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CONVEYANCING (PASSING OF RISK) AMENDMENT BILL 1986

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to give effect, with certain modifications, to recommendations of the Law Reform Commission of New South Wales in its report on Passing of Risk between Vendor and Purchaser of Land (L.R.C. 40).

The principal reform effected by the Bill is to remove the necessity for a purchaser under a contract for the sale of land to insure any building or other structure on the land immediately on entering into the contract. The risk in respect of damage to land (and the necessity for the purchaser to insure) is to be postponed until the completion of the sale or, if the parties agree, any earlier time after the purchaser enters into possession of the land. The Bill also makes consequential provision for the rescission of a contract or the reduction in the purchase price where the land is damaged after the contract is made and before the risk passes to the purchaser. The reforms effected by the Bill cannot be excluded by the parties to the contract in the case of the sale of a dwelling-house.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

Clause 3 is a formal provision that gives effect to the Schedule of amendments.

Clause 4 ensures that the proposed Act does not affect contracts for the sale of land made before the commencement of the proposed Act.

Schedule 1 (1) provides that the proposed new Division to be inserted into the Principal Act applies to land under the Real Property Act 1900.

Schedule 1 (2) inserts a new Division 7 into Part IV of the Principal Act containing the following provisions:

- (a) Proposed section 66J is an interpretation provision. "Land" has been defined to make it clear that the proposed Act applies to damage to buildings and other fixtures. Proposed section 66J (2) defines substantial damage to land as damage which renders the land materially different from that which the purchaser contracted to buy.
 - (b) Proposed section 66K postpones the passing of the risk in respect of damage to land (and the necessity for the purchaser to insure) until the completion of the sale or, if the parties agree, any earlier time after the purchaser enters into possession.
 - (c) Proposed section 66L empowers the purchaser of land to rescind the contract for sale if the land is substantially damaged after the contract is made and before the risk in respect of the damage passes to the purchaser. The option to rescind in those circumstances must be exercised within 28 days of the purchaser's first becoming aware of the damage or within such longer period agreed to by the parties to the contract. If the purchaser decides not to rescind the contract, the purchaser is entitled to a reduction in the purchase price under proposed section 66M. The proposed section makes provision with respect to the service of notice to rescind and the consequences of rescission.
 - (d) Proposed section 66M provides for an appropriate reduction in the purchase price of land damaged after the contract for its sale is made and before the risk in respect of the damage passes to the purchaser. The proposed section would apply where the land is not substantially damaged or the land is substantially damaged but the purchaser decides not to rescind the contract.
 - (e) Proposed section 66N empowers the Supreme Court to refuse to require the vendor to complete a sale where the land is substantially damaged and the purchaser decides not to rescind the contract. The power is exercisable by the Court if it would be unjust or inequitable to require the vendor to complete the sale.
 - (f) Proposed section 66O prohibits the parties to a contract for the sale of a dwelling-house from excluding the operation of the proposed Act.
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