



## Rubbery Cheques at Auctions



Edition: 4<sup>th</sup> November 2011

On every Saturday of every week of the year agents exchange contracts at auctions. We would love to ask people to bring bank cheques or money orders to auctions to exchange, however we don't know the purchase price to arrange a bank cheque. Therefore, we are all forced into accepting personal cheques at the exchange of contracts.

What happens if it bounces? Consideration is required for a contract to be valid. Where in legal terms, consideration is a value assigned to the offer. If a cheque is issued, is there consideration under the contract?

To me, that is not the point! The point is what is the remedy for the vendor? If the cheque bounces at an auction, unless a replacement cheque can be found quickly, you usually have a vendor incapable of selling their property. This means that, the solicitor acting for the vendor would most likely terminate the agreement on the basis of a deposit not being provided in accordance with the contract.

How do we get the money back? Well the Cheques Act of 1986(Cwth) provides that, where a person issues a cheque, and it bounces, the person receiving the cheque may take action against the person issuing the cheque for the full proceeds of the cheque. If I was the solicitor acting for the vendor, I would sue the purchaser under the Cheques Act and not under the contract to ensure that the money was received. The purchaser would have no defence and would therefore be required to pay the 10% deposit.

If you do have a vendor who is concerned about taking personal cheques, here is an answer for him/her. Having a rubbery cheque does not protect the purchaser from having to pay the 10%. Based on section 71 of the *Cheques Act 1986* a vendor is always protected.

***Cheers, Bailey Compton  
And The Team at ACP/Leverage!***

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