ANDREW DOUGLAS SOLICITORS

Insurance before Settlement:

Who is Responsible?

A Queensland buyer's guide to risk, insurance and damage between contract and settlement

Introduction

Buying a home is one of the most significant financial decisions most Queenslanders will ever make. Yet one of the most commonly overlooked questions during the purchase process is: who is responsible for the property if something goes wrong between signing the contract and settling?

In Queensland, the answer can surprise buyers. Risk often shifts to the buyer well before they receive the keys — and well before they become the registered owner. Understanding when risk passes, and why insurance is so important immediately after signing, can mean the difference between a smooth settlement and a very costly dispute.

1. When Does Risk Pass to the Buyer?

Under the standard REIQ/QLS residential contract used in Queensland, risk in the property generally passes to the buyer at 5:00 pm on the first business day after the contract date.

This is often a surprise. Many buyers assume that because the seller remains the legal owner until settlement and keys have not yet been handed over, the seller must be responsible for anything that goes wrong with the property until that point. In Queensland, that assumption is frequently wrong.

Once risk has passed, damage caused by storm, fire, flood, vandalism or any other event is generally the buyer's problem — even if:

- the contract is still conditional on finance or building and pest inspection;
- the buyer is still within the cooling-off period; or
- settlement has not yet occurred.

Conditional contracts are not risk-free. The passing of risk under the standard contract is not generally delayed by conditions precedent. A buyer may therefore be exposed during the very period when they do not yet know whether they will proceed with the purchase.

2. Why Buyers Should Arrange Insurance Immediately After Signing

Because risk passes so early, buyers should arrange building insurance as soon as possible after signing the contract — not from settlement.

If damage occurs after risk has passed and the buyer has no insurance in place, the buyer may be required to settle and take the property in its damaged condition. The cost of repairs, or even complete rebuilding, could then fall entirely on the buyer.

There are a few practical points to keep in mind:

- Buyers financing the purchase should check what their lender requires. Most lenders require evidence of building insurance before settlement and may specify minimum cover amounts or policy conditions.
- The policy should be in place from the time risk passes — not from the settlement date shown in the contract.
- Buyers should keep a copy of the certificate of currency readily accessible, as it will usually be required by the lender before funds are released.

3. What About the Seller's Insurance?

The seller will usually have their own building insurance policy in place during the settlement period. However, the buyer should not rely on this as a substitute for their own cover.

There is a statutory provision that can help in some circumstances. Section 50 of the Insurance Contracts Act 1984 (Cth) provides that, where risk has passed to a buyer under a contract for the sale of real property, the buyer may be deemed to be insured under the seller's building policy. This deemed cover applies until the earliest of:

- settlement;
- the buyer taking possession of the property; or
- the commencement of the buyer's own insurance policy.

Section 50 is a safety net, not a substitute. There are real risks in relying on it. The seller's policy may contain exclusions, the seller's insurer may dispute the claim, the seller may not cooperate, or the policy may have lapsed. The best practice is always for the buyer to take out their own policy immediately after signing.

4. The Seller's Continuing Obligations Until Settlement

Although risk passes to the buyer under the standard contract, the seller does not cease to have obligations in relation to the property. The standard REIQ/QLS contract requires the seller to use the property reasonably until settlement, and the seller must not do anything regarding the property or tenancies that may significantly alter them or result in later expense for the buyer.

This is an important continuing obligation. The distinction is between:

- Casualty risk — being damage caused by unforeseeable events such as storms, fire or accidental damage — which generally passes to the buyer; and

- Seller default — being damage caused by the seller's own acts, neglect, or breach of the contractual obligation to take reasonable care — which may remain the seller's responsibility.

Practical examples of what the seller must not do after contract include:

- removing fixtures, fittings or items that form part of the sale;
- causing damage to the property through misuse or neglect;
- leaving the property unsecured or allowing it to deteriorate; or
- doing anything to tenancies that would adversely affect the buyer's position on settlement.

Where the seller breaches these obligations, the buyer may have contractual remedies including damages, and in appropriate cases, a claim for specific performance or other relief.

5. Can the Buyer Refuse to Settle if the Property is Damaged?

In most cases involving pre-settlement damage, the buyer will still be required to complete the purchase. The standard contract does not provide an automatic right to a price reduction, delay, or termination simply because damage has occurred.

However, there is an important exception where the damage is severe.

Major Exception: Dwelling Unfit for Occupation

If the property is a residential dwelling and it becomes so damaged or destroyed before settlement or possession that it is unfit for occupation as a residential dwelling, the buyer may have a statutory right to rescind the contract.

Under s 77 of the Property Law Act 2023 (Qld), this right is non-excludable — meaning a contract provision that purports to remove or limit it will generally be ineffective. If the buyer rescinds under this provision, any amounts paid under the contract must be refunded.

This is a high threshold. The dwelling must be genuinely unfit for occupation, not merely damaged or in need of repair. Minor damage, temporary inconvenience or repairable defects will generally not be sufficient. Substantial damage — such as destruction by fire, major flooding, significant structural failure or destruction of essential services — is more likely to meet the test.

The Seller's Restoration Right

The buyer's right to rescind under s 77 is not absolute. The legislation gives the seller a pathway to prevent rescission. If, before the buyer gives a rescission notice, the seller:

- restores the dwelling to the condition it was in immediately before it became unfit for occupation; and
- gives the buyer written notice of that restoration;

…then the buyer's right to rescind on the basis of the damage will be extinguished. Timing is therefore critical where serious damage occurs before settlement.

6. Units and Townhouses: How Body Corporate Insurance Works

The position is different for buyers of units and townhouses within a community titles scheme (such as a strata or body corporate).

In most community titles schemes, the body corporate is required to hold building insurance for the common property and often the buildings within the scheme. The body corporate policy will generally cover the external structure and common areas.

However, this does not mean that the buyer has no insurance obligations. Buyers of units should be aware of the following:

- The body corporate insurance may not cover the buyer's contents, personal property, improvements, or fixtures installed by the owner.
- Lenders will often require the buyer to provide details of the body corporate insurance and may have specific requirements about the policy coverage or the buyer's interest being noted on it.
- The timing of when the body corporate's insurer will recognise the buyer's interest may not align perfectly with when risk passes under the contract.
- Buyers should request a copy of the body corporate's certificate of insurance and verify what is and is not covered before relying on it.

7. Practical Examples

Example 1 — Storm damage after contract

A buyer signs a contract on Monday. Risk passes at 5:00 pm on Tuesday. A severe storm damages the roof on the following Thursday, before the buyer's finance condition has been satisfied. The buyer has not yet arranged building insurance. Unless the damage renders the dwelling unfit for occupation, the buyer will likely still be required to complete the purchase and bear the cost of repairs. The buyer may have limited protection under s 50 of the Insurance Contracts Act 1984 (Cth) through the seller's policy, but this is uncertain and should not have been relied upon in place of the buyer's own cover.

Example 2 — Seller causes damage

After signing the contract, the seller removes built-in wardrobes, causes damage to walls, and leaves the property unsecured over a long weekend. Even though casualty risk has passed to the buyer, the seller's conduct may constitute a breach of the contractual obligation to use the property reasonably. The buyer may have a claim for the cost of reinstatement or repairs flowing from the seller's breach.

Example 3 — Fire renders the home uninhabitable

A fire substantially destroys the main bedroom wing, the kitchen and the electrical system before settlement. The property cannot be occupied as a residential dwelling. The buyer may have a statutory right to rescind the contract under s 77 of the Property Law Act 2023 (Qld). However, if the seller promptly engages builders and restores the dwelling to its pre-damage condition before the buyer issues a rescission notice, the buyer's right to rescind will be extinguished by the seller's restoration.

Example 4 — Air conditioner fails before settlement

A fixed air conditioning unit stops working between the contract date and settlement due to general wear and tear. Because risk has passed to the buyer, the buyer will not ordinarily be entitled to require the seller to repair it. If, however, the seller caused the failure through misuse, deliberate removal or neglect, the buyer may have a contractual claim arising from the seller's breach of the obligation to use the property reasonably.

Example 5 — Unit purchase

A buyer contracts to purchase a unit in a body corporate scheme. The body corporate holds building insurance. Before settlement, a pipe bursts in the ceiling and water damages the interior of the unit. The buyer should check whether the body corporate's policy covers internal damage of this kind, whether their interest is noted on the policy, and whether there is any excess they may need to bear. The buyer should not assume the body corporate insurance fully protects their position without reviewing the policy details.

8. Special Conditions Can Alter the Standard Position

Buyers and sellers can negotiate special conditions that change the usual contractual risk and insurance position. For example, a buyer may seek a special condition requiring:

- the seller to maintain building insurance until settlement and to provide evidence of that insurance;
- the seller to repair any specified damage before settlement;
- the seller to warrant that fixtures and appliances will be in working order at the date of settlement;
- settlement to be conditional on completion of identified works; or
- risk to remain with the seller until settlement.

Special conditions must be drafted with care. Poorly worded conditions can create uncertainty, create gaps in protection, or conflict with other terms of the standard contract. The benefit of legal advice in reviewing and drafting special conditions is significant.

9. Key Takeaways for Queensland Buyers

1	**Insure immediately after signing.** Risk passes at 5:00 pm on the first business day after the contract date — not at settlement. Arrange building insurance straight away.
2	**Conditional contracts are not risk-free.** Finance and building and pest conditions and the cooling-off period do not usually delay the passing of risk.
3	**Do not rely solely on the seller's insurance.** Section 50 of the Insurance Contracts Act 1984 (Cth) may provide some protection but is a safety net only. Always arrange your own cover.
4	**The seller must still take care of the property.** The seller's obligation to use the property reasonably continues until settlement. Damage caused by the seller's breach may give the buyer contractual remedies.
5	**Severe damage may allow rescission.** If the dwelling becomes unfit for occupation before settlement, the buyer may be able to rescind under s 77 of the Property Law Act 2023 (Qld). The threshold is high, and the seller has a right to restore the property.
6	**Units require separate consideration.** The body corporate holds insurance, but it may not cover everything. Check what the policy covers and what your lender requires.
7	**Special conditions matter.** The standard risk and insurance position can be altered by negotiated special conditions. Take legal advice before signing.

Conclusion

In Queensland, the question of who is responsible for insuring the property before settlement has a clear practical answer: the buyer should insure immediately after signing the contract.

Under the standard residential contract, risk passes to the buyer at 5:00 pm on the first business day after the contract date. From that point, pre-settlement damage — other than damage caused by the seller's own breach — is generally the buyer's responsibility. Prompt insurance is the buyer's primary protection.

The seller's obligations do not disappear on execution of the contract. The seller must use the property reasonably until settlement, and may be liable for damage caused by their own breach. Where damage is so severe that the dwelling becomes unfit for occupation, the buyer may have a statutory right to rescind. And for buyers of units, the body corporate's insurance is an important but not necessarily complete source of protection.

This is a topic where small oversights can have large financial consequences. We strongly recommend that buyers discuss insurance, risk and special conditions with their solicitor at the time of signing — not after damage has occurred.

Need advice on your Queensland property purchase?

Andrew Douglas Solicitors acts for buyers across Queensland.

andrew@andrewdouglas.com.au | PO Box 169, Morayfield QLD 4506