

BUYER TO KEEP

Residential Conveyancing Booklet - Buyers

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1. INTRODUCTION

This Residential Conveyancing Booklet (the **Booklet**) is to be read in conjunction with our letter (the **First Letter**) and the enclosures to the First Letter. **It is important that you read this Booklet as soon as possible because it contains essential information about your rights and obligations when buying property.**

If you have any questions about the information, please call us.

We may give you advice during your transaction on rights that you could have, such as rights to terminate the contract or to claim compensation from the seller. This advice may be general (eg advice contained in the Booklet) or specific (eg contained in the Contract and Property Report). Alternatively, you may form a view that you no longer wish to buy the property and need advice about any possible termination options that might exist.

These rights can be subject to strict time limits or lost as a result of your actions or steps in the transaction. For example, if you take steps or actions after you become aware of some rights (for example, receiving some types of notices or search results) it may impact that right and a Court may even consider you have lost a particular right. It is critical that if we have advised you about any rights and you consider that you may want to rely on them or if you otherwise are considering not proceeding with the purchase that you contact us as soon as possible to discuss. Otherwise any rights or options may be lost.

2. OUR RETAINER

In working towards the best outcome possible in your purchase, it is important that we clearly set out what is and is not part of our retainer. Please read this section so that you can identify as early as possible any additional legal or non-legal advice you may require or steps that you need to take personally for a successful purchase.

2.1. What is included in our retainer? (What we will do)

Our retainer includes all things the Queensland Conveyancing Protocol (endorsed by the Queensland Law Society) recommends as being usual and necessary for a purchase in Queensland.

If you instruct us to exclude any of the steps that are generally considered usual and necessary we are required by law to provide you with a detailed explanation of the risks associated with these exclusions. **Advice of this nature is not part of the**

usual conveyancing process and will be an extra cost to you.

2.2. What is excluded from our retainer? (What we are not doing)

Our retainer does not extend beyond what is usual and necessary in the conveyancing process. We consider the following to be excluded:-

a) **Physical Inspection**

We do not conduct a physical inspection of the property. It is up to you to do this. Each transaction is unique and each Buyer has different requirements for a property that may only be identified by a physical inspection. Issues about the property's location, impacts of nearby infrastructure noise or properties or proposed developments or road works are not likely to be discovered by us in our searches. Therefore you must advise us as soon as possible of any concerns following your physical inspection.

b) **Building and Pest Inspection**

It is up to you to obtain any building and pest inspection reports and tell us whether they are satisfactory to you before the date specified. Our retainer does not extend to giving advice on these reports.

c) **Commissioning a survey**

Please note that we do not conduct a survey of this is your responsibility (if you decided to do so). Issues such as errors in the boundaries, area of the land, encroachments by structures onto or from the land (where the land is waterfront land) whether its boundaries are affected by erosion will generally not be identified unless a survey is conducted.

d) **Obtaining Insurance**

It is your responsibility to attend to any necessary insurance for the property. See our comments in Part 4 below about insurance requirements.

Generally, it is recommended you make enquiries about insurance availability and cost before entering into a contract. Insurance can be expensive and, for some properties, may only be available in relation to certain risks.

e) **Document Storage**

We may destroy the file relating to this transaction on the earlier of any specified time agreed between our firm and you OR seven (7)

years after settlement of the transaction or the termination of engagement.

It is your responsibility to retain copies, and originals (where appropriate), of all correspondence and documentation for your purchase. This may be required for taxation, duties or other evidentiary purposes at a later date. For example, if the property is held as an investment at any time, then your documentation may be required for Capital Gains Tax ("CGT") purposes.

f) **Obtaining Finance and Loan Advice**

If needed, you must apply for any finance required and tell us before the date specified whether your finance approval is satisfactory to you. Finance approval is often subject to conditions, including satisfactory valuation. If so, it is up to you to satisfy any conditions of the finance approval before notifying us of the approval.

Our retainer does not extend to giving advice on the finance or security documents or any valuation you obtain.

We will however need to liaise with your financier to arrange settlement. Any instructions you give us concerning your loan, the security documents or any certificates required by your financier are beyond the scope of our retainer and may be an extra cost.

g) **Eligibility for grants and other schemes advice**

We will not be providing advice or reminders on the Queensland First Home Owners Grant or any other government grants as part of our retainer.

To find out if you are eligible for any grants you should contact your financier (if applicable) or visit the Queensland Treasury website (www.treasury.qld.gov.au)

It is up to you to apply for the grants if you think they apply to you.

If you are purchasing the property to develop it, we do not give any advice on your future buyers' eligibility for any grants or concessions, unless that advice has been specifically requested and is included in our retainer.

h) **Financial and tax advice**

We do not give advice on the commercial viability, tax and other financial implications of the purchase (including CGT, goods and service

tax ("GST") and land tax). If you require this advice, you should seek advice of a specialist financial advisor or tax professional, such as your accountant. This includes advice on whether or not the standard contract provisions relating to GST are appropriate for your circumstances.

Such advice could be particularly relevant for circumstances which may include buying the property:

- i. as an investment;
- ii. with or as part of a business;
- iii. to substantially renovate or develop the property;
- iv. as the executor or beneficiary of an estate;
- v. as a foreign owner; or
- vi. where you are not intending to use the property solely as your main residence.

You need to ensure that (where required) you or your accountant have registered the purchasing entity for GST and maintain that registration after settlement. Failure to do so could have significant GST, financial and other consequences.

i) **Self managed superannuation fund ("SMSF") advice**

If the purchasing entity is a SMSF entity, please seek your accountant's advice about compliance with your SMSF's investment strategy and any other requirements. There are restrictions on how your SMSF may borrow and invest funds. Our retainer does not include advice about those issues,

j) **Succession and matrimonial advice**

This transaction may affect or be inconsistent with your succession planning or any arrangements with your current or former spouse (whether a marriage, de facto relationship or civil partnership). This advice is beyond the scope of our retainer. We recommend that you obtain legal advice about wills and other succession planning and family law agreements or other spousal arrangements you have.

k) **Pool safety requirements**

If you are required to obtain a Pool Safety Certificate after settlement, we do not provide a reminder service for that date.

If a pool exists that is not on the Pool Safety Register, we do not give notice requesting that the pool be registered.

Please see the Pool Safety section of this Booklet for more information.

l) **Building contracts and other related agreements advice**

If relevant, we recommend that you obtain legal advice on any building contracts or other related agreements as this is beyond the scope of our retainer with you.

m) **Caretaking and letting agreements advice**

We will not conduct a review of any caretaking and letting agreements as part of our retainer. We are able to include this service with a solicitor of our firm at an additional cost to you.

Please see the specific section later in this Booklet about the importance of conducting a review of any of these agreements.

n) **Town Planning Information and Advice**

The information available from town planning searches is set out in section 7.3 of this Booklet and the Buyer Searches List. The information received depends on the search you select. The following types of advice are excluded:

Site Issues and Planning Laws

- the development potential of the site;
- whether nearby land is subject to development applications or development approvals which could affect the value or potential development of the site;
- whether any applications over the site are current or have lapsed;
- whether the site and structures on the site have all necessary approvals;
- whether any old or historic approvals are still current and binding on the site. For example, whether a Bushfire Management Plan affects the property.
- the laws about compensation for changes in the Town Planning Scheme;
- deadlines to apply under superseded versions of the Town Planning Scheme;

- other deadlines to make and pursue applications for approvals;
- whether the seller should assign certain rights to make applications to the buyer;
- any existing use rights;
- infrastructure charges which apply on development;
- whether the site is subject to call in powers by the government;
- any existing or proposed Town Planning Scheme amendments;
- the effect of the South East Queensland Regional Plans (if relevant); and
- the effects of current and future government planning policies.

If you are concerned about the impact of any of these things on your use of the property then you should engage a town planner, a lawyer with town planning experience or make your own enquiries with the relevant local council.

Other Laws

Local laws concerning:

- vegetation protection or controls;
- noise including industrial noise, road noise, rail noise, aircraft noise and future planned increases in noise levels from these and other sources;
- current and future transport routes; and
- whether the site has been illegally cleared in the past.

o) **Consumer Guarantees**

In some circumstances where goods are being supplied as part of the sale, implied consumer guarantees may apply to those goods. They cannot be contracted out of. Our retainer does not extend to providing advice on the applicability or effect of the consumer guarantees to your purchase.

p) **National Rental Affordability Scheme (NRAS) lease or arrangement advice**

We will not be providing advice on any NRAS lease related to your purchase as part of our retainer. NRAS arrangements are very complex in nature and require specialist legal advice. It is your responsibility to obtain NRAS advice and if you choose not to:

- i) you may not be eligible for any benefits from the NRAS scheme;
- ii) the NRAS lease or arrangement may not be enforceable; or
- iii) you may suffer loss.

3. EXPLANATION OF THE CONTRACT TERMS

The Contract includes a number of technical and legal terms that have been considered by the Courts and may be specific to Queensland conveyancing. **Contracts can change the meaning of words and phrases from what they may ordinarily mean which can lead to misunderstanding, miscommunication and loss.** We therefore provide the below explanation. Please contact us if you are unsure of any of the Contract's terms.

3.1. Method of Sale

In Queensland property is sold by the following methods:-

- a) private treaty, where you usually negotiate the contract price and terms through a real estate agent, who acts for the seller;
- b) auction, where terms are set by the seller and the price determined by competitive bid, usually subject to a reserve; or
- c) tender, this is another form of competitive bidding.

3.2. Form of contract

There are two forms of contract recommended by the Queensland Law Society. They are:-

- a) Houses and Residential Land; and
- b) Residential Lots in a Community Titles Scheme.

Please read all of your Contract.

In this section we point out contract terms important to your purchase. This advice is of a general nature only and may differ if the standard position in the Contract

has been altered by specific special conditions. Where there is inconsistency between a special condition and a standard condition, generally any special condition will override the standard condition to the extent of the inconsistency.

3.3. Reference Schedule

The Reference Schedule contains the particulars relevant to your contract. **You must check they are correct and tell us as soon as possible if they are not.**

3.4. Time essential

Time is of the essence of the contract. **This is a legal term that means you must perform your obligations strictly by the due date.** For example, you must be able to settle by 4.00pm AEST on the settlement date; otherwise the seller may either terminate or seek to enforce the contract. In both cases, the seller may claim compensation from you.

The contract provides that if anything is to be done on a day that is not a business day, it must be done next business day. Under the contract, business days are days other than any public holiday in the place named in the contract for settlement, any day in the period 27 December to 31 December (inclusive) and Saturdays and Sundays.

3.5. Natural disasters

If a party is not able to meet their settlement obligations because of a natural disaster (for example the January 2011 South-East Queensland floods) then in certain limited circumstances time will no longer be of the essence.

When the natural disaster no longer prevents performance of settlement obligations there are notices that must be served to make time once again of the essence. The suspension of time will then end and both parties are obliged to settle on the date stated in the notice.

3.6. Default interest

The contract provides that at settlement you must pay interest on any late payment from the due date for payment. Interest accrues at the Default Interest Rate noted in the Reference Schedule of the contract, or if no rate is specified at the contract rate fixed by the Queensland Law Society.

3.7. Deposit

Payment of the deposit is a sign of your intention to proceed with the contract and must be done at the time specified in the Contract. It is usually a substantial amount (but no more than 10%).

The deposit is generally held in trust by an agent or lawyer until settlement and following settlement the deposit will be paid to the seller unless there is a default or termination. If the deposit is not held in trust there is a risk that the seller or deposit holder may go bankrupt or into receivership and that you will not recover all of your deposit.

If you terminate the contract for a valid reason, then the deposit should usually be repaid to you.

If you do not pay the deposit on time or otherwise breach the contract the seller may be able to terminate the contract or seek an order from the court requiring you to settle. The seller may also keep your deposit and recover any part of the deposit not paid. If the seller is obliged to pay GST then GST will apply to the kept deposit. The seller may also be entitled to compensation, which may include commission payable to the real estate agent.

3.8. Finance (if applicable)

If the contract is subject to finance, you must take all reasonable steps to obtain finance approval by the finance date. This includes making a finance application shortly after the contract date and pursuing the application diligently.

If you fail to take reasonable steps to obtain finance approval, you may be prevented from relying on the finance condition to terminate the contract. The Seller may request evidence of your reasonable steps.

When you have a letter of approval from a financier you should send it to us.

We must notify the Seller in writing as to whether you have satisfactory finance approval on or before 5.00pm on the finance date.

Once notice of finance approval is given to the Seller under the Contract, it cannot be withdrawn. However, most financial institutions will reserve the right to withdraw finance approval at any time prior to settlement for any number of reasons. It is important that you consider very carefully any conditions attaching to a finance approval and your ability to satisfy all requirements (now and up to settlement) relevant to the advance of funds before instructing us to give any notice about finance under the contract.

If you do not obtain satisfactory finance approval from your financier, you can instruct us to terminate the contract or seek an extension of time for finance. Agreement from the seller is required to any extension and your request may be declined.

Alternatively, you may instruct us to give notice to the seller waiving the benefit of the finance condition.

Waiving the benefit of the finance condition means you are bound to complete the contract regardless of whether your financier approves finance or the finance terms are satisfactory.

If we do not notify the seller that finance is approved or waived by the finance date then the contract continues and both you and the seller have a right to terminate the contract. You also have a continuing right to give notice of satisfactory finance or waiver but only if it is received by the Seller before they terminate.

If you do not have sufficient funds to pay the balance purchase price (including any adjustments) at settlement the seller may terminate the contract or seek to have you specifically perform the contract and in both instances can claim compensation from you.

3.9. Building and Pest (B&P) Inspections (if applicable)

If the contract is subject to satisfactory B&P inspection reports on the property you must take all reasonable steps to obtain at least one report. You must use licensed inspector and the reports must be in writing, otherwise you will not be able to terminate the contract on the grounds that you are not satisfied with the B&P inspection. You should provide us with a copy of the B&P reports.

In the case of the House and Residential Land contract, the reports may relate to the land, the improvements on the land and any included chattels. The improvements will include not only the building structures on the land but also additional items such as sewerage and waste water treatment facilities, hot water systems, retaining walls or revetment walls within the land as these items might be expensive to repair or replace in the future. If you require particular items like these to be inspected, please ensure the inspector is suitably qualified.

If the property you are purchasing is a lot in a Community Titles Scheme, under the contract for Residential Lots in a Community Titles Scheme the reports must relate to the lot itself and fixed improvements on the lot. If the contract has not yet been signed, you may wish to instruct us to request extending the effect of the building and pest inspection clause in the contract to cover any larger structure containing the lot and the common property of the scheme.

We must notify the Seller in writing on or before 5.00pm on the inspection date as to whether you are or are not satisfied with B&P reports and wish to terminate the Contract.

If you do not have a report by the inspection date you can instruct us to seek an extension, however, the seller may not agree to the extension.

If you are satisfied with the report, you should instruct us to give notice to the seller that the B&P condition is satisfied.

If, acting reasonably, you are not satisfied with the results of the B&P reports then you may instruct us to terminate the contract. If either of the reports contain issues that are not satisfactory to you, contact us as soon as possible to discuss whether you would be acting reasonably if you terminated the contract in the circumstances.

If you terminate the contract then the seller is entitled to request a copy of the reports and you must provide them without delay.

Your other option is to waive the benefit of the condition in which case the contract will no longer be subject to this condition and you will be obliged to complete the contract. In either of these cases, you do not have any recourse against the seller under this condition for issues which are raised in the B&P reports.

If you are not satisfied with the results of the B&P reports, your right is to terminate the Contract (as long as you act reasonably). You do not have a right to reduce the purchase price or to require the Seller to carry out any works. Of course, you may wish to negotiate with the Seller in relation to a price reduction or for works to be carried out. Any price reduction may affect an existing finance approval or prompt your financier to require a further valuation of the property or to impose additional conditions in relation to your finance approval.

If we do not notify the Seller in writing before 5.00pm on the inspection date of satisfaction, waiver or dissatisfaction, the Contract continues and both you and the Seller have a right to terminate. You also have a continuing right to give notice of satisfactory B&P or waiver but only if it is received by the Seller before they terminate.

3.10. Cheques for settlement

The seller is not entitled to require payment of the balance purchase price at settlement by means other than bank cheque without your consent. The contract only requires you to pay for bank cheques for the seller and the seller's financier. If the seller requires additional cheques to be drawn, the seller must pay the cost incurred in drawing these as bank cheques (unless you have consented to a request that the funds be provided by other means).

3.11. Settlement Funds

If you are not borrowing all of the funds required for settlement you are responsible for providing the balance amount as cleared funds. You may be able to make arrangements to either:-

- a) transfer the funds to your financier (if your financier agrees), and instruct your financier to attend at settlement with all the settlement money;
- b) provide us with bank cheques as instructed by the seller. You will need to ask us about the exact cheque details; or
- c) deposit the funds to our trust account as cleared funds at least one day before the day of settlement. Note that an ordinary bank transfer is not cleared funds and we cannot draw on those funds. The amount needs to be deposited in cleared funds by:-
 - i) telegraphic transfer; or
 - ii) Real time gross settlement (RTGS).

If you need to do this please contact us as soon as possible as we will need to discuss timing issues and we will need to provide our trust account details to you.

You need to liaise with your financier and with us to ensure that logistically all settlement funds and any other payments you need to make at or before settlement are available when required. This includes ensuring that any deposits to our trust account are cleared with sufficient time for us to draw cheques and made available at the place nominated for settlement. If your financier is applying for a government grant on your behalf, you must find out whether the grant will be available for settlement.

Please note that if all the required cheques are not available at settlement in the correct amounts, payee names and form of cheque then we may not be able to settle which may place you in breach of the contract entitling the seller to terminate the contract, keep the deposit and sue you for compensation.

3.12. Certificate of Classification ("CoC")

If you are purchasing a unit, a search of the Local Government Records will confirm whether a CoC has issued for all buildings on the property. If an appropriate certificate has not issued you may be able to terminate the contract for the seller's failure to provide vacant possession.

We recommend you instruct us to order a building search for a CoC. The issue of a CoC usually demonstrates that the local authority is of the view that the conditions of development approval have been satisfied. You must check the building classification of the unit to ensure that the CoC allows for your intended use.

4. INSURANCE

4.1. Risk

The property is at your risk from 5:00pm on the first business day after the Contract Date.

Despite this, the seller has an obligation until settlement to take reasonable care of the property.

If the property is damaged between the Contract Date and settlement (for example - fire or vandalism) you are still required to settle in accordance with the contract (unless it is so destroyed or damaged as to be unfit for occupation).

If damage occurs, you may in some circumstances be able to gain the benefit of the seller's insurance. We do not recommend that you rely upon this as:

- a) the seller may not take out insurance;
- b) the seller may choose to cancel its insurance;
- c) the event that causes the damage may not be covered; or
- d) other factors may preclude recovery.

We recommend that you take out insurance as advised below. You can arrange insurance by contacting an insurance broker or home insurance company directly.

4.2. A residential house, not in a Community Title Scheme?

As the property is at your risk, we recommend that you arrange property insurance cover for house, contents and public liability.

4.3. A Lot in a Community Titles Scheme

If the lot is created under a building format or volumetric format plan of subdivision, the body corporate must insure, for full replacement value, each building in which a lot in the scheme is located (to the extent the building is scheme land).

If the lot is created under a standard format plan of subdivision and, in one or more cases a building on one lot has a common wall with a building on an adjoining lot, the body corporate must insure, for full replacement

value, each building that has a common wall with a building on an adjoining lot.

In the case of stand alone buildings on lots in a scheme created under a standard format plan of subdivision, the body corporate may establish a voluntary insurance scheme under which it puts in place insurance over stand-alone buildings for the owners of the lots on which they are located.

The body corporate is also responsible for insuring against public liability for the common property and any relevant body corporate assets (but not for lots).

We recommend obtaining insurance information as part of our searches so that you can satisfy yourself the insurance is adequate.

In all cases, we recommend that you arrange insurance cover for the lot's contents (which will include carpets, curtains, internal blinds, etc.) and public liability insurance for the lot's interior.

In the case of a stand-alone building on a lot created by a standard format plan of subdivision, we also recommend that you arrange insurance cover for the building (perhaps by way of a cover note), the contents of the lot (which will include carpets, curtains, internal blinds, etc.) and public liability insurance for the lot's interior. If the searches show the body corporate has not insured the building then your insurance of the building will be relevant, and you should pay the applicable premium. If you are satisfied with the body corporate insurance you can cancel your building insurance, but we recommend you still maintain contents and public liability insurance within the lot.

4.4. A lot in a Community Titles Scheme with no common walls?

The body corporate is responsible for public liability insurance for the common property and any relevant body corporate assets. The body corporate may insure the building with the agreement of all lot owners.

We recommend that you arrange insurance cover for the building (perhaps by way of a cover note), the contents of the unit (which will include carpets, curtains, internal blinds, etc) and public liability insurance within the lot's interior.

If the searches show the body corporate has not insured the building then your insurance of the building will be relevant, and you should pay the applicable premium. If you are satisfied with the body corporate insurance you can cancel your building insurance, but we recommend you still maintain contents and public liability within the unit.

4.5. Insurance if obtaining finance

If you are obtaining finance it will be necessary for your bank to be noted on the policy as mortgagee. You should arrange for your insurance broker or home insurance company to attend to this for you.

5. HOW DOES THE *PROPERTY OCCUPATIONS ACT 2014 (QLD)* ("POA") AFFECT THE CONTRACT?

5.1. Application of POA

POA contains provisions relating to the sale of residential property. Those provisions apply to contracts for the sale of property that is used, or is intended to be used, for residential purposes but will not apply to a contract:

- a) for the sale of property where the property is used primarily for the purposes of industry, commerce or primary production;
- b) formed on a sale by auction (directly on the fall of the hammer by outcry or directly at the end of another similar type of competition for purchase);
- c) entered into, no later than 5.00pm on the second clear business day after the property was passed in at auction with a registered bidder for the auction;
- d) formed because of the exercise of an option granted under an earlier agreement if the parties to the contract are the same as the parties to the earlier agreement;
- e) where the buyer is:
 - i) a publicly listed corporation; or
 - ii) a subsidiary of a publicly listed corporation; or
 - iii) the State or a statutory body; or
 - iv) purchasing at least three lots at the same time (even if under separate contracts).

5.2. Cooling off Period

If POA applies, you may be entitled to a five business day cooling off period.

The cooling off period starts on the day you receive from the seller or the seller's agent a copy of the contract signed by both parties or, if that day is not a business day, then on the next business day. If the seller signed the contract before you did, the cooling off

period starts on the day that you signed the contract and communicated your acceptance to the seller.

The cooling off period ends at 5:00pm on the 5th business day.

You are entitled to terminate the contract during the cooling off period. If you exercise that right, the seller may retain a penalty of 0.25% of the purchase price from the deposit paid under the contract. The balance of the deposit (if any) must be refunded to you within 14 days after the termination.

If you terminate the contract and later decide you would like to purchase the property, there is a risk that the seller will not be willing to enter another contract with you.

If you decide to terminate the contract during the cooling off period you should tell us as soon as possible so we have time to give notice before the period ends.

You may shorten the cooling off period or waive the benefit of it entirely by giving written notice to the seller of the shortening or the waiver. It is up to you whether you wish to do this.

5.3. Particular words to be included in contract

If POA applies, the seller is required to ensure that when the seller first gives you the proposed contract for signing, the contract contains a conspicuously written note (immediately above and on the same page where you sign to indicate your intention to be bound by the contract) which draws your attention to the cooling off period and the termination penalty that applies if you terminate the contract during the cooling off period. It must also include a recommendation that you obtain an independent property valuation and independent legal advice before signing the contract.

If the required statement is not included in the contract, the seller or the seller's agent may have committed an offence under POA and be liable to a fine. Please note that any non-compliance will not affect the validity of the contract or give you a right of termination. The standard REIQ contracts for residential property include the required notice.

5.4. Valuation

The note to be included in the contract recommends that you obtain an independent valuation of the property. We endorse this recommendation but do not provide valuation advice. The price is something you need to satisfy yourself about. The contract is not conditional on a valuation. If you do not want to proceed without a valuation, you will have to obtain it before entering the contract or expiry of the cooling off period.

The seller must allow you access to the property once before settlement for valuation purposes (after receiving reasonable notice).

6. IMPORTANT INFORMATION – GENERAL

6.1. Particular Issues of Concern

If there are matters regarding the property of particular concern or importance to you or your financier then you should contact us so that we can determine whether a special condition is required and appropriate investigations can be made. For example:

- a) is the purchase to be subject to sale of buyer's existing property?
- b) is payment of deposit by insurance bond or bank guarantee?
- c) rights of termination if particular searches are adverse for example, if an existing or proposed tunnel or abandoned mines are discovered beneath the property.

6.2. Signed Contract

For a contract for the sale of land to be enforceable, the law requires that it must be in writing and must be signed by the party against whom it is to be enforced.

Traditionally, land sale contracts will be printed on paper and the parties will affix their signatures to the printed document. The law does, however, recognise that the requirement for a written contract may be satisfied by the creation of an electronic document and that the parties may sign that document electronically as long as certain conditions in relation to the identification of the parties and their consent to the electronic signing process are met. DocuSign is an example of a digital signing tool which is sometimes used for the purpose of electronic signing of land sale contracts.

A party contemplating using DocuSign or a similar tool should be aware that there are risks in doing so including:

- a) the Seller may deny signing the contract and allege that a third party without authority signed the contract;
- b) the Seller is a corporation and alleges the signing party did not have authority; and
- c) the Seller alleges that signature used is not the Seller's signature.

If you are considering the use of an electronic signing tool in relation to the contract, please contact us to

discuss this issue. It is important to ensure that the process proposed to be used satisfies the relevant requirements to create an enforceable contract and that appropriate steps are taken to establish the authority of signatories to the contract.

If the contract has already been signed using an electronic tool, we will need to discuss the signing process with you.

6.3. Fraud, Identity Theft and Hacking

There has been a recent increase in the number of attempted frauds relating to real estate.

It is essential to the conveyancing process that you provide us with a range of private information. Much of that information can be obtained by fraudsters and identity thieves from publicly available records or by hacking, phishing or trolling through unsecure email transmissions.

Parties to a conveyance are targeted as the conveyancing process often requires the transfer of large quantities of money.

We will take efforts, such as obtaining personal identification from you, to assist to minimise the risk that fraud is committed.

We recommend that you should also take efforts to minimise the risk that your personal information is fraudulently obtained by being cautious about all communication. Steps could include:

- a) Double check that all money transfer requests are legitimately requested by our law practice or your financier ó despite how legitimate the request may appear;
- b) Do not transfer any money to any account other than our trust account (at our request ó details of which are in the To-Do List) or to your existing financier or mortgage accounts (at your financier's request) ó without first checking with us that the transfer is necessary for your transaction;
- c) if you are contacted by someone you don't immediately personally recognise representing themselves to be from our law practice, your financier or somehow linked to the transaction, ask the representative some historical questions about the transaction that you can be certain will verify that they are who they say they are;
- d) Avoid sending personal and sensitive information such as bank account numbers via email; and

- e) where instructions are requested or advice is provided via email check with another form of communication.

6.4. Seller's Warranties

The seller warrants various things that could affect the property, such as correctness of title, capacity to complete, no judgments, orders or writs affecting the property, no unregistered dealings, no notices of body corporate meetings and no obligation to give an EPA notice.

If the seller breaches any of these warranties you generally may:-

- a) terminate no later than 2 days before settlement; or
- b) claim compensation before settlement and proceed to completion.

6.5. Property adversely affected

If the property is affected as at the contract date because:-

- a) the present use is not lawful;
- b) the land or common property is affected by a proposal of a competent authority (e.g. Transport Infrastructure);
- c) access or any services to the land or common property passes unlawfully through other land;
- d) an authority has issued a current notice to treat, or notice of intention to resume the land or common property;
- e) there is an outstanding condition of a development approval attaching to the Property which, if complied with, would constitute a material mistake or omission in the Seller's Title.
- f) the property is affected by the *Queensland Heritage Act 1992* (Qld) or is included in the World Heritage List;
- g) the property is declared acquisition land under the *Queensland Reconstruction Authority Act 2011* (Qld);
- h) there is a charge against the land under the *Foreign Acquisitions and Takeovers Act 1975* (Cth);

and this is not disclosed in the contract, you may be able to terminate the contract up until settlement. If you do not terminate in accordance with the contract, you will be treated as having accepted the property subject to these issues.

6.6. Information Regarding The Property

If requested before settlement, the seller must give you:

- a) copies of all documents about any unregistered interest in the property;
- b) full details of all continuing tenancies to allow you to properly manage the property;
- c) sufficient details (including the date of birth of each seller who is an individual) to enable you to undertake a search of the Personal Property and Securities Register;
- d) further copies or details if any information previously given ceases to be complete and accurate.

Please let us know if there are any documents or details that you would like us to request. You may be entitled to claim compensation if this information is not provided and as a result you suffer loss.

6.7. Promises Made by the Seller or the Agent

Please tell us of any promises or warranties made to you by the seller or the agent which are not contained in the contract, as soon as possible, as we may not be aware of them. There may be no protection for you in the standard contract in relation to such issues. Your options may be limited to:-

- a) terminate under any applicable cooling off period or some other contractual term (where applicable); or
- b) make a claim for compensation.

Court action is expensive and if you are aggrieved by the misrepresentation it may be ultimately more cost effective to terminate using your contractual rights if you have the opportunity.

6.8. Other Professionals

We suggest you seek advice about the purchase from other professionals, including:-

- a) an accountant ó about the commercial viability, appropriate purchasing entity, tax considerations of the purchase and (if applicable) compliance with your Self Managed Super Fund's investment strategy;
- b) a surveyor ó to survey the property to check for boundary, area and encroachment issues;
- c) a valuer ó to assure yourself that the price represents the market value of the property;

- d) a soil tester ó if you are planning on building (particularly in a new estate) to assure yourself that the soil condition does not require any special construction requirements; and
- e) a town planner ó to assess planning compliance issues or give advice regarding proposed future development.

7. IMPORTANT INFORMATION – SEARCHES AND USE

7.1. Buyer Beware - the contract does not protect against unsatisfactory search results in some circumstances.

In Queensland the onus is on a buyer to obtain searches and satisfy itself about the property. **There is no obligation on the seller to tell you about the property or any of its defects or other issues, except for limited contractual warranties and statutory disclosure.**

Common practice is that contracts are usually signed first and searches conducted afterwards. This often leads to problems for buyers as issues in search results may not be identified in sufficient time for the buyer to exercise any remedy against the seller.

Where the contract is not signed a buyer can protect itself from unsatisfactory search results by including a special condition which can make the contract subject to satisfactory searches or can oblige the seller to compensate the buyer in the event of unsatisfactory search results.

Where the contract has already been signed there is generally no opportunity to add special conditions. In some limited circumstances it may be possible to negotiate amendments to the terms of the contract during the cooling off period or while the contract is still conditional.

The searches we recommend are essential for a buyer to conduct and should be conducted as soon as possible. We make this recommendation as:

- a) it might be possible to identify unsatisfactory search results before the contract becomes unconditional; and
- b) if we are able to obtain search results early, we can give you advice on any contractual or other rights you may have so you may exercise them while you can.

The contract does not contain any rights to terminate if searches reveal that the property is subject to flooding.

The contract does not contain any rights to terminate if searches reveal that the improvements, or any additions to the improvements, do not have appropriate approvals. The lack of a required approval may have significant ramifications for the lawful use of a building on the Property and for the ability to obtain insurance cover for the buildings. The only opportunity under the contract to terminate for building issues is if a property notice, such as a show cause or enforcement notice exists when the contract was entered into.

If searches reveal unsatisfactory results we suggest you instruct us to give you specific advice about your contractual rights and any remedies that you may have. The advice to you will depend upon the nature of the unsatisfactory search result and your particular contract.

7.2. Present Use

If the present use is not lawful under the relevant town planning scheme as at the contract date and this has not been disclosed in the contract then you may be able to terminate the contract at any time before settlement.

It is not possible to know whether the present use is lawful by search alone. The only way of being sure is by physical inspection and a detailed check against the town planning codes that apply. This type of investigation will usually be carried out by a town planner and is outside our retainer.

The seller does not warrant that the use of the property is lawful.

7.3. Planning and Development planning certificates

There are three types of planning and development certificates which can be obtained from the local authority. The information these searches disclose and their relative cost are set out in the Buyers Searches List:

a) **Limited Certificate - (takes approximately 5 business days)**

Provides:-

- i) information as to the town plan area or zone in which the property is located;
- ii) by reference to the plan, a description of the planning scheme provisions applying to the property; and
- iii) a copy of any information recorded for the property in the infrastructure charges register kept by the local authority (including the amount of any unpaid charge applying to the property).

Limited certificates do not tell you whether the existing use is lawful or whether any conditions for the use of the property have been complied with. This certificate reveals the designated zone of the land and any other restrictions on the use of land in the zone. (e.g. if the property is in a Demolition Control Precinct or subject to character housing or other development codes of general application to the area).

b) Standard Certificate - (takes approximately 12 business days)

Provides:-

- i) the same information as in a limited certificate; and
- ii) a copy of every decision notice or negotiated decision notice for a development approval that has not lapsed, which has been issued by the local authority for the property.

By looking at the existing use of the property, the local authority area or zone for the property and the approvals that have been obtained for the property it is possible to ascertain if the property is capable of being lawfully used for its existing use or for other uses.

The certificate does not identify compliance with any approval conditions.

c) Full Certificate - (takes approximately 30 business days)

Provides:

- i) the same information in a limited certificate and standard certificate; and
- ii) if there is currently in force for the property a development approval containing conditions (including conditions about the carrying out of works or the payment of money), a statement about the fulfilment or non-fulfilment.

The full certificate is more expensive as a town planning officer from the local authority needs to inspect the property and go through conditions to identify compliance and non-compliance.

Recommendation on Town Planning Certificates

A development approval that is in effect for a Property attaches to the Property and will bind all owners (and occupiers) even if the Property is

later sold, the Property is reconfigured under the approval or later development (including reconfiguration) is approved for the Property.

If you purchase the Property and there are outstanding obligations under a development approval which attaches to the Property, you may become liable to perform those obligations and for any consequences of non-compliance (including prosecution for an offence). An outstanding development condition may require the expenditure of money or the grant of an interest in the Property such as an easement or covenant which may affect the future use of the Property. For this reason, it is important that you are satisfied that any conditions of a development approval attaching to the Property (including a larger parcel of land from which the Property was created) have been satisfied and are not outstanding, even if the object of the development approval appears to have been carried out.

If it is discovered that at the Contract Date there is an outstanding condition of a development approval which, if complied with, would require the grant of an interest in land such as an easement, you may be able to terminate the Contract (see item 6.5 above).

The only sure way of knowing whether approval conditions have been complied with is to obtain a full planning and development certificate. Information about compliance with conditions of an approval (including conditions about the carrying out of work or the payment of money, other than under an infrastructure agreement) is only available by obtaining a full certificate.

Obtaining a full certificate is costly and takes considerable time (you may not necessarily receive the certificate by settlement even if ordered immediately). The certificate is legally binding on council and the search may discover non-compliance issues that the other town planning certificates will not. If you intend to develop the Property or are particularly concerned with compliance with all approvals (and your settlement date is sufficiently far enough away to allow the results to be obtained in time) it can be beneficial.

If the Seller does not pay any relevant charges attaching to the Property, you may become responsible for their payment. If you think this might affect the Property you are purchasing please contact us urgently.

In some circumstances, it may be sufficient to obtain a limited or standard certificate, or to make alternative investigations such as obtaining a copy of the Development Approval if available online, then consulting with town planners and checking title and other searches, however this may not identify all the conditions that might not be fulfilled. In the case of a unit in a building, the issue of a certificate of classification usually demonstrates that the local authority is of the view that the conditions of development approval have been satisfied.

For a residential dwelling or vacant land a limited certificate may be adequate unless the Property is recently subdivided land or you intend to develop the Property (in which case you may require a standard or full certificate). For a residential unit, the overall development must have been granted an approval for a material change of use. It is prudent to obtain a standard certificate to confirm approval was obtained.

If you require a full certificate please contact us as soon as possible.

7.4. Future Use

If you have any plans to change the present use of the property or any building structures on it in the future, it is your responsibility to investigate what approvals you require from the local or other authorities. This is not part of our retainer.

7.5. Environmental Protection

The *Environmental Protection Act 1994* (EPA) requires that the seller makes a specific disclosure before entering into an agreement with you if any of the following are applicable to the land (including common property, if in a community titles scheme):-

- a) the land is listed on the Contaminated Land Register or Environmental Management Register;
- b) the land is the subject of an EPA notice or evaluation (generally about possible contamination or notifiable activities such as underground fuel storage); or
- c) a magistrate has issued an EPA Order for an authorised person to enter the land to conduct an investigation or to carry out work.

If any of these apply and the seller does not give disclosure before you enter the contract then you may terminate the contract before the earlier of settlement or possession. If the seller has not complied with these disclosure obligations, the seller may still give

disclosure after the contract has been entered into, but in that case you will be given a period of 21 business days after the seller's disclosure to terminate the contract. If you do not terminate in that time you will lose the right. **Given the limited time period available for termination, it is important that you contact us promptly if you receive a notice from the seller to remedy a failure to comply with its disclosure obligations.**

If you terminate the contract because of the seller's failure to make relevant disclosure all money paid by you under the contract must be refunded.

The searches we undertake on your instruction only identify land on the Contaminated Land Register or the Environmental Management Register but not notices and orders. If you think the land (including the common property if in a community titles scheme) may be contaminated, consider that the prior or current use of the land might contribute to any contamination issues or think that any notices or orders may affect the land, please contact us as soon as possible so that we can take the steps necessary to address the issue.

7.6. Administrative Advice

Administrative advices may reveal interests on title impacting on the land that require disclosure by the seller such as heritage listing or agreements, coastal protection notices, nature conservation orders, vegetation clearing offences or Milton Brewery notices (for a lot in a community titles scheme).

An administrative advice on title may note that the land is declared acquisition land under the *Queensland Reconstruction Authority Act 2011* (Qld) and the following would apply:-

- a) the owner is not able to sell the land other than to the authority; and
- b) if the owner does want to sell the land the authority must acquire it.

If at the contract date the land is declared to be acquisition land and disclosure has not been made in the contract then you may be entitled to terminate the contract by giving notice any time before settlement.

If a coastal protection or tidal works notice is given under the *Coastal Protection and Management Act 1995* (Qld), this should appear as an administrative advice. If you buy land with this on title, then the contract may be of no effect unless the seller has given you written advice of the undischarged notice not less than 14 days before settlement, or if settlement is less than 14 days after the date of the contract, at or before entering the contract.

Your rights for any administrative advice, including termination rights, may depend on the administrative advice and the extent of disclosure.

7.7. Survey

The searches we conduct cannot ascertain if there is:-

- a) an error in the boundaries/area of the land; or
- b) any encroachment onto or from the land.

You are entitled to survey the land to establish the location of structures on the land or adjoining land.

Mistakes or omissions in how the property is described in the contract may also be identified by a survey.

A survey can sometimes also identify other issues, such as:

- a) an unallocated road reserve;
- b) unregistered encumbrances;
- c) encroachments; and
- d) easements;

that is not noted on the title and may not be identified by the searches we conduct.

You may have a right of termination or compensation under the contract that you may not realise you have unless a survey is conducted. If a right of termination or compensation does exist, you must give notice to the seller before settlement. If you don't and you identify one of these issues after settlement, then you may suffer loss and may not be able to make any claim against the seller.

A survey might also assist you in identifying whether:

- a) a retaining wall or revetment wall is within the boundaries of the land which may give rise to future maintenance obligations; or
- b) the nature level of the land has been altered by excavation or filling which may give rise to obligations to retain or support land (including neighbouring land).

In the case of waterfront land, a survey may also establish whether the boundaries of the land are affected by erosion. If land is beachfront land, in some cases the State government has the power to declare a right of public access over the beach area of your land despite private ownership. If that declaration is made, the public will be entitled to use that part of your beachfront land affected by the declaration and the State

or local government may create conditions for how the affected land may be used (including by you).

The seller should disclose any existing declarations to you. However, if a declaration is made after settlement, there is no compensation available to you. While any declaration that is made must be registered in relation to the land, it may be important to establish whether erosion has resulted in the seashore affecting the boundaries of the land and whether circumstances exist which might lead to a declaration being made or which may have already given rise to a declaration that has not yet been registered. If you are aware of any of these circumstances, please inform us as soon as possible.

If you wish to satisfy yourself about these potential issues then you should engage a surveyor to survey the land or contact the relevant government agency to make further enquiries as soon as possible. If the surveyor makes any observations you should contact us urgently.

7.8. Unregistered Encumbrances

Unregistered encumbrances and other government rights or interests may affect the property or the title such as:-

- a) unregistered water, sewerage or combine drains; or
- b) access or extraction rights under the *Greenhouse Gas Storage Act 2009*; *Geothermal Energy Act 2010* or the *Petroleum and Gas (Production and Safety) Act 2004* (Qld).

The standard searches may not reveal all unregistered encumbrances or other rights or interests. Council rates searches often show the existence of sewerage or drainage lines through the property.

If you have any concerns about unregistered encumbrances please contact us as soon as possible.

7.9. State Government – Prescribed Projects

It is possible that infrastructure projects being undertaken by the State Government under the *State Development and Public Works Organisation Act 1971* may affect the land or nearby properties (e.g. water infrastructure pipeline works).

Your use and enjoyment of the land may be affected by an infrastructure project even though the land is not directly affected. Our searches only reveal issues affecting your land.

We suggest you make enquiries to see if infrastructure projects have been declared or proposed in the area.

7.10. Urban Encroachment

The Planning Act 2016 (Qld) registration of a premises' existing use with the Registrar of Titles to provide protection from legal proceedings for nuisance in relation to the emission of aerosols, fumes, light, noise, odour, particles or smoke.

If the property you are purchasing is in an affected area, then you are restricted from taking proceedings against the industry making the emissions, with few exceptions.

There is generally no termination right if it is discovered that the property is in an affected area. However, for premises in the Milton Rail Precinct if you purchase from a seller who is the applicant under a development application and, when the contract is entered into, the registration is not recorded in the appropriate register because the applicant failed to give notice to the Registrar of Titles, then you may end the contract by giving a notice of termination at any time before settlement.

An owner must not lease premises in an affected area (other than registered premises) before giving notice to any tenant that it is in the affected area and noting the restriction on proceedings.

7.11. *Queensland Building and Construction Commission Act 1991 (Qld)* ("QBCC Act")

a) Home warranty insurance

The scheme established under the QBCC Act provides consumers protection when a licensed contractor performs insurable residential construction work. If the property that you purchase includes a residence that is less than 6 years and 6 months old covered by the scheme, you may be entitled to make a claim in respect of defects in the residence under the statutory insurance policy.

While we can undertake a search to establish whether a statutory insurance policy is in place, whether or not a claim is accepted under the policy may depend on issues such as the nature of the defect and when you become aware of the defect.

It is beyond the scope of our retainer to advise on the statutory insurance or any issues which may impact on or limit your coverage. You may wish to contact the Queensland Building and Construction Commission ("QBCC") if you have any concerns.

b) Seller as owner-builder

If:

- i) building work has been carried out on the property by a person who is not licensed to carry out that building work; and
- ii) the land is offered for sale within 6 years after the building work is completed,

then before the contract is signed the seller must give you a notice (in duplicate) which contains details of the building work and states that the work has been carried out under an owner-builder permit by the person named in the notice. The notice must also include the warning required by the *Queensland Building and Construction Commission Regulation 2003*. You must sign 1 copy of the notice and return it to the seller on or before signing the contract.

If a notice and warning are not given as set out above, the seller will be taken to have given a contractual warranty that the building work was properly carried out. This means that if the work turns out not to have been properly carried out then rather than being able to claim under the QBCC statutory insurance regime (if it applies to the property) you may only have a right to claim compensation from the seller.

Please let us know if you are aware of the seller having conducted any work as an owner builder or if you have received any notice from the seller.

7.12. Neighbourhood Disputes

Please tell us if you have been told about or received any copies of documents relating to disputes between the seller and neighbouring property owners about dividing fences or trees. In particular, please tell us if you are aware of any:-

- a) notices to fence from a neighbour;
 - b) applications to QCAT for fencing or trees; or
 - c) QCAT orders for fencing or trees affecting the property.
- a) For Trees

The seller must give you copies of any applications or orders before the Contract. Otherwise, you may be able to terminate at any time before settlement (despite any Contract disclosure). If you terminate the Contract, the Seller may be able to be liable for your reasonable

legal and other expenses after you sign the Contract.

If you complete the purchase and the Seller has not completed all work required in a QCAT tree order not disclosed to you before Contract, the Seller will remain liable to carry out the work after settlement.

However if there are tree applications or orders affecting the property and you receive them from the Seller before you enter into the contract, then you can be obliged to respond to the QCAT application or complete work specified in an order which has not been completed.

b) For fences:-

The seller warrants in the contract that there will be no unsatisfied fencing notices, applications or orders existing at settlement. If an unsatisfied notice, order or application exists at settlement you may be entitled to terminate the contract or claim compensation from the seller.

The QCAT search result does not reveal the presence of any applications in relation to trees or fences that have not yet resulted in an order. These applications can only be discovered by a physical search of the QCAT register. We recommend that you instruct us to have a search agent conduct this search.

The seller must promptly give you a copy of any notice, proceeding or order, received after the contract date. They must not give any notice, seek or consent to any order or agreement without your prior written consent after the contract date.

Although views from a property are not generally protected by the law, the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 (Qld) (ND Act)* will, in limited circumstances, provide a property owner with the ability to seek an order from QCAT regarding trees on adjoining land (or on land that would be adjoining but for a road). Where a property is affected by substantial, ongoing and unreasonable interference from a tree on adjoining land, that person may seek orders under the ND Act in relation to the tree (including for compensation or for work to be done to the tree).

The ND Act will not provide you with greater views than what exist when you take possession of the property and QCAT decisions suggest that the ND Act will only create rights in relation to a view from a dwelling that exists when you take possession. . If the views from the property you are buying are important to you, we recommend that, on taking possession of the

property, you make a record (including photographs) of the existing views from the dwelling on the property.

7.13. Building Covenants

Are you aware of any building covenants affecting the property or have you signed any document relating to any covenants? If so, please provide us with details and a copy of any documents signed, as these may impact on your proposed use of the property or bind you to additional contractual obligations or liabilities.

8. IMPORTANT INFORMATION OWNERSHIP AND PAYMENTS	—
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8.1. Purchasing Entity/Tenancy

If any of the following apply:-

a) **There is more than one buyer:**

Please advise in the Questionnaire whether you intend to purchase the property as joint tenants or tenants in common (and, if so, in what proportions) as we will need to specify this on the transfer documents.

The effect of **joint tenancy** ownership is that on the death of one owner their share in the land passes to the surviving joint tenants despite any provision in a will.

If you purchase as **tenants in common** then on the death of a co-owner the share in the property of that co-owner will pass in accordance with the will of that co-owner or in accordance with the laws of intestacy if the co-owner does not have a valid will.

Joint tenants can at any time give a notice to their co-owners which severs their interest from the joint tenancy. A joint tenant who gives such a notice will then hold their share as a tenant in common with any other co-owners remaining as joint tenants between them (if more than one).

A joint tenancy is not appropriate where parties wish to hold interest in the property in unequal shares. If you wish to hold the property other than equally (for example, a 99% and 1% split or some other unequal percentage ownership) for taxation, duty (e.g. Foreign Acquirers Duty) or asset protection reasons then you must hold the property as tenants in common. You will need to advise us of the percentage of ownership each owner is to have as this needs to be set out on the property transfer. Any later change to increase the share of one owner and decrease the share of

another will result in transfer duty being imposed.

Ensure you consider the impact of your instructions on matters such as your succession plans or any FIRB approval that might be relevant.

b) You are purchasing the property for investment purposes and the contract has not yet been entered into:

We recommend that you seek advice from an accountant or financial advisor on the best purchasing and borrowing entity for you taking into account your financial circumstances and financial planning requirements (for example:

- i) whether to purchase (and borrow) as an individual, company, trustee or other entity such as a self-managed superannuation fund;
- ii) tax implications and structuring; and
- iii) land tax and other holding costs).

If you enter into the contract in the capacity of trustee of a trust, you will still be personally liable under the contract for the performance of all obligations of the buyer unless provision is included in the contract to limit that liability. If you have any concerns about this issue please contact us.

8.2. Foreign ownership (if applicable)

If you are a foreign person or are a trustee of a foreign trust:

- a) you may need to obtain a notification from the Foreign Investment Review Board under the *Foreign Acquisition and Takeovers Act 1975* (Cth) that it has no objection to your acquisition of the property; and
- b) you may need to notify the Department of Natural Resources and Mines ("DNRM") under the Foreign Ownership of Land Register Act 1988 (Qld).

Please call us if you think this applies to you.

Clause 10.2 of the Contract contains a warranty by the Buyer that the purchase of the Property is not notifiable under the FAATA or that the Buyer has obtained no objection notification under the Act. For the purposes of applying FAATA:

- a) a corporation is considered to be a foreign person if an individual not ordinarily resident in Australia, a foreign corporation or a foreign

government holds a substantial interest in the corporation (at least 20% voting entitlements or shares) or two or more persons, each of whom is an individual not ordinarily resident in Australia, a foreign corporation or a foreign government, hold an aggregate substantial interest;

- b) a trustee of a trust is considered to be a foreign person if an individual not ordinarily resident in Australia, or foreign corporation or a foreign government holds a substantial interest in the trust (at least 20% of the income or property of the trust) or two or more persons, each of whom is an individual not ordinarily resident in Australia, a foreign corporation or a foreign government, hold an aggregate substantial interest in the trust; and
- c) the trustee of a discretionary trust where a foreign person holds any beneficial interest in the trust is generally considered to be a foreign person in their capacity as trustee of the trust.

Failure to obtain a required no objection notification prior to entry into the Contract will involve a breach of the warranty. In addition, to proceed with the transaction without a required "no objection" notification may result in a forced sale and substantial penalties being imposed.

Further, if the Property is not occupied or genuinely available for rent for at least half of the year, the Australian Taxation Office may charge you an annual fee equal to the relevant foreign investment application fee imposed on the Property. If this applies, this is your responsibility to comply with the relevant foreign ownership occupancy requirements and is outside the scope of our retainer.

8.3. Capital Gains Withholding payments (if applicable)

Under laws designed to ensure that foreign residents meet their liability for capital gains tax when selling land in Australia, a buyer may be required to pay 12.5% of the purchase price to the Australian Taxation Office (ATO).

The CGT withholding laws apply to contracts entered into on or after 1 July 2017 where the property sold has a market value of \$750,000.00 or more. (For contracts entered into after 1 July 2016 but before 1 July 2017, the withholding laws apply where the Property sold has a market value of \$2 million or more and the CGT withholding amount is 10%).

If the CGT withholding laws apply, the Buyer must pay the required amount to the ATO promptly after

settlement unless the Seller produces a valid clearance certificate issued by the ATO or a notice from the ATO varying the CGT withholding amount to nil.

The issuing of a clearance certificate by the ATO to the seller is confirmation that a buyer is not required to pay any part of the purchase price to the ATO at settlement.

It is important to note that payment of any required withholding amount is the buyer's responsibility. A failure to remit the CGT withholding amount to the ATO may have serious consequences. In addition to liability for the CGT withholding amount, a penalty (equal to the amount required to be withheld) may apply where a buyer fails to comply with the CGT withholding laws.

Under the Standard Contract, if the withholding laws apply, the seller irrevocably directs you to pay the required CGT withholding amount to the ATO unless, prior to settlement, the seller produces a clearance certificate or produces a notice from the ATO varying the CGT withholding amount to nil.

The CGT withholding laws effectively allow the Seller to avoid a CGT withholding by producing a clearance certificate at any time until settlement. Unfortunately, if the Seller provides a clearance certificate at a late stage, your ability to prepare for settlement may be prejudiced as details of cheques required for settlement may change. There is a risk that a late change in payment details may mean that you are unable to provide the required bank cheques at settlement and may be in breach of the Contract as a result. While we will endeavour to mitigate this risk by putting the Seller on notice of requirements in relation to the clearance certificate and the time frame for the drawing of bank cheques for settlement, if the Contract has not yet been signed, we recommend that you instruct us to request the inclusion of a special condition in the Contract to the effect that you will be entitled to extend the settlement date unilaterally for a further business day if the Seller provides a clearance certificate after cheques have been drawn for settlement.

In most cases the market value will be determined by the purchase price payable under the Contract. If the transaction involves a purchase price of \$750,000.00 or more but includes personal property (such as moveable equipment or furniture) with a market value and the market value of the land and improvements may be less than \$750,000.00, it may be appropriate to obtain an independent valuation of the Property for the purpose of specifying an apportionment of the purchase price.

Similarly, an independent valuation of the property should be considered if the transaction is between

related parties and the property may have a market value of \$750,000.00 or more.

If the market value of the property sold is \$750,000.00 or more but the purchase price to be paid under the contract is less than the amount to be paid to the ATO, you should consider options for the payment of this amount or amendment of the contract to require payment by the seller of an amount to cover the payment.

8.4. GST withholding Payments (if applicable)

For contracts selling **new residential premises** or **potential residential land** entered into after 1 July 2018, or entered into before 1 July 2018 but settling after 1 July 2020, GST withholding laws apply requiring the Buyer to withhold at settlement any GST payable in relation to the Contract.

Generally, a property will be treated as affected **new residential premises** if it has not previously been sold as residential premises or is residential premises built to replace demolished premises on the same land. The GST withholding requirements will not apply to the sale of commercial residential premises (such as a hotel).

Land will be affected **potential residential land** when all of the following apply:

- a) the land is permissible to use for residential purposes, but does not contain any buildings that are residential premises;
- b) the land is included on a property subdivision plan;
- c) the land does not contain any building that is in use for a commercial purpose;
- d) the following exclusion does not apply:
 - i the recipient is registered for GST; and
 - ii the recipient acquires the land for a creditable purpose.

The amount to be withheld will be 1/11th of the purchase price although if the margin scheme applies the amount of the GST withholding will be reduced (and in the absence of any other determination by the relevant Minister, will be 7% of the purchase price).

It is important to note that, payment of any required GST withholding amount is the Buyer's responsibility. A failure to pay the GST withholding amount to the ATO may have serious consequences. In addition to liability for the GST withholding amount, a penalty (equal to the amount required to be withheld) may apply where a Buyer fails to comply with the GST withholding laws.

If the GST withholding arrangements apply to the Contract, the standard contract terms require you to

provide the Seller with a bank cheque payable to the Commissioner of Taxation at settlement for the GST amount. If the Seller does not then provide the bank cheque to the Commissioner, you remain liable to the ATO for the payment.

8.5. Land valuation and taxes

An administrative advice called a Land Valuation Act Notice may be recorded on title. This alerts buyers that a land tax deduction for site improvement or an offset allowance applies. However, on change of ownership, any existing deduction for site improvement or offset allowance will no longer apply.

The calculation of local government rates, state land rent and possibly land tax will be based on the unimproved value (without these deductions).

A property details report, available by searching the Queensland Valuation and Sales (QVAS) database at any of the DNRM business centres, specifically states the amounts of the site improvement deduction total and the unadjusted value.

Depending on your proposed use of the land or your status you may be entitled to deductions or concessions in relation to the assessment of rates or land tax that apply to the property, for example:-

- a) a concession under the *Land Tax Act 2010* in relation to the payment of land tax for a principal place of residence; or
- b) a concession in relation to the payment of rates if you are a pensioner.

If you think you are entitled to these concessions, you should contact the Office of State Revenue or your local government.

After settlement, you will be responsible for dealing with any rates and land tax assessments, checking their accuracy (including whether the correct category has been applied for any assessments and your entitlement to any deduction or concession) and attending to payment.

Land tax is calculated by reference to the taxable value of a property (i.e. the value of the land). The taxable value of all property of an owner in Queensland is aggregated to determine the rate of land tax payable. A landowner who is an individual will pay a lower rate of land tax than that payable by a company or trustee. Absentee landowners (i.e. landowners who do not usually live in Australia) pay the higher rate of land tax applicable to companies and trustees and from 1 July 2017 will also pay an additional surcharge of 1.5%.

8.6. Outgoings & Adjustments

When you become the owner of the property, you will assume responsibility for all rates and statutory charges payable in relation to the property (including for any outstanding liabilities of the seller). The REIQ contract standard terms provide for rates, and other outgoings to be apportioned as adjustments to the price at settlement. **The seller is liable for all amounts up to settlement and you are responsible for the proportion of the outgoings relating to the period from settlement onwards, unless otherwise agreed.** An amount will usually be deducted from the purchase price for any outstanding liabilities for the seller.

In some circumstances adjustments could be substantial, and may in certain circumstances result in you having to pay a considerable amount above the balance purchase price. We may not be able to calculate the adjustments (and what you may need to pay) until we get our search results. **Please instruct us to order these searches immediately.**

The standard contract stipulates that the seller is responsible for all land tax assessed on the land for the land tax year current at the settlement date. Land tax is not included in the outgoings apportioned between the parties.

8.7. Transfer Duty

Transfer duty is a state tax which is payable on dutiable transactions in Queensland. It is calculated on the Property's dutiable value of the property which is generally the higher of the consideration payable under the contract and the Property's unencumbered market value.

As transfer duty is applicable to each transaction, you must ensure that the buyer named in the contract is the person or entity that you intend to own the property. Otherwise you risk 2 or more assessments of transfer duty, which can increase the transfer duty payable.

If you are seeking to purchase property for your SMSF and are planning to buy the property using a bare trustee as purchaser with a loan then you run the risk of having to pay transfer duty again when the property is transferred to your SMSF on repayment of the loan. It is outside our normal retainer to advise you on strategy to avoid that additional duty.

You also need to carefully consider your current and ongoing eligibility for any concession or exemption that you obtain.

If you do not pay duty or advise the Office of State Revenue of changes to your eligibility for concessions

or exemptions then they may identify this (as they actively cross-check data held by other government agencies) and can seek to recover any shortfall directly from you including penalties and interest. Recovery of incorrect or unpaid duty may occur years after settlement and could compound into substantial amounts.

From 1 October 2016, transactions under which foreign persons acquire land for residential use or development will attract additional duty. See item 8.8 for further details.

8.8. Home Concessions to Transfer Duty

You may be eligible for a home concession on the transfer duty if you meet the following occupancy requirements:-

- a) the property is being purchased as your first home and will be occupied as your principal place of residence within 12 months after settlement (**first home concession**); or
- b) the property is vacant land, is being purchased to construct your first principal place of residence that you will occupy within 24 months after settlement (**first home vacant land concession**); or
- c) the property is being purchased:
 - i) to be occupied as your principal place of residence within 12 months after settlement; and
 - ii) the agreement to purchase the home was entered into either before 1 August 2011 or after 30 June 2012 (**home concession**);

and:
- d) you satisfy all the Office of State Revenue's strict eligibility requirements; and
- e) you do not dispose of the property within 12 months of occupying the residence.

First Home Concession

If you are eligible, no transfer duty is payable for purchases where the consideration or value is under \$500,000.00. The concession progressively reduces as the consideration or value of the acquired property increases up to \$550,000.00.

There is no first home concession where the consideration or value is equal to or greater than the \$550,000.00 but you may still be eligible for a home concession.

First Home Vacant Land Concession

If you are eligible, no transfer duty is payable for purchases of first home vacant land up to \$250,000.00 in value. The concession progressively reduces as the value increases up to \$400,000. There is no concession where the value of the vacant land is \$400,000.00 or greater and transfer duty is then payable at ordinary rates.

Home Concession

If you are eligible, concessional duty rates apply to the first \$350,000.00 of the consideration or value of the home and any part of the price over \$980,000.00.

Duty at general rates apply to the value between \$350,000.00 and \$980,000.00.

Eligibility requirements

Strict eligibility requirements apply to each of these home concessions. Check your eligibility for the concession by using the Queensland Government's on-line eligibility test (available on its website at <http://www.qld.gov.au>) or by telephoning the Office of State Revenue directly on 1300 300 734.

Usually you will not meet the eligibility requirements for a home concession on duty if:

- a) you are purchasing an investment property;
- b) you are purchasing using a company, unit trust or discretionary trust;
- c) you are applying for a first home concession and:
 - i) have held an interest in residential land somewhere in the world; or
 - ii) have claimed the concession before;
- d) you are applying for a first home vacant land concession and:
 - i) have held an interest in residential land somewhere in the world; or
 - ii) there will be more than one home constructed on the vacant land; or
 - iii) there was a building, or part of a building, on the land when you bought it.

You should tell us as soon as possible if:

- a) a concession applicant is under 18 years old; or
- b) a trustee or guardian is purchasing for the benefit of legally disabled beneficiaries.

Disposal of property

You will lose your entitlement to the full concession if you sell, transfer, lease, extend a lease, rent, surrender a lease to another person or otherwise grant possession of your property to another person within 12 months of occupying the house. Repayment of all or part of the concession may be required and penalties and interest can apply.

If any of these things apply, you must notify the Office of State Revenue within 28 days of the event happening for liability reassessment. If you do not, significant additional penalty duty may be payable and interest will be charged from when you are liable to notify. If applicable, this is your responsibility and is outside the scope of our retainer.

However, please note the Office of State Revenue, generally does not considered to be a disposal of the property:

- a) the sellers remain in the property after settlement and move out within 6 months of settlement;
- b) existing tenants remain in the property no longer than 6 months after settlement and their current lease expiry date;
- c) an intervening event such as a natural disaster, incapacity or death prevents you from occupying the home;
- d) you enter a retirement village lease;
- e) you occupy the home as your principal place of residence, then leave it vacant for the rest of the 1-year occupancy period; or
- f) you transfer part of the property to your spouse.

It is important to consider the potential effect that any dealing with the property may have on your entitlement to a concession for transfer duty. You should contact us to discuss any queries you have in relation to this issue.

8.9. Additional Foreign Acquirer Duty (AFAD)

AFAD applies to transactions in land which are liable to transfer duty if:

- a) the duty liability arises on or after 1 October 2016;
- b) the land is AFAD residential land (see below); and

- c) the acquirer under the transaction is a foreign acquirer.

AFAD residential land is land in Queensland that is or will be used solely or primarily for residential purposes, where particular conditions are met. These include:

- established homes and apartments;
- vacant land on which a home or apartment will be built;
- land for development for residential use; and
- refurbishment, renovation or extension of a building for residential use.

AFAD residential land does not include land used for hotel and motel purposes.

A person will be a 'foreign acquirer' if the person is:

- a foreign individual, i.e. an individual other than an Australian citizen or permanent resident. However, AFAD will not apply to a New Zealand citizen who is the holder of a permanent visa, or who is the holder of a special category visa as defined in the *Migration Act 1958* (Cth);
- a foreign corporation, i.e., a corporation incorporated outside Australia or a corporation in which foreign persons have a controlling interest; or
- a trustee of a foreign trust, i.e., a trust where at least 50% of the trust interests are foreign interests.

AFAD is an additional duty imposed at the rate of 3% of the dutiable value of the transaction.

However, if there are multiple buyers and only one is a foreign acquirer, AFAD will only apply to the extent of the foreign acquirer's interest under the transaction. Liability for AFAD will not affect any entitlement to a home concession for transfer duty.

If, within 3 years of the transaction, the acquirer becomes a foreign corporation or the trustee of a foreign trust, it is important to note that the Commissioner of State Revenue must make a reassessment to impose AFAD on the transaction. This may occur, for example, because of a change in the controlling interest in the company or interests in the trust.

If this becomes applicable, you must take action to inform the Commissioner of the changed circumstances within 28 days. If you do not, significant additional penalty duty may be payable and interest will be charged from when you are liable to notify the

Commissioner. If applicable, this is your responsibility and is outside the scope of our retainer.

Ex gratia relief from AFAD may be available where a foreign acquirer which is Australian-based acquires residential land for significant development. Qualifying for such relief will depend on satisfying relevant conditions imposed by the Commissioner (including as to the significance of the proposed development). If a foreign acquirer is granted relief, it must notify the Commissioner if any of the conditions are no longer satisfied or if there is a material change in the circumstances existing when the relief was granted.

You should call us as soon as possible to discuss this issue if you think AFAD may apply to your transaction.

8.10. General Exemptions to Transfer Duty

Your transaction may also be exempt from transfer duty if:

- a) the contract is terminated or comes to an end;
- b) it is a transfer pursuant to a Family Court order, maintenance agreement or binding financial agreement;
- c) it is a transfer between de facto spouses under a recognised cohabitation or separation agreement;
- d) it is the distribution of a deceased's property to beneficiaries, surviving joint tenants or to a trust set up to distribute the estate;
- e) the property was won in an art union competition;
- f) you are a registered charitable institution (for example a religious body or educational institution);
- g) the transfer is to correct a clerical error in a previous transaction;
- h) it is a transfer between complying superannuation funds or entities;
- i) it is a transfer to a registered industrial organisation under the *Industrial Relations Act 1999* (Qld).

You should contact us as soon as possible if you think that any of these exemptions may apply.

8.11. Related Parties

You must tell us, as soon as possible, if you have a business or personal relationship with the seller or if the consideration for the sale is less than market

value. If so, this will have duty implications and we will require for duty assessment purposes a valuation of the property using 3 comparable sales within the last 3 months. If applicable, these valuations must meet certain criteria and are required before duty being assessed and paid. You should call us as soon as possible to discuss if you think this may apply, as failure to obtain the valuations can result in serious consequences for you (e.g. the imposition of penalty duty and interest).

8.12. Aggregation of Transfer Duty

If you buy two or more properties or enter into 2 or more contracts that the Office of State Revenue considers arise from the one arrangement you may be liable to pay more transfer duty based on the aggregate value of the assets being purchased.

Please contact us as soon possible if you have:

- a) previously bought a property from any of the sellers noted in the contract (including family members or associates of any of the sellers, such as companies or officeholders related to any of the sellers);
- b) bought an adjoining or nearby property from anyone - particularly to develop together with this current property;
- c) bought a business in conjunction with this transaction;
- d) negotiated this contract or property together with or shortly after other contracts or property; or
- e) otherwise have reason to believe that the Office of State Revenue may consider this transaction as one transaction with another contract or agreement.

8.13. Instalment Contract

A contract can become an instalment contract for many reasons including:-

- a) the deposit is more than 10%; or
- b) the deposit is stated to be non-refundable in all circumstances; or
- c) the buyer is given a rebate off the purchase price which makes the deposit more than 10% of the rebated purchase price; or
- d) the buyer is required to pay money to the seller (other than a 10% deposit) before receiving a transfer and the amount payable under the contract exceeds market value for what is provided in exchange. For example, a rent to buy

contract may require the payment of instalments which exceed the market rent that would otherwise be payable.

The effect of the contract being an instalment contract is:-

- a) if you default in the payment of any instalment or part of the purchase price (other than a deposit) the seller cannot terminate the contract until 30 days after having served a notice giving you 30 days within which to make payment. If you choose to make payment within the 30 day period (including any default interest payable under the contract) then the seller cannot terminate the contract as a consequence of your initial non-payment. This means that where the default is in the payment of the balance purchase price, you can effectively obtain another 30 days in which to settle;
- b) the seller is prohibited from re-selling or re-mortgaging the property before settlement; and
- c) the seller may be required to comply with the National Credit Code, including the requirements for pre-contractual disclosure, ongoing notices and certain pre-requisites to enforcement.

Unless you instruct us to investigate the possibility that your contract is an instalment contract, we will assume that this investigation will not be of any benefit to you and that you wish to settle the purchase on the settlement date. If, of course, your capability to settle on the settlement date changes at any time, you should let us know.

9. IMPORTANT INFORMATION – SETTLEMENT STEPS
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9.1. Pre-settlement Inspection

You are entitled (after giving reasonable notice to the seller) to enter the property once for the purpose of conducting a pre-settlement inspection. We suggest you make arrangements with the seller's agent to arrange to inspect the property closer to the time of settlement and, amongst other things, check that no fixtures have been removed or there are no other anticipated issues with the seller providing vacant possession.

You should let us know if the seller has made any changes to the property, as this may entitle you to terminate the contract or claim compensation from the seller.

Inspections are important even if you are purchasing vacant land, to ensure that the seller or other parties have not completed any earthworks or construction on the property since the contract was entered into.

9.2. Priority Notice

We will lodge a priority notice on title before settlement. This helps protect your interest in the property by preventing the registration of any conflicting interest (such as a mortgage or transfer to an unrelated third party, but not a caveat or a writ of execution) until the earlier of:

- a) 60 days after we lodge the notice (subject to any extension); or
- b) your transfer and all related documents have been lodged; or
- c) it is withdrawn.

A priority notice may be extended by 30 days by lodging a request to extend the notice before it lapses.

9.3. Transfer documents

Title to the property will be transferred to you after settlement when transfer documents are registered in the Land Titles Office. The transfer documents must be signed by the seller and by you although we are able to sign the transfer documents on your behalf. We will prepare the transfer documents and send them to the seller to sign. At the same time we will send a copy of the transfer documents to you for your records.

After settlement, we will lodge the transfer documents for registration unless you have a financier, in which case the financier will be responsible for lodging the transfer documents for registration. Registration of the transfer is critical to your ownership of the property and you should follow up your financier after settlement to ensure that the transfer has been registered. If you require us to follow up your financier, please let us know (but we note that this will be an extra cost to you).

We are able to sign the transfer documents on your behalf.

9.4. Keys and codes

At settlement, the seller is obliged to deliver all keys, codes or devices in the seller's possession or control for all locks or security systems on the property.

Please complete the section in the Questionnaire advising us on key collection preference. Usually we arrange for the seller to leave the keys with the agent for you to collect after settlement. However, you can

instruct that we should request to collect the keys at settlement for you to collect from us. If you want us to collect the keys at settlement, we must give notice to the Seller at least two clear business days before settlement. Unless you specifically instruct us to collect the keys, we will request that they are left with the real estate agent for you to collect after settlement.

9.5. Chattels

The seller must remove all chattels not included in the sale and any substantial rubbish on the property before settlement. The seller may also remove any fixtures that have been excluded from the sale.

If the property is currently tenanted and the tenancy is not noted on the contract, then this obligation requires both the seller's property and any tenant's property to be removed before the actual time of settlement on the settlement date.

9.6. Vacant possession

The seller is obliged to give vacant possession of the property, which means you are able to physically and legally occupy the property after settlement (except where you agree otherwise, such as buying property subject to tenancy). In the case of a lot in a community title scheme, the property includes any exclusive areas for the lot.

9.7. Utility Services

No adjustments are made at settlement for charges for electricity, gas, telephone, internet or pay-TV and other utility services. We recommend that you arrange for connection of these services from the proposed settlement date to ensure appropriate readings and calculations of the seller's obligations for these services can be billed to the seller.

If a service provider will not arrange for connection from settlement without authority or confirmation from the seller you should obtain this via the real estate agent or from the seller directly. It is beyond the scope of our retainer.

9.8. Early possession

If the seller agrees to let you into possession of the property before settlement, the contract provides that:

- a) you must maintain the property in substantially its condition at the date of possession except for fair wear and tear (which obliges you not only to look after the property but also to refrain from making any alterations to the property, including any improvements on the land and any landscaping);

- b) your entry into possession is under a personal licence that the seller can revoke at any time;
- c) you insure the property to seller's satisfaction;
- d) you indemnify the seller against any expense or compensation incurred as a result of your possession.

The seller may also choose to impose other conditions that it deems appropriate.

There is significant risk that you may incur expenses or suffer loss if you enter into early possession, including if:

- a) you do not settle and have not maintained the property so as the seller may claim compensation from you for failure to maintain the property;
- b) you do not settle and have improved the property in any way so as the seller is not specifically required under the contract to compensate you for any improvements and court action to seek compensation may be costly;
- c) the seller revokes your licence to possession (which the seller can do for any reasonable reason and at any time) and you resist eviction from the property so as the contract requires that you must repay the seller's costs of eviction and the Seller may claim compensation from you for loss (e.g. the seller cannot tenant or sell the property); or
- d) the seller seeks to enforce the indemnity you have provided to make a claim for any expenses or damage incurred as a result of your possession.

Other rights (including some possible termination rights) may be lost once you take possession. There may be other issues that need to be considered such as any effect early possession may have on land tax liability in relation to the property.

If you are considering early possession please contact us.

9.9. Electrical Safety Switch

If an approved electrical safety switch for general purpose socket outlets has not been installed in the property under the Electricity Regulations you are required to have one installed within three months following settlement. Failure to do so could result in a \$1,500 penalty.

9.10. Smoke Alarms

Failure to install compliant smoke alarms is an offence under the *Fire and Emergency Services Act 1990* (Qld). If the property does not have compliant smoke alarms installed, you should do so immediately following settlement as fines may apply.

10. PERSONAL PROPERTY SECURITIES – IF APPLICABLE

10.1. What are Personal Property Securities and how do they affect this transaction?

The *Personal Property Securities Act 2009* (Cth) (PPSA) applies to security interests in personal property, including goods and chattels, financial property, shares and intellectual property (personal property).

PPSA doesn't apply to land, buildings or fixtures that form part of the land.

The PPSA may apply if, in addition to the land, personal property is sold to you which is not a fixture. Title to that personal property must be transferred at settlement free from encumbrances.

10.2. What is affected by the PPSA?

A chattel, good or other personal property (other than crops) is considered to be a 'fixture' if it is affixed or annexed to the land in such a way as to become part of the land (taking into account the degree / mode / object of annexation). Fixtures are not affected by the PPSA. All other goods will generally be considered chattels and may be affected by the PPSA.

For example:-

- a) An air-conditioning unit, satellite dish, oven, rangehood, window furnishings or carpets are usually fixtures and the PPSA may not apply.
- b) A clothes dryer, furniture package, fridge or washing machine (if not affixed) are chattels to which the PPSA may apply.
- c) Items such as solar panels or water tanks/pumps may be considered a chattel depending on how these items are part of the property (e.g. if they are affixed, and if so, how).

10.3. When do I need a specific release?

If:

- a) personal property is included in the sale; and
- b) a security interest is noted on the PPS register for that property; and

- c) none of the extinguishment rules apply;

then the seller will need to obtain from the secured party either a letter or financing change statement, which releases the personal property being sold and provide it at settlement. If you are uncertain about the legal position of the chattels, we recommend you instruct us to request a specific release from the seller.

To enable us to consider if any of the extinguishment rules apply, please provide your instructions on whether any personal property being sold as part of the property is worth less than \$5,000.00, is subject to a security interest and is being sold for 'new value'.

Please tell us about any personal property included in the purchase so we can consider the impact of the PPSA on the transaction and protect your interests accordingly.

11. RESIDENTIAL TENANCY – IF APPLICABLE

11.1. Residential Tenancy Inquiries

If property is sold subject to an existing residential tenancy we recommend that you instruct us to obtain a copy of the tenancy documents from the seller (preferably before signing the contract) and that the documents be reviewed and enquiries made of the seller to ascertain:-

- a) if the tenancy is an enforceable agreement under the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) and if the seller complied with disclosure required under it;
- b) whether the term is fixed or periodic and the time left to run;
- c) if the tenancy is longer than three years, that it is registered;
- d) the current rent payable;
- e) if the rent or any other payments are in arrears;
- f) if there are any special arrangements between the seller and the tenant not in the tenancy agreement;
- g) any discrepancies between the contract and the tenancy agreement;
- h) any unusual provisions in the tenancy agreement;
- i) whether a bond is held by the Residential Tenancies Authority;
- j) whether the seller is in dispute with the tenant.

so that we may advise you about your rights and any circumstances in which you may terminate the Contract if anything adverse is discovered.

Our usual hourly rate will apply to the review of these documents.

11.2. Bond Transfer – Residential Tenancy

The usual process for the transfer of the tenancy agreement and bond is as follows:-

- a) a Residential Tenancies Authority Form 5 Change of Lessor or Lessor's Agent is prepared by you or your proposed management agent. Please instruct us who you intend to appoint as agent, or organise your appointed agent to complete the Form 5;
- b) the agent will send the Form 5 to the seller for the seller or their management agent to sign;
- c) the seller will deliver the completed and signed Form 5 to you or your managing agent at settlement; and
- d) following settlement you or your managing agent will lodge the Form 5 with the Residential Tenancies Authority and send a copy to the tenant so that the tenant knows to pay future rent to you as landlord.
- e) upon receipt, you must immediately:-
 - i) send a copy of the Form 5 to the Residential Tenancies Authority; and
 - ii) send a copy to the tenant so that the tenant knows to pay future rent to you as landlord.

12. POOL SAFETY – IF APPLICABLE

12.1. Pool Safety Laws

The *Building Act 1975* (Qld) requires owners of swimming pools to comply with the pool safety standard in Part MP3.4 of the Queensland Development Code. The standard, which deals primarily with swimming pool barriers, was introduced on 1 December 2010 and pool owners were given until 30 November 2015 or an earlier date of sale to comply.

12.2. What is a “swimming pool”

A regulated swimming pool is any excavation or structure capable of being filled with water to a depth of 300mm or more including a pool, spa or wading pool, but generally does not include a fish pond (or similar ornamental water feature), dam, water tank,

watercourse, spa bath in a bathroom (unless continually filled with 300mm or more of water) or birthing pool.

If you have any doubt as to whether a structure on the property is a pool you should contact us.

12.3. Non-shared pool – obligation to obtain Pool Safety Certificate

Residential non-shared pools generally exist on properties that are not units.

If there is a pool on the property (or on adjacent land used in association with the property) that is a non-shared pool and there is no Pool Safety Compliance Certificate ("PSCC") or Exemption Certificate ("EC") in effect, the seller must not enter into a contract to sell the property without giving you a Form 36 Notice of No Pool Safety Certificate. If you settle without a current PSCC or EC you will be responsible to obtain a PSCC and to carry out all works (at your cost) required to meet the standard (e.g. upgrading the pool fence).

Although the clear intention of the legislation is to ensure that all swimming pools comply with the relevant standard from 1 December 2015, it appears that the legislation will allow you a period of 90 days after settlement to attend to these requirements. However, you should be aware of the possibility of a fine being imposed for a failure to comply with the standard from 1 December 2015 regardless of the 90 day time frame. On the spot fines range between \$117.00 and \$824.00 (although larger penalties may apply in some circumstances).

12.4. Non-shared pool – how the contract operates

There are questions in the contract reference schedule about pools and pool safety certificates.

If the seller has indicated that it will give a PSCC or EC to you then the seller must hand over a copy at or before settlement, failing which you can terminate the contract. If any certificate provided to you expires before settlement, the seller must obtain a new certificate before settlement.

If the seller indicates that it has given a Form 36 or does not complete the questions (unless the contract is one mentioned in items 5.1 (b) to (e) above) the contract is conditional upon you obtaining from a licensed pool safety inspector:

- (a) confirmation that the pool safety requirements have been met and the issue of a PSCC; or
- (b) the issue of a Notice of Non-Conformity confirming the works required before a PSCC can be issued.

You must on or before the Pool Safety Inspection Date notify the seller that:

- (a) a pool safety inspector has issued a PSCC in which case neither party has further rights; or
- (b) if a PSCC is not issued, that you terminate the contract (acting reasonably); or
- (c) you elect to waive the benefit of the condition and proceed to settlement, in which case you become responsible at your expense for obtaining the PSCC after settlement. (Please see our comments above in relation to the applicable 90 day period after settlement.)

Please notify us in sufficient time for us to prepare and give the requisite notice under the contract.

If you do not give a notice to the seller before 5:00pm on the Pool Safety Inspection Date, the contract remains on foot and both you and the seller have a right to terminate the contract until settlement or a PSCC issues. You also have the right to waive the benefit of the condition, if you give notice before the Seller gives a notice terminating the contract.

12.5. Shared Pool

Residential shared pools generally exist on common property in unit complexes or other body corporates and the body corporate must obtain the PSCC.

The seller must give a Notice of No Pool Safety Certificate where a PSCC is not in effect:-

- a) before you enter the contract ó to you as the buyer; and
- b) before settlement ó to the body corporate (usually the owner of the shared pool) and the chief executive of the Department of Housing and Public Works.

The consequences for you are that the body corporate must obtain a PSCC at its cost and may be liable for a financial penalty for not already having obtained the certificate. You may be called upon to contribute your proportionate share of the cost to obtain the PSCC and any penalties imposed on the body corporate, through body corporate levies.

12.6. Prohibition on letting

If there is no PSCC for a pool you are prohibited from entering into a lease or tenancy without obtaining one.

12.7. Penalties

There are substantial penalties for non-compliance. The maximum penalty for non-compliance with the pool safety standard is \$19,437.00.

12.8. Pool Safety Register

Owners of swimming pools are responsible for ensuring that their pool is recorded in the Pool Safety Register. Failure to do so can result in a fine. We do not give this notice on your behalf.

13. PURCHASING A UNIT – IF APPLICABLE

13.1. Body Corporate Disclosures

The seller must notify you of any notices of body corporate meetings they receive and of any resolutions passed after the contract date. If you are materially prejudiced by any resolutions passed after the contract date, you may be entitled to terminate the contract. If disclosure is not made before settlement, you may sue for compensation. Please tell us if you are or become aware of any of the following:-

- a) any proposal to record a new Community Management Statement or a notice of meeting for that purpose (which may include proposed adjustments to lot entitlements within the Scheme);
- b) whether all body corporate consents to improvements made by the seller to common property are not in place;
- c) whether the exclusive use allocations given to the lot are recorded or changed in the Community Management Statement (for example, car parking); and
- d) a change in the insurance details for the building and public liability for the body corporate.

13.2. Implied warranties given about the body corporate

The BCCM Act also contains certain implied warranties that the seller is deemed to have given you. Please tell us if you are, or become aware of any of the following:-

- a) any patent or latent defects in the common property or body corporate assets (for example, substantial building work that requires repair which can include common boundary walls of the lot or exclusive use areas and may include repairs required as a result of issues such as concrete cancer);
- b) any actual or contingent or expected liabilities of the body corporate not part of the body corporate's normal operating expenses (for example, significant debts or judgments that the body corporate is liable to pay or other liabilities that may result or have resulted in the levying of a special contribution); and

- c) anything else you are aware of regarding the affairs of the body corporate which may affect you.

If any of the above exist and are not disclosed to you before entering into the contract you may have a right to compensation and a right to terminate the contract up until 14 days after your copy of the contract is received by you or someone else acting on your behalf.

We recommend you instruct us to conduct a full search of the body corporate's records so we may determine if any of the above exists and any potential right of termination or to compensation.

13.3. Community Management Statement (CMS)

The CMS tells you which regulation module applies to the scheme.

The CMS also contains information regarding the CSLE and the ISLE.

The CSLE is the basis for calculating your proportion of body corporate administrative and sinking fund levies payable (except for insurance) and is the value of your voting rights on an ordinary resolution.

The ISLE is the basis for calculating your portion of the insurance premium, your share of the common property, your interest on termination of the scheme and the unimproved value of the lot.

The CMS specifies:

- a) the CSLE for the lot you are purchasing and the aggregate CSLE (which is the total of all CSLEs for all the lots in the scheme and determines what proportion of the body corporate levies you will be liable to pay compared to other lots);
- b) for a scheme established before 14 April 2011 the lot entitlements must be equal unless there is an explanation in the CMS as to why it is just and equitable in the circumstances for them not to be equal (however, no explanation is required if the scheme was established before 4 March 2003);
- c) for a scheme established after 14 April 2011:-
 - i) must state that the CSLE are based on the equality principle or the relativity principle;
 - ii) if the equality principle applies, the lot entitlements must be equal, unless there is an explanation in the CMS as to why it is just and equitable in the circumstances for them not to be equal;
 - iii) if the relativity principle applies, the CMS must include an explanation which demonstrates the relationship between the

lots by reference to one or more particular relevant factors, including the following:-

- how the community titles scheme is structured;
- the nature, features and characteristics of the lots;
- the purposes for which the lots are used;
- the impact the lots may have on costs of maintaining the common property; and
- the market values of the lots.

- d) the ISLE for the lot and the aggregate ISLE (which is the total of all ISLEs for all the lots in the scheme and determines what proportion of the body corporate insurance you will be liable to pay compared to other lots). For a scheme established after 14 April 2011, the CMS includes either a statement that the ISLE reflects the respective market values of the lots or an explanation as to why it is just and equitable in the circumstances for the ISLE not to reflect the respective market values of the lots.
- e) the by-laws which apply to the scheme. You should read these by-laws carefully as they are the rules which apply to the scheme; and
- f) if exclusive use areas have been allocated, include plans (and a supporting by-law) showing the exclusive use areas allocated to various lots in the scheme.

If you have concerns about how the ISLE or the CSLE have been calculated or the principle upon which the CSLE were decided, please contact us as soon as possible.

If the seller is the original owner for the community titles scheme established on or after 14 April 2011 and you reasonably believe:-

- a) the CSLE are inconsistent with the principle upon which they were decided; and
- b) you would be materially prejudiced if compelled to complete the contract,

you may terminate the contract before it settles, by notice in writing, given not later than 30 days (or a longer period agreed between the buyer and the seller) after you or your agent receives a copy of the contract.

The notice must identify the relevant section of the BCCM Act upon which you rely.

It is possible that the CSLE may be amended in the future and there have been significant legislative changes in the last few years concerning CSLEs and the ability to change CSLEs.

If a change is made to the CSLE the amount you pay for body corporate fees may be significantly different than what is disclosed now. If you have concerns and want advice on this issue please contact us.

The *Body Corporate and Community Management and Other Legislation Amendments Act 2012* (the Amending Act) changes the process for the review of Body Corporate CSLEs. As a consequence, the Scheme in which your lot is situated may be affected by a review of the CSLEs and as a consequence of the review, the proportion of the body corporate levies paid by lot owners may change.

The Amending Act also removes certain rights which existed for a lot owner to apply for a review of how the levies are calculated.

We are not familiar with your circumstances or the history of the body corporate and specific advice about these changes is outside the scope of our current retainer. If you are concerned about the potential impact of the Amending Act on your lot or any recent amendment to the CSLEs in the Scheme then you should seek specific legal advice on your particular circumstances.

13.4. Review of Caretaking and Letting Agreements

If you are purchasing as an investment and will be relying on the income from the letting arrangements then we recommend you instruct us to review the letting arrangements that apply to your lot and advise you of the foreseeable legal risks arising from the transaction.

There are many possible letting arrangements that may apply to your lot. Below is a list of documents that may exist and may apply to your lot:-

- a) a product disclosure statement under the *Corporations Act 2001* issued by the letting manager;
- b) a caretaking and letting agreement entered into by the body corporate with the manager;
- c) an agreement appointing a letting agent for your lot;
- d) a tenancy agreement or lease between the seller and any tenant of the lot;
- e) a leaseback agreement with the seller; or

- f) a rental guarantee offered by the seller.

If you have been given any of these documents we recommend that you should send them to us for review. The review of the documents listed above is not included in the scope of our retainer and will be at an additional cost to you.

If we review any of the above documents that apply to your lot we will not be providing financial or commercial advice about the viability of the lot as an investment. Our advice will be limited to the associated legal risks, for example issues such as:-

- a) costs associated with the entry into the investment, including commissions, entry fees, furniture;
- b) costs associated with exiting the investment including penalties;
- c) the terms and option periods of any leaseback to the seller or letting agent;
- d) legal risks which could impact on the income stream from the property, such as default by the seller or third party under the leaseback, possibility of insolvency, default under any rental guarantees, the lack of a guarantee, the adequacy of the guarantees;
- e) protecting you from risks of default by the seller or a third party;
- f) protecting yourself from future interest rate rises over the period of the investment;
- g) the practical difficulties of renegotiating leases after the expiry of the leaseback arrangement; and
- h) any restrictions on the use of the unit for residential purposes if you wish to cease the investment at some stage.

For commercial advice you should seek the advice of other professionals such as qualified accountants, financial advisors, real estate agent and valuers.

If you would like us to review any of the above documents that apply to your lot you should call us as soon as possible. We can provide an estimate of the legal fees to do this review for you.

13.5. Body corporate levies

The REIQ contract standard terms provide for the regular periodic contributions levied by the body corporate to be apportioned between the parties in the same way as rates.

The seller will be solely responsible for the payment of any special contribution for which the body corporate has issued a levy notice on or before the contract date. **You will be responsible for any special contribution levied after the contract date.** To comply with warranties the seller gives to you, the seller should disclose any special contributions to you in the contract (irrespective of which party is responsible for their payment).

13.6. Body corporate notices

The seller to notify you of any notices of body corporate meetings or any resolutions passed at a body corporate meeting after the contract date.

If you are materially prejudiced by any resolutions passed after the contract date and not disclosed in the contract, you may be able to terminate the contract.

If you are notified of or become aware of a body corporate meeting proposed to be, or actually held after the contract date you should contact us.

13.7. Body corporate searches

We do not carry out a search of the body corporate records as each body corporate is in different geographical locations and it would be uneconomic for us to do so. We can engage a search agent to conduct a body corporate records inspection on your behalf at additional cost.

The information received from a search agent is generally limited to a search of the most recent records and levies which are the matters most likely to impact on your purchase. It would generally be too expensive to conduct a more extensive search of all of the body corporate records.

Our advice to you will be limited to interpreting the search results in the reports received. Accordingly, our retainer does not include specific advice about any issues that would only be discovered by an extensive historical body corporate search, such as, for example:-

- a) lot entitlement changes (past, proposed or possible future amendments);
- b) checking that all meetings, motions, notices and other records of the body corporate are in order and in compliance with body corporate law and regulations (including meetings and motions originally allocating or subsequently re-allocating exclusive use areas);
- c) checking all past and present infringements of the body corporate by-laws by the seller and other body corporate members;

- d) a review of all the body corporate by-laws to check whether any are inappropriate, unenforceable or illegal;
- e) a review of the body corporate by-laws to check whether pets are allowed and on what conditions or body corporate records for past pet approvals;
- f) whether any statutory easements for services run through the lot or allocated exclusive use areas;
- g) body corporate agreements with body corporate managers, service providers or employees;
- h) other agreements that the body corporate may have in place, including those with other bodies corporate for the sharing of exclusive use areas such as car parking or facilities such as gyms or common areas;
- i) a review of any Building Management Statement and checking compliance with its terms; or
- j) other body corporate matters that will not generally give rise to statutory or contractual rights of termination or compensation.

There is a risk that not all adverse issues with a body corporate will be discovered. If you would like us to arrange a more extensive search of all body corporate records, please tell us urgently. Any additional searches and advice will be at extra cost to you.

14. COMBUSTIBLE CLADDING – IF APPLICABLE

○ *Building Regulation 2006 (Qld)*

Under Part 4A of the *Building Regulation 2006 (Qld)* (**Cladding Regulations**), which came into effect on 1 October 2018, an owner of a private building is required to undertake a process to identify whether the building is affected by combustible cladding. Cladding is a type of "skin" or extra layer installed on the outside of a building. Some forms of cladding are now known to contribute to the spread of fire on the outside of buildings. Works to remove combustible cladding or to address fire risk (if required) may be very expensive at the cost of lot owners.

The Cladding Regulations apply to a building if:

- the building is a class 2 to 9 building (which includes most residential and commercial buildings other than stand alone houses) of a Type A or Type B construction (which is essentially any building of at least three storeys);

- a building development approval was given after 1 January 1994 but before 1 October 2018 for constructing the building or for altering cladding on the building; and
- the building is owned by one or more private entities or private entities hold more than a 50% interest in the building.

In the case of a building that comprises 2 or more lots (such as where the building comprises a community titles scheme), the body corporate is taken to be the owner of the building.

○ **Rectification**

The purpose of the Cladding Regulations is to identify buildings which may be affected by combustible cladding. The Cladding Regulations do not impose obligations for removal of cladding or for other

rectification work. Removal or rectification work may be required in some cases to ensure compliance with relevant laws or insurance requirements, which may be a costly exercise. In some cases, fire safety measures in a building may adequately address risks arising from the cladding.

○ **Notice that a building is affected**

If a building is affected by combustible cladding, the building owner must display a notice to that effect in a conspicuous position near the main entry point to the building. Please note that the Seller can give you this notice at any time before ownership changes.

Please inform us if you believe that the building may have cladding, the Cladding Regulations may apply to the Property or if you have received any disclosure from the Seller which refers to the presence of combustible cladding.