

## Condition Vs Warranty in a Contract

A Contract for the Sale of land or buildings subjects both the Seller and the Buyer to a number of distinct terms and obligations.

### Real Estate Update

A term of a Contract may be classified as a condition or a warranty. A term may be a pre-condition to formation of the contract (a condition precedent) or a pre-condition to performance (a condition subsequent). In this article a condition precedent and a condition subsequent are both referred to as a "condition". A warranty is a term collateral to the main purpose of the contract.

The importance of the distinction between a condition and a warranty is that the breach of a "condition" normally entitles the innocent party to terminate the Contract and claim damages; while the breach of a "warranty" normally entitles the innocent party to only claim damages.

An example of a "condition" is a term that entitles the Buyer to vacant possession of the property. If the Seller is unable to deliver vacant possession and is in breach of the condition, then the Buyer may have the right to affirm the Contract and sue for damages for default and/or sue for specific performance and/or terminate the Contract.

The remedies available to the Buyer may be set out in detail in the Contract and may oblige the Buyer to first issue a default notice requiring the breached condition to be fulfilled within a certain time period before exercising its further rights. A Buyer who terminates a Contract after a breach of a condition by the Seller will normally be entitled to recover the deposit and any other moneys paid under the Contract.

An example of a "warranty" is where the Seller warrants or agrees that at Settlement the property will be in the same state and condition it was in immediately before the date of the Contract. There may be a change in a physical feature of the property between the date of the Contract and settlement that the

#### Who does this affect?

The article affects buyers and sellers of both commercial and residential property.

#### Article Highlights

- A breach of a contract's "condition" by a Seller could result in claims for damages and a right to cease the contract or delay settlement.
- A breach in a contract's "warranty" only entitles a Buyer to claims damages or compensation but allows no right to cease or delay settlement.



Seller is not willing to rectify. In this instance the Buyer normally does not have a right to terminate or delay settlement unless the Contract provides otherwise. Rather, the Buyer must settle and separately pursue a claim for damages/compensation from the Seller.

A party should always seek legal advice so it can correctly identify the nature of a term of a Contract and ascertain what remedies are available in each particular case. Depending on the type of term, the remedies for breach are likely to be quite different and the strategies to deal with the breach are also likely to be different.

*Disclaimer: This publication is intended to provide general information only and should not be relied upon as legal advice. If you require legal advice on a matter please contact us.*

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