, we would suggest that all real estate agents ask the vendor if there is anything that is unapproved. If they discover there is a structure that is unapproved, this should be advised to the vendor's solicitor to ensure that the disclosure is placed in the contract for sale of land.

Furthermore, if it is discovered that there is an unapproved structure, and this is discovered after exchange, the vendor should obtain a section 149D Certificate under the Environmental Planning and Assessment Act 1979. This again would avoid the rescission.

If you wish to protect yourself against this hidden regulation, please make certain that:

- Disclosures are advised in the contract; and
- Building certificates are obtained in relation to every structure.

Cheers,  
**Bailey Compton**  
*and The team at ACP/Leverage!*



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