

Residential Conveyancing Booklet



Acting for Seller of Residential Property

This document is only for use:

- (a) with REIQ House and Land Contract, 11th Edition or REIQ Contract for Residential Lots in a Community Titles Scheme, 7th Edition;
- (b) for contracts formed from 1 December 2014; and
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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.

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 buyer. 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 sell the property and need advice about any possible termination options that might exist.

Any such rights have strict time limits, may be subject to the Court considering you to have lost them by actions or steps you take in the conveyance - particularly those you take after you become aware of those rights. It is critical that if we have advised you about any rights and you consider that you may want to rely on them that you contact us as soon as possible to discuss. Otherwise any rights or options may be lost.

2. OUR RETAINER

2.1. What is included in our retainer?

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

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

a) **Financial and tax advice**

We do not give advice on the commercial viability, tax and other financial implications of the sale. If you require advice on the commercial viability or the tax implications of the sale (including Capital Gains Tax and Goods and Services Tax and land tax) you should seek the 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.

Advice from your tax accountant or financial advisor could be particularly relevant for circumstances which may include if you bought the property before the CGT or GST regimes were introduced or are selling an investment, with or as part of a business, you substantially renovated or developed the property, you are the executor of an estate or you did not use the property solely as your main residence.

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

b) **Succession and matrimonial advice**

This transaction may affect your succession planning or any arrangements with your current or former spouse (whether a marriage, de facto relationship or registered relationship). We recommend that you obtain legal advice about wills and other succession planning and any family law agreements or other spousal arrangements.

c) **Survey**

We do not conduct a survey of the property. Issues such as errors in the boundaries, area of the land or encroachments by structures onto or from the land are not likely to be identified unless a survey is conducted. While it is not usual for a seller to conduct a survey, a buyer may have rights of termination or compensation if any encroachments are identified and notified before settlement. If you are aware of any of these issues affecting the land please tell us so they can be disclosed in the contract.

d) **Eligibility for grants, schemes and concessions**

If you have previously obtained the first home owners grant, first home owners construction grant, building boost, great start grant or a first home, home or first home vacant land duty concession, your sale of the property may affect your continued eligibility for these schemes. We do not check whether you will have any obligation to refund a part or all of your entitlement to a concession or grant. See paragraphs 7.3 and 7.4 for further information.

e) **Building contracts and other related agreement**

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.

f) **Document Retention**

We may not retain documents from your sale indefinitely. The timing of destruction will depend on authorities you may give us.

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

g) **National Rental Affordability Scheme (NRAS) lease or arrangement**

We will not be providing advice on any NRAS lease related to your sale 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 you may suffer loss.

3. EXPLANATION OF THE CONTRACT 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 with the buyer, often with the assistance of a real estate agent;
- b) auction, where terms are set by you and the price determined by competitive bid, 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 (11th Edition); and
- b) Residential Lots in a Community Titles Scheme (7th Edition).

You should read your contract in detail.

In this section we point out contract terms important to your sale. This advice is of a general nature and may differ if your contract has been altered by the inclusion of specific special conditions.

You should read our review of your contract in the Report for advice on your particular contract.

3.3. Reference Schedule

The reference schedule contains the particulars relevant to your contract. You must check they are accurate 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 or else the buyer may either terminate or seek to enforce the contract. In both cases, the buyer 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 on the 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. The party affected must make all reasonable efforts to minimise the effect of the natural disaster on its ability to perform its settlement obligations.

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. If this becomes relevant we will advise you.

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 the buyer must pay interest on any late payment from the due date for payment until the payment is made. 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 the buyer's intention to proceed with the contract. It is usually a substantial amount (but no more than 10%). If the deposit is only a nominal amount and the buyer is a corporate entity, you can instruct us to request

director or other guarantees prior to the contract being signed.

The deposit is generally held in trust by an agent or lawyer until settlement and following settlement the deposit will be paid to you (usually less the agent's commission).

If the buyer terminates the contract for a valid reason, then the deposit is usually repaid to the buyer. If the buyer does not pay the deposit on time or the buyer otherwise breaches the contract, you may be able to terminate the contract or seek an order from the court requiring the buyer to settle. You may be able to keep the buyer's deposit and recover from the buyer any part of the deposit not paid. If you are obliged to pay GST you will have to pay GST on the kept deposit. You may also be liable to pay your agent's commission but may be entitled to claim this and other compensation from the buyer.

3.8. Finance

If the contract is subject to finance, the buyer is required to take all reasonable steps to obtain finance approval and notify us as to whether finance is approved before 5:00pm on the finance date. If the buyer does not notify us that finance is approved then the contract remains on foot and either party can terminate the contract. The buyer also has a continuing right to give notice of receipt of satisfactory finance or alternatively to waive the benefit of the finance condition up until the time the contract is terminated by you.

3.9. Building and Pest Inspections

If the contract is subject to building and pest reports, the contract requires the buyer to take all reasonable steps to obtain the reports – although the buyer may elect to only obtain one of the reports.

The buyer must use licensed inspectors for the reports and reports must be in writing, otherwise the buyer will not be able to terminate the contract on the grounds that they are not satisfied with the building or pest inspection. If the lot you are selling is a lot in a Community Titles Scheme, the reports must relate to the lot itself.

The buyer must notify us as to whether the reports are satisfactory before 5:00pm on the inspection date. If the buyer does not notify us that the building and pest reports are satisfactory then the contract remains on foot and either party may terminate.

If the buyer terminates the contract then you are entitled and we recommend that you request a copy of any reports from the buyer. The buyer must provide them without delay. If the buyer gives notice of an unsatisfactory report, contact us as soon as possible to discuss getting a copy of the report and whether the buyer would be 'acting reasonably' by terminating in the circumstances.

The information in the report may assist you to negotiate to keep the current buyer or it may assist you to rectify the deficiency in the property or adopt a different marketing strategy.

The buyer also has a continuing right to give notice of receipt of satisfactory reports or waive the benefit of the building and pest condition up until the time the contract is terminated by you.

3.10. Cheques for settlement

The contract only requires the buyer to pay for bank cheques for the seller and the seller's financier. If you require additional bank cheques you must pay the cost of those at settlement, unless the buyer agrees in writing before settlement to draw trust cheques for those amounts. If you request additional cheques to be drawn as trust cheques and the buyer or buyer's bank draw them as bank cheques then the buyer will be responsible for the cost.

3.11. 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) verify that all requests for transfers of money have been legitimately requested by our law practice or your bank – despite how legitimate the request may appear;
- b) do not transfer any money to any account other than our trust account (at our request – details of which are in the To-Do List) or to your existing bank or mortgage accounts (at your bank's request) – without first verifying 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 bank 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) try to avoid at all costs sending personal and sensitive information such as bank account numbers via email; and
- e) where instructions are requested or advice is provided via email, independently confirm them by another form of communication.

4. INSURANCE

The property is at the buyer's risk from 5:00pm on the first business day after the contract date. Despite this, we strongly recommend that you maintain your insurance policy until we have confirmed that settlement has been effected. There are many circumstances in which the risk will pass back to you without notice (even after the contract is unconditional) and failure to maintain adequate insurance could result in significant loss to you.

You have a continuing obligation until settlement to take reasonable care of the property and if the property becomes "unfit for occupation" as a dwelling before settlement, then the buyer may have a right to withdraw from the contract.

However, if the property is damaged in any way between the Contract Date and settlement (for example, due to fire or vandalism) then you will likely be able to require the buyer to settle in accordance with the contract irrespective of the damage (unless the buyer has another right of termination it can exercise, such as a residence being so destroyed or damaged as to be unfit for occupation).

5. HOW DOES THE PROPERTY OCCUPATIONS ACT 2014 ("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 a publicly listed corporation or a subsidiary of a publicly listed corporation or where the buyer is the State or a statutory body or where the buyer is purchasing at least three lots at the same time (even if under separate contracts).

5.2. Cooling off Period

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

The cooling off period starts on the day the buyer receives from you or your 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 you signed the contract before the buyer did, the cooling off period starts on the day that the buyer signed the contract and communicated the buyer's acceptance of your offer.

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

The buyer is entitled to terminate the contract during the cooling off period. If the buyer exercises that right, you 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 the buyer within 14 days after the termination.

The buyer may shorten the cooling off period or waive the benefit of it entirely by giving written notice to you of the shortening of the waiver. It is up to you whether you wish to insist on this from the buyer or not. If you require the buyer to shorten or waive the benefit of the cooling off period please call us to discuss this.

5.3. Particular words to be included in contract

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

If the required statement is not included in the contract, you or your agent may have committed an offence under POA and be liable to a fine of up to \$22,000. Please note that any non-compliance will

not affect the validity of the contract or give the buyer a right of termination. The standard REIQ contracts for residential property include the required notice.

6. WARRANTIES AND DISCLOSURE

6.1. Seller's warranties

Under the contract the seller gives warranties about various things which could affect the property, in particular:

- a) that you are the registered owner of the property;
- b) you are capable of completing the sale;
- c) there are no unsatisfied judgments, orders or writs affecting the property (and if a unit, the common property) and no current threats or claims that might lead to a judgment order or writ affecting the property (and if a unit, the common property);
- d) there are no unregistered encumbrances, leases or other dealings;
- e) in relation to the *Environmental Protection Act 1994* ("EPA"):
 - i) there is no outstanding obligation to give notice under the EPA of a notifiable activity on the land (including the scheme land if in a body corporate);
 - ii) you are not aware of facts or circumstances that may lead to the land being classified as contaminated under the EPA (including the scheme land if in a body corporate).

6.2. Consequence of breach of warranty

If you breach any of these warranties the buyer generally may:-

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

6.3. Property adversely affected

If the property (including any part of the Scheme Land if the property is in a body corporate) is affected at the contract date by any of the following:-

- a) the present use is not lawful;
- b) the land is affected by a proposal of a competent authority e.g. Transport Infrastructure;
- c) access or any services to the land passes unlawfully through other land;

- d) an authority has issued a current notice to treat, or notice of intention to resume;
- e) the property is affected by the *Queensland Heritage Act 1992* or is included in the World Heritage List;
- f) the property is declared acquisition land under the *Queensland Reconstruction Authority Act 2011*;

and these facts are not disclosed in the contract, then the buyer is entitled to terminate the contract up until 2 business days before settlement. If the buyer does not terminate in accordance with the contract, the buyer will be treated as having accepted the property subject to these issues.

6.4. What you may need to disclose

To enable us to make the appropriate disclosure or to advise you on the consequences of disclosure having not been made, please call us if you are aware of any of the following, or other particular or unusual features affecting the property, such as:

- a) unregistered encumbrances and other government rights or interests that may affect the property, for example, water, sewerage or combine drains through the property;
- b) urban encroachment – if in the Milton Rail Precinct or other declared area – an affected area notice (see comments in clause 6.7)
- c) access rights for geothermal exploration or production under the *Greenhouse Gas Storage Act 2009*, *Geothermal Energy Act 2010*, or the *Petroleum and Gas (Production and Safety) Act 2004*;
- d) notices to do work issued by the local government or any court or tribunal;
- e) building covenants;
- f) easements;
- g) equitable mortgages;
- h) leases;
- i) known minor encroachments by fences or trees;
- j) any heritage listings;
- k) declarations of beach area;
- l) road widening or any notice of a proposed road widening;
- m) proposed resumptions;
- n) any unsatisfied judgments, orders or writs affecting the property, the common property or body corporate assets;

- o) any threatened claims notices or proceedings that may lead to a judgment order or writ (e.g. orders or applications to QCAT in relation to trees on the property); or
- p) ongoing conditions of development approvals, for example, the existence of a bushfire management plan affecting the property.

If you fail to make proper disclosure in the contract the buyer may have rights to terminate the contract and claim compensation. For example, if you fail to disclose in the contract that a sewerage or drain line passes over or under your property this will be a defect in title which, if material to the buyer, may allow the buyer to terminate the contract or claim compensation.

6.5. EPA Disclosure

The *Environmental Protection Act 1994* (“EPA”) requires that you make a specific disclosure before entering into an agreement with the buyer if any of the following are applicable to the land (including the 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 a notice or evaluation under the EPA generally about possible contamination or notifiable activities on the land such as underground fuel storage); or
- c) a magistrate has issued an order under the EPA for an authorised person to enter the land to conduct an investigation or to carry out work.

If any of these situations arise and they are not disclosed in a notification by you under the EPA before the buyer enters into the contract then the buyer may terminate the contract by notice given before the earlier of settlement or possession. If you do not comply with these disclosure obligations, you may still give disclosure after the contract has been entered into, but in that case the buyer will be given a period of 21 days after your disclosure to terminate the contract.

If the buyer terminates the contract because of your failure to make relevant disclosure, all money paid by the buyer under the contract must be refunded.

Please contact us as soon as possible if you think any of these issues may apply to the land or if you think that it may be contaminated (including the common property if in a community titles scheme). If the contract has not been signed it is important that these issues be disclosed in a notice to the buyer before entering into the contract.

6.6. Administrative Advices

Administrative advices may also reveal other interests impacting on the land that require disclosure by you such as heritage listing or agreements, coastal protection notices, nature conservation orders, vegetation clearing offences or Milton Brewery notices (for a unit).

In addition, if an administrative advice is lodged on the title where land is declared acquisition land under the *Queensland Reconstruction Authority Act 2011* (Qld) then the following applies:

- a) you are not able to sell the land other than to the relevant authority; and
- b) if you do want to sell the land the relevant authority must acquire it.

If as at the Contract Date the land is declared to be acquisition land and disclosure has not been made in the contract then the buyer may be entitled to terminate the contract by giving notice no later than 2 Business Days before the Settlement Date.

If there is an administrative advice of this nature on your land, you should not sign a contract to sell the land to any person other than the relevant authority. However, if you have already signed a contract:

- a) the contract is not invalid and the buyer is treated as having received notice that the land is declared acquisition land;
- b) your rights as seller and any rights that the buyer may have will depend upon the terms of the contract, including possible rights of termination for the buyer.

If a coastal protection or tidal works notice is given under the *Coastal Protection and Management Act 1995* (Qld), then this should appear as an administrative advice on the title. If you sell land which is subject to an undischarged coastal protection or tidal works notice then the contract may be of no effect unless you give the buyer 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 into the contract.

There may also be unregistered interests affecting the title under statute such as access agreements under the *Greenhouse Gas Storage Act 2009*, *Geothermal Energy Act 2010*; *Petroleum and Gas (Production and Safety) Act 2004*. Please tell us as soon as possible if you think any of these issues may affect the property.

The buyer rights in relation to any administrative advice depend on the content of the notification which gives rise to the administrative advice and the extent of disclosure in the contract or otherwise, including possible rights of termination.

6.7. Urban Encroachment

Chapter 8A of the *Sustainable Planning Act* (“SPA”) contains provisions about Urban Encroachment.

These provisions provide for the registration of specific administrative advices on title in geographical areas that are known to be affected by the emission of aerosols, fumes, light, noise, odour, particles or smoke.

SPA requires:

- a) registration of existing uses;
- b) mapping of affected areas;
- c) the lodgement of an affected area notation as an administrative advice on the title; and
- d) restrictions on the owner or occupier of affected premises, which are the subject of an application for intensification of use from taking proceedings against any person carrying out an existing use who has acted in compliance with the conditions of its approval and any environmental laws.

There is no statutory or contractual right to terminate a contract if it is discovered that the property being sold is in an affected area, except in the Milton Rail Precinct as set out below.

If you are selling a lot in a CTS in the Milton Rail Precinct which is subject to a current development application made before 27 April 2009 the buyer is entitled to terminate the contract unless the buyer has received an affected area notice before the buyer entered into the contract of sale. If you are unsure as to whether this applies to your lot, please contact us as soon as possible.

In addition, for premises which are in an affected area, you or your agent must before leasing the premises, give a notice to any tenant stating that the premises is in an affected area and noting the restriction on the tenant taking proceedings about the emission of aerosols, fumes, light, noise, odour, particles or smoke from registered premises in the affected area.

6.8. Owner-Builder Notice

If:

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

then before a contract is signed you must give the buyer 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*. The buyer must sign 1 copy of the notice and return it to you on or before signing the contract.

If a required notice and warning are not given as set out above, then you will be taken to have given the buyer a contractual warranty that the building work was properly carried out. The effect of this is that if the work turns out not to have been properly carried out then the buyer may have a right to claim compensation from you.

Please let us know if you conducted any work as an owner-builder so that we can prepare the relevant notice.

6.9. Consumer Guarantees

In some circumstances where goods are being supplied as part of the sale of the property, the consumer guarantees contained in the Australian Consumer Law will apply. These guarantees cannot be contracted out of, however, where:

- a) the value of each of those goods (if sold separately) is under \$40,000; and
- b) the goods are not goods of a kind ordinarily acquired for personal, domestic or household use, for example industrial air-conditioning or other plant,

then it is possible to limit your liability under some guarantees to the repair or replacement of those goods, that is, you can limit claims for any other reasonably foreseeable loss or damage resulting from failure to comply with a consumer guarantee.

If you think this applies and you would like us to include a special condition to limit your liability in this way, please contact us to discuss.

6.10. Neighbourhood Disputes

Please tell us if you are currently in dispute with neighbouring property owners about fences or trees as these disputes may need to be disclosed to the buyer. In particular, please tell us if you are aware of any:

- a) notices to fence from a neighbour;
- b) applications to the Queensland Civil and Administrative Tribunal (“**QCAT**”) in relation to fencing or trees; or
- c) QCAT orders in relation to fencing or trees affecting the property.

In relation to trees:

- a) you must give copies of these documents relating to trees to the buyer before the buyer enters into the contract and specific disclosure

may need to be made in the contract. If copies of documents relating to trees are not given then you may be liable to pay a significant financial penalty and the buyer may terminate the contract at any time before settlement or you may be liable to comply with the order following settlement.

- b) if the buyer terminates in these circumstances before settlement you may also be liable for the buyer's reasonable legal and other expenses incurred by the buyer in relation to the contract after the buyer signed the contract; and
- c) if the buyer completes the purchase and you have not completed all work in relation to a QCAT tree order which has not been given to the buyer before they entered into the contract, you will remain liable to carry out the work required under the order.

In relation to fences:

- a) you have warranted in the contract that there are no unsatisfied fencing notices, orders or applications existing at settlement that were not disclosed in the contract to the buyer; and
- b) if an unsatisfied notice, order or application exists at settlement then the buyer may be entitled to terminate the contract or claim compensation from you.

You are also obliged under the contract to promptly give the buyer a copy of any notice, proceeding or order, received after the contract date that affects the property.

You must not, after the contract date, give any notice to another party or seek or consent to any order or agreement that affects the property without the buyer's prior written consent.

Please contact us as soon as possible with details of any disputes relating to dividing fences or trees so that we can ascertain if disclosure has, must or can still be made and advise you accordingly.

7. IMPORTANT CONTRACTUAL INFORMATION FOR YOU TO CONSIDER

7.1. 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 the buyer may be able to terminate the contract up until 2 business days before the settlement date.

7.2. Instalment Contract

We need to determine if your contract is an 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 10% of the rebated purchase price; or
- d) the buyer is required to pay money to you (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 the buyer defaults in the payment of any instalment or part of the purchase price (other than a deposit) you cannot hold the buyer in default under the contract until 30 days after you serve a notice on the buyer giving them 30 days within which to make payment. If the buyer chooses to make payment within the 30 day period (including any default interest payable under the contract) then you cannot terminate the contract as a consequence of the buyer's initial non-payment. This means that where the default is in the payment of the balance purchase price, the buyer can effectively obtain another 30 days in which to settle;
- b) you are prohibited from re-selling or re-mortgaging the property before settlement; and
- c) you 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.

An instalment contract should be avoided or, at the very least, you should be aware the contract is or has become an instalment contract.

7.3. Transfer Duty

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

It is a liability of both the seller and buyer. However the contract determines that it is the responsibility of the buyer to pay this liability. If the buyer does not pay the duty then the Office of State Revenue may seek recovery of the duty from you as seller. This is, however, unlikely as the buyer will need to pay duty before the property can be registered in the buyer's name.

You must tell us if you have a business or personal relationship with the buyer or if the consideration for the sale is less than market value. If so, this will have duty implications and the buyer will need to obtain a valuation of the property using 3 comparable sales in the last 3 months for duty assessment purposes. If applicable, it is important that we alert the buyer's lawyer to this fact as if the buyer does not fulfil its obligations regarding the payment of duty then the Office of State Revenue can seek to recover any shortfall directly from you including penalties and interest. Recovery of incorrect or unpaid duty from you may occur years after settlement and could compound into substantial amounts. You should call us to discuss if you think this may apply in the circumstances of this sale.

If you obtained a transfer duty concession when purchasing the property on the basis that you would not dispose of it for a period of at least 12 months from occupying it as your principal place of residence, then you should now review whether you have met your obligations. If you:

- a) purchased an existing home and did not occupy the home within 12 months of settlement;
- b) purchased vacant land to build on and you have not built and occupied the house within 2 years;
- c) had the seller or the seller's tenants in the residence and they did not vacate the property within 6 months of settlement or the tenants stayed longer than the original lease; or
- d) have already transferred, leased, rented, or otherwise granted exclusive possession of your property within 12 months of occupying the house as your principal place of residence; or
- e) never occupied the house as your principal place of residence at all;

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

7.4. First Home Owner's Grant, First Home Owner's Construction Grant, Qld Building Boost Grant and Great Start Grant

If you obtained either the First Home Owner's Grant, the First Home Owner's Construction Grant, the Queensland Building Boost Grant or the Great Start Grant and if now, due to the current sale, you no longer satisfy the eligibility requirements for those grants, you should notify the relevant State Government departments who administer those grants with details of the sale as you may be required to repay some or all of those grant monies. To investigate whether you are required to notify, you should check the forms signed and information received when you applied for the grants, and the Office of State Revenue website (<http://www.osr.qld.gov.au>).

We do not give any advice or reminders in relation to these grants or whether you may have to notify and repay money. You should check this for yourself.

7.5. Survey

Under the contract the buyer is entitled to survey the land to establish if there are errors in the boundaries or area of the land, there exists any encroachment onto or from the land or there are mistakes or omissions in describing the property. If any of these issues arise then the buyer may be entitled to claim compensation or terminate the contract providing notice is given to you before settlement.

7.6. Pre-settlement Inspection

Under the contract the buyer is entitled (after giving reasonable notice to you) to enter the property once for the purpose of conducting a pre-settlement inspection to check on the condition of the property. You need to co-operate with the buyer and if a request for inspection is received, we suggest you make arrangements directly with your agent and ensure your agent is present when the buyer inspects the property.

You should ensure that you do not modify the property in any way after the contract date, otherwise the buyer may be able to terminate the contract or claim compensation from you (if the modifications are significant and the issue is raised before settlement).

7.7. Transfer documents

All parties comprising the seller need to sign the transfer documents. Any individuals must sign in the presence of a Justice of the Peace, Commissioner of Declarations or a Legal Practitioner and a company must have two directors, a director and a secretary or if a sole director company, the sole director can sign. You will need to arrange for all signatories to be in a position to sign the transfer documents expeditiously once they are received. If you would like to attend at our office for the purpose of executing transfer

documents please let us know and we will call you once the transfer documents are received.

7.8. Keys and codes

At settlement, you must deliver to the buyer all keys, codes or devices in your possession or control for all locks or security systems on the property. You will need to make a written record for the buyer of all codes and combinations, if applicable, necessary to fasten or unfasten any lock including electronic devices in the property. If the buyer requests that we deliver the keys at settlement you will need to deliver them to our office before settlement. This request only needs to allow 2 clear business days. Failure to deliver the keys as requested may result in the buyer terminating the contract and seeking compensation from you. The usual situation is that the keys are left with the agent before settlement for collection by the buyer after the agent is notified that settlement has been effected.

7.9. Chattels

Before settlement you must remove all chattels not included in the sale and any substantial rubbish on the property. You 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 that both your property and any tenant's property must be removed before the actual time of settlement on the settlement date.

7.10. Information regarding the property

If requested before settlement, you must give the buyer:

- 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 after settlement;
- c) sufficient details (including the date of birth of each seller who is an individual) to enable the buyer 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 have that may be requested. The buyer may be entitled to claim compensation if this information is not provided and as a result the buyer suffers loss.

7.11. Utility Services

No adjustments are made at settlement for charges for usage of electricity, gas, telephone, internet or pay-TV and other utility services. We recommend that you arrange for disconnection of these services on the proposed settlement date so that readings and charges only up to that date are billed to you.

Please note that you should check your agreements with service providers for any fees or terms relating to discontinuing the service as this is beyond the scope of our retainer.

7.12. Agent's commission

If your property is being sold through an agent, we will let the agent know when settlement has been effected. If the agent holds the deposit then the usual procedure is for the agent to deduct commission from the deposit and forward the balance (if any) to you.

If the deposit is not sufficient to pay the agent's commission then you will need to arrange to pay any balance to the agent.

You should be aware that the agent is not entitled to charge you a commission where the agent sells your property to a related party such as a family member, an agent from their agency or a family member of an agent at their agency. If you believe this may apply to your transaction, you should contact us as soon as possible. Any advice on whether the agent is entitled to charge you a commission is outside the scope of our retainer and may incur additional legal fees.

7.13. Land tax

The standard position under the contract is that you will be responsible for all land tax for the land for the land tax year current at the settlement date. This means that if you are liable for land tax in relation to the land you will not be able to recover from the buyer the amount of the land tax liability for the parcel being sold attributable to the period following settlement unless the standard contract is amended to allow recovery of land tax.

7.14. Rates and Water Notices

Please forward to us a photocopy of the latest Council Rates and Water Utilities Notices for the property and tell us if they have been paid or are still outstanding. If the notices are still outstanding you should instruct us as to whether you intend to make payment before settlement and, if so, provide us with evidence that the council/water provider has received payment before settlement. (This is so we can calculate the appropriate adjustments.)

7.15. Land Valuation Act 2010

An administrative advice called a Land Valuation Act Notice may be recorded on title. If applicable, this

notice alerts potential buyers that a deduction for site improvement or an offset allowance applies to the land. You should specifically instruct us if you have applied for or have been granted any deduction or allowance as in certain circumstances the Land Valuation Act Notice may not yet have registered on the title to your property and may register before settlement.

Where there is a change of ownership, a deduction for site improvement or an offset allowance will no longer apply. The unadjusted value will then be used for the calculation of local government rates, state land rent and land tax.

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

If you are a Seller with a deduction for site improvement or an offset allowance:

- a) you need to be aware that the deduction for site improvements will be lost on a sale and this will impact on the land value for rating and taxing purposes;
- b) you need to ensure that neither you nor any real estate or other agent acting on your behalf makes representations to the buyer about the rates or tax liabilities that are currently payable or that will be payable by the buyer after the property has settled as this information could potentially be misleading to the buyer and could impact on the buyer's decision to ultimately purchase the property; and
- c) we suggest you check to make sure the offset allowance or deduction has reduced your rates and land tax.

7.16. Smoke Alarms

Failure to install compliant smoke alarms is an offence under the *Fire and Emergency Services Act 1990*. If the property does not have compliant smoke alarms installed, you should ensure this is done immediately. You will need to declare whether compliant alarms are installed, in the transfer documents.

7.17. Electrical Safety Switch

Please let us know if an approved electrical safety switch for general purpose socket outlets has been installed in the property under the Electricity Regulations.

7.18. Early possession

There are a range of issues you should consider before agreeing to early possession, such as

implications on land tax liability, recovering possession and general risk of damage to the property. If you agree to let the buyer into possession of the property before settlement, the contract provides that:

- a) the buyer must maintain the property in substantially its condition at the date of possession (except for fair wear and tear (which means that the buyer must not only look after the property but must refrain from making any alterations to the property including any improvements on the land and any landscaping);
- b) the buyer's entry into possession is under a personal licence that you can revoke at any time;
- c) the buyer must insure the property to your satisfaction;
- d) the buyer indemnifies you against any expense or damages incurred by you as a result of the buyer's possession of the property.

You may also choose to impose other conditions that you deem appropriate before agreeing to grant early possession. We can discuss other possible conditions if you receive a request for early possession.

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

- a) the buyer does not settle and has not maintained the property – you may need to seek compensation from the buyer;
- b) the buyer does not settle and has improved the property in any way – although you are not specifically required under the contract to compensate the buyer for any improvements the buyer may commence court action to seek compensation, which may be costly;
- c) you revoke the buyer's licence to possession (which you can do for any reasonable reason and at any time) and the buyer resists eviction from the property, does not repay your costs of eviction or you suffer loss whilst the buyer is being evicted (e.g. you cannot tenant or sell the property) and are not successful in claiming compensation from the buyer for that loss; or
- d) you unsuccessfully seek to enforce the indemnity the buyer has provided to make a claim for any expenses or damage incurred as a result of the buyer's possession (e.g. the buyer becomes bankrupt).

The rights of both parties under the contract may be affected by the buyer taking possession of the

property before settlement. In some limited circumstances, it may be to your advantage to grant early possession to the buyer.

If you are considering granting early possession to the buyer please contact us.

8. ELECTRONIC CONVEYANCING (OR E-CONVEYANCING)

8.1. What is e-conveyancing?

E-conveyancing is a recently introduced system which allows for an “electronic” settlement of a conveyancing transaction through an online exchange known as PEXA. The system will operate across Australia and is supported by legislation in Queensland.

The system does not cover all aspects of the conveyancing process but does allow for the preparation and signing of documents and their lodgement in the Land Titles Office as well as the completion of financial transactions involved in a conveyance (such as the transfer of settlement money and the payment of transfer duty) to occur electronically. Traditionally, each of these steps is handled by a paper process where printed documents would be signed by parties and documents and cheques for settlement funds are physically exchanged at settlement.

The main advantage of an electronic settlement process is efficiency. Not only does the process make it unnecessary to attend a physical settlement for exchange of documents and funds, when the exchange occurs, cleared funds are credited to the recipient’s account within a very short time. This has particular benefits for a seller who will not be required to wait for cheque clearing procedures following a settlement.

8.2. When can e-conveyancing be used?

The electronic settlement process cannot be used for all conveyancing transactions. The process is only available to financial institutions and legal practitioners. It could not be used, for example, where a party chooses not to engage a legal practitioner. It is important to note that the process can only be used if all parties agree to use it (ie, there is no compulsion to use the system).

8.3. Client Authorisation and verification of identity

We require your authority to use e-conveyancing for settlement of the transaction. That authority must be provided in the form of the Client Authorisation (which will accompany our First Letter if we are

subscribers to PEXA and are able to use e-conveyancing for settlement of the transaction). A separate Client Authorisation form must be signed by each seller and confirm your right to deal with the property.

As a Client Authorisation allows us to undertake the settlement of the transaction on your behalf (and to sign documents for you), we are required to undertake a prescribed process to verify your identity. This will require you to attend at our office for a face-to-face meeting where you will need to produce identity documents and sign the Client Authorisation. Please contact us to discuss details of the identity documents required. If it is not possible for you to attend at our office for a face-to-face meeting, arrangements can be made for an agent to undertake the verification of identity process. Please contact us to discuss this option.

8.4. Risks of using e-conveyancing

Although the system may have advantages for the parties in relation to the efficiency of arranging settlement and the transfer of funds, a party contemplating the use of the system should be aware of the following risks:

- a) The electronic settlement may be delayed by system failures. The contract provides that if a settlement cannot occur by 4pm (AEST) on the settlement date because a relevant computer system is inoperative, a party will not be in default (despite that time is of the essence of the contract) and the settlement date is deemed to be the next business day. While that risk also exists in circumstances where a traditional (paper based) settlement process is used, in the electronic environment the extension of the settlement date will be automatic. Generally speaking, apart from where the Land titles Office computer fails and titles cannot be searched, in a traditional settlement, any extension will still be a matter for negotiation between the parties (ie, a party is not automatically entitled to an extension of time because of the failure of its financier’s computer system) and a party may impose conditions on an extension to protect itself from financial loss.
- b) A party to a transaction may, after having previously agreed to use the system, elect to withdraw from it. The contract allows a party to elect not to proceed with electronic settlement by giving written notice to the other party. That notice cannot be given later than 5 business days before the settlement date unless the transaction is excluded by the rules applying to the use of the system, a party’s solicitor is unable to complete the transaction due to death,

a loss of legal capacity or the appointment of a receiver or administrator or where the financial institution of a party is unable to settle using the system. If one of the exceptions applies, the settlement date will be extended by a period of 5 business days. This means in practice that the parties will still need to prepare for a traditional (paper based) settlement process to ensure that if one party withdraws from the electronic process, the seller is still able to satisfy its settlement obligations on time. Having to prepare for both methods of settlement may erode the efficiencies and costs savings of the electronic process and may well add to the work involved in preparing for settlement.

- c) One of the main advantages of electronic settlement is the transfer of funds to the recipients of the settlement proceeds within a very short time. This will include not only the seller and the seller's financial institution but also authorities to whom money is paid to discharge an outgoing. Any arrangement that involves the transfer of funds to a nominated bank account carries with it the risk that an error may result in funds being credited to the wrong account. The speedy transfer of funds may make any wrongfully transferred funds more difficult to track or recover.
- d) A traditional settlement involves a physical exchange of documents and funds (provided by bank cheques) and, generally speaking, at any time until that exchange has taken place a party may refuse to settle. An electronic settlement will require the respective parties to commit themselves to settlement of the transaction at an agreed time for settlement (when the workspace for the transaction will lock). The settlement process is to commence at this time and, unlike a traditional settlement (where settlement may be aborted until final exchange), the parties will not be able to abort the settlement after the workspace locks and the settlement process has commenced. Any rights that you might have under the contract are not able to be exercised from locking.

If you have any questions about how e-conveyancing works or whether it may be used for your transaction, please contact us to discuss them.

9. PERSONAL PROPERTY SECURITIES

9.1. 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 the buyer which is not a fixture. Title to that personal property must be transferred at settlement free from encumbrances.

9.2. 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 goods other than fixtures 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 (eg if they are affixed, and if so, how).

9.3. 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 we will seek to obtain (on your behalf) from the secured party either a letter or financing change statement, which releases the personal property being sold and provide it to the buyer 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 secured party.

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, is subject to a security interest and is being sold for “new value”.

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

10. POOL SAFETY

10.1. 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 to comply with the standard unless they sold their property before this time in which case the standard would become applicable at the time of the sale.

10.2. 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.

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

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

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

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 or Exemption Certificate in effect, you must not enter into a contract to sell the property without giving the buyer a Form 36 Notice of No Pool Safety Certificate.

In addition, if you will not be giving a Pool Safety Compliance or Exemption Certificate you must, before settlement, notify the chief executive of the Department of Housing and Public Works that a Pool Safety Certificate is not in effect. We will provide a copy of the Form 36 Notice of No Pool Safety Certificate to the chief executive.

If you indicated in the contract that a current Pool Safety Compliance or Exemption Certificate exists then you must hand over a copy of a current Pool

Safety Certificate, building certificate that may be used instead of a Pool Safety Certificate or an exemption from compliance before settlement, failing which the buyer can terminate the contract. If any of the certificates expire before settlement, you must obtain a new certificate before settlement.

If you indicate that there is no Pool Safety Compliance or Exemption Certificate or do not complete the questions, (unless the contract is one mentioned in items 5.1(b) to (e) above) the contract is conditional upon the buyer obtaining from a licensed pool safety inspector:

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

Under the contract, the buyer has until the Pool Safety Inspection Date to notify us that:

- a) a pool safety inspector has issued a Pool Safety Certificate in which case neither party has further rights; or
- b) if a Pool Safety Certificate is not issued, that the buyer terminates the contract. The buyer must act reasonably in making this decision; or
- c) the buyer elects to waive the benefit of the condition and proceed to settlement, in which case the buyer becomes responsible for obtaining the Pool Safety Certificate within 90 days of settlement.

You are also entitled to obtain a Pool Safety Certificate in this period and if you do then you should tell us and we will give notice that the condition is satisfied and the buyer's right to terminate will end. You may prefer to obtain the Pool Safety Certificate yourself in circumstances where you want to avoid the possibility of the buyer terminating the contract because a Pool Safety Certificate is not obtained by the buyer, for example if there is some minor non-conformity.

If a Pool Safety Certificate has not issued and the buyer does not give notice, the contract remains on foot and both you and the buyer have a right to terminate the contract, unless a copy of a current Pool Safety Certificate is received. The buyer also has the right to waive the benefit of the condition.

10.4. Shared Pool

In the case of a shared pool (e.g. a pool on the scheme land of an apartment building) the body corporate is responsible for obtaining the Pool Safety Certificate. You have an obligation where a Pool Safety Certificate is not in effect, to give a Notice of No Pool Safety Certificate to:

- a) before the buyer entering the contract – to the buyer; and
- b) after settlement - the body corporate (being the owner of the shared pool) and the chief executive of the Department of Housing and Public Works.

We will provide a copy of the Form 36 Notice of No Pool Safety Certificate to the chief executive.

The owner of the shared pool (usually the body corporate) then has the responsibility to obtain a Pool Safety Certificate.

10.5. Prohibition on letting

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

10.6. Penalties

If the contract does not proceed for any reason in circumstances where the pool safety standard has not been met in relation to a swimming pool on the property you will obviously be responsible for compliance with the standard.

There are substantial penalties for non-compliance. On the spot fines range between \$117 and \$824 (although larger penalties may apply in some circumstances). The maximum penalty for non-compliance with the pool safety standard is \$19,437.

10.7. 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.

11. IF SELLING A UNIT

11.1. Body Corporate disclosures

You must notify the buyer of any notices of body corporate meetings you receive and of any resolutions passed after the contract date. If the buyer is materially prejudiced by any resolutions passed after the contract date, the buyer may terminate the contract. If disclosure is not made before settlement, the buyer 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 you to common property are 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.

11.2. Implied warranties given about the body corporate

The BCCM Act also contains certain implied warranties that you are deemed to have given to the buyer. 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);
- 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 the buyer.

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

If you don't know whether any of the above exist, then to ensure appropriate disclosure is made to the buyer so that we may avoid the buyer obtaining a right of termination, we recommend that you instruct us to conduct a full search of the body corporate's records before entering into the contract.

11.3. BCCM Disclosure Obligations

You have disclosure obligations under the contract, at common law and pursuant to statute. Generally, the consequences of failing to give the required disclosure is that the buyer will have a right of termination of the contract or compensation.

The disclosure statement given with the contract must contain the following information:-

- a) details of the secretary or body corporate manager or in a specified 2 lot scheme, the person responsible for keeping records;

- b) details of the body corporate administrative and sinking fund levies that apply to the lot you are selling;
- c) details of improvements on common property for which you may be responsible;
- d) details of any body corporate assets; and.
- e) that there is a committee of the body corporate or a body corporate manager engaged to perform the functions of the committee.

If the disclosure statement contains errors or is incomplete and the buyer would be materially prejudiced if required to complete the contract, then the buyer may have rights to terminate the contract. This may apply where issues are identified that are of particular importance to the buyer's purchase.

The only way to ensure the relevant information is disclosed in the disclosure statement and the contract is to conduct a full search of the body corporate records. Whilst there is a risk in not doing so, it is considered to be low if we obtain a copy of the registered CMS, you provide us with the information we have requested and instruct us to obtain a Body Corporate Information Certificate before preparing or giving a disclosure statement.

Unless you instruct us otherwise, we will not perform a full search of the body corporate records and will rely on the registered CMS, the information you disclose to us and the Body Corporate Information Certificate. If you would prefer that we conduct a full search of the body corporate records you should call us as soon as possible.

11.4. Community Management Statement (CMS)

The CMS contains information relevant to the buyer, including 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 selling and the aggregate CSLE (which is the total of all CSLE's for all the lots in the scheme and determines what proportion of the body corporates 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:
 - A. how the community titles scheme is structured;
 - B. the nature, features and characteristics of the lots;
 - C. the purposes for which the lots are used;
 - D. the impact the lots may have on costs of maintaining the common property; and
 - E. the market values of the lots.

- d) the ISLE for the lot and the aggregate ISLE (which is the total of all ISLE's for all the lots in the scheme and determines what proportion of the body corporates insurance you are 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; 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 are the original owner for the community titles scheme established on or after 14 April 2011 and the buyer reasonably believes:-

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

the buyer 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 the buyer or the buyer's agent receives a copy of the contract. The notice must identify the relevant section of the BCCM Act upon which the buyer relies.

The *Body Corporate and Community Management and Other Legislation Amendments Act 2012* ("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 as a matter of urgency.

11.5. Body corporate levy notices

Please forward to us a photocopy of the latest body corporate levy notice for the property and tell us if the levies have been paid or are still outstanding. If the levies are still outstanding you should instruct us as to whether you intend to make payment before settlement and, if so, provide us with evidence that the body corporate has received payment before settlement.

We require information about levy notices so that we can calculate the appropriate adjustments as well as considering your disclosure obligations to the buyer.

While liability for the regular periodic contributions levied by the body corporate are apportioned between the parties in the same way as rates, you 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. The buyer is responsible for any special contribution levied after the contract date. Special contributions should be disclosed to the buyer in the contract

(irrespective of which party is responsible for their payment).

11.6. 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 engage a search agent to conduct a body corporate records inspection on your behalf.

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 sale.

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 approvals of pets;
- 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.