

Proceed with caution

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With the global Covid-19 pandemic accelerating remote working and ushering in an age of remote dealings on a scale never before experienced, correspondence solely through email is on the rise. Despite the common belief that a formal sale and purchase agreement is required for the sale and purchase of land, there is a need for both purchasers and vendors to proceed with caution when engaging in email correspondence discussing the sale of property. There can be situations where parties to the sale and purchase of property may find themselves unintentionally compelled to settle a transaction pursuant to a binding and enforceable contract.

While there are commonly situations where the elements of offer and acceptance are present in email communications, the Property Law Act 2007 prescribes certain necessary formalities (which act as a gate-keeper) before a contract for the disposition of property is binding and enforceable. While there is no particular requirement as to form, any written

record of the contractual terms may constitute a contract, provided the necessary elements are present, including the existence of all material terms and those terms being sufficiently certain. The parties must also have “signed the agreement”.

The “three P’s” is generally seen as being the minimum requirements of a contract for the sale of land – price, property and parties. Email correspondence regarding the sale of property may commonly identify the purchase price or prescribe conditions that must be satisfied before settlement. This may not be enough for an agreement to be sufficiently certain. The absence of a specific description of the land in question may not be fatal as long as there is sufficient evidence that the purchaser knew what they were buying and the offer related to that land.

An absence of a date for settlement may also prove to be an obstacle to satisfying the Court that the agreement is sufficiently certain, however the Courts have been willing to imply a term into the agreement that settlement will occur within a reasonable time frame from the date at which the agreement becomes unconditional. This again highlights the need for caution when discussing matters by email if a party does not intend to be bound at that time, or if there are material matters left to agree upon.

Interestingly, a party is capable of “signing” an agreement by inserting their names at the end of an email with an intention to assent to the preceding text in the body of the email.

What is clear is that a formal agreement for the sale and purchase of property is not strictly necessary in order for a contract for the sale of land to be binding and enforceable, unless that was expressed to be a condition of the agreement.

Despite there being a plethora of legal issues involved, it is clear that anyone discussing the sale and purchase of property via email must act prudently and with caution.

When you are undertaking preliminary email correspondence with a view to enter into a sale and purchase agreement in due course, it may be sensible to include some reference to the fact that any agreement will only be binding on the signing of a formal sale and purchase agreement. This avoids any ambiguity that may arise over intention.

On the other hand, where there is a wish to lock the other party into a binding agreement based on email correspondence, it would be wise to confirm the position reached by the parties in a concluding email summarising the necessary elements.

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