

CONVEYANCING UPDATE

MARCH 2021

THE IMPORTANCE OF NOTICES IN PROPERTY CONTRACTS

The standard terms of an REIQ contract set out the requirements for the service of notices. These requirements must be strictly adhered to in order for the service of notice to be valid.

These standard terms include how and upon whom notices must be served. They also require notices to be served by 5.00pm on the given day. Any notice served after 5.00pm will be deemed to have been served on the next business day.

An interesting case has recently been determined by the Queensland Supreme Court which highlights the need for careful consideration of the service of notices and the construction of special conditions.

In the case of *Latimore Pty Ltd v Lloyd* (2020) the buyer entered into a contract to purchase a residential property from a seller in which there was a special condition requiring the seller to provide the buyer with a pool safety certificate 7 days before settlement which was stipulated as an essential term.

The seller failed to provide the pool safety certificate to the buyer by 5.00pm on the day that was 7 days before settlement. The buyer's solicitor sought to terminate the contract at 5.03pm on the same day. The seller's solicitor provided the pool safety certificate to the buyer's solicitor at 6.31pm on the same day.

The seller applied to the court for an order that the buyer's termination was invalid on the grounds that:

1. The requirement to provide the pool safety certificate was not a notice and thereby the provisions of the contract concerning the service of notices (including the requirement to give notice by 5.00pm) did not apply.
2. The special condition requiring the seller to provide the buyer with the pool safety certificate did not prescribe a time of day for compliance and therefore the seller had until midnight on the due date to provide the pool safety certificate (which the seller had done by providing it at 6.31pm).

The court found in favour of the seller and ruled that the termination was invalid.

The takeaway from this case is that unless the contract is time specific and requires something to be done by a certain time then you should not assume that a right to terminate arises at 5.01pm on the given day. It will come down to how the clause has been drafted and the interpretation of that clause.

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