

70. Holding of deposit and other contract moneys when a lot is pre-sold

- (1) No person shall sell a lot in a proposed scheme before the strata/survey-strata plan is registered under Part II unless the contract of sale provides that any deposit and all other moneys payable by the purchaser prior to the registration of the strata/survey-strata plan are to be paid to a solicitor, real estate agent or settlement agent, who shall be named or specified in the contract, to be held by that solicitor, real estate agent or settlement agent on trust for the purchaser until the strata/survey-strata plan is registered.
- (2) Any deposit and other moneys payable and paid by the purchaser prior to the registration of the strata/survey-strata plan under any such contract as is referred to in subsection (1) shall be paid by the purchaser to the solicitor, real estate agent or settlement agent named or specified in the contract of sale.
- (3) In the event of a contravention of subsection (1) or subsection (2), the purchaser may at any time before the strata/survey-strata plan is registered avoid the sale.
- (4) If the strata/survey-strata plan is not registered —
 - (a) within such period after the date of the contract as is agreed in writing by the purchaser and the vendor; or
 - (b) in the absence of any such agreement, within 6 months after that date,the purchaser may avoid the sale at any time before the plan is registered.
- (5) Where a purchaser avoids a sale under this section, all moneys, including the deposit, shall be recoverable by him from the solicitor, real estate agent or settlement agent or other person to whom they were paid, but the purchaser shall be liable to pay an occupation rent for any period during which he was in occupation of the lot or entitled to receive the rents and profits of the lot.

[(6), (7) repealed]

- (8) In this section —

“**date of the contract**” means the day on which the contract of sale referred to in subsection (1) was signed or, if the parties signed it on different days, the last of those days;

“**real estate agent**” means a person licensed as a real estate agent under the *Real Estate and Business Agents Act 1978*;

“**settlement agent**” means a person licensed as a settlement agent under the *Settlement Agents Act 1981*.

[Section 70 amended by No. 42 of 1986 s. 4; No. 58 of 1995 s. 64, 95 and 96; No. 61 of 1996 s. 31.]