

# Residential Conveyancing Booklet



## Acting for Buyer 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; 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 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.

Any such rights may have strict time limits, or 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 (for example, receiving some types of notices or search results). It is critical that if we have advised you about any rights and 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

### 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 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?

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 purchase. If you require advice on the commercial viability or the tax implications of the purchase (including Capital Gains Tax, 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 are buying the property as an investment, with or as part of a business, to substantially renovate or develop the property, you are the executor or beneficiary of an estate or 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.

#### 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) **No physical inspection**

We do not conduct a physical inspection of the property. It is up to you to do this. Issues about the location of the property, impacts of nearby properties or proposed developments or road works in the vicinity of the property 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.

#### d) **Finance and loan advice**

You must apply for any finance required and tell us whether your finance approval is satisfactory. A finance approval is often subject to satisfactory valuation or other conditions. If so, it is up to you to arrange for the valuation and decide whether you are able to satisfy any condition of the finance approval before notifying us that you have finance approval.

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

We will 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.

e) **Building and Pest**

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

f) **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.

g) **Limited town planning information**

The information available from town planning searches is set out in section 6.5 of this Booklet and the Buyer Searches List. The information received depends on the search you select. The work to be done as part of this retainer does not include advice about any of the following issues, unless we accept instructions to give advice (which will be at extra cost to you):

**Site Issues and Planning Laws**

- A. the development potential of the site;
- B. whether nearby land is subject to development applications or development approvals which could affect the value or potential development of the site;
- C. whether any applications over the site are current or have lapsed;
- D. whether the site and structures on the site have all necessary approvals;
- E. whether any approvals over the site have lapsed;
- F. whether any old or historic approvals are still current and binding on the site. For example, whether a Bushfire Management Plan affects the property;
- G. the laws about compensation for changes in the town planning scheme;
- H. deadlines to apply under superseded versions of the town planning scheme;
- I. other deadlines to make and pursue applications for approvals;
- J. whether the seller should assign certain rights to make applications to the buyer;
- K. any existing use rights;

- L. infrastructure charges which apply on development;
- M. whether the site is subject to call in powers by the government;
- N. any existing or proposed planning scheme amendments;
- O. the effect of the South East Queensland Regional Plan; and
- P. the effect 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:

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

h) **Survey**

We do not conduct a survey – this is your responsibility. Issues such as errors in the boundaries, or area of the land, encroachments by structures onto or from the land or (where the land is waterfront land) whether its boundaries are affected by erosion will generally not be identified unless a survey is conducted.

i) **Document Retention**

We may not retain documents from your purchase 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 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 purposes.

j) **Consumer Guarantees**

In some circumstances where goods are being supplied as part of the sale, implied consumer guarantees may apply to those goods. Where applicable 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.

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

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.

l) **Eligibility for grants and other schemes**

We will not be providing advice on the Great Start 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 Office of State Revenue website (<http://www.osr.qld.gov.au>).

It is up to you to apply for the grants if you think they apply to you and we do not give any advice or reminders in relation to the grants.

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.

m) **Caretaking and Letting Agreements**

We will not conduct a review of any caretaking and letting agreements as part of our retainer unless that advice has been specifically requested and is included in our retainer.

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

n) **Pool Safety**

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.

See the Pool Safety section of this Booklet for more information.

o) **Self managed superannuation fund (SMSF) advice**

If the purchasing entity is an SMSF entity, you should seek the advice of your accountant about compliance with your SMSF's investment strategy and any other requirements. There are restrictions on how your SMSF may invest funds as well as restrictions on borrowing. The work to be done as part of this retainer does not include advice about those issues unless we accept instructions to give advice (which will be an extra cost to you).

### **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 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 (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 purchase. This advice is of a general nature only and may differ if the standard position in the Contract has been altered by the inclusion of 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.

You should read our review of your contract in the Report.

#### **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; 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 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. Default interest

The contract provides that at settlement you 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.

### 3.6. 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.

### 3.7. Deposit

Payment of the deposit is a sign of your intention to proceed with 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. Generally a deposit is held in the trust account of either a real estate agent or lawyer. 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 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.

When you have a letter of approval from a financier you should send it to us. We can answer questions about the finance approval, however, you must obtain the finance approval and decisions relating to the acceptability or otherwise of conditions in the finance approval rests with you.

We must notify the seller as to whether you have satisfactory finance approval on or before 5:00pm on the finance date.

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 of the benefit of the finance condition up until the time the contract is terminated by the seller.

If you want to give notice of satisfactory finance or waiver of the condition you will need to give us instructions to give notice to the seller. Notice will not be effective unless received by the seller before the seller terminates the contract.

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.

Once notice of finance approval is given to the seller under the contract, it cannot be withdrawn. You should however be aware that 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.

### **3.9. Building and Pest Inspections**

If the contract is subject to satisfactory building and pest inspection reports you must take all reasonable steps to obtain the reports – although you may elect to only obtain one of the reports. You must use licensed inspectors for the reports 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 building or pest inspection. You should provide us with a copy of the building and pest reports.

We must give written notice to the seller's lawyers on or before 5:00pm on the inspection date as to whether you are not satisfied with your building and pest 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 building and pest condition is satisfied.

If, acting reasonably, you are not satisfied with the results of the building and pest reports then you may instruct us to terminate the contract by giving notice before 5pm on the inspection date. 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 the lot you are purchasing is a lot in a Community Titles Scheme, the reports must relate to the lot itself. 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.

If you terminate the contract, the seller is entitled to request a copy of the reports from you 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 building and pest reports.

If you do not instruct us to give a notice to the seller before 5:00pm on the inspection date, the contract continues and both you and the seller have a right to terminate. You can also give notice that you have received a satisfactory report or alternatively elect to waive the benefit of the building and pest condition.

If you decide to waive the benefit of the building and pest condition you must instruct us to give notice to the

seller, as your waiver will not be effective unless notice of waiver is received by the seller before the seller terminates the contract.

There are no rights to terminate for unapproved structures in the contract, unless a show cause or enforcement order exists.

### **3.10. Cheques for settlement**

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

### **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 is willing to accept additional funds from you), 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) 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 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 arrange for cheques to be drawn and made available at the place nominated 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. 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**

### **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, due to fire or vandalism) you will be required to settle in accordance with the contract despite the damage (unless a residence 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 right 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. If the lot you are purchasing is 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. If the lot you are purchasing is a lot in a Community Titles Scheme with common walls**

The body corporate is responsible for insuring the building for replacement value and public liability for the common property and any relevant body corporate assets. We recommend obtaining insurance information as part of our searches and you will need to satisfy yourself the insurance is adequate. We recommend that you arrange insurance cover for the contents of the unit (which will include things such as carpets, curtains and internal blinds) and public liability insurance for the interior of the lot.

### **4.4. If the lot you are purchasing is 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 things such as carpets, curtains and internal blinds) and public liability insurance for the interior of the lot.

The building insurance should cover you until you are able to discover by search whether the body corporate has common insurance for the building.

If 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 insurance of the 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* (“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, 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 of the seller’s offer 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. We do not provide valuation advice and 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 until you have a valuation, you will have to obtain the valuation before entering the contract or expiry of the cooling off period.

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

## 6. IMPORTANT CONTRACTUAL INFORMATION FOR YOU TO CONSIDER

### 6.1. 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 any applicable 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 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.

### 6.2. 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).

#### 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, corporate trustee or other entity such as a self-managed superannuation fund;
- ii) tax implications and structuring; and
- iii) land tax and other holding costs).

### 6.3. Foreign ownership

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

- a) you may need to obtain the consent of the Foreign Investment Review Board under the *Foreign Acquisition and Takeovers Act 1975*; and
- b) you may need to notify the Department of Natural Resources and Mines under the *Foreign Ownership of Land Register Act 1988*.

Please call us if you think this applies to you.

Failure to obtain the relevant approvals may result in a forced sale and substantial penalties being imposed.

#### 6.4. 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 up until 2 business days before the settlement date.

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. Establishing the lawfulness of the present use and related town planning issues are not part of our retainer and are set out in Section 2.2 of this Booklet.

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

#### 6.5. Town planning certificates

There are 3 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 12 business days)**

A limited planning and development certificate provides:

- i) information as to the town plan area or zone in which the property is located; and
- ii) by reference to the plan, a description of the planning scheme provisions 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. For example, 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)**

A standard planning and development certificate 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 whether the conditions of any approval have been complied with.

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

A full planning and development certificate 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 of each condition.

The full certificate is more expensive as a town planning officer from the local authority needs to inspect the property and go through conditions of approval to identify those which have been complied with and those which have not.

#### Recommendation on Town Planning Certificates

Our recommendations on the type of certificate to obtain are:

- i) **for a residential dwelling or vacant land**, a limited certificate will generally be adequate unless you intend to develop the property when you may require a standard or full certificate;
- ii) **for residential units**, 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 whether a material change of use approval was obtained:

Despite the above, we recommend you instruct us to obtain a standard certificate. If you do not obtain a standard certificate the risk is that you may not be able to establish that the use is lawful. In addition, information about some local government charges that may apply to the property (such as infrastructure charges) is only available by obtaining a standard (or a full) certificate. A local government approval for a change in use or a reconfiguration will often include conditions requiring the payment of charges for the use or upgrading of infrastructure. If the seller does not pay any relevant charges

attaching to the property you are buying, you may become responsible for their payment. If you think this might affect the property you are purchasing please contact us urgently.

We recommend, at the very least, that you instruct us to obtain a limited certificate.

We also recommend you instruct us to order a building search for a certificate of classification. 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. You must check the building classification of the unit to ensure that the certificate of classification is of a classification which allows you to use the premises for your intended use.

The only sure way of knowing whether the conditions of the approval have been complied with is to obtain a full certificate. Obtaining a full certificate is costly and takes considerable time to obtain (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 you require a full certificate please contact us as soon as possible.

## 6.6. 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.

## 6.7. 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 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 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 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 days after the seller's disclosure to terminate the contract. If you do not terminate in that time you will lose the right of termination. 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 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.

## 6.8. Administrative Advices

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 no later than 2 Business Days before the settlement date.

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.

### 6.9. 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 any deduction for site improvements or offsets).

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 make inquiries of 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 of them.

### 6.10. Particular issues of concern

If there are matters regarding the property of particular concern or importance to you or your financier then you should discuss this with 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.

### 6.11. Outgoings & Adjustments

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. In some circumstances these adjustments could be substantial, and could 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. You should 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.

### 6.12. 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*.

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 you should contact us as soon as possible.

### 6.13. 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. An example is water infrastructure pipeline works.

Your use and enjoyment of the land may be affected by a 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 projects have been declared or proposed in the area.

### 6.14. Urban Encroachment

The *Sustainable Planning Act* (“SPA”) contains provisions for the registration of urban encroachment areas that are known to be affected by 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, contracts for units in the Milton Rail Precinct that are subject to a current development application made before 27 April 2009 may be terminated if the buyer did not receive a notice before the contract.

An owner must not lease a unit in an urban encroachment area before giving notice to any tenant that the unit is in the area and noting the restriction on proceedings.

#### **6.15. Queensland Building and Construction Commission Act 1991 (Qld)**

##### **a) Home warranty insurance**

The scheme established under the *Queensland Building and Construction Commission Act 1991* 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 for the property you purchase, whether or not a claim is accepted under the policy may depend on issues such as the nature of the defect and when you became 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 required 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.

#### **6.16. Neighbourhood Disputes**

Please tell us if you have been told about or been given 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.

For trees:

- a) the seller must give you copies of any applications or orders. If copies are not given before contract you may be able to terminate the contract at any time before settlement (despite any contract disclosure);
- b) if you terminate the contract the seller may also be liable for your reasonable legal and other expenses after you signed the contract;
- c) 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; and
- d) If there are tree applications or orders affecting the property and they have been given to you by 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 by the seller.

For fences:

- a) the seller warrants in the contract that there will be no unsatisfied fencing notices, applications or orders existing at settlement; and
- b) 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.

The seller must not give any notice, seek or consent to any order or agreement without your prior written consent after the contract date.

Please give us any details of any disputes, notices or orders relating to dividing fences or trees that you are aware of.

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 person's 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). If the interference is the obstruction of a view, QCAT may only make orders if the tree rises at least 2.5 metres above the ground and the obstruction is a severe obstruction of a view, from a dwelling on the property, that existed when the property owner took possession of the property.

The ND Act will not provide you with greater views than what exist when you take possession of the property. 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. Without a relevant record, it would be difficult to provide evidence to QCAT about the views that existed at the time you took possession of the property.

### 6.17. 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 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.

### 6.18. 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.

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 Self Managed Super Fund ("**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 fulfil obligations regarding the payment of duty or advising 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.

### 6.19. 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. The concession progressively reduces as the consideration or value of the acquired property increases up to \$550,000.

There is no first home concession where the consideration or value of the acquired property is equal to or greater than the applicable amount noted above. If you are over the upper limit for the first home

concession you may be 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 in value. The concession progressively reduces as the value of the acquired vacant land increases up to \$400,000. There is no concession where the value of the vacant land is \$400,000 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 of the consideration or value of the home and any part of the price over \$980,000.

Duty at general rates apply to the value between \$350,000 and \$980,000.

#### **Eligibility requirements**

Strict eligibility requirements apply to each of these home concessions.

We strongly suggest that if you intend on applying that you check your eligibility for the concession by using the Office of State Revenue's on-line eligibility test (available on their website at <http://www.osr.qld.gov.au>) or by calling them 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 as your liability for transfer duty is required to be reassessed. If you do not, significant additional penalty duty may be payable and interest will be 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.

However, the following are generally not considered to be a disposal of the property by the Office of State Revenue:

- 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.

### **6.20. 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 between husband and wife 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.

### **6.21. Related Parties**

You must tell us 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, for example, the imposition of penalty duty and interest.

### **6.22. Aggregation of Transfer Duty**

If you buy 2 or more properties or enter into 2 or more contracts that the Office of State Revenue considers arise from the 1 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.

### 6.23. 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.

### 6.24. 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) 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 this is not disclosed in the contract, you may be able to terminate the contract up until 2 business days before settlement. If you do not terminate in accordance with the contract, you will be treated as having accepted the property subject to these issues.

### 6.25. 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 your contractual rights are not exercised by settlement 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 for any damage suffered.

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.

### 6.26. 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 titles scheme, the property includes any exclusive areas for the lot.

### 6.27. 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 not 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.

### 6.28. Transfer documents

Title to the property will be transferred to you after settlement when the 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).

### 6.29. 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 whether to arrange for the seller to leave the keys with the agent for you to collect after settlement or if 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 of that requirement at least 2 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.

### 6.30. 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.

### 6.31. 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 after settlement;
- 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.

### 6.32. Other Professionals

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

- a) an accountant – 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 – to survey the property to check for boundary, area and encroachment issues;
- c) a valuer – to assure yourself that the price represents the market value of the property;
- d) a soil tester – 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 – to assess planning compliance issues or give advice regarding proposed future development.

### 6.33. Settlement Notice

We will lodge a Form 23 Settlement 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) 2 months after we lodge the notice; or

- b) your transfer and all related documents have been lodged; or
- c) it is withdrawn.

### 6.34. 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.

### 6.35. 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. If you have been promised anything not shown in the contract you should tell us 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.

### 6.36. 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 of the property.

The seller may also choose to impose other conditions that it deems appropriate for granting early possession.

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 – 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 – 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 – as the contract requires that you must repay the seller's costs of eviction. The seller may also suffer loss whilst you are being evicted (e.g. the seller cannot tenant or sell the property) and may claim compensation from you for that loss; 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 that might exist (including some possible termination rights) may be lost once you take possession. There may be other issues that need to be considered such as an effect early possession may have in land tax liability in relation to the property.

If you are considering early possession please contact us.

### 6.37. 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.

### 6.38. 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 3 months following settlement. Failure to do so could result in a \$1,500 penalty.

### 6.39. 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 following settlement.

## **7. ELECTRONIC CONVEYANCING (OR E-CONVEYANCING)**

### **7.1. 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.

### **7.2. 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).

### **7.3. 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 buyer.

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.

### **7.4. 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 other party 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 electronic 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. In limited circumstances, this may mean you discover issues with the property and, while the contract has not settled, you may be unable to exercise any rights.
- e) 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.

## **8. PERSONAL PROPERTY SECURITIES**

### **8.1. 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.

### **8.2. 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 (eg if they are affixed, and if so, how).

### **8.3. 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, 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.

## **9. IF YOUR PURCHASE INVOLVES A RESIDENTIAL TENANCY**

### **9.1. 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* and if the seller complied with disclosure required under the Act;
- b) whether the term is fixed or periodic and the time left to run;
- c) if the tenancy is longer than 3 years, that it is registered;

- d) the current rent payable by the tenant;
- 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.

## 9.2. 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 us 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 and send it to us;
- b) we will send the Form 5 to the seller’s lawyers for the seller or their management agent to sign;
- c) the seller’s lawyers will deliver the completed and signed Form 5 to us at settlement;
- d) following settlement we will forward the Form 5 to you for you or your agent to lodge with the Residential Tenancies Authority; and
- 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.

## 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 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.

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, 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 Pool Safety Compliance or Exemption Certificate you will be responsible to obtain a Pool Safety Certificate and to carry out all works (at your cost) required to meet the pool safety standards (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 and \$824 (although larger penalties may apply in some circumstances).

### 10.4. 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 Pool Safety Compliance or Exemption Certificate to you then the seller must hand over a copy of the current certificate or exemption from compliance 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 Notice of No Pool Safety Certificate or does not complete the questions (unless the contract is one mentioned in items 5.1 (b) to (3) 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 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.

You must on or before the Pool Safety Inspection Date notify the seller 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 you terminate the contract. You must act reasonably in making this decision; 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 Pool Safety Certificate after settlement. (Please see our comments above in relation to the 90 day period applicable after settlement.)

You need to notify us in sufficient time to enable us to prepare and give the requisite notice under the contract.

We suggest you plan to give us instructions on the day before the Pool Safety Inspection Date, however, if this is not possible, by 12 noon on the Pool Safety Inspection Date.

Your other option is to waive the benefit of the condition in which case you must proceed to complete the contract.

If you do not instruct us to 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 Pool Safety Certificate issues. You also have the right to waive the benefit of the condition, before the seller gives a notice terminating the contract.

If you decide to waive the benefit of the condition you must instruct us to give notice to the seller, as your waiver will not be effective unless notice of waiver is received by the seller before the seller notifying us of the termination of the contract.

**10.5. Shared Pool**

Residential shared pools generally exist on common property in unit complexes or other body corporates.

In the case of a shared pool the body corporate must obtain the Pool Safety Certificate.

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

- a) before you enter the contract – to you as the buyer; and

- b) before settlement – 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 Pool Safety Certificate at the cost of the body corporate 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 Pool Safety Certificate and any penalties imposed on the body corporate, through body corporate levies.

**10.6. 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.

**10.7. Penalties**

There are substantial penalties for non-compliance. The maximum penalty for non-compliance with the pool safety standard is \$19,437.

**10.8. 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.

**11. IF PURCHASING A UNIT**

**11.1. 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.



## 11.2. 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);
- 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.

## 11.3. 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 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 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 CSLE's and the ability to change CSLE's.

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* ("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.

#### **11.4. Review of Caretaking and Letting Agreements**

We do not undertake a review of the caretaking and letting agreements for the scheme on your behalf as this is not included in the scope of our retainer. If you would like us to review those agreements and provide a summary to you then you should call us as soon as possible.

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 you 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) the need to protect you from risks of default by the seller or a third party;
- f) the need to protect 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.

### **11.5. 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 contribution to you in the contract (irrespective of which party is responsible for their payment).

### **11.6. Body corporate notices**

The contract requires 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.

### **11.7. 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 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 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 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.