TRANSFER OF TITLE AND RISK OF LOSS

TITLE - OWNERSHIP OF GOODS

We prepared this short summary based on our understanding of the concept of Transfer of Title to goods and its' relationship with Risk of Loss. We strongly recommend that your questions be directed to your Attorney for a complete discussion of this important subject.

In many contracts for the sale of goods the parties involved do not express their intention as to when, how or under what conditions Title to the goods is to be transferred. Title to the goods may not even be discussed in the negotiations. It is implicit or taken for granted. The parties are more interested in reaching agreement on matters such as price, quantity, quality, warranties, delivery schedule credit terms, discounts, and other important details. They seldom concern themselves with the abstract concept of title.

Transfer of Title to goods, which have been identified to the contract of sale, passes from the seller to the buyer in any manner and on any conditions agreed upon by the parties to the contract of sale. The rule is that title to the goods passes when the parties intend it to pass.

Where parties have no explicit agreement as to the transfer of title, then title passes to the buyer:

- At the time and place at which the seller completed his performance with reference to delivery of the goods.
- At the time and place of shipment, if the contract authorizes shipment but does not require the seller to deliver the goods to the buyer at destination.
- Upon tender of the goods to the buyer at destination, if the contract requires delivery at destination.
- Upon delivery of a document of title where the contract calls for delivery of such document without moving the goods.
- At the time and place of contracting where the goods at the time are identified to the contract, no documents are to be delivered, and delivery is to be made without moving the goods.

Title can only be transferred on existing, specific, identified goods. Title cannot pass under a contract of sale prior to identification of these goods. After formation of the contact of sale, it is normal for the seller to take steps to obtain, manufacture, prepare or select goods with which to fulfill his obligation under the contract. At some stage in the process the seller will have identified the goods which he intends to ship or deliver or hold for the buyer. Once the goods have been identified, relative to the contract, Title to the goods may pass to the Buyer. Title need not pass to the buyer at this point in the transaction! However, once the goods have been identified to the contract of sale, the buyer assumes a Special Property in the goods. This Special Property gives the buyer an insurable interest in them even though in fact they may not conform to the contact of sale. Identification of the goods to the contract does not shift the risk of loss. After identification, the seller may under the contact have duties to perform with respect to the goods.

RISK OF LOSS

It has been observed that, according to the general rule, the risk of loss or damage to goods is borne by the person who is the owner at the time of the loss or damage. This is true in every case. Even where the buyer may have assumed risk of loss, the holder of title to the goods still bears risk of loss. There is nothing to prevent both the buyer and seller at the same time carrying insurance on goods in which they both have a property interest, whether it be Title, security interest or special property.

Risk of loss, as the term is used in the law of sales, means placement of the ultimate loss upon the buyer or the seller. If placed upon they buyer, he is under a duty to pay the price for lost or damaged goods even though he never received them or became owner of them. If upon the seller, he has no right to recover the purchase prices from the buyer.

There are specific rules that impose risk of loss upon the buyer or the seller irrespective of title or ownership of the goods:

1. Agreement of the parties. An agreement may not only shift the allocation of risk but may also divide the risk or burden in any manner.

2. Delivery to a carrier if the contract does not require the seller to deliver the goods at a particular destination. Risk of loss passes to the buyer upon delivery of the goods to the carrier. If the seller is required to deliver them at a particular destination, risk of loss passes to the buyer at destination upon tender even though the goods are in the possession of the carrier.

3. Goods and possession of bailee to be delivered without being moved.

4. Where the goods at the time of the contract are held by a bailee, and are to be delivered without being moved, the risk of loss passes to the buyer on his receipt of a negotiable document of title covering the goods. Or, receipt of a nonnegotiable document of title, or other written direction to deliver the goods, unless the buyer reasonably objects.

5. Goods not to be shipped by carrier. If they are in the possession of the seller, buyer or other bailee, or if they are in the possession of the third party bailees, the contract may provide for delivery to the buyer with or without moving the goods

Transfer of Title is essential to a sale of goods. **Transfer of Title is not essential to the imposition of risk of loss to the goods.** Risk of loss may follow ownership of the goods but this is not necessarily so. Risk of loss may exist independently of ownership of the goods. A determination of whether Title to goods has been transferred continues to be important with respect to liability for taxes, duties, inventory management and its effect on the balance sheet.