

# Residential Conveyancing Booklet

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## 1. WHY READ THIS BOOKLET?

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

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

We may give you advice during your transaction on your rights in relation to the Contract. This could include rights to terminate the Contract or to claim compensation from the Seller. This advice may be general (e.g. advice contained in this Booklet) or specific to your circumstances (e.g. advice contained in the Contract and Property Report). Alternatively, you may decide you no longer wish to buy the Property and need advice about any possible termination options that might exist.

**These rights can be subject to strict time limits or lost as a result of your actions or steps in the transaction.** For example, if you take steps or actions after you become aware of some rights (e.g. receiving some types of notices or search results) it may impact that right and a Court may even consider you have lost that particular right. 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, you contact us as soon as possible to discuss. Otherwise, any rights or options may be lost.

## 2. OUR RETAINER

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

### 2.1. What Is Included In Our Retainer? (What We Will Do)

Our retainer includes things that are usual and necessary for a residential purchase in Queensland.

If you instruct us to not take any of these usual or necessary steps, we are required by law to provide you with a detailed explanation of the risks associated with these exclusions. **Advice of this nature is not part of the usual conveyancing process and will be an extra cost to you.**

### 2.2. What Is Excluded From Our Retainer? (What We Are Not Doing)

Our retainer does not extend beyond what is usual and necessary in the residential conveyancing process. The following is therefore excluded:

#### a. Physical inspection

We do not conduct a physical inspection of the Property. It is up to you and also better if you do this.

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

#### b. Building and pest inspection

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

If you buy property with asbestos or other hazardous materials (e.g. dust or toxic chemicals), other health issues might become relevant for any occupants of the property. Depending on the circumstances, this may also give rise to rights in personal injuries against the property owner or material manufacturer. This is outside the scope of our retainer. If this becomes an issue, you might want to retain a lawyer urgently as time limits apply and any delay might compromise available rights.

#### c. Commissioning a survey

Please note that we do not conduct a survey – this is your responsibility (if you decide to do so). 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.

#### d. Obtaining insurance

It is also your responsibility to attend to any necessary insurance for the Property. Please see our comments in Part 4 below about insurance requirements.

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

#### e. Document storage

We may not retain documents from your purchase indefinitely. The timing of destruction will depend on authorities given.

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

f. **Obtaining finance and loan advice**

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

Our retainer (unless otherwise agreed for additional cost) does not extend to giving advice on the finance or security documents or any valuation you obtain.

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

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

We will not be providing advice or reminders on the Queensland First Home Owners' Grant, the National First Home Loan Deposit Scheme or the National First Home Super Saver Scheme or any other government grants or schemes as part of our retainer (unless agreed otherwise for additional cost).

To find out if you are eligible for any grants or to participate in any home buyer assistance schemes you should contact your financier (if applicable) or visit the relevant websites.

It is up to you to apply for the grants or to arrange to participate in the schemes if you think they apply to you.

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

h. **Financial and tax advice**

We do not give advice on the commercial viability, tax and other financial implications of the purchase (including CGT, goods and services tax ('GST') and land tax). If you require this advice, 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.

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

- i. as an investment;
- ii. with or as part of a business;
- iii. to substantially renovate or develop the Property;
- iv. as the executor or beneficiary of an estate;
- v. as a foreign resident or someone who intends to reside overseas in the future; or
- vi. where you are not intending to use the Property solely as your main residence.

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

i. **Self-managed superannuation fund ('SMSF') advice**

If the purchasing entity is an SMSF entity, please seek your accountant's advice about compliance with your SMSF's investment strategy and any other requirements. There are restrictions on how your SMSF may borrow and invest funds. Our retainer does not include advice about those issues unless we accept specific instructions (which will be an extra cost to you).

j. **Succession and matrimonial advice**

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

k. **Pool safety requirements**

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

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

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

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

If relevant, we recommend that you obtain legal advice on any building contracts or other related agreements and any obligations you may have under legislation in relation to building on the land as this is beyond the scope of our retainer with you (unless agreed to for additional cost).

m. **Caretaking and letting agreements advice**

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 (for an additional cost).

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

n. **Town planning information and advice**

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

### Site Issues and Planning Laws

- the development potential of the site;
- whether nearby land is subject to development applications or development approvals which could affect the value or potential development of the site;
- whether any applications or approvals over the site are current or have lapsed;
- whether the site and structures on the site have all necessary approvals;
- whether any old or historic approvals are still current and binding on the site (e.g. whether a Bushfire Management Plan affects the Property);
- the laws about compensation for changes in a Town Planning Scheme;
- deadlines to apply under superseded versions of a Town Planning Scheme;
- other deadlines to make and pursue applications for approvals;
- whether the Seller should assign certain rights to make applications to the Buyer;
- any existing use rights;
- infrastructure charges which apply on development;
- whether the site is subject to call in powers by the government;
- any existing or proposed Town Planning Scheme amendments;
- the effect of the South East Queensland Regional Plan (if relevant); and
- 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 solicitor with town planning experience or make your own enquiries with the relevant local council.

### Other Laws

Local laws concerning:

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

#### **o. Consumer guarantees advice**

In some circumstances where goods are being supplied as part of the sale, implied consumer guarantees may

apply to those goods. They cannot be contracted out of. Our retainer does not extend to providing advice on the applicability or effect of any consumer guarantees to your purchase.

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

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

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

### **3. EXPLANATION OF IMPORTANT CONTRACT TERMS**

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

#### **3.1. Method Of Sale**

In Queensland, property is sold by the following methods:

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

#### **3.2. Form Of Contract**

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

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

**Please read all of your Contract and our review in the Contract and Property Report we provided.**

In this section we point out contract terms important to your purchase. This advice is of a general nature only and may differ if the standard position in the Contract has been altered by specific special conditions. Where there is inconsistency between a special condition and a standard condition, generally any special condition will override the standard condition to the extent of the inconsistency.

### 3.3. Reference Schedule

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

### 3.4. Time Is 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 4pm 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. However, this date calculation does not apply to statutory dates (e.g. statutory cooling-off period).

### 3.5. Delay Events

If a party, after making all reasonable efforts, is not able to meet their settlement obligations because of a Delay Event then, in certain limited circumstances, time will no longer be of the essence. A Delay Event is:

- (a) a tsunami, flood, cyclone, earthquake, bushfire or other act of nature;
- (b) riot, civil commotion, war, invasion or a terrorist act;
- (c) an imminent threat of an event in paragraphs a or b; or
- (d) compliance with any lawful direction or order by a government agency.

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

### 3.6. Default Interest

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

### 3.7. Deposit

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

**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.

The deposit is generally held in trust by an agent or solicitor until settlement and following settlement the deposit will be paid to the Seller. If you terminate the Contract for a valid reason, then the deposit should usually be repaid to you.

We strongly recommend that you do not agree to a contractual provision or other arrangement under which the deposit is released to the Seller prior to settlement. If the deposit is not held in trust until settlement, there is a risk that the Seller or deposit holder may become insolvent and that you will lose the deposit or be unable to recover it even if settlement doesn't proceed and you don't receive title to the Property.

### 3.8. Finance (if applicable)

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

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

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

**We must notify the Seller in writing as to whether you have satisfactory finance approval on or before 5pm on the finance date.**

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

If you do not obtain satisfactory finance approval from the financier specified in the Contract, you can instruct us to terminate the Contract or seek an extension of time for finance. Agreement from the Seller is required for 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. This 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 in writing that finance is approved, waived or not approved by the finance date then, the Contract continues and both you and the Seller have a right to terminate the Contract.** You also have a continuing right to give notice of satisfactory finance or waiver but only if it is received by the Seller before they terminate.

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

### 3.9. Building And Pest ('B&P') Inspections (if applicable)

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

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

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

**We must notify the Seller in writing on or before 5pm on the inspection date as to whether you are or are not satisfied with your B&P reports and wish to terminate the Contract.**

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

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

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

If you terminate, the Seller is entitled to request a copy of the reports and you must provide them without delay.

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

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

**If we do not notify the Seller in writing before 5pm on the inspection date of satisfaction, waiver or dissatisfaction, the Contract continues and both you and the Seller have a right to terminate.** You also have a continuing right to give notice of satisfactory B&P or waiver but only if it is received by the Seller before they terminate.

### 3.10. Cheques For Settlement

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

### 3.11. Settlement Funds

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

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

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

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

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

### 3.12. Certificate Of Classification ('CoC')

If you are purchasing a unit, a local government records search will confirm whether a CoC has issued for all buildings on the land. If an appropriate certificate has not issued, you may be able to terminate the Contract for the Seller's failure to provide vacant possession.

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

## **4. INSURANCE**

### **4.1. Risk**

#### **The Property is at your risk from 5pm 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 (e.g. fire or vandalism) you are still required to settle in accordance with the Contract (unless it is so destroyed or damaged as to be unfit for occupation).

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

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

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

### **4.2. A Residential House, Not In A Community Title Scheme?**

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

### **4.3. A Lot In A Community Titles Scheme**

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

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

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

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

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

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

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

### **4.4. Insurance If Obtaining Finance**

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

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

### **5.1. Application Of POA**

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

- (a) for the sale of property where it is used primarily for 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 5pm 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 parties as in the earlier agreement;
- (e) where the Buyer is:
  - i. a publicly listed corporation; or
  - ii. a subsidiary of a publicly listed corporation; or
  - iii. the State or a statutory body; or
  - iv. purchasing at least three lots at the same time (even if under separate contracts).

### **5.2. Cooling-Off Period**

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

The cooling-off period starts on the day you receive from the Seller or their agent a copy of the Contract signed by both parties or, if that day is not a business day, on the next business day. If the Seller signed the Contract before you did, the cooling-off period starts on the day you signed the Contract and communicated your acceptance to the Seller.

**The cooling-off period ends at 5pm on the fifth business day.**

You are entitled to terminate the Contract during the cooling-off period. If you do, 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 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 enter into 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 can give notice before the cooling-off 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 Must Be In The Contract**

If POA applies, the Seller is required to ensure that, when they first give you the proposed Contract for signing, it 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. 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 recommends that you obtain an independent valuation of the Property. We endorse this recommendation but do not provide valuation advice. The price is something you need to satisfy yourself about. The Contract is not conditional on a valuation. If you do not want to proceed without a valuation, you will have to obtain it before entering the Contract or expiry of the cooling-off period.

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

## **6. IMPORTANT INFORMATION - GENERAL**

### **6.1. Particular Issues Of Concern**

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

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

### **6.2. Signing Contract**

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

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

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

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

If you are considering the use of an electronic signing tool in relation to the Contract, please contact us to discuss this issue. It is important to ensure that the process proposed to be used satisfies the relevant requirements to create an enforceable Contract and to deal with the delivery of any required disclosure in relation to the Contract and that appropriate steps are taken to establish the authority of signatories to the Contract.

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

### **6.3. Fraud, Identity Theft And Hacking**

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

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

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

We will take steps, such as obtaining personal identification from you, to assist to minimise the risk of fraud.

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

- (a) Double-check that all money transfer requests are legitimately requested by our law practice or your financier – 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 financier or mortgage accounts (at your financier's request) – without first checking with us that the transfer is necessary for your transaction.
- (c) If you are contacted by someone you don't immediately personally recognise representing themselves to be from our law practice, your financier or somehow linked to the transaction, ask the representative some historical questions about the transaction that you can be certain will verify that they are who they say they are.
- (d) Avoid sending personal and sensitive information such as bank account numbers via email.
- (e) Where instructions are requested or advice is provided via email, check with another form of communication.

#### **6.4. Seller's Warranties**

The Seller warrants various things that could affect the Property, such as correctness of title, capacity to complete, no judgments, orders or writs affecting the Property, no unregistered dealings, no notices of body corporate meetings and no obligation to give an *Environmental Protection Act* ('EPA') notice.

If the Seller breaches any of these warranties you generally may:

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

#### **6.5. Property Adversely Affected**

If the Property is adversely affected as at the Contract Date because:

- (a) the present use is not lawful;
- (b) the land or common property is affected by a proposal of a competent authority (e.g. Transport Infrastructure);
- (c) access or any services to the land or common property passes unlawfully through other land;
- (d) an authority has issued a current notice to treat, or notice of intention to resume the land or common property;
- (e) there is an outstanding condition of a development approval attaching to the Property which, if complied

with, would constitute a material mistake or omission in the Seller's title;

- (f) the Property is affected by the *Queensland Heritage Act 1992* (Qld) or is included in the World Heritage List;
- (g) the Property is declared acquisition land under the *Queensland Reconstruction Authority Act 2011* (Qld);
- (h) there is a charge against the land under the *Foreign Acquisitions and Takeovers Act 1975* (Cth);

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

#### **6.6. Information Regarding The Property**

If requested before settlement, the Seller must give you:

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

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

#### **6.7. Promises Made By The Seller Or The Agent**

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

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

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

#### **6.8. Other Professionals**

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

- (a) an accountant – 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) an engineer – to assess the structure and fabric of the buildings;

- (d) a building industry professional / fire engineer – to report on fire safety issues including cladding;
- (e) a valuer – with respect to a rental valuation and projected returns, or to assure yourself that the price represents the market value of the Property;
- (f) 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
- (g) a town planner – to assess planning compliance issues or give advice regarding proposed future development.

## 7. IMPORTANT INFORMATION – SEARCHES AND USE

### 7.1. Buyer Beware - The Contract Does Not Protect Against Unsatisfactory Search Results In Some Circumstances

In Queensland the onus is on the 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 as issues in search results may not be identified in sufficient time for you to exercise any remedy against the Seller.

**Where the Contract is not signed, you can protect yourself from unsatisfactory search results by including a special condition making the Contract subject to satisfactory searches or obliging the Seller to compensate the Buyer in the event of unsatisfactory search results.**

Where the Contract is signed by both parties there is generally no opportunity to add special conditions. In some limited circumstances it may be possible to negotiate amendments during any applicable cooling-off period or while the Contract is still conditional.

The searches we recommend are essential 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 in time.

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

The Contract also does not contain any rights to terminate if searches reveal that the improvements, or any additions to the improvements, do not have appropriate approvals. The lack of a required approval may have significant ramifications for the lawful use of a building on the Property and for the ability to obtain insurance cover for the building. 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 you may have. The advice will depend on the nature of the unsatisfactory search result and your particular Contract.

### 7.2. Present Use

If the present use is not lawful under the relevant Town Planning Scheme as at the Contract Date and this has not been disclosed in the Contract then, you may be able to terminate the Contract at any time before settlement.

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

The Seller does not warrant that the use of the Property is lawful.

### 7.3. Planning and Development Certificates

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

#### a. Limited Certificate - (takes approximately five business days)

Provides:

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

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

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

Provides:

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

By looking at the existing use of the Property, the local authority area or zone and the approvals obtained, it is

possible to ascertain if the Property is capable of being lawfully used for its existing use or for other uses.

The certificate does not identify compliance with any approval conditions.

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

Provides:

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

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

**Recommendation on Planning and Development Certificates**

A development approval that is in effect for a Property attaches to the Property and will bind all owners (and occupiers) even if the Property is later sold, the Property is reconfigured under the approval or later development (including reconfiguration) is approved for the Property.

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

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

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

Obtaining a full certificate is costly and takes considerable time (you may not necessarily receive the certificate by settlement even if ordered immediately).

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

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

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

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

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

**7.4. Future Use**

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

**7.5. Environmental Protection**

The *Environmental Protection Act 1994* (Qld) ('EPA') requires that the Seller makes specific disclosure, before entering into the Contract, 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 an EPA notice or evaluation (generally about possible contamination or notifiable activities such as underground fuel storage); or
- (c) a magistrate has issued an EPA order for an authorised person to enter the land to conduct an investigation or carry out work.

If any of these apply and the Seller does not give disclosure before you enter the Contract then, you may terminate 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 you will be given a period of 21 business days after disclosure to terminate the Contract. If you do not terminate in that time

you will lose the right. **Given the limited time period available for termination, it is important that you contact us promptly if you receive a notice from the Seller to remedy a failure to comply with its disclosure obligations.**

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

The searches we undertake 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 the prior or current use of the land might contribute to any contamination issues or any notices or orders may affect the land, please contact us as soon as possible so that we can take necessary steps.

## 7.6. 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 the Contract does not disclose this then, you may be entitled to terminate by giving notice at any time before settlement.

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

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

## 7.7. Survey

The searches we conduct cannot ascertain if there is:

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

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

Mistakes or omissions in how the Contract describes the Property 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 are not noted on the title nor identifiable by the searches we conduct.

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

A survey might also assist you in identifying whether:

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

In the case of waterfront land, a survey may also establish whether the boundaries are affected by erosion. If land is beachfront land, in some cases, the State government can declare a public access right over the beach area of your land. If declared, the public will be entitled to use the affected land and the State or local government may create conditions for how it 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 must be registered, it may be important to establish whether erosion has affected boundaries and whether circumstances exist which might lead to a declaration or an unregistered declaration already exists. If you are aware of any of these circumstances, please inform us as soon as possible.

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

## 7.8. Unregistered Encumbrances

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

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

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

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

## 7.9. State Government – Prescribed Projects

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

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

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

## 7.10. Urban Encroachment

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

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

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

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

## 7.11. Queensland Building and Construction Commission Act 1991 (Qld) ('QBCC Act')

### a. Home warranty insurance

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

While we can undertake a search to establish whether a statutory insurance policy is in place, whether or not a claim is accepted 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 was carried out on the Property by a person who was not licensed to carry out that work; and
- ii. the land is offered for sale within six 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* (Qld). You must sign one copy and return it to the Seller on or before signing the Contract.

If a required notice and warning are not given, the Seller is taken to give a contractual warranty that the building work was properly carried out. This means that if the work was not properly carried out then, rather than claiming 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 conducting any work as an owner-builder or if you received any notice from the Seller.

## 7.12. Neighbourhood Disputes

Please tell us if you hear about or receive 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:

- notices to fence from a neighbour;
- applications to QCAT for fencing or trees; or
- QCAT orders for fencing or trees affecting the Property.

### a. For trees

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

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

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

### b. For fences

The Seller warrants in the Contract that there will be no unsatisfied fencing notices, applications or orders existing at settlement. If an unsatisfied notice, order or application exists at settlement you may be entitled to

terminate the Contract or claim compensation from the Seller.

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

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

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

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

### 7.13. Building Covenants

Are you aware of any building covenants affecting the Property or have you signed any document relating to any covenants? For example, there may be requirements about the type of house you may construct or landscaping requirements for the Property. 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. A failure to comply with these covenants may be enforced by the Seller.

### 7.14. Water Entitlements

Water rights or entitlements may often be important in relation to the use of some land (particularly land which is used for agricultural purposes). A land owner may require a licence for taking or interfering with surface water, overland flow water or underground water or a water allocation to take and use water from a particular catchment for use on the land. If water entitlements are critical to your objectives, the current or future use of the land or property finance arrangements, you should be aware that there are risks associated with water entitlements and that they may be affected by future government changes in the management of water resources including a reduction in entitlements or a change in classification of entitlements. This may result in a significant reduction in the value of those water entitlements (and a consequent reduction in the value of land which benefits from the entitlements). You should be aware that there are very limited options to challenge or seek a review of any reduced or changed water entitlements (regardless of any property ownership rights you have). Seeking to review

any water entitlement changes could involve costly litigation and may not be successful.

## 8. IMPORTANT INFORMATION – OWNERSHIP AND PAYMENTS

### 8.1. Purchasing Entity/Tenancy

If any of the following apply:

#### a. **There is more than one Buyer:**

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

The effect of **joint tenancy** ownership is that on the death of one owner their share in the Property 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 their will or in accordance with the laws of intestacy if they do not have a valid will.

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

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

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

#### b. **You are purchasing the Property for investment purposes and the Contract has not yet been entered into:**

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

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

If you enter into the Contract as trustee of a trust, you are still personally liable under the Contract for the performance of all the Buyer's obligations unless provision is included in the Contract to limit that liability. If you have any concerns about this issue, please contact us.

## 8.2. Foreign Ownership (if applicable)

If you are a foreign person or are a trustee of a foreign trust, you may need to:

- (a) obtain a notification from the Foreign Investment Review Board under the *Foreign Acquisition and Takeovers Act 1975* (Cth) ('FAATA') that it has no objection to your acquisition of the Property ('No Objection Notification'); and
- (b) notify the Department of Natural Resources, Mines and Energy ('DNRME') under the *Foreign Ownership of Land Register Act 1988* (Qld).

Please call us if you think this applies to you.

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

For the purposes of applying FAATA:

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

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

For this reason, if your purchase is subject to the FAATA, it is imperative that the contract is made conditional on a No Objection Notification being obtained.

## Australian Taxation Office ('ATO') Requirements

If the Property is not occupied or genuinely available for rent for at least half of the year, the ATO may charge you an annual fee equal to the relevant foreign investment application fee imposed on the Property. If this applies, this is your responsibility to comply with the relevant foreign ownership

occupancy requirements and is outside the scope of our retainer.

A foreign person who has purchased residential real estate in Australia must register their acquisition on the Land and Water Register maintained by the ATO within 30 days of settlement. It will be your responsibility to attend to any required registration (which is outside the scope of our retainer).

## 8.3. Capital Gains Tax Withholding Payments (if applicable)

Under laws designed to ensure that foreign residents meet their liability for CGT when selling land in Australia, a Buyer may be required to pay 12.5% of the purchase price to the ATO.

**The CGT withholding laws apply to contracts entered into on or after 1 July 2017 where the Property sold has a market value of \$750,000 or more.**

If the CGT withholding laws apply, the Buyer must pay the required amount to the ATO promptly after settlement unless the Seller produces a valid clearance certificate issued by the ATO or a notice from the ATO varying the CGT withholding amount to nil.

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

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

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

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

In most cases, market value will be determined by the purchase price payable under the Contract. If the transaction involves a purchase price of \$750,000 or more but includes personal property (such as moveable equipment or furniture) with a material value and the market value of the land and improvements may be less than \$750,000, it may be appropriate to obtain an independent valuation of the Property for the purpose of specifying an apportionment of the purchase price.

Similarly, an independent valuation of the Property should be considered if the transaction is between related parties and the Property may have a market value of \$750,000 or more.

If the market value of the Property is \$750,000 or more but the purchase price is less than the amount to be paid to the ATO, you should consider options for the payment of this amount or amendment of the Contract to require payment by the Seller of an amount to cover this payment.

#### 8.4. Foreign Resident / Becoming A Foreign Resident

If you live overseas for more than six months in any given year, or otherwise become a foreign resident for tax purposes, and then sell your Property during that time, you may not be eligible for the CGT main residence exemption on the disposal, even if you lived in the house as your principal place of residence prior to becoming a foreign resident. Ascertaining whether an individual is a foreign resident at a particular point in time can be complicated and will depend on all of the circumstances.

If this might apply to you, we recommend you obtain tax advice before you enter into a contract to sell the property or dispose of the property in the future. This is not part of the scope of our retainer.

#### 8.5. GST Withholding Payments (if applicable)

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

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

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

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

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

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

If the GST withholding arrangements apply to the Contract, the standard contract terms require you to provide the Seller with a bank cheque payable to the Commissioner of Taxation at settlement for the GST amount. If the Seller does not then provide the bank cheque to the Commissioner, you remain liable to the ATO for the payment.

#### 8.6. Land Valuation And Taxes

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

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

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

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

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

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

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

Land tax is calculated by reference to the taxable value of a property (i.e. the value of the land). The taxable value of all property of an owner in Queensland is aggregated to determine the rate of land tax payable. A landowner who is an individual will pay a lower rate of land tax than that payable by a company or trustee. Absentee landowners (i.e. landowners who do not usually live in Australia) pay a higher rate of land tax. Absentee landowners, foreign corporations and trustees of foreign trusts also pay an additional land tax surcharge of 2%.

## 8.7. Outgoings And Adjustments

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

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

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

## 8.8. Transfer Duty

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

**As transfer duty is applicable to each transaction, you must ensure that the Buyer named in the Contract is the person or entity that you intend to own the Property.** Otherwise you risk two or more assessments of transfer duty, which can increase the amount payable.

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

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

If you do not pay duty or advise the Office of State Revenue of changes to your eligibility for concessions or exemptions then they may identify this (as they actively cross-check data held by other government agencies) and can seek to recover any shortfall directly from you including penalties and interest. Recovery of incorrect or unpaid duty may occur years after settlement and could compound into substantial amounts.

Transactions under which foreign persons acquire land for residential use or development will attract additional duty. See item 8.10 for further details.

## 8.9. 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 and 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 Property increases up to \$550,000.

There is no first home concession where the consideration or value is equal to or greater than \$550,000 but you may still be eligible for a home concession.

### First Home Vacant Land Concession

If you are eligible, no transfer duty is payable for purchases of first home vacant land up to \$250,000 in value. The concession progressively reduces as the value increases up to \$400,000. There is no concession where the value of the vacant land is \$400,000 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 applies to the value between \$350,000 and \$980,000.

### Eligibility requirements

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

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

- (a) you are purchasing an investment property;
- (b) you are purchasing using a company, unit trust or discretionary trust;
- (c) you are applying for a first home concession and
  - iii. have held an interest in residential land somewhere in the world; or
  - iv. have claimed the concession before;

- (d) you are applying for a first home vacant land concession and
  - v. have held an interest in residential land somewhere in the world; or
  - vi. there will be more than one home constructed on the vacant land; or
  - vii. 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 the Property to another person within 12 months of occupying the house. Repayment of all or part of the concession may be required and penalties and interest can apply.

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

However, please note the Office of State Revenue generally does not consider the following to be a disposal of the Property:

- (a) the Sellers remain in the Property after settlement and move out within six months of settlement;
- (b) existing tenants remain in the Property no longer than six 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 one-year occupancy period; or
- (f) you transfer part of the Property to your spouse.

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

### 8.10. Additional Foreign Acquirer Duty ('AFAD')

- (a) AFAD applies to property transactions which are liable to transfer duty if:
- (b) the Property is AFAD residential property (see below); and
- (c) the acquirer under the transaction is a foreign acquirer.

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

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

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

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

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

AFAD is an additional duty imposed on the transaction's dutiable value.

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

If, within three years of the transaction, the acquirer becomes a foreign corporation or the trustee of a foreign trust, it is important to note that the Commissioner of State Revenue must make a reassessment to impose AFAD on the transaction.

This may occur, for example, because of a change in the controlling interest in the company or interests in the trust.

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

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

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

### 8.11. General Exemptions To Transfer Duty

Your transaction may also be exempt from transfer duty if:

- (a) the Contract is terminated or comes to an end;

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

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

### 8.12. Related Parties

**You must tell us, as soon as possible, if you have a business or personal relationship with the Seller or if the consideration for the sale is less than market value.** If so, this will have duty implications and we will require a valuation of the Property using three comparable sales within the last three months. If applicable, these valuations must meet certain criteria and are required before duty is assessed and paid. You should call us as soon as possible to discuss if you think this may apply, as a failure to obtain the valuations can result in serious consequences for you (e.g. the imposition of penalty duty and interest).

### 8.13. Aggregation Of Transfer Duty

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

Please contact us as soon as 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 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 OSR may consider this transaction as one transaction with another contract or agreement.

### 8.14. 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 instalment payments 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. 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.
- (c) The Seller may be required to comply with the National Credit Code, including the requirements for pre-contractual disclosure, ongoing notices and certain pre-requisites to enforcement.

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

## 9. IMPORTANT INFORMATION – SETTLEMENT STEPS

### 9.1. Pre-Settlement Inspection

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

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

Inspections are important even if you are purchasing vacant land, to ensure no earthworks or construction occurred on the Property post Contract.

### 9.2. Priority Notice

We will lodge a priority notice on title before settlement. This helps protect your interest in the Property by preventing the registration of any conflicting interest (such as a mortgage or

transfer to an unrelated third party, but not a caveat or a writ of execution) until the earlier of:

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

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

### **9.3. Transfer Documents**

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

After settlement, we will lodge the transfer documents for registration unless you have a financier, in which case they 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 registration. If you require us to follow up your financier, please let us know (but this will be an extra cost to you).

### **9.4. Keys And Codes**

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

Please complete the section in the Questionnaire advising us on key collection preference. Usually we arrange for the Seller to leave the keys with the agent for you to collect after settlement. However, you can instruct that we should request to collect the keys at settlement. If you want us to collect the keys at settlement, we must give notice to the Seller at least two clear business days before settlement. Unless you specifically instruct us to collect the keys, we will request that they are left with the real estate agent for you to collect after settlement.

### **9.5. Chattels**

The Seller must remove all chattels not included in the sale and any substantial rubbish on the Property before settlement. The Seller may also remove any fixtures excluded from the sale. The Seller is deemed to have abandoned any property not removed before settlement and you can dispose of that property as you think fit. Contact us for advice before acting if you think this applies.

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

### **9.6. Vacant Possession**

The Seller is obliged to give vacant possession of the Property, which means you are able to physically and legally occupy the Property after settlement (except where you agree otherwise, such as buying property subject to tenancy). In the case of a lot

in a Community Titles Scheme, the Property includes any exclusive areas for the lot.

### **9.7. Utility Services**

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

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

### **9.8. Early Possession (if applicable)**

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 the same 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 it 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 must insure the Property to the Seller's satisfaction;
- (d) you indemnify the Seller against any expense or compensation incurred as a result of your possession.

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

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

- (a) you do not settle and have not maintained the Property – as the Seller may claim compensation from you;
- (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 (for any reasonable reason and at any time) and you resist eviction from the Property – as the Contract requires that you repay the Seller's eviction costs and the Seller may claim compensation from you for loss (e.g. they cannot tenant or sell the Property); or
- (d) the Seller seeks to enforce the indemnity you provided to claim for any expenses or damage incurred as a result of your possession.

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

If you are considering early possession please contact us.

### **9.9. Electrical Safety Switch**

If an approved electrical safety switch for general purpose socket outlets is not installed in the Property under the

Electricity Regulations you are required to have one installed within three months following settlement. Failure to do so could result in a penalty.

#### **9.10. Smoke Alarms**

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

### **10. ELECTRONIC CONVEYANCING (OR E-CONVEYANCING) – IF APPLICABLE**

#### **10.1. What Is E-Conveyancing?**

E-conveyancing allows for an “electronic” settlement of a conveyancing transaction through an online exchange such as PEXA. The system operates 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 settlement money transfer and transfer duty payment) 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.

#### **10.2. When Can E-Conveyancing Be Used?**

The electronic settlement process cannot be used for all conveyancing transactions and can also only be used if all parties agree to it. The process is only available to financial institutions and parties who engage legal practitioners.

#### **10.3. 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 accompanies our First Letter if we are PEXA subscribers and are able to use e-conveyancing for settlement). 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 a face-to-face meeting is not possible, a VOI agent can undertake the verification of identity process. Please contact us to discuss this option.

#### **10.4. 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 e-conveyancing 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 settlement date extension 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 (i.e. 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) In some circumstances, settlement may proceed (and settlement funds will be disbursed) even although the electronic lodgement of documents in the Land Titles Office that would normally be part of the electronic settlement process is not available. Lodgement of a priority notice (see item 9.2 above) will help to protect a Buyer’s position. In addition, PEXA provides insurance for loss incurred if a dealing is lodged prior to lodgement of the Buyer’s documents which prevents registration of the Buyer’s documents or takes priority over them.
- (c) A party to a transaction may, after having previously agreed to use the system, elect to withdraw from it by giving written notice to the other party. That notice cannot be given later than five business days before the settlement date unless
  - i. the transaction is excluded by the rules;
  - ii. 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
  - iii. a party’s financial institution is unable to settle using the system.

If one of the exceptions applies, the settlement date will be extended by a period of five business days. This means in practice that the parties will still need to prepare for a traditional (paper-based) settlement process to ensure they are still able to satisfy settlement obligations on time. Having to prepare for both methods of settlement may erode any efficiencies and costs savings and even add to the work involved.

- (d) 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.

- (e) 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 at an agreed time (when the electronic workspace for the transaction will lock). 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.

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.

## **11. PERSONAL PROPERTY SECURITIES – IF APPLICABLE**

### **11.1. 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.

### **11.2. What Is Affected By The PPSA?**

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

For example:

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

## **11.3. 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 is required to obtain from the secured party either a letter or financing change statement, which releases the personal property, 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.

## **12. RESIDENTIAL TENANCY – IF APPLICABLE**

### **12.1. Residential Tenancy Inquiries**

If the Property is sold subject to an existing residential tenancy we recommend you instruct us to obtain a copy of the tenancy documents (preferably before signing the Contract) and that they be reviewed and enquiries made of the Seller to ascertain:

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

### **12.2. 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 solicitors for the Seller or their management agent to sign.
- (c) The Seller's solicitors 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.
- (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.

### 13. POOL SAFETY – IF APPLICABLE

#### 13.1. Pool Safety Laws

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

#### 13.2. 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 swimming pool please contact us.

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

Although the clear intention of the legislation is to ensure that all swimming pools comply with the relevant standard from 1 December 2015, it appears that the legislation will allow you a period of 90 days after settlement to attend to these requirements. However, you should be aware of the possibility of a fine being imposed for a failure to comply with the standard from 1 December 2015 regardless of the 90-day timeframe.

#### 13.4. Non-shared Pool – Contract Requirements

There are questions in the Reference Schedule about pools and pool safety certificates.

If the Seller states it will give a current PSCC or EC to you then they must hand over a copy at or before settlement, failing which you can terminate the Contract. If any certificate provided to you expires before settlement, the Seller must obtain a new certificate before settlement.

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

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

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

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

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

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

#### 13.5. Shared Pool

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

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

- (a) before you enter the Contract – 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 PSCC at its cost and may be liable for a financial penalty for not already having obtained the certificate. You may be called upon to contribute your proportionate share of the cost to obtain the PSCC and any penalties imposed on the body corporate, through body corporate levies.

### **13.6. Prohibition On Letting**

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

### **13.7. Penalties**

There are substantial penalties for non-compliance.

### **13.8. 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.

## **14. PURCHASING A UNIT – IF APPLICABLE**

### **14.1. 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. 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); or
- (d) a change in the insurance details for the building and public liability for the body corporate.

### **14.2. 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 defects that require repair which can include common boundary walls of the lot or exclusive use areas and may include repairs required as a result of issues such as concrete cancer, structural or water issues and rectification works required because of the use of combustible cladding on the building);
- (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 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 body corporate's affairs 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 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.

### **14.3. Community Management Statement (CMS)**

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

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

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

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

The CMS specifies:

- (a) the CSLE for the lot you are purchasing and the aggregate CSLE (which is the total of all CSLEs for all the lots in the scheme and determines what proportion of the body 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. that the CSLE are based on the equality principle or the relativity principle;
  - ii. if the equality principle applies, the lot entitlements must be equal, unless there is an explanation in the CMS as to why it is just and equitable in the circumstances for them not to be equal;
  - iii. if the relativity principle applies, the CMS must include an explanation which demonstrates the relationship between the lots by reference to one or more particular relevant factors, including the following
    - how the Community Titles Scheme is structured;
    - the nature, features and characteristics of the lots;

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

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

If the Seller is the original owner for the Community Titles Scheme established on or after 14 April 2011 and you reasonably believe:

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

you may terminate the Contract before it settles, by notice in writing, given not later than 30 days (or a longer period agreed between the Buyer and the Seller) after you or your agent receives a copy of the Contract. The notice must identify the relevant section of the BCCM Act upon which you rely.

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

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

The *Body Corporate and Community Management and Other Legislation Amendments Act 2012* (Qld) ('**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 urgently seek specific legal advice on your particular circumstances.

#### 14.4. Review Of Caretaking And Letting Agreements

Unless you specifically instruct us, 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 please 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* (Cth) issued by the letting manager;
- (b) a caretaking and letting agreement entered into by the body corporate with the manager;
- (c) an agreement appointing a letting agent for your lot;
- (d) a tenancy agreement or lease between the Seller and any tenant of the lot;
- (e) a leaseback agreement with the Seller; or
- (f) a rental guarantee offered by the Seller.

If you have been given any of these documents we recommend that you should send them to us for review (at an additional cost).

If we review any of the above documents that apply to your lot we will not be providing financial or commercial advice about the lot's viability 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 Property's income stream, such as default by the Seller or third party under the leaseback, possibility of insolvency, default under any rental guarantees, the lack of a guarantee, the adequacy of the guarantees;
- (e) protecting you from risks of default by the Seller or a third party;
- (f) protecting yourself from future interest rate rises over the period of the investment;
- (g) the practical difficulties of renegotiating leases after the expiry of the leaseback arrangement; and
- (h) any restrictions on the use of the unit for residential purposes if you wish to cease the investment at some stage.

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

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

#### 14.5. 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).

#### 14.6. Body Corporate Notices

The Seller must 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.

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.

#### 14.7. Body Corporate Searches

We engage a search agent to conduct a body corporate records inspection on your behalf as each body corporate is in different geographical locations and it would be uneconomical for us to do so.

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

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

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

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

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

### 15. COMBUSTIBLE CLADDING - IF APPLICABLE

#### 15.1. Building Regulation 2006 (Qld)

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

The Cladding Regulations apply to a building if:

- (a) the building is a class 2 to 9 building (which includes most residential and commercial buildings other than stand-alone houses) of a Type A or Type B construction (which is essentially any building of at least three storeys but may also include some two storey buildings);
- (b) a building development approval was given after 1 January 1994 but before 1 October 2018 for constructing the building or for altering cladding on the building; and
- (c) the building is owned by one or more private entities or private entities hold more than a 50% interest in the building.

Most residential homes will not be affected by the Cladding Regulations. For units, determining whether the Cladding Regulations apply to a particular building may require the advice of a building industry professional.

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

### **15.2. Rectification**

The purpose of the Cladding Regulations is to identify buildings which may be affected by combustible cladding. The Cladding Regulations do not impose obligations for removal of cladding or for other rectification work. Removal or rectification work may be required in some cases to ensure compliance with relevant laws or insurance requirements, which may be a costly exercise. In some cases, fire safety measures in a building may adequately address risks arising from the cladding.

### **15.3. Notice That A Building Is Affected**

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

Please inform us if you believe that the building may have cladding, the Cladding Regulations may apply to the Property or if you have received any disclosure from the Seller which refers to the presence of combustible cladding. If the building has cladding and is affected by the Cladding Regulations you will need to obtain advice about how this may affect insurance for the building and your obligations of disclosure to an insurer.

that the Seller can give you this notice at any time before ownership changes.

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