



## PROPERTY BULLETIN

# DEPOSITS

In the recent Supreme Court case of *Markson v Cutler* [2007] NSWSC 1515 a contract for the sale of land was exchanged. The contract required a 10% deposit to be paid.

The contract also contained an additional provision stipulating that if the vendors accepted less than a 10% deposit, the full 10% was payable on completion or termination of the contract.

The real estate agent advised the purchasers that the vendor would accept a 5% deposit, which was paid.

After exchange the vendors received a higher offer and, as only a 5% deposit had been paid by the purchasers, the vendor terminated the contract.

The court concluded that there was no evidence to support the fact that the vendors had agreed to accept a 5% deposit despite what the agent had told the purchasers. The judge found that the agent had no authority to make such a statement and that it was not binding on the vendors.

The court ruled that the contract was rightfully terminated for non-payment of the 10% deposit and the purchaser was not entitled to specific performance of the contract.

Should you have any further queries with regard to the above, please do not hesitate to contact any member of the Commins Hendriks Property Team.