

## **What happens if the property you just bought has been destroyed?**

**As seen in the Property Watch section of the Sun Herald 2<sup>nd</sup> February 2011 –**

The recent flood destruction has raised questions regarding who is responsible for the bill if damage occurs between the time a property has exchanged and settlement day.

The floods may not have affected you personally, but what if the house was burnt down between exchange and settlement? Or even if there's a broken window, the air-conditioner no longer works, or rubbish is left in the property by the seller? Who is liable then?

Or what if you simply failed to notice damage prior to exchange?

The general law is that if property becomes so damaged as to make it unliveable between exchange and settlement; the buyer has full rights to terminate the contract and receive their deposit back in full.

If it's still liveable, but there's damage, the seller must pay for the costs to bring it back to the same condition as when the property exchanged. If the seller cannot do that, then the buyer can once again, walk away from the contract and is entitled to get back their deposit.

In practice, what happens here is that the sale amount is renegotiated to take into account the new conditions of the property.

This is fair practice and it's necessary to have this included in a standard real estate contract. And by the way, sellers can't leave a heap of rubbish lying around on settlement day. The buyer will be entitled to hold off on settling until you clean it up.

In Queensland, there is some contention on who is liable when it comes to damage done between settlement and exchange that is outside the seller's control. One Queensland solicitor received some media last week, scaring buyers into believing they were liable.

Now the contract for sale of exchange in Queensland states that the 'risk' of the property is transferred to the buyer on exchange. However the same contract (drawn up by the Real Estate Institute of Queensland) also states that if the seller is still in possession of the property then they must hold insurance over that property.

The same contract also states the seller must ensure the property was in the same condition as where it was on exchange. This was not mentioned in the Brisbane Times story, that was also featured on Domain.

In Victoria, after the devastating Black Friday bushfires, it was made very clear that the seller was indeed liable to make up such damages, if indeed it was out of their control. In my mind this is proper, ethical practice, especially if the seller is still in possession of the property. Then again, whoever said real estate was an ethical industry?!

That stated, buyers need to be aware that any damage found on or after settlement has to be proven that it wasn't there pre-exchange and/or that the seller has outright lied to you with regard to specific questions you have asked of the property. So if there was damage there before exchange, and you have not noticed it on your inspection, that's tough luck for you as the buyer.

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