

WATCH OUT FOR THE "LAST MINUTE" PENALTY BITE WHEN BUYING YOUR NEW HOUSE

The form of agreement for sale and purchase of real estate used by most land agents has been substantially revised – the Seventh Edition July 1999. While many of the changes are cosmetic, there are major amendments that could have a significant impact on the obligations of the purchaser/buyer or the vendor/seller.

"Last minute settlements"

The concept of a "last minute settlement" has been introduced. If settlement does not occur until after 4 pm on the settlement date due to purchaser's delay, the purchaser has to pay the vendor "late settlement interest" on that portion of the purchase price due to be paid on the settlement date for that day and each day until the next working day the purchaser can settle. "Late settlement interest" is specified on the front page of the agreement, or if not specified, will be double the 90-day bank bill buy rate.

For example, if settlement is agreed to take place on a Friday, but does not occur until the following Monday, the purchaser is required to pay three days interest regardless of whether the delay was caused by the purchaser or due to circumstances out of the purchaser's control (for example, delay in obtaining mortgage funds or delay in settlement of the prior sale of the purchaser's existing property).

Often your purchase will be in a "chain" of transactions which are to take place on the same day. We will make every endeavour to ensure that settlement takes place before 4 pm but if settlement of your purchase is dependant upon our obtaining funds from your sale we may be in the invidious position of your sale settling just before the 4 pm deadline leaving us with insufficient time to settle your purchase before 4 pm. This would result in you not receiving interest on your sale but having to pay it on your purchase.

What can you as a purchaser do to avoid a "last minute settlement" or reduce its consequences?

1. Avoid the traditional Friday settlement and opt to settle earlier in the week. For example, if a "last minute settlement" takes place on a Thursday the you will only have to pay one day's interest as compared to settlement on a Friday, where three days interest will need to be paid.
2. Ensure sufficient time is allowed in the agreement between the signing of the agreement and the settlement day for the satisfaction of all conditions and for arranging any necessary finance.
3. Do not leave arranging your finance until the week of settlement. With most mortgage finance the following steps are involved:
 - a. finance is approved by the lending institution
 - b. the lending institution instructs us to act for it
 - c. documents are prepared by us
 - d. the documents are signed by you
 - e. our solicitor's certificate is sent to the lending institution
 - f. the lending institution checks that the documents are in order and pays the advance to us on the settlement day. (Many lending institutions require our certificate at least one if not two working days prior to the advance being made. If this is done, the lending institution will have the time to ensure the documentation is correct, resulting in the funds generally being made available to us before midday on the settlement day).
4. Have your new property insurance cover arranged well before the settlement day. We need to provide cover details to the lending institution in our certificate if a mortgage is required. Have your insurance agent fax a certificate of currency of the insurance policy to us.
5. Well in advance of settlement, make arrangements through your real estate agent or direct with the vendor for you to carry out your "final inspection" of the property prior to settlement. The inspection should be carried out close to the settlement date, however sufficient time should be allowed for the vendor to remedy any aspect about the property which may have changed since you signed the

agreement. If the inspection is left to the morning of the settlement day, delays are inevitable if you are not happy with the inspection.

6. Make arrangements through your real estate agent, the seller or your solicitor on where you can pick up the keys once the settlement has been completed.
7. Before signing the agreement for the purchase of your new property have clause 3.8 of the agreement which provides for the penalty for "last minute settlement" deleted.
8. An alternative to deletion of clause 3.8 is to have a special clause inserted in your sale agreement which requires your purchaser:
 - a. to settle early enough for us to complete your subsequent purchase; or
 - b. to meet the cost of any penalty you incur as a result of delay in settlement of your purchase due to delay in settlement of your sale.
9. Most importantly, seek legal advice **before** signing any agreement because once it is signed it is a binding contract between the parties and very difficult, if not impossible to amend at a later date.

Other changes to the new agreement

The inclusion of a specific clause governing the obtaining of a **Land Information Memorandum** ("LIM"). If you require a LIM then in the "Conditions" box on the front page of the agreement delete "no" in response to the question "LIM required". The procedure then is:

- a. you as purchaser, or ourselves on your behalf have three working days from the date of the agreement to apply for a LIM
- b. within fifteen working days from the date of the agreement we need to give the vendor notice of any matter/s contained in the LIM of which you do not approve and what you require to be done in respect of such matter/s
- c. the vendor then has the choice of rectifying such matter/s as requested prior to settlement, or giving us notice on your behalf that the vendor is unable or unwilling to comply with your notice. If the vendor opts for the later option, you or the vendor may end the agreement.

You therefore can not unilaterally cancel the agreement because there is something in the LIM that is not to your satisfaction – you must first give the vendor the opportunity to rectify the problem. From your point of view this may not be satisfactory. As an alternative you may wish to delete the printed LIM condition and have inserted a special clause to the effect that you as purchaser have an express right to cancel the agreement if the LIM is not satisfactory to you in all respects.

Warranties under clause 6 have been redrafted. The warranty relating to payment of electricity and gas has been deleted.

Warnings are provided on the back page of the agreement which a buyer or seller should read and consider **prior** to signing an agreement.