Podcast Transcript

Episode Title: Can You Walk Away from a Property Contract?
Host: Ian (Speaker 2)
Guest: Paul Denny (Speaker 1)
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Transcript

Ian (00:00.142)

Paul Denny from Bowral Conveyancing Centre. A very good morning to you. Look, a lot of people are looking at property at the moment because there's some good value around. You need to get a contract, obviously, sorted out. Can people just walk away from contracts?

Paul (00:15.000)

Good morning, Ian. Well, that's possible. What this brings to light is the critical importance of having a good contract prepared before a property goes on the market, if you're the seller.

This all goes back to decades ago when there was a problem with what they call "gazumping." Gazumping is where you reach an agreement with the seller to buy a property for, say, X dollars. Then you go off and see your solicitor or conveyancer, do all your inquiries, and come back two or three weeks later and say, "I'm ready to go ahead now." And that person turns around and says, "Well, sorry, another buyer's popped up with more money." So you've been gazumped. You have to pay more or you miss out.

So the New South Wales government's answer to that was to introduce a regime where a contract must be prepared before a property even goes on the market, to give the purchaser the opportunity to exchange immediately.

Part of that contract is the inclusion of a number of what they call "prescribed documents." All those inquiries that would be made before are actually provided up front. We talk about things like zoning certificates, details about where the sewer main runs, and title details. So all that's available immediately.

The other part of that was that they also retain a five-day cooling-off period. So if they get advice and they don't like something, they can actually withdraw and get their money back, less a forfeit of just 0.25%. On a million dollars, that's about $2,500.

Ian (01:53.071)

It all adds up. So how can you help people with this sort of thing?

Paul (01:57.500)

Well, the thing is to make sure that the contract does contain all those prescribed documents. If one is missing—and a lot of them are pretty obscure, some are very obvious like a zoning certificate, but there are a lot of very obscure ones as well, the purchaser actually has a right to rescind for 14 days after they've exchanged contracts. Now that's better than a cooling-off period because not only have they got 14 days, but they get all their deposit back.

Ian (02:30.000)

That's very important. It is. So what happens, the purchaser says, "Look, I want to pay X number of dollars for this." The seller says, "Yes, that's fine." The agent then gives them a contract, and then they take the contract to you.

Paul (02:48.780)

The agent is authorised to actually exchange the contract. They're authorised only to insert things like the name and price. They can't change anything else, but the contract must be prepared by a solicitor or a conveyancer. And they hold that, so if a purchaser wants to commit themselves there and then, they can do so.

Ian (03:07.000)

So it's really, really important that people get these contracts microscopically checked by somebody like yourself.

Paul (03:13.000)

Absolutely. Look, just an example, I looked at a contract for someone the other day and it turned out there's a swimming pool on the property. There was no compliance certificate in that contract. Now, my client who was buying it could have exchanged contracts and just 10 days later said, "I don't want to buy this anymore," simply because that certificate was missing.

Ian (03:36.000)

So whether you're buying or selling, you need to be absolutely sure. How can people get in touch with you?

Paul (03:41.500)

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Key Information

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