

Finance Approval

When purchasing a property it is important to ensure that funds will be available to complete the transaction.

What happens if the purchaser is unable to pay on the day of settlement?

A purchaser who is unable to provide funds on the settlement date risks being in default and forfeiting the deposit, which is usually ten per cent of the purchase price. A purchaser will be liable for any shortfall between the original contract price and the amount ultimately received by the vendor for the property. This amount can be significant where the purchaser has paid a premium price for the property or where the market value of the property drops between the date of the purchase and the subsequent sale of the property to another buyer.

'Subject to finance' as a special condition of the contract of sale

A purchaser may ask to have a condition included in the Contract of Sale that the contract is 'subject to finance'. This clause is usually only relevant where the property is sold privately. Sales at public auction are normally unconditional and would not include a finance condition.

The relevant clause in the contract specifies the loan amount, approval date and name of the lender (which may be 'any recognised financial institution').

If finance is not approved by the approval date, that fact must be communicated to the vendor, to enable the purchaser to treat the contract as at an end.

If the vendor is not advised of the non-approval prior to the expiration of the specified period (usually with an additional two clear business days), the contract becomes unconditional and the purchaser is liable to perform the terms of the contract and hand over settlement funds on the scheduled settlement date, regardless of financial ability to do so.

If there is a delay in finance approval, and the purchaser needs extra time to obtain finance approval, an extension should be sought from the vendor. Such a request should be communicated in writing, with the proviso that if the request is not granted the purchaser terminates the contract for reasons of non-approval.

To be able to rely on the 'subject to finance' special condition, the purchaser (and for the record, not an alternative nominated entity) should have assiduously pursued the loan application, and not be otherwise in breach of the contract. At the time of requesting an extension to the approval period, it is advisable to request an extension for the payment of the deposit and any other obligations upon the purchaser.

A purchaser relying on this special condition should ensure that the lender arranges for any valuation promptly and as a matter of priority.

The serious consequences of the vendor's refusal to grant an extension of the approval period may include the obligation of the purchaser to complete the contract, or alternatively, the automatic termination of the contract.

HICKS
OAKLEY
CHESSELL
WILLIAMS

Lawyers & Notary

Contact us at:

Melbourne Office

Phone: **03 9629 7411**

[Google Map Link](#)

Level 18
461 Bourke Street
Melbourne 3000

Fax: 03 9629 7422
DX: 31331 Mid-town
PO Box 16067
Collins Street West 8007

Mt Waverley Office

Phone: **03 9550 4600**

[Google Map Link](#)

Central 1, Level 2, Suite 17
1 Ricketts Road
Mt Waverley 3149

Fax: 03 9544 8711
DX: 32002 Mt Waverley
PO Box 2165
Mt Waverley 3149

enquiries@hocw.com.au
www.hocw.com.au

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