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BUYING OR SELLING A PROPERTY - SOME SIMPLE TIPS ON NEGOTIATIONS OUTSIDE THE CONTRACT

The main point to remember when buying or selling a property, is that someone wants to sell, and someone else wants to buy. The negotiations as to the price have all been conducted by the Real Estate Agents, and an agreement has been reached. The parties usually then advise their solicitors of their intention to sell or to buy, and the vendor's solicitor will issue the contract to the purchaser's solicitor. At this stage there is still no binding agreement. The binding agreement does not occur until an exchange of contracts, and that usually takes place after the parties have discussed the contents of the contract with their respective solicitors. After the contracts have been exchanged, they become legally binding, and generally cannot be changed. It is therefore important that both the vendor and the purchaser advise their respective solicitors of any other negotiations that may have taken place.

In property law, the entire terms of the contract must be in writing and incorporated into the contract. If there was an agreement reached between the vendor and the purchaser to do something, or leave something at the property, and it is not in the contract, it may not be done or left.

As one example, there was a negotiation between a purchaser and a vendor that the vendor would paint the purple walls in his daughter's bedroom white before completion. The vendor did not mention this to his solicitor, and it did not occur to the purchaser to mention it to his solicitor either. The contracts were entered into without a further condition to this effect, and following exchange of contracts the vendor went overseas leaving signed documents with his solicitor to complete the transaction within the usual 5 week period. When the issue of painting the room was



brought up by the purchaser when he conducted his final inspection, the purchaser was told that there was no such agreement in the contract, and the vendor had left the country. It wasn't going to happen. In that particular instance, the purchaser had to complete, and then presumably paint out the purple walls at a later time. Had the purchaser advised his solicitor that this had been agreed, there is no doubt that the purchaser's solicitor would have requested the vendor's solicitor to make this a condition of the contract, which would have had the effect of making it binding.

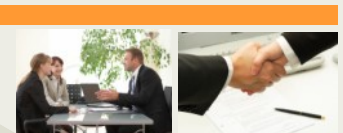
Another example from a vendor's point of view was when the price



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had been negotiated, the purchaser agreed to let the vendor remain in the property following settlement for one month to enable the vendor to purchase a caravan and go on his "Round Australia" trip. Unfortunately neither the vendor nor the purchaser advised their solicitors of this arrangement, and the vendor's solicitor issued the purchaser's solicitor with a standard vacant possession contract. When the time for completion came the vendor did not want to move, as he was going to buy a caravan with his sale money.

However, the purchaser's circumstances had changed, and he needed to move in immediately. We were left with a vendor with no where to go who would not go, and a purchaser who could not move into his new house as it was not vacant. Again, had the parties discussed this with their solicitors, there would have been a further condition in the contract to the effect that the purchaser allowed the vendor to remain in the property for a period of one month following settlement, and the consequences following if the vendor did not move out after that time. As the contract stood without those arrangements noted, the purchasers gave the vendors Notice to Complete and settlement took place under

very strained and difficult circumstances for the vendor. All this could have been avoided.

These are a couple of examples that can cause delay and confusion to completion of a conveyancing transaction, because the requirements of the parties had not been properly discussed.

Another source of confusion can be what should or should not be left in a property when it is changing hands. Some items such as "fixtures" must be left in the property. These include, fixed floor coverings, light fittings, stove, curtains and blinds, but there can be many others. For example, if something is so affixed to the property that to remove it would be to cause damage, or substantially alter the appearance of the property, it clearly should not be removed. A good example of this is plants in the garden. A row of standard roses in the soil has to stay. What is in the soil forms part of the soil and remains in the soil. However, if the row of standard roses is in pots, then both the pots and the roses can be removed.

At Rankin Nathan, we take great care with our clients'



needs when buying or selling a property. We ask them to tell us if there have been any arrangements made between the parties that are not reflected in the contract, however small they consider them to be. Even if there has been an agreement to clean the carpets before completion because the vendor has had a dog running around the house, we would ensure that there is a further clause in the contract that the vendor will carry out this arrangement prior to completion. No arrangement is too trifling. We would rather spend a bit more time with our clients ascertaining their needs, and their understanding of what will or will not happen, and what will or will not stay, than have hardship or unnecessary delay, in what should ultimately be a very exciting time for everyone, and should go off without a hitch.