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This is the author's version of a work that was submitted/accepted for publication in the following source:

[Dixon, William M.](#) (2004) Land Sales Act 1984: The time limit for an application for exemption. *The Queensland Lawyer*, 25(3), pp. 120-121.

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Land Sales Act 1984 (Qld) **The Time Limit for an Application for Exemption**

The decision of Wilson J in *Wan and Ors v NPD Property Development Pty Ltd* [2004] QSC 232 also concerned the operation of the *Land Sales Act 1984* (Qld) ('the Act').

As previously noted, s 8(1) of the Act provides that a proposed allotment of freehold land might be sold only in certain circumstances. An agreement made in contravention of s 8(1) is void. Section 19 allows a purchaser (and others) to apply for an exemption from any of the provisions of Pt 2. By s 19(6), notwithstanding s 8, a person may agree to sell a proposed allotment if the instrument that binds a person to purchase the proposed allotment is conditional upon the grant of an exemption. By s 19(7) an application for exemption must be made 'within 30 days after the event that marks the entry of a purchaser upon the purchase of the proposed allotment.'

The Question for Determination

The nub of the problem was the meaning of the statutory expression 'the event that marks the entry of the purchaser upon the purchase of the proposed allotment.' The seller submitted that the statutory reference was to the date the contract was made. As the buyer did not apply for the exemption within 30 days of the day of the contract, the seller submitted that the contract was void. For the buyer, it was submitted that the statutory reference was to the point at which the buyer was bound to purchase and that point was not reached until any conditions precedent were satisfied or waived. On this basis, the buyer argued that its application for exemption was made within time.

The Decision

Wilson J held that a person who signs an instrument intended to bind the signatory to purchase (whether it is intended to bind that person absolutely or conditionally) is taken to have entered upon a purchase for the purpose of the legislation. The signing of the contract is the relevant event. The fact that contractual conditions remain to be fulfilled does not change the result. Accordingly, as the application for exemption was not made within 30 days of the contract date, the contract was void.

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