

THE PURCHASER HAS DEFAULTED – *What can I do?*



When selling your property, you have an expectation that the buyer will complete the sale. It is therefore extremely frustrating if the buyer defaults and fails to settle.

If the buyer fails make payment at the settlement, what are your rights?

Failure to make payment at the time designated for settlement is a fundamental breach of contract. This entitles you an election to choose one of two options, either:

1. To confirm the contract and seek to proceed with it; or
2. Terminate the contract and claim damages.

Proceeding with the Contract

You would elect to proceed with the contract if you want to, or need to, continue with the contract. For example if the purchaser merely needs more time, which you can allow, you could elect to affirm the contract and settle at a later time. In those circumstances, you can seek to recover an adjustment for interest pursuant to the contract.

If the purchaser continues to fail, you can apply to court to seek an order called “specific performance”. This is a court order requiring the purchaser to buy the property.

To obtain this, you must be ready willing and able to proceed with the sale and payment of damages cannot be an adequate remedy. Damages will not be an adequate remedy for a developer who has a finance facility. The developer will need to sell the property to reduce debt. If the purchasers are not readily available, it might be that damages are not an adequate remedy.

What are my Rights if I Terminate the Contract?

If you terminate the contract, you can forfeit the deposit. You would then seek to re-sell the property on the open market. If there is a loss resulting from the re-sale, taking into account the deposit forfeited, then this can be recovered by court action from the buyer for breach of contract.

Which way should a seller choose?

This depends on the circumstances of a particular case. However, in view of the nature of the matter, as time is of the essence, the election must be made quickly.

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How we can help you

Our team can provide advice as to which election you should choose in your circumstances. If you need to commence litigation to enforce your rights, our team can do so for you at short notice.

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