

## Submission for Consideration

by Alan Liddle & Peter Carter (for ADL Software)  
(on behalf of the Real Estate Industry of Qld)

### Review of the *Property Agents and Motors Dealers Act 2000*

#### Background

ADL Software provides a legal forms service to the Real Estate industry in Australia, with in excess of 1,500 client real estate offices in Qld alone.

As part of our services to the industry we provide news and articles on legislation, court rulings and precedence that affect the industry and also lobby relevant government bodies on the industry's behalf to affect changes to improve the overall status of the industry.

Given our industry services, we have not only become highly respected as legal forms to the industry, but also an instrument of industry opinion, information provision and influence.

In a great many cases, clients will approach our organisation as a de facto industry representative association.

As a result we have a number of relevant real estate industry issues that we are able to bring to the attention of the review committee. These issues are, we believe, reflective of the feelings of the majority of real estate agents throughout Qld who all believe that addressing these issues will resolve many day-to-day problems for the industry without diminishing consumer protection.

#### References

##### **SDPC Report:**

In this submission reference to "SDPC Report" is a reference to the Report on the Review of Regulatory Reform (Phase 2) - Property Agents and Motor Dealers Act 2000 by the Service Delivery and Performance Commission dated March 2008.

#### Preamble

Regulation and its enforcement should be **fair and equitable** to all stakeholders, whilst achieving the policy goals of government.

As impliedly recognised by the SDPC report, the current regime is one of over-regulatory prescription that delivers negligible benefits as compared to the overhead it creates. Compliance and inadvertent non-compliance bring large disputation and transaction costs: more than 50% of the legal effort for any transaction is expended on compliance issues that have nothing to do with its legal imperatives.

It has been estimated that compliance and disputation cost of PAMDA has been at least \$12.6 million/month which is more than \$1.5 billion over 10 years.

This is an enormous cost borne widely by the real estate industry, legal industry and consumers when considering that it is designed to prevent the shonky practices of just a few.

Further, the multitude of forms and disclosure is confusing to consumers to the extent that they are (including the PAMD form 30c & BCCM 14 warning statements) mostly ignored. On the contrary, disclosing parties are immunised from liability by the very act of disclosure. It is a paradox the result is that consumers' rights are diminished by reason of the very consumer protection measures perceived to benefit them.

Agents suffer not just legislative penalties as a result of compliance breaches. They also are liable civilly for the same inadvertent error, for example in lawsuit damages to their client seller, for the resulting collapse of a transaction. Thirdly, they are denied remuneration for the work they have performed, often when the refusal to pay is entirely opportunistic.

Clearly legislative protections should be directed against the few shonks that are responsible for any orts – not the industry and consumers themselves who currently bear this burden through increased transaction costs and the cost of disputation.

Generally we submit that there is now for the most part, adequate protection under the general law - the Australian Consumer Law for example that came into force from January 1 2011 – that renders much of PAMDA's specific protections redundant. Thus the new regime of regulation should be far less prescriptive.

Given that the Real Estate Industry in Qld is currently suffering its worst decline in many years, with stamp duty rising and sales at rock bottom, it is time to make a change that will help rejuvenate a key part of Qld's economy.

## **Issues for Consideration**

(Not necessarily in order of importance)

### **1. Approved Forms**

Under current legislation there are many "approved" forms that must be used within the real estate industry. The purpose of these forms in general is not a matter of contention.

The problems that are associated with having prescribed forms are as follows:

- (a) Legislation requiring that these forms be reproduced in a manner substantially the same as prescribed can lead to disputes based on mere technicalities in respect to production or printing of a form;
- (b) Prescribed forms can be stockpiled and often become out-of-date and still used without agents becoming aware;
- (c) Some forms cause a duplication of information (eg 22a & 27c or 30c, BCCM 14 & Sales Contract) that is entirely unnecessary. Such duplication can inadvertently lead to unintentional irregularities and unintended non-compliance;
- (d) the regular requirement to update prescribed forms version numbers & logos causes unnecessary expensive compliance costs within the industry;
- (e) These requirements:
  - a. cause additional workload within the industry;

- b. waste paper and;
- c. add significantly to transaction costs.

### **Recommendation**

We submit that where possible the requirement for prescribed forms be removed and that regulated information for buyers be included within a residential contract itself as recommended in the SDPC report.

In other cases (eg appointment of agents), regulated warnings, information and other text that should appear in and be part of specific industry documents. This method is used in other States with great success

*Refer SDPC Report item 11.6 and in particular recommendation 11.6.1.*

## **2. Trivial Infringements**

Clients have reported Office of Fair Trading (OFT) conducting records investigations intent on finding even the smallest infringements. Such inspections and subsequent follow-ups by the OFT can last months and even years, resulting in minor breaches with minor fines.

One instance involving a minor discrepancy within a recognised industry trust accounting software program (where no monies actually went missing) lasted two years and caused a major heart attack to the Licensee concerned. The eventual outcome being that the OFT agreed to split the costs of the investigation with the licensee and drop the charges.

We agree that unannounced inspections are an important part of industry surveillance, but it appears that some inspectors are intent on prolonged investigation for minimal benefit. Such an attitude can only alienate the OFT from the industry, thereby reducing their effectiveness as a surveillance and enforcement agency.

A number of Agents have even expressed a real fear of speaking out against the OFT for fear of retribution.

### **Recommendation**

We submit that for minor infringements, counselling and the prescription of mandatory training in the area of concern would help resolve the matter more readily than the threat of penalty.

Training could range from an education session with the Inspector through to enrolment in an accredited training course covering the minor breach. Such an approach would certainly reduce angst, secure greater co-operation and save a great amount of currently wasted time.

## **3. Rulings on Interpretation of the Act**

As mentioned above, OFT inspectors are more than happy to 'direct' agencies in respect to perceived errors in operation (whether such direction is correct or not), but when a Real Estate Agency contacts the OFT for advice or ruling on the interpretation of some aspect of legislation, the standard response is, "We are not at liberty to give advice. You will have to wait 'til the courts rule on the matter."

This is a very common complaint by our clients.

Given that most legal professionals cannot agree upon the intended meaning of many aspects of legislation relating to the Real Estate industry, it is extremely unfair to force Agencies to

walk a tightrope of uncertainty waiting for the court case that may or may not find them in breach of legislation.

Agents have every right to be informed of the OFT interpretation and for the OFT to publish rulings in respect to legislation. Surely when legislation is drafted it is done so with a specific intent in mind. We fail to understand how such intent cannot be explained to those Agents it affects prior to them inadvertently breaking the law because of misinterpretation of ambiguous or difficult-to-understand legislation.

#### **Recommendation**

We submit that an advisory service be implemented to provide agents on rulings to do with legislation and the running of their businesses.

#### **4. Penalties**

Real Estate Agents appear to be assumed guilty until proven innocent. The severity of fines in respect to breaches of legislation is certainly a very good way to demonstrate this point.

We have previously published an article (addendum A) outlining fines within the Real Estate Industry compared to other industries and criminal law. Our findings were astounding!

PAMDA differentiates NOWHERE between accidental, inadvertent and victimless breaches on the one hand and those committed with an 'intent to defraud' or that cause actual losses!

The penalties do NOT seem to deter the real 'scammers' and 'racketeers' whose blatant intent is to break the law, but can easily bankrupt a genuine agent trying to do the right thing.

#### **Recommendation**

We submit that when redrafting PAMDA legislation all penalties be reconsidered and accommodation be made, where applicable, for unintentional infringements.

*Refer SDPC Report item 11.3 and in particular recommendation 11.3.1.*

#### **5. Regulated Commissions**

Please refer to the attached document (Addendum B), "Submission for Consideration - Deregulation of Real Estate Commissions".

#### **6. Salesperson/Property Manager Licenses**

This topic is a bone of contention by every Real Estate Agent in the State. It is a requirement by law to be registered before Salespeople and Property Managers can actually perform their jobs. To gain registration they must undertake the appropriate training for their position.

The issue is not the training. It is the fact that it takes approximately six weeks for a certificate to be issued by the OFT AFTER successfully completing the appropriate training. The excuse given by the OFT is that certain criminal checks must be undertaken to ensure the suitability of the professional to take on the desired position.

The fact of the matter is that one of two things occurs during this six week period. A Salesperson/Property Manager goes hungry for the term or the Licensee pays them to earn no income for the business. Either case is totally inappropriate!

### **Recommendation**

We submit that the requirement for sales people and property managers to be licensed is removed from legislation and procedures be implemented as outlined in the original SDPC Report.

*Refer SDPC Report item 3.3 and in particular recommendation 3.3.2.*

## **7. Valuations by Valuers**

In accordance with the *PAMD Act* a Real Estate Agent must comply with sections 574 & 574C by supporting their opinion of the value of a property by supplying the Seller with a CMA (Comparative Market Analysis). There are strict guidelines as to how an opinion must be formulated and how the CMA must be completed.

It appears however, that there is no such requirement placed on financial institutions or independent property valuers.

The issue here is that Real Estate Agents go to great lengths to value and subsequently sell properties to the best advantage of their client (the Seller), in accordance with the above mentioned legislation. On many occasions the financial institutions value can be well under 'market value' and subsequently the sale falls through for finance reasons.

Under such circumstances the financial institution will give absolutely no support for their valuation. WHY?

It would seem only fair that anyone providing a valuation on real property in Qld should comply with sections 574 & 574C of the *PAMD Act*, by always providing a supporting CMA with their valuation.

### **Recommendation**

We submit that for the purposes of valuing real property in Qld these sections of the *PAMD Act* MUST apply.

## **8. Standardised Training**

In covering issues with training we come back to the fact that NO ONE is able to get definitive rulings on the true intent of legislation.

It has become apparent that different Registered Training Organisation's (RTO's) interpret legislation in different ways and subsequently vary their training accordingly. One of the most common reasons for contact with us by our clients is where two or more employees within an agency, having been trained by different RTO's, have differing opinions on how to perform certain aspects of their roles within the agency. Most enquiries revolve around forms.

In many cases we are unable to assist, advising them to contact the OFT for further clarification. Needless to say, subsequent feedback is that the OFT were not prepared to give any legal advice.

### **Recommendation**

We submit that our recommendations under item 4 above be implemented

## **9. BCCMA**

Currently PAMDA & BCCMA overlap to a degree causing unnecessary duplication of effort and paperwork in respect to residential property sales.

### **Recommendation**

We submit that Government should re-consider April 2011 BCCMA requirements regarding the contents of Disclosure notices regarding “extent” of divergence etc. There should only be one form of BCCM disclosure/warning/information statement – not 3 as currently applies.

Further, the BCCMA should be brought into alignment with a new form of PAMDA that provides a much less prescriptive form of regulation.

## **10. Definition of ‘residential real estate’**

There have been a number of expensive court actions that involve the interpretation of the statutory definition.

### **Recommendation**

We submit that the inherent uncertainty must be removed. For example it should be clarified that PAMDA requirements does not apply to broadacre residential land (with or without a residence) that is intended for subdivision.

## **11. Put and Call Options**

There have been a multitude of expensive court actions to determine the circumstances in which PAMDA applies to options.

### **Recommendation**

We submit that the inherent uncertainty must be removed. It is submitted that PAMDA should be expressed not to apply to the formation of a contract as a result of an option if it was complied with when the option was entered into.

## **12. Appointment of Agent**

There have been expensive court actions relating to the failure to express Part 4 of a PAMD form 22a the means by which the agent intends to “perform the service”. This serves no purpose.

### **Recommendation**

We submit that the requirement to specify how an agent intends to perform the sales service be removed.

## **13. Lawyer’s Certificate**

A lawyer must disclose any relationship with the seller etc. in the s 365 certificate in a form 32a.

However if a lawyer has such relationship they are precluded from providing a form 32a certificate in relation to the waiving or shortening of a cooling off period under sections 369 and 370 of the PAMDA.

In the first instance, the categories of “business relationship” are insufficiently defined.

Moreover, there appears to be no logical reason for the different standards. Surely the 'mischief' is overcome by the disclosure and the general law will apply to protect a buyer if a solicitor with a relationship exerts undue influence to secure a cooling-off waiver.

This causes difficulty and inconvenience in practice as a buyer's preferred lawyer may in fact have some business association with an agent that can disqualify him or her from providing a s 369 or s 370 certificate.

### **Recommendation**

We submit that there be the additional qualification for a solicitor providing a cooling-off waiver or shortening certificate be removed provided disclosure of any relationship is made.

### **Splitting of PAMDA**

We generally support the regulation of PAMDA by way of a separate Act that is a much less prescriptive form of regulation, allows for incorporation of regulated information for buyers within contracts themselves (rather than in prescribed forms) and allows the general law and other consumer provisions (eg. Australian Consumer Law) to provide the protections that are appropriate.

### **Summary**

In addition to the above items of concern we believe that the SDPC Report is extremely comprehensive and identifies other issues that should be addressed within current legislation.

Generally agents believe that:

- (a) they are being singled out for persecution as an industry
- (b) legislation is poorly drafted
- (c) legislation is difficult to understand
- (d) there is not enough industry consultation in the legislation drafting process

There is definitely a great deal of room for improvement with relevant real estate legislation.

# Addendum A

## Real Estate Agents are Criminals



By Alan Liddle  
[www.adlsoftware.com](http://www.adlsoftware.com)

**It appears that the law treats Real Estate Agents as criminals, with very little (or no) tolerance allowed for genuine error.**

After doing a little research I have found that the penalties dished out to Real Estate agents for breaches of the PAMD Act can be quite extreme compared to other legislation.

Here are some comparisons:

Offence	Maximum Fine	Maximum Prison Term
<b>PAMD Act</b>		
Represent in any way to someone else anything that is false or misleading in relation to the letting, exchange or sale of property.	\$40,500	Nil
Neglect to pay rent to the licensee's general trust account before paying the money to the owner.	\$15,000	3 Years
Fail to pay trust monies for investment with a branch of a financial institution within the State operated for the investment of the amount.	\$15,000	3 Years
Fail to give a written statement to a proposed Buyer that a lot of vacant land cannot be legally used for residential purposes prior to the Buyer signing a Contract for purchase of such lot.	\$15,000	2 Years
Fail to keep a copy of the above statement or fail to have it <i>immediately</i> available for inspection by an inspector who asks to see it.	\$15,000	2 Years
Threaten or obstruct an inspector who is exercising a power under this Act, unless the person has a reasonable excuse.	\$15,000	1 Year
Pay to a trust account an amount other than an amount that must be paid to the account.	\$15,000	1 Year
Fail to notify the chief executive in the approved form of any change in the agent's principal place of business within 14 days after the change.	\$15,000	Nil
A resident letting agent who manages one building complex fails to reside within the complex.	\$15,000	Nil
Fail to present a Sales Contract to a Buyer in the approved manner.	\$15,000	Nil
<b>Trust Accounts Act 1973 (Outside Real Estate)</b>		
Pay to a trust account an amount other than an amount that must be paid to the account <b>with the intent to defraud.</b>	\$7,500	1 Year
Pay to a trust account an amount other than an amount that must be paid to the account ( <i>No intent to defraud</i> ).	\$3,750	Nil
<b>Transport Operations (Road Use Management) Act 1995</b>		
Drive under the influence of alcohol (1 <sup>st</sup> offence within the last 5 years).	\$2,100	9 Months
Drive under the influence of alcohol (2 <sup>nd</sup> offence within the last 5 years).	\$4,500	18 Months
<b>Crime and Misconduct Act 2001</b>		
Intimidate or harass, or threaten to intimidate or harass, a witness in a commission hearing.	\$6,375	Nil
<b>Criminal Code Act 1899</b>		
Operate, or in any way interfere with the operation of, a vehicle dangerously in any place.	\$15,000	3 Years
Go armed to Parliament without lawful excuse.	\$7,500	2 Years
Unlawfully enter another person's vehicle.	Nil	2 Years
Threaten violence with intent to alarm any person, discharge loaded firearms or do any other act that is likely to cause any person in the vicinity to fear bodily harm to any person or damage to property.	Nil	2 Years
Harbour an escaped prisoner	Nil	2 Years
Knowingly contravene a restraining order.	\$3,000	1 Year

Given that all PAMD offences mentioned above can be either committed by genuine error or are totally absurd in themselves and bear no mention of 'intent' to commit fraud, and the majority of the other Acts' offences clearly involve 'intent' and/or are far more serious offences, it is no wonder you feel like malicious criminals these days.

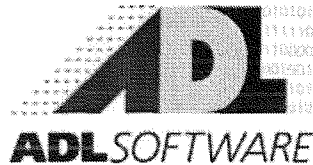
How can a drink driver receive a maximum penalty of \$2,100 or 9 months imprisonment and you can cop a maximum fine of \$15,000 or one year's imprisonment for accidentally banking the wrong amount in a trust account. Why does a solicitor receive a maximum penalty of \$3,750 for exactly the same accident? And since when can a person 'accidentally' drive a motor vehicle while under the influence?

I estimate there to be at least 373 offences involving penalties in the PAMD Act (without actually counting them). The minimum penalty appears to be \$7,500. The intent to defraud is NOT mentioned in any one of these offences. Surely this means that the legislation assumes your intent to defraud in all cases.

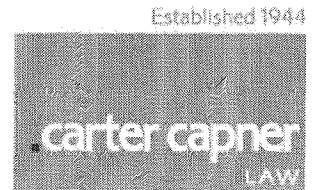
Just food for thought!

*(The above article represents the opinion of Alan Liddle and is not meant as professional advice nor is it necessarily the opinion of A.D.L. Software.)*





## Addendum B



# Submission for Consideration Deregulation of Real Estate Commissions

(by Alan Liddle & Peter Carter on behalf of the collective clients of ADL Software – Totalling in excess of 1,500 within the Real Estate Industry of Queensland)

This submission relates to the proposed deregulation of residential real estate commissions in Queensland and proposes a means by which such change could take place whilst fairly considering the effects of such change on consumers, taxpayers and the Real Estate Industry in Qld.

This proposal has been compiled through consultation with the ADL client base and from resulting feedback. It accurately reflects the concerns of real estate agents in respect to legislative changes that were flagged by the Minister in his media statement of 15 June 2011.

### Legislation Objective

Objectives in respect to the proposed changes:

1. To bring Queensland into line with other States in Australia;
2. To increase competition in the industry for the benefit of both consumers and agents;
3. To ensure consumer protection.

### Current Implementation

The quantum of residential real estate commissions are regulated in Queensland only by the imposition of Maximum Commissions in respect to real estate transactions (see Schedule 1A of the *Property Agents and Motor Dealers Regulation 2001*).

There is NO requirement for an agent to charge the maximum commission in respect to a real estate transaction.

### Current Practice & Concerns

There is already a growing trend within the industry of discounting commissions to attract greater market share (especially in sales), although many agents prefer to charge the maximums outlined in the PAMDA Regulations as a matter of course.

Current practice already allows consumers to negotiate their commissions. They are encouraged to negotiate when entering into agency agreements (refer the Commission item on both the PAMD Form 20a and Form 22a which alerts the consumer to the fact that, "You have a right to negotiate an amount lower than the 'maximum' amount of commission").

There is a concern within the industry, in relation to current practice, that:-

- (a) current sales commission maximums do not allow for variations in property pricing and saleability between different region types (eg. Inner City, Urban, Regional, Country, etc.); and
- (b) the maximum commissions have not been updated since 1986, no longer reflecting current input costs.

In reality Queensland already has a system that meets legislative objectives 2 & 3 (scope for greater industry competition and protection for consumers against excessive commissions). The deficiency is that maximum commissions are prescribed at all.

## **Minister's Proposals**

### **Being in Line With Other States:**

Alignment with other States in and of itself does NOT make a course of action correct, although in this instance it is generally agreed throughout the industry that deregulation of commissions is best for the industry. Having said this it must be questioned as to whether the current system is or is not already a deregulated system with built in consumer protection. I personally believe that our current system achieves the objectives of the proposed reform, with a question mark over the effectiveness in the way that maximum commissions are determined.

If it is of value that Qld come into line with other States, then why add additional legislation that the other States have NOT introduced (ie. QCAT Jurisdiction over allegations of harsh commissions). Wouldn't this then make Qld 'out-of-line' with the other States?

Minister Paul Lucas states, "While there may be perceived concerns that deregulation may lead to increases in commissions, the experience in other jurisdictions shows that this is *not* the case". Given that these successes have been achieved in other States without the implementation of a QCAT style "added protection" for consumers, wouldn't it be fair to assume that it would work in Qld without QCAT intervention as well?

### **Additional Disclosure:**

It has been proposed that "any changes will have strong protections *including strong disclosure*". Queensland already has the most regulated real estate industry procedures with the highest form of agent disclosure for any State in Australia. The addition of further disclosure will only add to the overall burden of agents and add additional uncertainty to the real estate sales process.

Currently agents must declare their commissions and other remunerations of everyone concerned to prospective buyers in respect to a property sale. Such disclosure was implemented:-

- (a) by means of form 22a to inform sellers of the extent of their obligations to the agent; and
- (b) by means of form 27c to inform buyers of commission and marketing fees and allow them to decide if the proportion of the sale price allocated to remuneration was excessive.

The current disclosure requirements are onerous and the consequences of inadvertent non-compliance are harsh. It is hard to imagine how further disclosure would afford any better protection to consumers.

### **QCAT Jurisdiction over allegations of harsh commissions:**

Making the way clear for any seller to easily dispute commissions without qualification after a sale is completed, regardless of the commission charged, is fraught with danger. At the very least it undermines the legal fundamentals of "a meeting of minds" and is in contradiction to accepted contract law principles – why have the agreement in the first place? This proposal can only be detrimental to the industry and ultimately to consumers.

Without guidelines or recommended commission rates, how will the market know what's "fair" and how will agents be able to set them?

Further, recent media reports indicate that QCAT is currently struggling with a higher than expected rate of tribunal disputes (60% more than expected over the past 18 months). A further influx of claims under the proposed deregulation of commissions will further degrade QCAT's effectiveness as well as overly burdening the real estate industry.

### **Saleability and effort required to market:**

The minister's media statement suggests that saleability and effort required to market a property are factors that should be taken into consideration when QCAT adjudicates on whether a commission is excessive.

Real Estate agencies can go to great extremes of marketing to ensure that their agency gains maximum exposure and attract the greatest number of potential buyers to provide maximum selling potential for a seller's property.

To provide a seller a quick and seemingly effortless sale an agency may, at no additional direct cost to the consumer, spend large amounts of money on advertising and exposure. Along the way they will also have many

properties that require considerably more effort to sell for no other reason than the right buyer took longer to walk through their doors.

In many cases, where a property does not sell at all (often because the seller is unrealistic about the property's value), an agent will put in a great deal of effort for no reward whatsoever. A real estate agent faces the same risk & responsibility regardless of whether a property sells or not.

On a \$400,000 property sale, a real estate agent can achieve a maximum commission of \$10,450 for weeks or months of work. From 1<sup>st</sup> August 2011 the State Government will gain \$11,825 as a tax on the same transfer and for playing no part in respect of the transaction. Which is 'fairer'?

### **What is a Fair Commission?:**

Generally a seller considers a fair commission to be one where they net a figure (after commission) for the sale of a particular property which accords with their opinion of its value.

It is relevant that sellers often have optimistic expectations of their property's worth. Dissatisfaction with commission payments arises after an eventual sale at below the anticipated figure. Such dissatisfaction is therefore a product of a disappointing sale and therefore the state of the market, rather than as a result any conduct or under-performance of the selling agent.

Unrealistic price setting can be due to lack of education, an unrealistic opinion of the attributes of their property or having been given an inaccurate opinion on value by a friend or even the selling agent. This practice may be worthy of legislative oversight. Certainly the "fairness" of contractually agreed commission rates is not.

Currently agency agreements must be completed in such a way that commission is specified as both percentage and amount based on listing price. It is in 'Black & White' for the client to see. They know what it is up front. If they are not happy with it they can negotiate or go elsewhere. It is their choice. At the time of signing, in 100% of cases, the stated commission is considered by the seller to be a 'FAIR COMMISSION'.

Sellers should not be allowed to cry "unfair" simply because their expectation of price was not achieved. Under a deregulated system there would be nothing stopping a seller from negotiating a sliding scale commission based on price achieved – such an agreement would certainly work in favour of the consumer.

### **What's Fair for the Consumer Should be Fair for the Agent:**

If it is deemed 'fair' that consumers can take advantage of QCAT after the fact, to get a reduction in commissions, then wouldn't it be 'fair' if agents could do the same thing to achieve a higher commission when a property is very difficult to sell or doesn't sell at all because the consumer is unrealistic about the value of their property?

### **Expertise to Adjudicate:**

Allowing third-party adjudicators, who have no formal understanding of running and managing a real estate agency, the power to overrule commissions agreed upon by two educated parties to an agency agreement would be an abuse of power that is unconscionable in the extreme. Pre-agreement consumer education & advisory services can be the only route to greater consumer protection.

### **Same System – Other Industries?**

What if it was proposed that a similar system should apply to other industries?

Example A:

1. A builder quotes on the building of a house for a client.
2. The client accepts the quote and building commences.
3. The builder completes the job promptly, exactly as was specified, to plan and to the client's satisfaction.
4. Then the client decides that the builder did the job too quickly and doesn't deserve the agreed fee.
5. Is it fair that QCAT then steps in and reduces the builder's fee?

Example B:

1. A surgeon performs an operation on a patient.
2. The operation is NOT successful.
3. Should the patient be allowed to go to QCAT and ask for a reduction in fees?

### **Penalties for Providing Service**

To allow QCAT to substitute 'fairer' commission undermines the entire rationale of incentive that is built into a commission agent's process. The fact that sellers are prepared to pay commission at the maximum prescribed rates evidences that they value such service accordingly. A much more significant economic indicator will be revealed under deregulation, by the extent to which a seller is prepared to incentivise an agent whether it be at higher or lower rate than the current maximum. Either way, as long as each party has equal bargaining power, the rate agreed is an economic representation of the value placed by the consumer on the anticipated service.

Allowing after the fact intervention in remuneration, leaves it wide open for real estate agents to be penalised through opportunistic disputation. Such undesirable behaviour should not be enabled by legislation.

### **"Problem with the Current 'Fixed' Commission System"?**

It has been suggested by the Minister that there is a problem with the current 'fixed' commission system. This statement has absolutely no grounding as consumers under the current commission system already have the ability to negotiate any commission they like below a regulated maximum and are encouraged under regulation to do so.

A number of franchise groups and independent agencies already promote fixed, capped or discount commissions to gain greater market share, providing consumers with greater choice.

There is the possibility that the Minister is alluding to a non-commission based system when referring to a 'non-fixed' commission system. If this is correct then it would be important to point out to the Minister that a non-performance based remuneration system cannot work. There will be no incentive for agents to actually sell properties and consumers will be far worse off.

### **Current Maximum Commissions**

It is an economic axiom that regulated maximum prices generally become de facto standard prices. Despite growing price competition, this is what has occurred, to some extent, in the residential property sales industry.

Deregulation will in many instances put downward pressure on commission rates and the overall cost of sale transactions. It may also promote:-

- (a) separate agent representation of buyer and seller in the one transaction, each agent being separately remunerated; and
- (b) variable commission rates dependant upon sale price achieved.

These are for the market to resolve ultimately, most likely to the benefit of consumers.

The trade-off for these benefits must be scope for agents to charge at higher than the current maximum rates in appropriate situations relevant to region and property category.

Many of our regional clients regularly complain that the current maximum commission does not allow them to charge enough commission to cover the work they normally have to do to make a sale. In regional areas prices are generally a fraction of prices in the cities and because of the potential distance between properties they are limited to the number of property inspections they can achieve in any given day.

The market is likely to set its own levels taking into account the circumstances of country and regional agents.

## **Submission**

Our feedback indicates that generally the industry is in favour of deregulated commissions provided it is not accompanied by further burdensome regulation and any subversion of privity of contract.

The potential for consumers to contest commissions without qualification after the sale is completed is totally unacceptable to all agents that we have communicated with.

Given that the only impediment to the current system being classed as a deregulated system is the maximum commissions as set out in Section 1A of the *Property Agents and Motor Dealers Regulation 2001*, the legislative objectives can be accomplished simply by the repeal of this regulation.

Currently many agencies promote discounted, flat fee or capped commissions and consumers are already encouraged to negotiate.

A report by the Service Delivery and Performance Commission, as a result of a review into PAMDA, published in 2008 states, "*Of the 2454 complaints against real estate agents (excluding resident letting agents) in the period 1 July 2005 to 30 June 2007, ten resulted in court proceedings and one led to a CCT disciplinary proceeding. The number of proceedings is extremely low given the size of the industry (an estimated 176,000 residential real estate transactions in Queensland per annum (REIQ))*". This certainly indicates that additional regulation in respect to consumer protection in the real estate industry is not warranted.

Government should resist any bias in its efforts to provide 'fairness' to the consumer at the expense of 'fairness' to one of the State's major industries.

In our opinion, any efforts to allow consumers to contest performance based commissions after successful task completion by real estate agents will undermine the very concept of being paid for results. This could lead to non-performance-based systems such as time-based 'per month' fees being charged which may or may not be supplemented with lower performance-based commissions.

A non-performance based system would lead to poorer service/performance standards from agents, possibly resulting in degraded sale prices, longer listing times and ultimately much less consumer satisfaction (unless maybe if you're the buyer).

## **Proposed Solution**

Deregulation can be achieved very simply to be in line with other States.

1. Remove Section 1A from the *Property Agents and Motor Dealers Regulation 2001*.
2. Modify agency agreements to provide greater warning to consumers in respect to:
  - a. Their right to seek an independent valuation of their property before signing;
  - b. Their right to seek independent advice before signing;
  - c. Their right to shop around;
  - d. Their right to negotiate the commission;
  - e. The fact that once the agreement is signed they will be committed to pay the agreed commission on successful performance by the agent.

Note: This solution is in line with current Chapter 11 legislation for Buyers. It would provide Sellers no more and no less protection than Buyers currently have.

To reiterate, in the words of the Honourable Minister Paul Lucas, "While there may be perceived concerns that deregulation may lead to increases in commissions, the experience in other jurisdictions shows that this is *not* the case". The other jurisdictions did NOT implement a QCAT style system in their deregulation process for it to work 'fairly'. It is certainly 'fair' to assume that the same would apply in Queensland.

### **Benefits of the New Approach**

- All objectives of proposed legislation will be met with maximum effectiveness, assuring the required consumer protection.
- There will be greater certainty given to the contracting process.
- Legislation will be easier to understand.
- There will be minimal cost to changing the legislation.
- There will be minimal cost to the real estate industry.

### **Disadvantages**

- None

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**Would you enter into an employment or contractual agreement for an agreed amount knowing full well that you might not get paid even after performing to the letter of the agreement?**

## Gail Easton

---

**From:** Alan [REDACTED]  
**Sent:** Wednesday, 24 August 2011 3:50 PM  
**To:** Legal Affairs Police Corrective Services and Emerg Svc Committee  
**Cc:** Peter Carter  
**Subject:** Attention Gail: ADL sales contracts  
**Attachments:** Pool Safety Fact Sheet & Guide.pdf; Presentation Process (Community Title).pdf; Presentation Process (House & Land).pdf; Sample ADL Sales Contract with Warning (House & Land).Pdf; Sample ADL Sales Contract with Warning (Community Title).Pdf

Hi Gail,

Please find attached watermarked versions of both our sales contracts as requested.

In respect to the presentation of sales contracts and the sales process prior to signing, ADL also provides agents with guides for Pool Safety and Presenting Sales Contracts. These guides can show the complexities still apparent in the sales process and may also be of assistance to the committee in understanding how technical error can occur in the sales process.

I have attached copies of both presentation process guidelines and pool safety fact sheet & guidelines.

I am happy to make myself available to discuss these items (or any other aspects of our submission) with the committee as required.

Thanks for your help.

Regards,

**Alan Liddle**  
(Director)  
**A.D.L. Software**  
P.O. Box 364  
Wilston, QLD 4051  
Ph: +61 (07) 3367 1982

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# FACT SHEET

A.D. Liddle Pty Ltd t/a A.D.L. Software



## Pool Safety

### Facts to Know

#### Spa Baths

Spa baths which are continually filled to a depth of more than 300mm are deemed regulated swimming pools for the purposes of legislation. (Schedule 2 - Dictionary - Swimming Pool)

#### Portable Wading Pools

A portable wading pool means a pool that;

- a) is capable of being filled with water to a depth of no more than 300mm; and
- b) has a volume of no more than 2000L; and
- c) has no filtration system.

(Schedule 2 - Dictionary 'Portable Wading Pool')

If any of the above does NOT apply (eg. the wading pool CAN contain more than 2,000L of water OR can be filled to a depth of MORE than 300ml) a wading pool is then deemed to be a regulated pool as soon as it is 'constructed' (eg. 'A person constructs a regulated pool if the pool is portable and the person places it, ready to be filled with water, on land or in a Building' [see Schedule 2 – Dictionary 'Construct']).

This can only mean that as soon as a 'portable' wading pool, that does NOT fit the definition for a 'portable wading pool', is placed on the ground ready to be filled with water it MUST have a fence erected around it and have a safety certificate obtained for it, before it is filled with water.

#### Resuscitation Signs

The owner of a regulated swimming pool must display near the pool a resuscitation sign showing the current procedures approved by the Australian Resuscitation Council for CPR.(s236)  
{Maximum penalty - 20 penalty units}

#### Pool Safety Compliance

- Pools must always comply with relevant Pool Safety Standards, regardless of whether the requirement for a Pool Safety Certificate has been 'triggered' (see the next two paragraphs for further explanation in respect to what the relevant Pool Safety Standard would be).
- Until the requirement to obtain a Pool Safety Certificate is 'triggered' for a pool or 1<sup>st</sup> December 2015, whichever occurs first, a pool must comply at all times with the Pool Safety Standard the pool would have had to comply with prior to 1st December 2010.
- AFTER a Pool Safety Certificate is current for a pool or as at 1st December 2015, whichever occurs first, a pool must comply at all times with the Pool Safety Standard that comes into force on 1st December 2010.

**Note:** The owner of an existing regulated swimming pool at the time of the new legislation becoming law, must make the pool compliant with the new standard within five years of the new legislation becoming law, unless the property is leased or purchased after the new legislation becomes law (see below). (s231A - definitions - pool safety standard application day)

- Any pool constructed on or after 1st December 2010 must comply at all times with the Pool Safety Standard that comes into force on 1st December 2010 (This would include a wading a pool that does NOT fit the definition of a Portable Wading Pool – see above).

#### Pool Safety Certificate

- A pool safety certificate is taken to be current for a relevant regulated pool at a particular time if information included on the regulated pools register at that time shows that a Pool Safety Certificate (Form 23) or a Final

This Fact Sheet/Guide is not legal advice but a quick reference guide and is not meant to replace proper 'Best Business Practice' training. It is recommended that anyone using this guide complete proper training beforehand.



Inspection Certificate (Form 17) is current for the pool. (s246ATE(2)) (Although the Queensland Law Society has said, "but an owner may not rely on this presumption if they knew, or ought reasonably to have known, that a pool safety certificate was not in effect for the pool")

- Pool safety certificates have a lifespan, after which the requirement to obtain a further pool safety certificate may be triggered (Note: It is NOT mandatory to keep a pool safety certificate always current for a pool. They only need to be obtained when a 'trigger' occurs - see 'triggers' in next paragraph). Lifespans for Pool Safety Certificates for residential premises are as follows:
  - Shared Pools – 1 Year
  - Non-shared Pools – 2 Years
- The two 'triggers' that instigate the requirement to obtain a pool safety certificate are:
  - The settlement of the sale of a property with a regulated pool
  - The 'entering into of an accommodation agreement'. For safety this should be taken to be whenever a tenancy agreement is signed or entered into, extended, renewed or modified (ie. the terms of tenancy are changed)
- A pool safety certificate MUST be in place BEFORE a trigger occurs for any tenancy, including an existing tenancy where the tenancy is renewed or modified.

**Note:** The Department of Infrastructure and Planning (DIP) have advised that when a tenancy lapses into a periodic tenancy where no terms have changed (eg. rent does not change) a 'trigger' does not occur.

### **Pool Registration**

An owner of a regulated swimming pool MUST ensure that the pool is registered with the Department of Infrastructure and Planning prior to 4<sup>th</sup> May 2011 (this in itself does not require a Pool Safety Certificate to be issued).

### **Form 36 (Notice of No Pool Safety Certificate)**

When a Pool Safety Certificate is NOT current at the time of a 'trigger', legislation requires that a Notice in the Approved Form be given to certain stakeholders to a transaction involving a regulated pool. The approved form is the Form 36 (Notice of No Pool Safety Certificate).

### **Date Legislation is Effective From:**

# 1<sup>st</sup> December 2010

## Selling a Residential Property

When selling a residential property that has one or more regulated swimming pools, for each pool:

### ↳ Pool Safety Certificate is Current

The Buyer should be given a copy of such certificate before settlement by the Seller (s246ATF(a));  
{Maximum Penalty - 165 penalty units}

**OR**

### ↳ Pool Safety Certificate is NOT Current

- ↳ before a prospective Buyer enters into a sales contract the Seller should inform the Buyer:
  - ↳ that there is no pool safety certificate in effect for a relevant regulated pool for the premises
  - ↳ ⓘ about matters relating to the Buyer's potential obligations under the Act

(s246ATM)  
{Maximum Penalty - 20 penalty units}

- ↳ before settlement the following should be given Notice in the Approved Form by the Seller:
  - a) the Buyer;
  - b) the Chief Executive (ie. the Department of Infrastructure and Planning);
  - c) the Owner (if a shared pool) {ie. body corporate}.

(s246ATF(b) & (c))  
{Maximum Penalty - 165 penalty units}

**Note:** The 'approved form' has been published as the Form 36 (Notice of no pool safety certificate) which in itself specifies the requirement to provide a copy of the notice to a 'prospective purchaser' before they enter into a contract of sale. By doing this the requirement to provide the Form 36 to the Buyer prior to settlement is fulfilled unless the settlement date changes after signing the contract (the requirement to provide copies to DIP and the Body Corporate prior to settlement still stands).

**AND**

- ↳ a pool safety certificate should be brought into effect within 90 days of settlement by:
  - ↳ if the pool is not a shared pool, the Buyer; (s246ATJ)

**OR**

- ↳ if the pool is a shared pool, the owner (ie. body corporate). (s246ATK(1) & (2))  
{Maximum Penalty - 165 penalty units}

ⓘ See Special Notes.

## Letting a Residential Property

When starting a new tenancy, renewing a current tenancy or changing the terms<sup>②</sup> of a tenancy for a residential property that has one or more regulated swimming pools, for each pool:

### ↳ Pool is a Shared Pool

#### ↳ Pool Safety Certificate is NOT Current

- ↳ before entering into the accommodation agreement, the following should be given Notice in the Approved Form by the Owner of the premises:
  - a) the Tenant;
  - b) the Owner (ie. body corporate).
  - c) the Chief Executive (ie. the Department of Infrastructure and Planning);

(s246ATI)

{Maximum Penalty – 165 penalty units}

#### AND

- ↳ a pool safety certificate should be brought into effect within 90 days after the accommodation agreement is entered into (ie. signed or agreed to by all parties) by the owner of the pool (ie. body corporate). (s246ATK(3) & (4))  
{Maximum Penalty – 165 penalty units}

#### OR

#### ↳ Pool Safety Certificate is Current

- ↳ The Owner of the pool (ie. Body Corporate) must, as soon as practicable after the pool safety certificate is in effect for the pool and while it is in effect ensure that a copy of the pool safety certificate is conspicuously displayed as near as practicable to:
  - a) the main entrance of the regulated premises; OR
  - b) a gate or door giving access to the shared pool.

(s246ATH(1) & (2))

{Maximum Penalty – 165 penalty units}

#### AND

- ↳ The Owner of the premises must, before entering into an accommodation agreement (ie. signed or agreed to by all parties) for the premises, give to the person who will be the occupier of the premises under the agreement a copy of the pool safety certificate.  
(s246ATH(3) & (4))  
{Maximum Penalty – 165 penalty units}

#### OR

#### ↳ Pool is NOT a Shared Pool

The Owner of the premises must not enter into an accommodation agreement (ie. signed or agreed to by all parties) for the premises unless a pool safety certificate is in effect for each pool for the premises. (s246ATG)  
{Maximum Penalty – 165 penalty units}

**Note:** In respect to this situation an agent **MUST NOT**, for any activities carried out for the entering into of the accommodation agreement, ask for, or receive a reward (eg. remuneration, fee, commission or gain of any kind) for the performance of their activities. (s246ATL)  
{Disciplinary proceedings could be instigated under PAMDA s496}

**Further Note:** This restriction does not specify that the agent's activities are restricted to those in respect to pool safety.

<sup>②</sup> See Special Notes.

# Agents' Responsibilities

Legislation does not outline the responsibilities of real estate agents, but given that agents represent their clients it would be best business practice to ensure certain of the client's responsibilities are fulfilled. Below are steps that should be taken to adhere to Best Business Practice principals.

## Selling a Residential Property

### ↳ Shared Pool

#### ↳ Check Currency of Pool Safety Certificate

④ Prior to listing a property check the regulated pools register to see if a Pool Safety Certificate (Form 23) or a Final Inspection Certificate (Form 17) is current for each regulated pool at the premises (also ask the client if they know of any reason why a certificate may not be current).

#### ↳ Safety Certificate is Current

- ↳ ⑤ Ensure any proposed Sales Contract notes the currency of a Pool Safety Certificate as at the date of signing (there will be a new Item in ADL contracts for this plus new Special Conditions).
- ↳ No More Action Required - The Seller or their legal representative should handle their remaining responsibilities in respect to pool safety.

OR

#### ↳ Safety Certificate is NOT Current

- ↳ When signing the PAMD 22a, get the Seller to sign a Form 36 (Notice of No Pool Safety Certificate) and take a copy.
- ↳ ⑤ Ensure any proposed Sales Contract notes the non-currency of a Pool Safety Certificate as at the date of signing (there will be a new Item in ADL contracts for this plus new Special Conditions).
- ↳ Before a prospective Buyer signs a proposed relevant contract give them a copy of the notice Form 36 (Notice of No Pool Safety Certificate).

OR

### ↳ Non-Shared Pool

#### ↳ Check Currency of Pool Safety Certificate

④ Prior to listing a property check the regulated pools register to see if a Pool Safety Certificate (Form 23) or a Final Inspection Certificate (Form 17) is current for each regulated pool at the premises (also ask the client if they know of any reason why a certificate may not be current).

#### ↳ Safety Certificate is Current

- ↳ ⑤ Ensure any proposed Sales Contract notes the currency of a Pool Safety Certificate as at the date of signing (there will be a new Item in ADL contracts for this plus new Special Conditions).
- ↳ No More Action Required - The Seller or their legal representative should handle their remaining responsibilities in respect to pool safety.

OR

#### ↳ Safety Certificate NOT Current

- ↳ When signing the PAMD 22a, get the Seller to sign a Form 36 (Notice of No Pool Safety Certificate) and take a copy.
- ↳ ⑤ Ensure any proposed Sales Contract notes the non-currency of a Pool Safety Certificate as at the date of signing (there will be a new Item in ADL contracts for this plus new Special Conditions).
- ↳ Before a prospective Buyer signs a proposed relevant contract give them a copy of the notice Form 36 (Notice of No Pool Safety Certificate).

**Note:** The Buyer may wish to negotiate the terms of the contract if no safety certificate is current, by reducing their offer or making the sale conditional upon a safety certificate being put into place by a certain date. The use of ADL distributed Special Conditions may be required to clarify the situation.

③④ See Special Notes.

## Letting a Residential Property

(Starting a new tenancy, renewing a current tenancy or changing the terms of a tenancy<sup>2</sup>)

### ↳ Shared Pool

#### ↳ Check Currency of Pool Safety Certificate

④ Prior to signing a PAMD 20a to manage a property, check the regulated pools register to see if a Pool Safety Certificate (Form 23) or a Final Inspection Certificate (Form 17) is current for each regulated pool at the premises (also ask the client if they know of any reason why a certificate may not be current).

#### ↳ Safety Certificate is Current

- ↳ Obtain a copy of the Pool Safety Certificate from the Body Corporate.
- ↳ Give a copy of the Pool Safety Certificate to the Tenant prior to them entering into the Tenancy Agreement.

OR

#### ↳ Safety Certificate is NOT Current

- ↳ When signing the PAMD 20a, get the Owner to sign a Form 36 (Notice of No Pool Safety Certificate) for your use.
- ↳ Prior to the Tenant entering into the Tenancy Agreement give them a copy of the Notice in Form 36 (Notice of No Pool Safety Certificate).
- ↳ ⑤ *Optional* - Before entering into the Tenancy Agreement, on behalf of the Owner, give a copy of the Notice in Form 36 (Notice of No Pool Safety Certificate) to:
  - a) the Department of Infrastructure and Planning;
  - b) the Body Corporate.

OR

### ↳ Non-Shared Pool

#### ↳ Check Currency of Pool Safety Certificate NOW!!!!

②③④ Check the regulated pools register for ALL current managements now, and new managements as they occur, to see if a Pool Safety Certificate (Form 23) or a Final Inspection Certificate (Form 17) is current for each regulated pool (also ask the client if they know of any reason why a certificate may not be current).

#### ↳ Safety Certificate is Current

- ↳ Obtain a copy of the Pool Safety Certificate from the Owner prior to them entering into a Tenancy Agreement (the agent may organise a copy of the certificate on the owner's behalf).
- ↳ ⑥ Give a copy of the Pool Safety Certificate to the Tenant prior to them entering into the Tenancy Agreement (Best Business Practice only).

OR

#### ↳ Safety Certificate is NOT Current

- ↳ The owner MUST obtain a Pool Safety Certificate prior to entering into a Tenancy Agreement (the agent may wish to assist the owner in organising the certificate).

**Note:** The owner must not enter into an accommodation agreement (or renewal of tenancy) for the premises unless a pool safety certificate is in effect for each pool for the premises. **GIVE YOURSELF PLENTY OF TIME!** It could take the owner some time to organise a Pool Safety Certificate and a new tenancy or change of tenancy **CANNOT** start until it is in place.

**Further Note:** In respect to this situation an agent **MUST NOT**, for any activities carried out for the entering into of the accommodation agreement, ask for, or receive a reward (eg. remuneration, fee, commission or gain of any kind) for the performance of their activities. (s246ATL)  
{Disciplinary proceedings could be instigated under PAMDA s496}

**Caution:** The above restriction does not specify that the agent's activities are restricted to those in respect to pool safety.

- ↳ Obtain a copy of the Pool Safety Certificate from the Owner prior to them entering into the Tenancy Agreement.
- ↳ ⑥ Give a copy of the Pool Safety Certificate to the Tenant prior to them entering into the Tenancy Agreement.

②③④⑤⑥⑦ See Special Notes.

## Special Notes

❶ This section in the Act, in respect to matters relating to the Buyer's potential obligations, was added at the last minute prior to being passed in Parliament. By providing the Buyer with the Form 36 (Notice of No Pool Safety Certificate), which outlines the Buyer's obligations under the Act, the Seller has complied with this section.

❷ The Department of Infrastructure and Planning (DIP) have advised that any change in tenancy, where the tenant signs a new agreement or agreement to change or continue an existing tenancy, is considered to be entering into a tenancy agreement in respect to Pool Safety Legislation.

Also given that under the Residential Tenancies and Rooming Accommodation Act 2008 any change in tenancy terms is also considered to indicate the start of a new agreement, increasing the rent for a tenancy when it becomes a periodic tenancy or during the periodic tenancy could legally indicate the start of a new agreement.

In either case the owner's 'trigger' obligations will need to be adhered to.

❸ This will ensure that you have fulfilled your responsibility to make the Buyer aware of relevant material facts.

❹ A Pool Safety Certificate may be current at the time an Agency Appointment is entered into but may expire prior to a 'trigger' event occurring thereby changing the owner's responsibilities at the time of the 'trigger' event. Example: A Pool Safety Certificate is current at the time a PAMD 22a is signed by the Seller, but it expires prior to finding a prospective Buyer.

Note: You will have at least 12 months before this scenario will affect you.

❺ It is the owner's responsibility to provide a copy of the Form 36 to the Department of Infrastructure and Planning and the Body Corporate. As such the agent may wish to execute this requirement on behalf of the client.

❻ It is not a requirement of legislation to supply a copy of a Pool Safety Certificate to a tenant in respect of a non-shared pool. This step has only been added for Best Business Practice and to ensure a more standard approach to tenanting procedures.

❼ Given that note❷ is correct, it would be prudent to start advising the owners of your managed properties to begin processes to obtain Pool Safety Certificates for non-shared pools where they currently do not have them. **Such safety certificates MUST be in place before a tenant enters into a renewal agreement after the 30<sup>th</sup> November 2010.**

## Contract for Sale of Lots in a Community Title Scheme



- Step 1** Prepare an **Electronic Transmission Consent Form** for signing by the Buyer (Print 2 copies if going onsite to the client). **Note:** *This form is used to gain consent from the Buyer to Fax and/or Email legal documents to them for the purposes of the sales process.*
- Step 2** Prepare a signed (by the Seller) **Seller's Disclosure Statement (BCCM Section 206)** (Print 2 copies if going onsite to the client) and prepare a copy of the Community Management Statement (CMS) which should have been obtained from the Seller, Body Corporate or the Land Titles Office (**Note:** Ensure the CMS is current).
- Step 3** Prepare and sign a **PAMD Form 27c** (Print 2 copies if going onsite to the client).
- Step 4** As per the Buyer's instructions prepare and print a **Contract for Sale of Residential Lots in a Community Title Scheme** which, in ADLForms, includes an **IMPORTANT INSTRUCTIONS** page, a **PAMD Form 30c (Warning Statement)** and a **BCCM Form 14 (Information Sheet)** (Print 2 copies if going onsite to the client).
- Step 5\*** Attach the **Documentation For Contract** (preferably stapled or bound) in the order shown below:
1. **IMPORTANT INSTRUCTIONS (page 1 of the Documentation For Contract)**
  2. **PAMD Form 30c (Warning Statement)**
  3. **BCCM Form 14 (Information Sheet)**
  4. **Contract for Sale of Residential Lots in a Community Title Scheme**
  5. Any other documents referred to in the Sales Contract (ie. Addendums or Annexures)
- Note:** ADLForms automatically prints documents 1 through 4 in the above order with appropriate page numbering.
- IMPORTANT:** *Failure to "attach" the PAMD 30C and/or BCCM 14 is an offence. "Attaching" the PAMD 30C and BCCM 14 helps guard against unintended terminations.*
- Step 6** Present the Buyer with the completed **Electronic Transmission Consent Form** and have them sign it and hand it back to you.
- Step 7** If the property has a regulated swimming pool (shared or non-shared) that DOES NOT have a current Pool Safety Certificate present the Prospective Buyer with a copy of **Form 36 - Notice of No Pool Safety Certificate** which has been signed by the Seller.
- Step 8** Present the Buyer with the completed and signed **Seller's Disclosure Statement (BCCM Section 206)** accompanied by a copy of the Community Management Statement (CMS) and ask them to read and acknowledge the disclosure by signing and handing it back to you. **Note:** *The Seller's Disclosure Statement MUST be presented to the Buyer before they sign the Proposed Relevant Contract.*
- Step 9** Present the Buyer with the completed and signed **PAMD Form 27c** and ask them to read and acknowledge it by signing and handing it back to you. **Note:** *The PAMD Form 27c MUST be signed by the Buyer before they sign the Proposed Relevant Contract.*
- Step 10\*** Present the Buyer with the completed **Documentation For Contract**, as outlined in Step 5 above, and ask them to read the **IMPORTANT INSTRUCTIONS** (page 1), drawing their attention in particular to item B \*\*\* TO THE BUYER\*\*\*.
- Note:** *The IMPORTANT INSTRUCTIONS (page 1), item B, fulfils your obligations under legislation to direct the Buyers' attention to the Warning Statement (PAMD 30c) and the Proposed Relevant Contract. You may also verbally draw their attention to these documents for additional protection. Failure to direct buyers' attention to the form 30C opens up termination opportunities.*
- Step 11** Ask the Buyer to follow the instructions of the **IMPORTANT INSTRUCTIONS** page (ie. reading, signing and initialling where applicable), giving them assistance where necessary (Do NOT give legal advice in respect to any questions they may have).
- Step 12** If in your office, photocopy all above signed documentation.
- Step 13** Retain in your possession:
1. The original **Electronic Transmission Consent Form**
  2. A copy of the **Seller's Disclosure Statement (BCCM Section 206)** signed by the Buyer
  3. A copy of the **PAMD Form 27c** signed by the Buyer
  4. The original **Documentation For Contract** (as outlined in Step 5 above)
- Step 14** Have the Seller sign & initial documents where required and return to the Buyer (or their agent) with all documents in Step 5 still attached as required. Also include a **Buyer's Receipt Acknowledgement – On Completion** for the Buyer or their agent to sign and return in respect to receipt of the completed Relevant Contract.

**Important Note:** If onsite, get Buyer to sign & initial both copies of all documents where applicable.

\* Denotes a required process in Chapter 11 of the *Property Agents and Motor Dealers Act 2000*.

**Special Notes:** Refer to the Special Notes (page 5) in respect to such things as Buyer prepared contracts, changes to terms or conditions of the contract, changes to parties' or property details, cooling-off period and completing.



**BY POST**

- Step 1** Prepare and sign a **Presentation Letter - Prior to Signing (Residential Lots)**.
- Step 2** Prepare an **Electronic Transmission Consent Form** for signing by the Buyer.  
**Note:** *This form is used to gain consent from the Buyer to Fax and/or Email legal documents to them for the purposes of the sales process.*
- Step 3** Prepare a signed (by the Seller) **Seller's Disclosure Statement (BCCM Section 206)** and prepare a copy of the Community Management Statement (CMS) which should have been obtained from the Seller, Body Corporate or the Land Titles Office (**Note:** Ensure the CMS is current).
- Step 4** Prepare and sign a **PAMD Form 27c**.
- Step 5** As per the Buyer's instructions prepare and print a **Contract for Sale of Residential Lots in a Community Title Scheme** which, in ADLForms, includes an **IMPORTANT INSTRUCTIONS** page, a **PAMD Form 30c (Warning Statement)** and a **BCCM Form 14 (Information Sheet)**.
- Step 6\*** Attach the **Documentation For Contract** (preferably stapled or bound) in the order shown below:
1. **IMPORTANT INSTRUCTIONS (page 1 of the Documentation For Contract)**
  2. **PAMD Form 30c (Warning Statement)**
  3. **BCCM Form 14 (Information Sheet)**
  4. **Contract for Sale of Residential Lots in a Community Title Scheme**
  5. Any other documents referred to in the Sales Contract (ie. Addendums or Annexures)
- Note: ADLForms automatically prints documents 1 through 4 in the above order with appropriate page numbering.  
**IMPORTANT:** *Failure to "attach" the PAMD 30C and/or BCCM 14 is an offence. "Attaching" the PAMD 30C or BCCM 14 helps guard against unintended terminations. Failure to give the IMPORTANT INSTRUCTIONS (ie. direct buyers' attention to the form 30C and BCCM 14) opens up termination opportunities.*
- Step 7** Photocopy all above documentation for your records.
- Step 8** Compile the following documents in the order set out below and insert into an addressed envelope to be mailed to the Buyer:
1. The original signed **Presentation Letter - Prior to Signing (Residential Lots)**
  2. The original or copy of the **Electronic Transmission Consent Form**
  3. If the property has a regulated swimming pool (shared or non-shared) that DOES NOT have a current Pool Safety Certificate, a copy of **Form 36 - Notice of No Pool Safety Certificate** which has been signed by the Seller
  4. The original signed **Seller's Disclosure Statement (BCCM Section 206)**
  5. A copy of the Community Management Statement (CMS) for the community title scheme
  6. The original signed **PAMD Form 27c**
  7. The completed **Documentation For Contract** (attached as required), as outlined in Step 6 above
- Note:** *It is no longer an offence to attach or bind all these documents (Step 8) together providing that the Warning Statement (PAMD 30c) and the BCCM Information Sheet (BCCM 14) are attached to the Sales Contract.*
- Step 9** Compile the following documents in the order set out below to retain in your possession:
1. A copy of the signed **Letter for Presentation Prior to Signing**
  2. A copy of the **Electronic Transmission Consent Form**
  3. If the property has a regulated swimming pool (shared or non-shared) that DOES NOT have a current Pool Safety Certificate, a copy of **Form 36 - Notice of No Pool Safety Certificate** which has been signed by the Seller
  4. A copy of the signed **Seller's Disclosure Statement (BCCM Section 206)**
  5. A copy of the Community Management Statement (CMS) for the community title scheme
  6. A copy of the signed **PAMD Form 27c**
  7. A copy of the completed **Documentation For Contract** (attached as required), as outlined in Step 6 above
- Step 10** Mail the letter to the Buyer.
- Step 11** On return of the signed documentation from the Buyer, have the Seller sign & initial documents where required and return to the Buyer (or their agent) with all documents in Step 6 still attached as required. Also include a **Buyer's Receipt Acknowledgement – On Completion** for the Buyer or their agent to sign and return in respect to receipt of the completed Relevant Contract.

\* Denotes a required process in Chapter 11 of the *Property Agents and Motor Dealers Act 2000*.

**Special Notes:** Refer to the Special Notes (page 5) in respect to such things as Buyer prepared contracts, changes to terms or conditions of the contract, changes to parties' or property details, cooling-off period and completing.



 **BY FAX**

- Step 1** Prepare an **Electronic Transmission Consent Form** for signing by the Buyer.  
**Note:** *This form is used to gain consent from the Buyer to Fax and/or Email legal documents to them for the purposes of the sales process.*
- Step 2** Prepare a signed (by the Seller) **Seller's Disclosure Statement (BCCM Section 206)** and prepare a copy of the Community Management Statement (CMS) which should have been obtained from the Seller, Body Corporate or the Land Titles Office (**Note:** Ensure the CMS is current).
- Step 3** Prepare and sign a **PAMD Form 27c**.
- Step 4** As per the Buyer's instructions prepare and print a **Contract for Sale of Residential Lots in a Community Title Scheme** which, in *ADLForms*, includes an **IMPORTANT INSTRUCTIONS** page, a **PAMD Form 30c (Warning Statement)** and a **BCCM Form 14 (Information Sheet)**.
- Step 5** Compile together the **Documentation For Contract** in the order shown below:
1. **IMPORTANT INSTRUCTIONS (page 1 of the Documentation For Contract)**
  2. **PAMD Form 30c (Warning Statement)**
  3. **BCCM Form 14 (Information Sheet)**
  4. **Contract for Sale of Residential Lots in a Community Title Scheme**
  5. Any other documents referred to in the Sales Contract (ie. Addendums or Annexures)
- Note:** *ADLForms automatically prints documents 1 through 4 in the above order with appropriate page numbering. Failure to give the IMPORTANT INSTRUCTIONS (ie. direct buyers' attention to the PAMD 30C and BCCM 14) opens up termination opportunities.*
- Step 6** Fax the **Electronic Transmission Consent Form** to the Buyer with a cover page requesting them to complete, sign and return by fax to a specified fax number.  
**IMPORTANT:** *No other documents should form part of this fax transmission.*
- Step 7** Wait for the return fax transmission of the signed **Electronic Transmission Consent Form** (It is important that no documents be transmitted electronically until the signed form is received by you).
- Step 8** If the property has a regulated swimming pool (shared or non-shared) that DOES NOT have a current Pool Safety Certificate fax to the Prospective Buyer a copy of **Form 36 - Notice of No Pool Safety Certificate** which has been signed by the Seller.
- Step 9** Fax the signed **Seller's Disclosure Statement (BCCM Section 206)**, Community Management Statement (CMS) and **PAMD Form 27c** to the Buyer (using the fax number noted on the returned **Electronic Transmission Consent Form**) with a cover page requesting them to complete, sign and return by fax to a specified fax number.  
**IMPORTANT:** *For maximum protection, no other documents should form part of this fax transmission.*
- Step 10** If practical, wait for the return of the signed and acknowledged **Seller's Disclosure Statement (BCCM Section 206)** and **PAMD Form 27c** (the PAMD 27c MUST be signed by the Buyer prior to them signing the Sales Contract and the Disclosure Statement MUST be presented to them prior to them signing the Sales Contract. Receiving these documents prior to faxing the Sales Contract provides satisfactory proof that is the case. Otherwise keep accurate transmission reports).
- Step 11\*** Fax the **Documentation For Contract** as outlined in Step 5 in one single transmission to the Buyer's nominated fax number.  
**IMPORTANT:** *For maximum protection, no other documents should be sent in this transmission.*
- Step 12** Wait for the return fax of signed and initialled documentation as outlined in 'Step 11'.
- Step 13** Retain copies of all original documents and returned documents with appropriate fax transmission reports.
- Step 14** On return of the signed documentation from the Buyer, have the Seller sign & initial documents where required and return to the Buyer (or their agent) with all documents in Step 5 still attached as required. Also include a **Buyer's Receipt Acknowledgement – On Completion** for the Buyer or their agent to sign and return in respect to receipt of the completed Relevant Contract.

\* Denotes a required process in Chapter 11 of the *Property Agents and Motor Dealers Act 2000*.

**Special Notes:** Refer to the Special Notes (page 5) in respect to such things as Buyer prepared contracts, changes to terms or conditions of the contract, changes to parties' or property details, cooling-off period and completing.



BY EMAIL

- Step 1** Prepare an **Electronic Transmission Consent Form** for signing by the Buyer, then save it to PDF file format.  
**Note:** This form is used to gain consent from the Buyer to Fax and/or Email legal documents to them for the purposes of the sales process.
- Step 2** Prepare a signed (by the Seller) **Seller's Disclosure Statement (BCCM Section 206)** and prepare a copy of the Community Management Statement (CMS) which should have been obtained from the Seller, Body Corporate or the Land Titles Office (**Note:** Ensure the CMS is current).
- Step 3** Prepare and sign a **PAMD Form 27c**.
- Step 4** As per the Buyer's instructions prepare a **Contract for Sale of Residential Lots in a Community Title Scheme** which, in *ADLForms*, includes an **IMPORTANT INSTRUCTIONS** page, a **PAMD Form 30c (Warning Statement)** and a **BCCM Form 14 (Information Sheet)**, then save it to PDF file format.
- Step 5** Email the **Electronic Transmission Consent Form** to the Buyer's nominated email address requesting them to complete, sign and return by:
- a) fax transmission to a specified fax number OR
  - b) scanning the signed form, protecting it against unauthorised alteration and emailing it to a specified email address
- Step 6** Wait for the return fax or email transmission of the signed **Electronic Transmission Consent Form**. (It is important that no documents be transmitted electronically until the signed form is received by you).
- Step 7** If the property has a regulated swimming pool (shared or non-shared) that DOES NOT have a current Pool Safety Certificate scan and email to the Prospective Buyer a copy of **Form 36 - Notice of No Pool Safety Certificate** which has been signed by the Seller.
- Step 8** Scan the signed **Seller's Disclosure Statement (BCCM Section 206)**, Community Management Statement and **PAMD Form 27c**, protect the scanned file against unauthorised change and email it to the Buyer's nominated email address (noted on the returned **Electronic Transmission Consent Form**) as an attachment with an email body requesting them to complete, sign both forms and return by:
- a) fax transmission to a specified fax number OR
  - b) scanning the signed form, protecting it against unauthorised change and emailing it to a specified email address
- Step 9** If practical, wait for the return of the signed and acknowledged **Seller's Disclosure Statement (BCCM Section 206)** and **PAMD Form 27c** (the PAMD 27c MUST be signed by the Buyer prior to them signing the Sales Contract and the Disclosure Statement MUST be presented to them prior to them signing the Sales Contract. Receiving these documents prior to faxing the Sales Contract provides satisfactory proof that is the case).
- Step 10** Using the ADL PDF Form, **Email Body - Prior to Signing**, to create an email for forwarding to the Buyer's nominated email address, marked to the Buyer's attention, incorporating the Property Details in the subject heading.  
When using the ADL form, **Email Body - Prior to Signing**, copy and paste its content into the body of the email and modify where applicable.
- Step 11\*** Attach the single PDF file created in Step 4 to the email created in 'Step 10'.
- Step 12** Send the email created in 'Steps 10 & 11'.
- Step 13** Wait for the return fax or email transmission of signed and initialled documentation as outlined in 'Steps 10, 11 & 12'.
- Step 14** Retain copies of all documents with appropriate printouts of all sent and received emails.
- Step 15** On return of the signed documentation from the Buyer, have the Seller sign & initial documents where required and return to the Buyer (or their agent) with all documents in Step 4 still attached as required. Also include a **Buyer's Receipt Acknowledgement – On Completion** for the Buyer or their agent to sign and return in respect to receipt of the completed Relevant Contract.

\* Denotes a required process in Chapter 11 of the *Property Agents and Motor Dealers Act 2000*.

**Note:** ADL Software can provide validation of its method of PDF file creation in accordance with the *Electronic Transactions (Queensland) Act 2001*. ADL provides automatic password protection against unauthorised change.

**IMPORTANT Note:** Difficulties can arise where the recipient does not have adequate equipment to reply electronically or scan into an appropriate file format that can be protected against unauthorised change as required by legislation. Also, you may not have the tools by which to provide the same protection on the PAMD Form 27c.

**Special Notes:** Refer to the Special Notes (page 5) in respect to such things as Buyer prepared contracts, changes to terms or conditions of the contract, changes to parties' or property details, cooling-off period and completing.



## SPECIAL NOTES

### Signing of PAMD 30c & BCCM 14

- There is NO legal requirement for the buyer to sign the Warning Statement (PAMD 30C) or Information Sheet (BCCM 14).
- If ALL buyers sign the Warning Statement (PAMD 30C) and Information Sheet (BCCM 14) before they sign the Proposed Relevant Contract, and the forms are 'attached' to the contract, the buyer cannot terminate the sales contract under Chapter 11 of the Act.

### Buyer Prepares Sales Contract

If the Buyer prepares the sales contract, no 'presentation process' applies and the Buyer cannot terminate the sales contract under Chapter 11 of the Act, unless the Seller subsequently amends the contract (see below).

### Seller Amends a Buyer-Prepared Sales Contract

If the Seller subsequently amends a buyer-prepared contract and returns it as a counter-offer, the contract should be treated as a new 'proposed relevant contract' and the full presentation process MUST be adhered to when presenting the counter-offer to the Buyer.

### Alterations to Details of Seller, Buyer or Property

If the contract is amended by changing the Seller, Buyer or Property details (by either party), the amended contract should be treated as a new 'proposed relevant contract' and the full presentation process MUST be adhered to when re-presenting the contract to the Buyer, regardless of whether the 'presentation process' has already been adhered to in respect to the contract.

### Change of Contract Form (eg. Changed from REIQ version to ADL version)

If the contract is re-created in a new format (eg. Changed from REIQ version to ADL version), the amended contract should be treated as a new 'proposed relevant contract' and the full presentation process MUST be adhered to when re-presenting the contract to the Buyer, regardless of whether the 'presentation process' has already been adhered to in respect to the contract.

### Changes to Terms or Conditions of the Contract

If the contract terms or conditions are changed (eg. Special Conditions are added or deleted, or price is changed), regardless of whether a new contract is drawn up in the same form or changes are made manually and initialed, the 'presentation process' does NOT have to be re-enacted.

### Requirement to 'Attach'

The PAMD 30c and BCCM 14 must be attached to the sales contract:

1. When presenting the Proposed Relevant Contract to the Buyer (prior to Buyer signing); AND
2. When presenting the Relevant Contract (signed by all parties) to the Buyer.

**Note:** It is Best Business Practice to have these forms *always* 'attached' to the sales contract, as penalties can apply in respect to both above scenarios.

**Note:** Use ADL's **Buyer's Receipt Acknowledgement – On Completion** to assist in proving attachment on completion.

### Termination

If the Buyer can prove their attention was not drawn to the PAMD 30c, BCCM 14 and Sales Contract, and all Buyers have not signed both the PAMD 30c and BCCM 14, the Buyer can terminate prior to settlement but only within 90 days following the date the buyer (or his solicitor) receives the relevant contract from the buyer.

**Note:** It is Best Business Practice to keep accurate records to ensure you have proof that you drew the buyer's (or if several buyers - one of the buyers) attention to the PAMD 30c, BCCM 14 & Sales Contract. Also, Use ADL's **Buyer's Receipt Acknowledgement – On Completion** to assist in proving the date of the Buyer's receipt of completed documents.

### When is a Contract Binding?

A contract becomes binding after ALL parties have signed the contract, and the last party to sign (or initial changes) (or their solicitor) communicates acceptance to the other party. This advice could be verbal, but written acknowledgement by the Buyer in the form of ADL's **Buyer's Receipt Acknowledgement – On Completion** would assist in this matter.

### Cooling Off Period

The five-day cooling-off period runs from the date of the buyer's (or solicitor's) receipt of the signed contract but if received on a weekend or public holiday, from the next business day thereafter. It ends at 5 p.m. on the fifth business day.

If the buyer signs the contract after the seller (or initials to accept changes made by the seller), the buyer is taken to have received a copy of the contract when the buyer has both signed (and/or initialed changes) and communicated acceptance to the seller. In other cases, PAMDA does not specify when 'receipt' occurs. For this reason it would be prudent to have buyers sign a **Buyer's Receipt Acknowledgement – On Completion** specifying the date upon which they have received a copy of the signed contract.

### If You Get it Wrong

If you get the 'presentation process' wrong, you have a short window of opportunity to rectify the situation. The Seller or the Seller's Agent may notify the proposed Buyer of the failure to comply at any time before the Proposed Relevant Contract becomes a Relevant Contract (ie. before the Seller signs the contract). The notice must:

1. identify the failure to comply; AND
2. state that the proposed relevant contract is withdrawn; AND
3. advise whether new documents complying with the requirements of section 368A(2) will be given to the proposed buyer.

(refer section 368 of the Act)

## Contract for Sale of House & Land



**BY HAND**

- Step 1** Prepare an **Electronic Transmission Consent Form** for signing by the Buyer (Print 2 copies if going onsite to the client).  
**Note:** *This form is used to gain consent from the Buyer to Fax and/or Email legal documents to them for the purposes of the sales process.*
- Step 2** Prepare and sign a **PAMD Form 27c** (Print 2 copies if going onsite to the client).
- Step 3** As per the Buyer's instructions prepare and print a **Contract for Sale of House & Land** which, in *ADLForms*, includes an **IMPORTANT INSTRUCTIONS** page and a **PAMD Form 30c (Warning Statement)** (Print 2 copies if going onsite to the client).
- Step 4\*** Attach the **Documentation For Contract** (preferably stapled or bound) in the order shown below:
1. **IMPORTANT INSTRUCTIONS (page 1 of the Documentation For Contract)**
  2. **PAMD Form 30c (Warning Statement)**
  3. **Contract for Sale of House & Land**
  4. Any other documents referred to in the Sales Contract (ie. Addendums or Annexures)
- Note:** *ADLForms* automatically prints documents 1 through 3 in the above order with appropriate page numbering.  
**IMPORTANT:** *Failure to "attach" the form 30C is an offence under the Act. "Attaching" the form 30C helps guard against unintended terminations.*
- Step 5** Present the Buyer with the completed **Electronic Transmission Consent Form** and have them sign it and hand it back to you.
- Step 6** If the property has a regulated swimming pool that DOES NOT have a current Pool Safety Certificate present the Prospective Buyer with a copy of **Form 36 - Notice of No Pool Safety Certificate** which has been signed by the Seller.
- Step 7** Present the Buyer with the completed and signed **PAMD Form 27c** and ask them to read and acknowledge it by signing and handing it back to you.  
**Note:** *The PAMD Form 27c MUST be signed by the Buyer before they sign the Proposed Relevant Contract.*
- Step 8\*** Present the Buyer with the completed **Documentation For Contract**, as outlined in Step 4 above, and ask them to read the **IMPORTANT INSTRUCTIONS** (page 1), drawing their attention in particular to item B \*\*\* **TO THE BUYER\*\*\***.  
**Note:** *The IMPORTANT INSTRUCTIONS (page 1), item B, fulfils your obligations under legislation to direct the Buyers' attention to the Warning Statement (PAMD 30c) and the Proposed Relevant Contract. You may also verbally draw their attention to these documents for additional protection. Failure to direct buyers' attention to the form 30C opens up termination opportunities.*
- Step 9** Ask the Buyer to follow the instructions of the **IMPORTANT INSTRUCTIONS** page (ie. reading, signing and initialling where applicable), giving them assistance where necessary (Do NOT give legal advice in respect to any questions they may have).
- Step 10** If in your office, photocopy all above signed documentation.
- Step 11** Retain in your possession:
1. The original **Electronic Transmission Consent Form**
  2. A copy of the **PAMD Form 27c** signed by the Buyer
  3. The original **Documentation For Contract** (as outlined in Step 4 above)
- Step 12** Have the Seller sign & initial documents where required and return to the Buyer (or their agent) with all documents in Step 4 still attached as required. Also include a **Buyer's Receipt Acknowledgement – On Completion** for the Buyer or their agent to sign and return in respect to receipt of the completed Relevant Contract.

**Important Note:** If onsite, get client to sign & initial both copies of all documents where applicable.

\* Denotes a required process in Chapter 11 of the *Property Agents and Motor Dealers Act 2000*.

**Special Notes:** Refer to the Special Notes (page 5) in respect to such things as Buyer prepared contracts, changes to terms or conditions of the contract, changes to parties' or property details, cooling-off period and completing.

 **BY POST**

- Step 1** Prepare and sign a **Presentation Letter - Prior to Signing (House & Land)**.
- Step 2** Prepare an **Electronic Transmission Consent Form** for signing by the Buyer.  
**Note:** *This form is used to gain consent from the Buyer to Fax and/or Email legal documents to them for the purposes of the sales process.*
- Step 3** Prepare and sign a **PAMD Form 27c**.
- Step 4** As per the Buyer's instructions prepare and print a **Contract for Sale of House & Land** which, in *ADLForms*, includes an **IMPORTANT INSTRUCTIONS** page and a **PAMD Form 30c (Warning Statement)**.
- Step 5\*** Attach the **Documentation For Contract** (preferably stapled or bound) in the order shown below:
1. **IMPORTANT INSTRUCTIONS (page 1 of the Documentation For Contract)**
  2. **PAMD Form 30c (Warning Statement)**
  3. **Contract for Sale of House & Land**
  4. Any other documents referred to in the Sales Contract (ie. Addendums or Annexures)
- Note: *ADLForms* automatically prints documents 1 through 3 in the above order with appropriate page numbering.
- IMPORTANT:** *Failure to "attach" the form 30C is an offence. "Attaching" the form 30C helps guard against unintended terminations. Failure to give the IMPORTANT INSTRUCTIONS (ie. direct buyers' attention to the form PAMD 30C) opens up termination opportunities.*
- Step 6** Photocopy all above documentation for your records.
- Step 7** Compile the following documents in the order set out below and insert into an addressed envelope to be mailed to the Buyer:
1. The original signed **Presentation Letter - Prior to Signing (House & Land)**
  2. The original or copy of the **Electronic Transmission Consent Form**
  3. If the property has a regulated swimming pool that DOES NOT have a current Pool Safety Certificate, a copy of **Form 36 - Notice of No Pool Safety Certificate** which has been signed by the Seller
  4. The original signed **PAMD Form 27c**
  5. The completed **Documentation For Contract** (attached as required), as outlined in Step 5 above
- Note:** *It is no longer an offence to attach or bind all these documents (Step 7) together providing that the Warning Statement (PAMD 30c) is attached to the Sales Contract.*
- Step 8** Compile the following documents in the order set out below to retain in your possession:
1. A copy of the signed **Letter for Presentation Prior to Signing**
  2. A copy of the **Electronic Transmission Consent Form**
  3. If the property has a regulated swimming pool that DOES NOT have a current Pool Safety Certificate, a copy of **Form 36 - Notice of No Pool Safety Certificate** which has been signed by the Seller
  4. A copy of the signed **PAMD Form 27c**
  5. A copy of the completed **Documentation For Contract** (attached as required), as outlined in Step 5 above
- Step 9** Mail the letter to the Buyer.
- Step 10** On return of the signed documentation from the Buyer, have the Seller sign & initial documents where required and return to the Buyer (or their agent) with all documents in Step 5 still attached as required. Also include a **Buyer's Receipt Acknowledgement – On Completion** for the Buyer or their agent to sign and return in respect to receipt of the completed Relevant Contract.

\* Denotes a required process in Chapter 11 of the *Property Agents and Motor Dealers Act 2000*.

**Special Notes:** Refer to the Special Notes (page 5) in respect to such things as Buyer prepared contracts, changes to terms or conditions of the contract, changes to parties' or property details, cooling-off period and completing.

 BY FAX

- Step 1** Prepare an **Electronic Transmission Consent Form** for signing by the Buyer.  
**Note:** *This form is used to gain consent from the Buyer to Fax and/or Email legal documents to them for the purposes of the sales process.*
- Step 2** Prepare and sign a **PAMD Form 27c**.
- Step 3** As per the Buyer's instructions prepare and print a **Contract for Sale of House & Land** which, in *ADLForms*, includes an **IMPORTANT INSTRUCTIONS** page and a **PAMD Form 30c (Warning Statement)**.
- Step 4** Compile together the **Documentation For Contract** in the order shown below:  
 1. **IMPORTANT INSTRUCTIONS (page 1 of the Documentation For Contract)**  
 2. **PAMD Form 30c (Warning Statement)**  
 3. **Contract for Sale of House & Land**  
 4. Any other documents referred to in the Sales Contract (ie. Addendums or Annexures)  
**Note:** *ADLForms automatically prints documents 1 through 3 in the above order with appropriate page numbering. Failure to give the IMPORTANT INSTRUCTIONS (ie. direct buyers' attention to the form 30C) opens up termination opportunities.*
- Step 5** If the property has a regulated swimming pool that DOES NOT have a current Pool Safety Certificate fax to the Prospective Buyer a copy of **Form 36 - Notice of No Pool Safety Certificate** which has been signed by the Seller.
- Step 6** Fax the **Electronic Transmission Consent Form** to the Buyer with a cover page requesting them to complete, sign and return by fax to a specified fax number.  
**IMPORTANT:** *No other documents should form part of this fax transmission.*
- Step 7** Wait for the return fax transmission of the signed **Electronic Transmission Consent Form** (It is important that no documents be transmitted electronically until the signed form is received by you).
- Step 8** Fax the signed **PAMD Form 27c** to the Buyer (using the fax number noted on the returned **Electronic Transmission Consent Form**) with a cover page requesting them to complete, sign and return by fax to a specified fax number.  
**IMPORTANT:** *For maximum protection, no other documents should form part of this fax transmission.*
- Step 9** If practical, wait for the return of the signed and acknowledged **PAMD Form 27c** (this form MUST be signed by the Buyer prior to them signing the Sales Contract. Receiving the **PAMD Form 27c** prior to faxing the Sales Contract provides satisfactory proof that is the case. Otherwise keep accurate transmission reports).
- Step 10\*** Fax the **Documentation For Contract** as outlined in Step 4 in one single transmission to the Buyer's nominated fax number.  
**IMPORTANT:** *For maximum protection, no other documents should be sent in this transmission.*
- Step 11** Wait for the return fax of signed and initialled documentation as outlined in 'Step 10'.
- Step 12** Retain copies of all original documents and returned documents with appropriate fax transmission reports.
- Step 13** On return of the signed documentation from the Buyer, have the Seller sign & initial documents where required and return to the Buyer (or their agent) with all documents in Step 4 still attached as required. Also include a **Buyer's Receipt Acknowledgement – On Completion** for the Buyer or their agent to sign and return in respect to receipt of the completed Relevant Contract.

\* Denotes a required process in Chapter 11 of the *Property Agents and Motor Dealers Act 2000*.

**Special Notes:** Refer to the Special Notes (page 5) in respect to such things as Buyer prepared contracts, changes to terms or conditions of the contract, changes to parties' or property details, cooling-off period and completing.



BY EMAIL

- Step 1** Prepare an **Electronic Transmission Consent Form** for signing by the Buyer, then save it to PDF file format.  
*Note: This form is used to gain consent from the Buyer to Fax and/or Email legal documents to them for the purposes of the sales process.*
- Step 2** Prepare and sign a **PAMD Form 27c**.
- Step 3** As per the Buyer's instructions prepare a **Contract for Sale of House & Land** which, in ADLForms, includes an **IMPORTANT INSTRUCTIONS** page and a **PAMD Form 30c (Warning Statement)**, then save it to PDF file format.
- Step 4** Email the **Electronic Transmission Consent Form** to the Buyer's nominated email address requesting them to complete, sign and return by:  
a) fax transmission to a specified fax number OR  
b) scanning the signed form, protecting it against unauthorised alteration and emailing it to a specified email address
- Step 5** Wait for the return fax or email transmission of the signed **Electronic Transmission Consent Form**. (It is important that no documents be transmitted electronically until the signed form is received by you).
- Step 6** If the property has a regulated swimming pool that DOES NOT have a current Pool Safety Certificate scan and email to the Prospective Buyer a copy of **Form 36 - Notice of No Pool Safety Certificate** which has been signed by the Seller.
- Step 7** Scan the signed **PAMD Form 27c**, protect the scanned file against unauthorised change and email it to the Buyer's nominated email address (noted on the returned **Electronic Transmission Consent Form**) as an attachment with an email body requesting them to complete, sign and return by:  
a) fax transmission to a specified fax number OR  
b) scanning the signed form, protecting it against unauthorised change and emailing it to a specified email address
- Step 8** If practical, wait for the return of the signed and acknowledged **PAMD Form 27c** (this form MUST be signed by the Buyer prior to them signing the Sales Contract. Receiving the **PAMD Form 27c** prior to electronically forwarding the Sales Contract provides satisfactory proof that is the case).
- Step 9** Using the ADL PDF Form, **Email Body - Prior to Signing (House & Land)**, to create an email for forwarding to the Buyer's nominated email address, marked to the Buyer's attention, incorporating the Property Details in the subject heading.  
When using the ADL form, **Email Body - Prior to Signing (House & Land)**, copy and paste its content into the body of the email and modify where applicable.
- Step 10\*** Attach the single PDF file created in Step 3 to the email created in 'Step 9'.
- Step 11** Send the email created in 'Steps 9 & 10'.
- Step 12** Wait for the return fax or email transmission of signed and initialled documentation as outlined in 'Steps 9, 10 & 11'.
- Step 13** Retain copies of all documents with appropriate printouts of all sent and received emails.
- Step 14** On return of the signed documentation from the Buyer, have the Seller sign & initial documents where required and return to the Buyer (or their agent) with all documents in Step 3 still attached as required. Also include a **Buyer's Receipt Acknowledgement – On Completion** for the Buyer or their agent to sign and return in respect to receipt of the completed Relevant Contract.

\* Denotes a required process in Chapter 11 of the *Property Agents and Motor Dealers Act 2000*.

**Note:** ADL Software can provide validation of its method of PDF file creation in accordance with the *Electronic Transactions (Queensland) Act 2001*. ADL provides automatic password protection against unauthorised change.

**IMPORTANT Note:** Difficulties can arise where the recipient does not have adequate equipment to reply electronically or scan into an appropriate file format that can be protected against unauthorised change as required by legislation. Also, you may not have the tools by which to provide the same protection on the **PAMD Form 27c**.

**Special Notes:** Refer to the Special Notes (page 5) in respect to such things as Buyer prepared contracts, changes to terms or conditions of the contract, changes to parties' or property details, cooling-off period and completing.

## SPECIAL NOTES

### Signing of PAMD 30c & BCCM 14

- There is NO legal requirement for the buyer to sign the Warning Statement (PAMD 30C) and Information Sheet (BCCM 14).
- If ALL buyers sign the PAMD 30C and BCCM 14 before they sign the Proposed Relevant Contract, and the forms are 'attached' to the contract, the buyer cannot terminate the sales contract under Chapter 11 of the Act.

### Buyer Prepares Sales Contract

If the Buyer prepares the sales contract, no 'presentation process' applies and the Buyer cannot terminate the sales contract under Chapter 11 of the Act, unless the Seller subsequently amends the contract (see below).

### Seller Amends a Buyer-Prepared Sales Contract

If the Seller subsequently amends a buyer-prepared contract and returns it as a counter-offer, the contract should be treated as a new 'proposed relevant contract' and the full presentation process MUST be adhered to when presenting the counter-offer to the Buyer.

### Alterations to Details of Seller, Buyer or Property

If the contract is amended by changing the Seller, Buyer or Property details (by either party), the amended contract should be treated as a new 'proposed relevant contract' and the full presentation process MUST be adhered to when re-presenting the contract to the Buyer, regardless of whether the 'presentation process' has already been adhered to in respect to the contract.

### Change of Contract Form (eg. Changed from REIQ version to ADL version)

If the contract is re-created in a new format (eg. Changed from REIQ version to ADL version), the amended contract should be treated as a new 'proposed relevant contract' and the full presentation process MUST be adhered to when re-presenting the contract to the Buyer, regardless of whether the 'presentation process' has already been adhered to in respect to the contract.

### Changes to Terms or Conditions of the Contract

If the contract terms or conditions are changed (eg. Special Conditions are added or deleted, or price is changed), regardless of whether a new contract is drawn up in the same form or changes are made manually and initialed, the 'presentation process' does NOT have to be re-enacted.

### Requirement to 'Attach'

The PAMD 30c & BCCM 14 must be attached to the sales contract:

1. When presenting the Proposed Relevant Contract to the Buyer (prior to Buyer signing); AND
2. When presenting the Relevant Contract (signed by all parties) to the Buyer.

**Note:** It is Best Business Practice to have this form *always* 'attached' to the sales contract, as penalties can apply in respect to both above scenarios.

**Note:** Use ADL's **Buyer's Receipt Acknowledgement – On Completion** to assist in proving attachment on completion.

### Termination

If the Buyer can prove their attention was not drawn to the PAMD 30c and Sales Contract, and all Buyers have not signed the PAMD 30c, the Buyer can terminate prior to settlement but only within 90 days following the date the buyer (or his solicitor) receives the relevant contract from the buyer.

**Note:** It is Best Business Practice to keep accurate records to ensure you have proof that you drew the buyer's (or if several buyers - one of the buyers') attention to the PAMD 30c & Sales Contract. Also, Use ADL's **Buyer's Receipt Acknowledgement – On Completion** to assist in proving the date of the Buyer's receipt of completed documents.

### When is a Contract Binding?

A contract becomes binding after ALL parties have signed the contract, and the last party to sign (or initial changes) (or their solicitor) communicates acceptance to the other party. This advice could be verbal, but written acknowledgement by the Buyer in the form of ADL's **Buyer's Receipt Acknowledgement – On Completion** would assist in this matter.

### Cooling Off Period

The five-day cooling-off period runs from the date of the buyer's (or solicitor's) receipt of the signed contract but if received on a weekend or public holiday, from the next business day thereafter. It ends at 5 p.m. on the fifth business day.

If the buyer signs the contract after the seller (or initials to accept changes made by the seller), the buyer is taken to have received a copy of the contract when the buyer has both signed (and/or initialed changes) and communicated acceptance to the seller. In other cases, PAMDA does not specify when 'receipt' occurs. For this reason it would be prudent to have buyers sign a **Buyer's Receipt Acknowledgement – On Completion** specifying the date upon which they have received a copy of the signed contract.

### If You Get it Wrong

If you get the 'presentation process' wrong, you have a short window of opportunity to rectify the situation. The Seller or the Seller's Agent may notify the proposed Buyer of the failure to comply at any time before the Proposed Relevant Contract becomes a Relevant Contract (ie. before the Seller signs the contract). The notice must:

1. identify the failure to comply; AND
2. state that the proposed relevant contract is withdrawn; AND
3. advise whether new documents complying with the requirements of section 368A(2) will be given to the proposed buyer.

(refer section 368 of the Act)



**DOCUMENTATION FOR CONTRACT  
(CONTRACT FOR SALE OF HOUSE AND LAND)**

**IMPORTANT INSTRUCTIONS**

**READ CAREFULLY:**

**A. This page is part of documentation that comprises:**

1. This Instructions Page (Page 1);
2. The **WARNING STATEMENT - PAMD FORM 30C** (Pages 2 to 3);
3. The Contract which includes:
  - a) Item Schedule (Pages 4 to 7);
  - b) Signature Section (Page 7);
  - c) Terms & Conditions (Pages 8 to 14);
  - d) Special Conditions (if any)
  - e) Plus any attachments, Annexures and Addendums mentioned or referred to within the Contract Item Schedule as forming part of the Contract.

The above items of this Instruction Page are provided in compliance with Section 368A of the *Property Agents and Motor Dealers Act 2000*.

**\*\*\* TO THE BUYER \*\*\***

**B. THE BUYERS' ATTENTION IS SPECIFICALLY DIRECTED TO:**

1. The **WARNING STATEMENT - PAMD FORM 30C** (Pages 2 to 3);
2. The **Contract for Sale of House & Land (Proposed Relevant Contract)** (Pages 4 to 14) *Note: once signed by all parties, the Proposed Relevant Contract will become a Relevant Contract and the provisions of item B will have been satisfied.*

Refer Section 368A (2)(c) of the *Property Agents and Motor Dealers Act 2000*

**C. Read all documentation in the order as provided in A.**

**D. Documentation should be signed in the following order:**

1. Buyer's Acknowledgement (G, Page 1);
2. The PAMD FORM 30C (Page 3);
3. The Contract - Signature Section (Page 7);
4. Wherever Applicable on any Attached Documentation.

**E. All Parties MUST Initial any Alterations to the Contract.**

**F. All Parties should initial at the bottom of each page of the Contract.**

(Note: Failure to do so as required in F does NOT invalidate the Contract)

**G. Buyer's Acknowledgement**

By signing below I/we the Buyer/Buyer's Agent acknowledge that, prior to signing the Proposed Relevant Contract, I/we:

1. received, read and signed the **PAMD Form 27c - Selling Agent's Disclosure to Buyer**;
2. read this Instruction Page
3. in the case of a Property with a Regulated Pool where no Pool Safety Certificate is current, received a **Form 36 - Notice of no pool safety certificate**.

**Signatures:**

For Buyer 1: ..... For Buyer 2: .....

For Buyer 3: ..... For Buyer 4: .....

Note: Failure to sign this Acknowledgement does NOT invalidate the Contract.

## Warning statement

Property Agents and Motor Dealers Act 2000 — Chapter 11  
This form is effective from 1 October 2010.

ABN: 24 830 236 406

Department of **Employment, Economic  
Development and Innovation**

### Instructions

This form is to be attached to a proposed relevant contract of sale for residential property to be read and signed by a proposed buyer **BEFORE** the proposed buyer signs the proposed relevant contract.

**The seller or seller's agent must give the proposed buyer a clear statement directing the buyer's attention to the proposed relevant contract and to this warning statement before the proposed buyer signs the proposed relevant contract. Failure to give the proposed buyer a clear statement may give the buyer a right to terminate the contract under section 370 within 90 days of receiving a copy of the relevant contract unless settlement occurs earlier.**

#### Property address

**Note:** If no street address is applicable, use lot and plan information to identify the property

Street name and number .....

Suburb ..... State  Postcode

# WARNING

**DO NOT sign the proposed relevant contract for the above property until you have read and understood ALL SECTIONS of this form. DO NOT sign if you feel pressured.**

**The relevant contract is subject to a five (5) business day cooling-off period. You may terminate this contract during the cooling-off period. However, the seller may deduct a termination penalty of up to 0.25% of the purchase price from the deposit.**

### You should obtain independent:

- **legal advice** See note 1
- **valuation** See note 2

### Cooling-off period

#### What is the cooling-off period?

The cooling-off period is five (5) business days, during which you can change your mind about purchasing this property. Use this time to seek independent legal advice and an independent valuation of the property.

#### When does the cooling-off period start?

Your cooling-off period starts on the day you receive a copy of the completed relevant contract from the seller or seller's agent. The proposed contract becomes a relevant contract when both parties have signed. In any dispute about the commencement of the cooling-off period, it will be up to the seller to prove the buyer received a copy of the relevant contract. If you receive a copy of the relevant contract on a day other than a business day, the cooling-off period commences on the first business day after you receive a copy of the relevant contract

#### When does the cooling-off period end?

Your cooling-off period ends at **5.00pm on the fifth business day** after the cooling-off period started. A business day is a day other than a Saturday, Sunday or public holiday.

#### Can I waive or shorten the cooling-off period?

Yes, but only if you engage an independent lawyer who must give you a lawyer's certificate explaining the purpose and nature of the certificate. You should seek advice from your lawyer about the effect of waiving or shortening your cooling-off period. If you are waiving the cooling-off period, the lawyer's certificate must be given to the seller or seller's agent before you and the seller enter into the relevant contract.

## Cooling-off period continued

### What should I do during the five (5) day cooling-off period?

It is strongly recommended that you seek independent legal advice and obtain an independent valuation of the property during this time and that you understand and agree with the terms and conditions of the contract.

### How do I terminate the contract during the cooling-off period and what happens if the relevant contract is terminated?

If you want to terminate the contract at any time before the end of the five (5) day cooling-off period, you must give a signed, dated notice to the seller indicating that you wish to terminate the contract during the cooling-off period. The notice must state that the relevant contract is terminated under section 370A of the *Property Agents and Motor Dealers Act 2000*. The seller must refund your deposit within **14 days** of the termination. The seller may deduct a termination penalty of up to **0.25% of the purchase price**. Make sure you terminate any building contract associated with this property if you terminate this contract during the cooling-off period.

### What happens after the cooling-off period ends?

If you do not terminate the contract during the cooling-off period, you are legally bound by the contract, subject to the terms and conditions of the contract.

## Other important information

**Read the attached proposed relevant contract. Do not be pressured into signing the proposed relevant contract before you have read it.**

### Note 1 - Independent legal advice

Do you fully understand the legal consequences of signing the attached proposed relevant contract? Before signing the proposed relevant contract, it is strongly recommended that you seek independent legal advice and clarify any queries or concerns you have about buying the property. Are you sure the person you have obtained advice from is totally independent from the seller or seller's agent? **Exercise extreme caution in accepting the advice of anyone referred to you by the seller or seller's agent.**

### Note 2 - Independent valuation of the property

Are you sure the purchase price for this property is fair? You should consider obtaining an independent valuation of the property before you sign the contract, or before your cooling-off period ends. When choosing a valuer you should ask whether the valuer has any relationship with any person involved in selling the property and whether they have professional indemnity insurance. Before you engage the valuer ask about the cost of the valuation. For more information about valuations, go to [www.fairtrading.qld.gov.au/house-valuation.htm](http://www.fairtrading.qld.gov.au/house-valuation.htm).

### Building contracts

For building contracts associated with the purchase of residential property, you should ensure that the building contract price is not over-valued or inflated. Get a valuation or compare homes of similar value advertised or displayed by other home builders.

Domestic building contracts also have a cooling-off period under the *Domestic Building Contracts Act 2000* (section 72). Please check the Building Services Authority of Queensland website at [www.bsa.qld.gov.au](http://www.bsa.qld.gov.au) for further information about building contracts. Remember to terminate any building contracts related to this property if you terminate this contract.

### Claim fund and property developers

A claim fund exists which, in some cases, enables buyers to make a claim if they suffer financial loss because a real estate agent commits a claimable offence. Strict guidelines and timeframes apply. If you suffer loss while buying an investment property or buying any property from a property developer you can not make a claim for loss against the fund.

### How do I know if I'm dealing with a licensed real estate agent or property developer and/or obtain further information about purchasing real estate?

The Fair Trading website at [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au) provides you with useful information about purchasing property. You can check that you are dealing with a licensed real estate agent or property developer at [www.fairtrading.qld.gov.au/are-you-licensed.htm](http://www.fairtrading.qld.gov.au/are-you-licensed.htm) or by phoning 13 13 04.

## Buyer's acknowledgment

I/we have read all sections of this warning statement and I/we acknowledge that by signing this warning statement, my/our attention has been directed to this warning statement and the attached proposed relevant contract by a clear statement and I/we have signed the warning statement BEFORE I/we signed the attached proposed relevant contract.

Signing this Warning Statement negates any termination right I/we may have had under section 370 of the *Property Agents and Motor Dealers Act 2000*.

Name .....

Name .....

Signature ..... Signature .....

Date   /   /

Date   /   /

# CONTRACT FOR SALE OF HOUSE AND LAND

The Seller and Buyer agree to be bound by this Contract.

## Item

## Item Schedule

### 1. DATE OF CONTRACT Clause 1(10)

THE DAY OF 20 (Note: Seller/Seller's Agent must complete)

### 2. SELLER'S AGENT Clause 33

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
ABN: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Mobile: \_\_\_\_\_  
Email: \_\_\_\_\_ Notices\*:   
License Number: \_\_\_\_\_ Expiry Date: / /

### 3. SELLER Clauses 1(25), 11, 12.1, 29-32.1 & 33

*Note: If insufficient room list additional Names and Addresses in Item (23) (Special Conditions)*

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
  
ABN / ACN \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Mobile: \_\_\_\_\_  
Email: \_\_\_\_\_ Notices\*:   
Solicitor / Self Acting \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Mobile: \_\_\_\_\_  
Email: \_\_\_\_\_ Notices\*:  Contact: \_\_\_\_\_

### 4. BUYER'S AGENT (If Applicable)

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
ABN: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Mobile: \_\_\_\_\_  
Email: \_\_\_\_\_ Notices\*:

### 5. BUYER Clauses 1(9), 10, 12, 13 & 26

*Note: If insufficient room list additional Names and Addresses in Item (23) (Special Conditions)*

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
  
ABN / ACN \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Mobile: \_\_\_\_\_  
Email: \_\_\_\_\_ Notices\*:   
Solicitor / Self Acting \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Mobile: \_\_\_\_\_  
Email: \_\_\_\_\_ Notices\*:  Contact: \_\_\_\_\_

### 6. LAND Clauses 1(21), 21, 24 & 25

Address: \_\_\_\_\_  
  
Lot No. \_\_\_\_\_ on Plan \_\_\_\_\_ Title Reference: \_\_\_\_\_ Area: \_\_\_\_\_ (Approx.)  
Freehold  Leasehold  (Complete as applicable. If neither checked, it is assumed to be Freehold)  
Local Government: \_\_\_\_\_

\* By checking the Notices box, that party agrees to receive appropriate Notice via email to the specified email address (Clause 35.1(e))

**7. PURCHASE PRICE** *Where applicable, include GST* Clause 1(22)

Purchase Price \$

*(WARNING: Some property sales may attract GST and require a tax invoice to be issued separate to this Contract. Seek appropriate professional advice if unsure).*

**8. DEPOSIT** Clause 3

Initial Deposit:

Payable:

Balance Deposit:

Payable by a date no later than:

**9. DEPOSIT HOLDER** Clauses 3.1 & 3.7

**10. FINANCE** *Complete all details for Clause 5 to apply.* Clauses 5 & 31.2

Finance Amount:

Finance Date:

Lender:

**11. BUILDING / PEST / POOL SAFETY INSPECTIONS** *Only completed details will apply.* Clauses 4 & 31

(a) Building Inspection: **Yes / No**

(b) Pest Inspection: **Yes / No**

(c) Pool Safety Inspection: **Yes / No** *(only answer 'yes' where Item (15.3)(c) is ticked)*

Inspection Date:

(Date to be completed by)

**Note:** *If 'yes' is selected in Item (11)(a), (b) or (c), an Inspection Date must be inserted.*

Acknowledged Defects/Exclusions:

**12. SETTLEMENT DATE/PLACE** Clauses 1(27), 7 & 31

Date: / / OR

days from the Date of Contract

OR

Place:

(Suburb, City or Town)

**13. ELECTRICITY SAFETY SWITCH** Clause 1(2)

An Approved Safety Switch  is  is not installed for general purpose socket outlets.

**14. SMOKE ALARMS** Clauses 9.2(5) & 12.1(12)

Smoke alarms **are / are not** installed on the Property.

**15. POOL SAFETY CERTIFICATE** Clauses 1(19), 1(23), 1(24), 9.2(7) & 12.1(13)

Tick the applicable option below:

**Note:** *If Item (15.1), (15.2), (15.3)(a) or (15.3)(b) is ticked below, 'no' is the answer to Item (11)(c)*

15.1  **No Regulated Pool** included as part of the Property being sold or on Regulated Land adjacent thereto.

15.2  **Regulated Pool** included as part of the Property being sold or on Regulated Land adjacent thereto.

*Note: If more than one Regulated Pool Item 15.3 must be completed in respect of each Regulated Pool. Place additional details in Special Conditions.*

15.3 If Item (15.2) is ticked, at the date of the Contract in respect to such Regulated Pool/s there is a: *(one of the boxes below must be ticked)*

(a) Current Pool Safety Certificate

Certificate No.:

Expiry: / /

(b) Current Form 17 - Final inspection certificate *(issued for newly constructed pools only)*

(c) Form 36 - Notice of no pool safety certificate (see Clause 4.3) *(where there is a Notice of no Pool Safety Certificate the Buyer must indicate their intention with respect to a Pool Safety Inspection in Item (11)(c))*

**16. EXCLUDED IMPROVEMENTS** Clauses 1(14), 8.3 & 12.1(10)



**24. SIGNING**

**WARNING:** By signing this Contract the parties confirm that no legal advice as to the conditions contained herein was provided by the Agent. The parties have been advised to seek legal advice with respect to this Contract.

Seller(s): ..... Witness(es): .....  
.....  
.....

Buyer(s): ..... Witness(es): .....  
.....  
.....

Deposit Holder: ..... (To be signed on receipt of Initial Deposit)

*Copies to be provided to all parties*

Demonstration

# Contract for Sale of House and Land - Terms & Conditions

## Definitions & Interpretations

### 1. Definitions

In this Contract (which includes the Item Schedule) the following terms mean:

- (1) **Adjustment Date:** The earlier of:
  - (a) the date possession being given to the Buyer; or
  - (b) the Settlement Date.
- (2) **Approved Safety Switch:** defined as a residual current device under Schedule 9 of the *Electrical Safety Regulation 2002*.  
Note: Where an Approved Safety Switch is not installed, advice should be obtained from a licensed electrician to ensure compliance with the *Electrical Safety Regulation 2002*.
- (3) **Balance Purchase Price:** Monies payable, by the Buyer, on Settlement after deducting the Deposit, if paid, from the Purchase Price and allowing for Adjustments as provided in this Contract.
- (4) **Bank:** A Bank as defined in the *Banking Act 1959 (Cwlth)*, the Reserve Bank or Bank constituted under State Law.
- (5) **Bank Bond/Guarantee:** Deposit Bond or Guarantee issued by a Bank or insurance company to secure the Deposit in accordance with Clause 3.4 of this Contract.
- (6) **Bank Cheque:** An unendorsed Cheque drawn by any Bank or, if authorised by the Seller, some other cheque.
- (7) **Bond:** Any Bond paid in accordance with the provisions of the *Residential Tenancies and Rooming Accommodation Act 2008*.
- (8) **Business Day:** Any day other than a Saturday, Sunday or public holiday in the State of Queensland.
- (9) **Buyer:** The Buyer named in Item (5), including any additional Buyers named in Special Conditions, Item (23).
- (10) **Date of Contract:** The date as set out in Item (1) of the Item Schedule.
- (11) **Encumbrance:** Certain matters affecting title, both registered and un-registered, including statutory easements and rights referred to in the Certificate of Title.
- (12) **GST:** Where used in this Contract, has the meaning used in the *A New Tax System (Goods & Services Tax) Act 1999* and "GST" includes any applicable rulings issued by the Commissioner of Taxation.
- (13) **GST Act:** refers to the *A New Tax System (Goods & Services Tax) Act 1999*.
- (14) **Improvements:** All fixed or permanent structures on the land and any items fixed to them, including domestic dwelling, sheds, car accommodation, pergolas, in-ground or fixed pools (regulated or otherwise), fixed carpets and tiles, curtains, blinds and fittings, stoves, hot water systems, fixed antennae, fixed satellite dishes, fixed security systems, fixed clothes lines and all in-ground plants, unless excluded in Item (16).
- (15) **Land Tax Clearance Certificate:** A certificate issued by the Commissioner of Land Tax that describes the land charged, and showing whether or not any land tax remains unpaid on the land described in the application and where land tax remains unpaid, the amount thereof. (Section 37 (1A) of the *Land Tax Act 2010*)
- (16) **New Pool Safety Standard:** means the compliance standard applicable under the *Building Act 1975* to a Regulated Pool from the earlier of the 30th November 2015 or the date a property is sold or leased.
- (17) **Nonconformity Notice:** means the Pool Safety Nonconformity Notice (Form 26) issued where the Pool Safety Inspector is not satisfied the pool complies with the New Pool Safety Standard.
- (18) **Outgoings:** All government and local government rates and charges assessed on the Land including land tax, water and sewerage rates, general rates, fire levy and all periodic charges up to and including the Adjustment Date.
- (19) **Pool Safety Certificate:** means the certificate issued under the *Building Act 1975* with respect to a complying Regulated Pool.
- (20) **Pool Safety Standard:** means the compliance standard applicable to the Regulated Pool at the time the pool was constructed.
- (21) **Property:** The Land described in Item (6) together with Improvements described in Clause 1(14) and the included chattels described in Item (17) of the Item Schedule.
- (22) **Purchase Price:** The sum referred to in Item (7) of the Item Schedule.
- (23) **Regulated Land:** means regulated land as defined under Section 231A of the *Building Act 1975*.
- (24) **Regulated Pool:** Where used in this Contract has the same meaning as given to it by Section 231B of the *Building Act 1975*.  
Note: a Regulated Pool is a swimming pool as defined under the *Building Act 1975* which will include a spa pool.
- (25) **Seller:** The Seller named in Item (3), including any additional Sellers named in Special Conditions, Item (23).
- (26) **Settlement:** The conveyance of the Property from the Seller to the Buyer.
- (27) **Settlement Date:** The appointed date specified in Item (12) for Settlement to occur.
- (28) **Tenancy Documents:** Tenancy Agreements, residential or otherwise, and documents ancillary thereto.
- (29) **Transfer Documents:** All those documents necessary to transfer title to the Property, as defined, to the Buyer, including Queensland Land Registry Transfer and Form 24.

### 2. Interpretation

In this Contract, unless the contrary intention appears:

- (1) the singular includes the plural and vice versa.
- (2) 'person' includes a firm, a body corporate.
- (3) an agreement, representation or warranty:
  - (1) in favour of two or more persons is for the benefit of them jointly and severally.
  - (2) on the part of two or more persons binds them jointly and severally.
- (4) a reference to:
  - (1) an item number is a reference to an item in the Item Schedule.
  - (2) a person includes the person's executors, administrators, successors and assigns.
  - (3) a document includes any variation to that document.
  - (4) any law includes all regulations and other instruments under it and amendments or replacements of any of them.
- (5) Column notes in the Item Schedule form part of this Contract.

## Events

### 3. Deposit

- 3.1 The Buyer must pay the Deposit to the Deposit Holder as Stakeholder in the amount and at the times required in Item (8).



- 3.2 Time is of the essence when making payment of the Deposit.
- 3.3 Failure to pay any monies on time, or by cheque which is not honoured on presentation, will be an act of default by the Buyer.
- 3.4 The Buyer may secure payment of the Deposit (in whole or in part) by Bank Bond/Guarantee in a form and on terms acceptable to the Seller, in which case on receipt of the Bank Bond/Guarantee the Buyer's obligation to pay the Deposit shall have been satisfied to the extent of the Bank Bond/Guarantee.
- 3.5 The Deposit is payable to the Seller:
- on Settlement; or
  - in case of the Buyer's Default on default.
- 3.6 Should this Contract be properly terminated by the Buyer, the Deposit will be refunded to the Buyer in which case the Buyer shall have no further claim under this Contract unless there has been a breach of the provisions of this Contract by the Seller, giving rise to a claim for damages.
- 3.7 Investment of Deposit: (*Note: see Section 380 of the Property Agents and Motor Dealers Act 2000*)  
Where the Stakeholder is instructed by the parties to invest the deposit, subject to any legislative requirements, then (except in the case of Bank Bond):
- the Deposit Holder will invest the Deposit in its name as trustee for the Buyer and Seller in an interest bearing account with a Bank, Building Society or Credit Union until the Settlement Date or as otherwise instructed by the parties.
  - the parties will supply to the Deposit Holder, prior to the investment of the Deposit, their tax file numbers and acknowledge that if the tax file numbers are not provided then they accept that the interest earned on the Deposit may be taxed at the highest rate allowable.
  - the Deposit and the interest are at the risk of the party who is ultimately entitled to the Deposit.
  - the interest on the Deposit will be paid to the party who becomes, and is, entitled to the Deposit at Settlement and such party will be solely responsible for any tax liability on such monies.
  - where the Contract does not proceed to Settlement, the interest is payable to the party entitled to the Deposit in accordance with Clauses 3.5 and 3.6.
  - all costs in relation to this investment will be borne by the party referred to in Clause 3.7(4).
  - a Stakeholder, being a licensed Agent, may not invest the Deposit if the sale is to be completed on a contractually ascertainable day less than 60 days after the Deposit is received.
- 4. Property Inspections**
- 4.1 The Contract is subject to and conditional upon the Buyer obtaining, at their own expense, by the Inspection Date (or such extended date as may be agreed) the relevant inspection report/s:
- as specified in Item (11)(a) &(b) (excluding Acknowledged Defects / Exclusions) satisfactory to the Buyer; and
  - where Item (11)(c) applies, report that the Regulated Pool:
    - complies with the New Pool Safety Standard (Pool Safety Certificate Issued); or
    - does not comply with the New Pool Safety Standard (Nonconformity Notice given).
- 4.2 In compliance with this Clause the Buyer will promptly, after the signing of this Contract by the Seller, take all reasonable steps to obtain the inspection report/s in compliance with Clause 4.1.
- 4.3 Where there is no Pool Safety Certificate and the Buyer has indicated their intention to obtain a Pool Safety Inspection in Item (11)(c), the Seller authorises the Buyer to appoint a licensed Pool Safety Inspector for the purposes of carrying out the inspection and to receive the results of such inspection.
- 4.4 Upon receipt of any inspection report the Buyer must promptly but no later than 5pm on the Inspection Date, give notice to the Seller:
- that the Buyer is satisfied with the inspection report/s; or
  - that the Buyer is not satisfied with the inspection report/s and terminates the Contract.
- Note to Buyer: Building Act 1975** - If no Pool Safety Certificate is received and the Contract proceeds to Settlement, it shall be the Buyer's responsibility to, at its own cost, obtain such certificate within 90 days after Settlement. The Buyer is referred to Section 4 of the Form 36.
- Note to Seller:** Where a Pool Safety Inspection has been carried out resulting in a Nonconformity Notice issuing and the Contract does not proceed to Settlement, the local authority may require the pool owner, at its cost, to carry out works to comply with the relevant Pool Safety Standard.
- 4.5 The Buyer must at all times act reasonably.
- 4.6 Should the Buyer not give notice to the Seller in accordance with Clause 4.4 by 5.00 p.m. on the Inspection Date the Seller may, by notice, terminate this Contract.
- 4.7 In respect of Clause 4.4 and 4.6, this Contract is not terminated until written notice is given and the Buyer may at any time up to termination, by written notice, waive the benefit of Clause 4.4.  
Provided however, where a Pool Safety Certificate (Clause 4.1(2)(a)) has been issued, the Buyer will be deemed to be satisfied and may not terminate under Clause 4.4.
- 4.8 Where the Buyer has given notice of termination in accordance with Clause 4.4 but has failed, when requested by the Seller, to provide a copy of the relevant inspection report/s (or in the case of a Regulated Pool any Nonconformity Notice issued as a result of the Pool Safety Inspection), the termination will not take effect until after such copy has been provided to the Seller.
- 4.9 Should this Contract be terminated in accordance with the provisions of Clause 4, Clause 3.6 will apply.
- 4.10 In respect of white-ants, risk in itself will not constitute a reason for termination of this Contract.
- 4.11 Inspectors who conduct building inspections for the purposes of this Contract must be licensed as Building Inspectors in accordance with the *Queensland Building Services Authority Act 1991*.
- 4.12 Inspectors who conduct Pool Safety Inspections for the purposes of this Contract must be licensed as Pool Safety Inspectors by the Pool Safety Council.
- 5. Finance**
- This Clause shall not apply unless all details in Item (10) are completed.
- 5.1 This Contract is subject to and conditional upon the Lender approving a loan to the Buyer in the Finance Amount, on terms and conditions satisfactory to the Buyer, for the purchase of the Property by the Finance Date (or such extended date as may be agreed). See Item (10).
- 5.2 In complying with this Clause the Buyer will promptly, after the signing of this Contract by the Seller, make application to the Lender for the Loan and take all reasonable steps to obtain the Finance approval by the Finance Date.
- 5.3 The Buyer must give notice to the Seller immediately upon approval/rejection of Finance in accordance with Clause 35 (Notice).

- 5.4 If the Buyer, through no fault on the Buyer's part, has not obtained the Finance approval by the Finance Date then the Buyer may by notice to the Seller:
- terminate this Contract; or
  - waive the benefit of this condition.
- 5.5 Should the Buyer not give notice to the Seller in accordance with Clause 5.4 (a) or (b) by 5.00 p.m. on the Finance Date the Seller may, by notice, terminate this Contract.
- 5.6 The Buyer will, if required by the Seller, provide details of compliance with Clause 5.2 or written proof of rejection of the Buyer's application for finance.
- 5.7 This Contract is not terminated until notice is given.
- 5.8 Should the Buyer not obtain Finance Approval by the Finance Date and then subsequently obtains Finance Approval and notifies the Seller prior to the Seller giving notice to terminate this Contract in accordance with Clause 5.5, then the Buyer will have complied with the requirement to obtain a loan in the Finance Amount.
- 5.9 All monies paid by way of Deposit will be forthwith refunded to the Buyer once this Contract is terminated in accordance with this Clause.
- 6. Adjustments**
- 6.1 The Seller is entitled to the Rents and Income and is liable for and will make payment of all Outgoings on the Property up to and including the Adjustment Date. Thereafter the Buyer shall be entitled to Rents and Income and be liable for all Outgoings.
- 6.2 All Outgoings under Clause 6.1 must be apportioned as at the Adjustment Date.
- 6.3 All Rents and Income received by the Seller in relation to periods subsequent to the Adjustment Date must be apportioned between the parties as at the Adjustment Date.
- 6.4 Apportionment of Outgoings with respect to those which have been paid will be adjusted on the amount paid and for those assessed but not paid on the non discounted assessment.
- 6.5 All Outgoings paid and Rents and Income received (including post Settlement reassessments) by either party must be apportioned based on the Adjustment Date and paid or received at Settlement or as otherwise appropriate. This excludes water rates charges based on usage.
- 6.6 Unpaid Rent, as at Settlement, will not be adjusted until paid.
- 6.7 Land tax will be apportioned as if the Land were the Seller's only land in Queensland and the Seller is a natural person resident in Queensland.
- 6.8 (1) Should the Commissioner of Land Tax not have issued a Land Tax Clearance Certificate to the Buyer by the Adjustment Date, then in such case the parties agree the Buyer will retain in his Solicitor's Trust Account such sum from the settlement monies, as the Commissioner of Land Tax specifies in writing would be prudent to cover any land tax liability outstanding for the period up to and including 30th June immediately preceding the Adjustment Date.
- Upon a Land Tax Clearance Certificate issuing, the Buyer undertakes and agrees to direct the Solicitor to pay from the funds held in the Trust Account so much of those funds as may be necessary to obtain for the Buyer a Land Tax Clearance Certificate. Any balance funds remaining shall be paid to the Seller.
- This obligation is a continuing obligation and does not lapse at Settlement.
- (2) Where the Land described in Item (6) forms part of a larger lot and no separate assessment of Land Tax is issued in respect to the Land, Land Tax will be adjusted based on the proportion the area of the Land bears to the area of the whole of the Lot.
- 6.9 (1) Where Outgoings have not been assessed at the Adjustment Date any apportionment will be based on the sum advised by the relevant authority or where no such information is available, on the latest assessment.
- (2) Outgoings on a "per lot" basis shall be adjusted by dividing the total assessment by the number of lots included in the assessment.
- 6.10 Any amount, other than Land Tax, adjustable under this provision which relates to land other than that included in the Property shall be (where no specific assessment is issued) adjusted proportionately based on the area of the whole of the land relative to the area of the Land included in the Property.
- 6.11 Should the Seller be entitled to any discount on Outgoings then, for the purpose of this Clause, the discount shall not be taken into account, unless already received.
- 6.12 Adjustments will be made with respect to water rates when the rates charged are based on the average daily usage using the following formula:  

$$\text{Adjustment} = \text{TC/RD} \times \text{AD}$$
Where:  
TC = Total Usage Charge as at the Adjustment Reading Date  
RD = Days between the previous reading and Adjustment Reading Date  
AD = Adjustment Days. The number of days between the Adjustment Reading Date and Settlement Date.  
(i.e. Settlement Date minus Adjustment Reading Date. The Adjustment Reading Date is the date the water metre was read for the purpose of issue of Local Government water usage assessment)
- 6.13 The Buyer is responsible for;
- obtaining an accurate water meter reading within a reasonable time period prior to Settlement for the purpose of Clause 6.12.
  - determining an Adjustment amount to be paid in accordance with Clause 6.12.
  - disclosing the information in Clause 6.13 (1) & (2) to the Seller not less than 48 hours prior to the Adjustment Date.
- 6.14 The Seller may direct the Buyer to provide on Settlement a cheque payable to the relevant authority for Outgoings assessed but unpaid at the Adjustment Date. It shall be the Buyer's responsibility to forward such cheque to the relevant assessing authority forthwith. This will be an adjustment for purposes of Clause 6.1.
- 6.15 It shall be the Buyer's responsibility to obtain at its own cost all details of Outgoings from relevant government and local government authorities.
- 7. Preparation and Completion of Documents**
- 7.1 The Buyer will have delivered to the Seller, at a reasonable time before Settlement for execution by the Seller, Transfer Documents for the Land and any assignment or other document reasonably necessary for Settlement of this Contract.
- 7.2 Upon compliance by the Buyer with the provisions of this Contract and where the Seller is legally represented (payment by the Buyer of the Seller's reasonable legal expenses), the Seller will upon request, produce the Transfer Documents (prior to Settlement or payment of the Balance Purchase Price) for the purposes of assessment and payment of transfer duty.
- 7.3 It is agreed to by the parties hereto that the Buyer shall be under no obligation to pay any production fee to the Seller pursuant to Clause 7.2 if the Seller is not represented by a solicitor.

## 8. Handover

- 8.1 The Seller must hand over the Property at Settlement without damage or loss to the condition, as at the Date of Contract (fair wear and tear excepted). Should there be damage or loss to the condition of the Property the Buyer may not delay Settlement or withhold monies.
- 8.2 The Seller will, prior to Settlement, remove all chattels and other property not included in the sale, and repair damage, if any, caused by such removal.
- 8.3 Property not removed in accordance with Clause 8.2 shall be deemed abandoned and may be dealt with by the Buyer in any way the Buyer considers appropriate without obligation to account to the Seller.
- 8.4 Where the Seller has not satisfied its obligations under Clauses 8.1, 8.2 & 8.3 the Buyer may serve a notice on the Seller giving details of the failure to comply and requiring rectification prior to Settlement.
- 8.5 The Buyer may claim from the Seller the reasonable costs of effecting rectification of any damage or failure to carry out repairs in relation to Clauses 8.1 and 8.2 and costs incurred in dealing with property not removed in accordance with Clause 8.3 as liquidated damages notwithstanding Settlement may have taken place.
- 8.6 With respect to Clauses 8.1, 8.2 & 8.3, the Buyer must notify the Seller prior to Settlement, of its intention to make a claim. A notice provided in accordance with Clause 8.4 and not complied with will satisfy this obligation.
- 8.7 Where a dwelling house which forms part of the Property the subject of this Contract is before the date of possession or completion, whichever earlier occurs, so destroyed or damaged as to be unfit for occupation as a dwelling house, the Buyer may, at the Buyer's option, rescind the Contract by notice in writing given to the Seller or the Seller's solicitor not later than the date of completion or possession whichever the earlier occurs.

## 9. Settlement

- 9.1 Settlement shall take place on the Settlement Date specified in Item (12) (or if the Settlement Date is not a Business Day on the next Business Day following) between 10.00 am and 5.00 pm:
  - (a) at the settlement office of the Seller's mortgagee or solicitor; or
  - (b) as otherwise agreed upon by the parties; or
  - (c) failing agreement, at the nearest office to the nominated place for Settlement at which land title documents may be lodged for registration.
- 9.2 On payment of the Balance Purchase Price, adjusted as provided in this Contract, by Bank Cheque/s (as directed by the Seller or its Solicitors in writing) and compliance by the Buyer with the conditions of this Contract the Seller must deliver (or cause to be delivered) to the Buyer (or as directed by the Buyer):
  - (1) the instrument of title, if any, for the Land.
  - (2) Transfer Documents free of un-notified Encumbrances executed by the Seller in a form capable of immediate registration (save for stamping) in accordance with the *Land Title Act 1994*.
  - (3) all the Seller's keys and other devices and codes for entry, exit and security unless an alternative time and place for delivery is agreed to in writing.
  - (4) all Tenancy Documents, including all documents and forms required to comply with the provisions of the *Residential Tenancies and Rooming Accommodation Act 2008* including Bond transfers and notice to Tenants advising of the sale, provided however *Section 117 of the Property Law Act 1974* does not apply insofar as it assigns to the Buyer the right to recover rent arrears.

- (5) a properly completed property transfer information form in accordance with the *Fire and Rescue Service Act 1990*.
  - (6) title to any chattel forming part of the Property including assignable warranties and documentation relating thereto to which the Buyer may be reasonably entitled.
  - (7) documents in the Seller's possession reasonably required by the Buyer relating to the Property, in particular those relating to tenancies, licenses, warranties, Pool Safety Certificates and any unregistered dealings and in so doing assigns to the Buyer the benefit of such tenancies, licenses and warranties.
- 9.3 The Buyer shall be required to bear the cost of no more than four Bank Cheques in payment of the Balance Purchase Price.
  - 9.4 If the Title document on Settlement relates to other land, the Seller must produce that document to enable registration of the Transfer.
  - 9.5 Vacant possession of the Land (except if tenanted) and title to all the Property shall be given and passed to the Buyer on payment of the Balance Purchase Price.

## Other Matters Affecting this Contract

### 10. Buyer's Default

- 10.1 If the Buyer does not pay any monies due or is otherwise in default then, providing the Seller is not in default, the Seller may, in addition to and without limiting other remedies, including action for damages and/or specific performance, by notice in writing to the Buyer specifying the default, terminate or affirm this Contract.
- 10.2 Should the Seller terminate this Contract the Seller may, without prejudice to any other rights:
  - (1) claim forfeiture of the Deposit or call up any Bank Bond or Bank Guarantee provided in accordance with Clause 3.4; and/or
  - (2) resell the Property and provided such resale is completed within 12 months, any deficiency, including the expense of such resale, shall be recoverable by the Seller from the Buyer as liquidated damages.
  - (3) may retain the Property and sue the Buyer for damages for breach of this Contract.
  - (4) claim any Deposit monies that are in arrears as a liquidated debt.
  - (5) appropriate the profit, if any, on resale.
- 10.3 Should the Seller affirm this Contract the Seller may, without prejudice to any other rights:
  - (1) sue the Buyer for specific performance of the Contract and/or damages for breach as well as, or in lieu of, specific performance of the Contract; and
  - (2) recover from the Buyer, the Deposit or any part thereof the Buyer has failed to pay as a liquidated debt.
- 10.4 Damages will include:
  - (1) professional fees and costs incurred to satisfy the terms of this Contract.
  - (2) legal costs on an indemnity basis.

### 11. Seller's Default

- 11.1 If the Seller is in default under this Contract then, providing the Buyer is not in default, the Buyer may, in addition to and without limiting other remedies, including action for damages and/or specific performance, by notice in writing to the Seller specifying the default, terminate or affirm this Contract.
- 11.2 Should the Buyer affirm this Contract the Buyer may, without prejudice to any other rights, sue the Seller for specific performance of the Contract and/or damages for breach as well as, or in lieu of, specific performance of the Contract.

11.3 Should the Buyer terminate this Contract the Buyer may, without prejudice to any other rights:

- (1) recover from the Seller/Stakeholder the Deposit and any other monies paid by the Buyer under the Contract.
- (2) the Buyer will be entitled to any interest earned on a Deposit invested in accordance with Clause 3.7.
- (3) the Buyer, in addition is entitled to claim interest on any monies paid by the Buyer under the Contract (other than the Deposit) at the rate prescribed in Item (22) to be calculated from and including the date of payment by the Buyer up to, but excluding the date on which the money is repaid.
- (4) sue the Seller for damages.

11.4 Damages will include:

- (1) professional fees and costs incurred to satisfy the terms of this Contract.
- (2) legal costs on an indemnity basis.

## 12. Seller's Warranties

12.1 The Seller warrants, unless otherwise disclosed in this Contract, that at the time of Settlement:

- (1) the Seller will be the Registered Owner in the case of freehold land or the Lessee in the case of leasehold land.
- (2) it is the owner of all the Property.
- (3) there is no impediment to the Seller completing the sale.
- (4) the Seller is not insolvent or bankrupt.
- (5) there are no legal actions affecting or which may affect the Property or any part of it.
- (6) there are no outstanding or unsatisfied Notices, Orders or demands with respect to any Act, Regulation or By-Law, required to be complied with by the Seller pursuant to Clause 32.1, which have not been fully complied with or which may adversely affect the Property or the Seller's ability to complete this Contract, unless disclosed in Item (20).
- (7) the Seller has complied with all relevant environmental legislation in respect to the Property. The Land is not subject to any notice or order under the *Environmental Protection Act 1994*, nor are particulars of the Land recorded under the Environmental Management Register or Contaminated Land Register.
- (8) the Seller has complied with the requirements of the *Residential Tenancies and Rooming Accommodation Act 2008* with respect to the Tenancies as set out in Item (18) of the Item Schedule.
- (9) the Seller has caused notice of sale of the Property to be given to the Managing Agent mentioned in Item (18.2).
- (10) any Improvements to the Property not excluded in Item (16) will not have been removed by the Seller.
- (11) in the case of vacant land, the Property has been provided with a separate sewerage connection, unless otherwise disclosed in Item (23) (Special Conditions). This clause shall not apply to Property where other disposal systems are required and permissible by the local authority or council.
- (12) the Seller has complied with Division 5A of the *Fire and Rescue Service Act 1990* with respect to smoke alarms.  
Note: From the 1st July 2007 owners of all houses and units (domestic dwellings) in Queensland must install and maintain smoke alarms in compliance with the *Fire and Rescue Service Act 1990* as amended.
- (13) where there is a current Pool Safety Certificate, no alterations or additions have been made to the Regulated Pool/s or its surrounds prior to Settlement which would affect the Pool Safety Certificate.

12.2 It is acknowledged and agreed by the parties hereto that any building approval defect listed as a requisition in the local authority's building records does not constitute a Notice or an Order as contemplated by Clause 12.1 (6).

12.3 If a warranty set out in Clause 12.1 is incorrect or is breached by the Seller, the Buyer may:

- (a) where the Buyer is materially prejudiced, by notice to the Seller given not later than 5pm on the Business Day immediately preceding the Settlement Date (except in the case of matters disclosed in Item (20) with relation to Clause 12.1(6) or disclosed in Item (23)), rescind this Contract; or
- (b) elect to complete the Contract and reserve its rights to claim compensation providing notice to this effect has been given to the Seller in writing at or prior to Settlement.

12.4 Any notice given to the Seller under Clause 12.3 must set out clearly, details of the incorrect or breached warranty.

## 13. Buyer Warrants

- (a) It is not required to obtain consent to this purchase under the *Foreign Acquisitions and Takeovers Act 1975*; or
- (b) It has obtained any and all consents under the *Foreign Acquisitions and Takeovers Act 1975* to this purchase.

## 14. Consent

14.1 If the Seller must obtain consent to transfer the Property, as is the case with Leasehold Property, the Seller shall at his own cost promptly take every reasonable action to obtain such consent.

14.2 The Buyer will, if required, do all things as may reasonably be necessary to assist in obtaining such consent.

14.3 If consent is not obtained by the Settlement Date, providing neither party is in default, either party may by written notice to the other party terminate this Contract.

## 15. Encumbrance

The Property is sold free of Encumbrances and Tenancies except as notified in Items (18) & (21) (But subject to all reservations in favour of the Crown).

## 16. Further Acts

Each party must do whatever is reasonably necessary, at that party's own expense, to carry out its obligations under this Contract.

## 17. Inspection (Pre Settlement)

On the giving of reasonable notice to the Seller, the Buyer, or designated representative, may at reasonable times, prior to Settlement, inspect the Property for the purposes of:

- (1) Inspections in accordance with Clause 4.
- (2) valuation, if required (under Clause 5 or otherwise).
- (3) reading of the water meter
- (4) one pre-settlement inspection in addition to Clauses 17(1) & 17(2)
- (5) survey in accordance with Clause 21.

## 18. Interest on Unpaid Monies

Any monies payable under this Contract (or any Judgment given in respect of this Contract) not paid when due will attract Interest from the due date, to the date of payment, at the rate prescribed in Item (22) and the party, to whom those monies are owed, when such monies are paid, may recover the interest thereon from the other party as liquidated damages.

## 19. Possession Prior to Settlement

19.1 Should possession be given before the Settlement Date set out in Item (12) it shall be given solely at the Seller's discretion and then only on terms agreed between the parties in writing.

19.2 Such possession shall not give rise to a tenancy (unless otherwise agreed) but is a licence only.

19.3 The Buyer accepts the Property in the condition it is in at the date of possession.

- 19.4 The Buyer must maintain and not alter the Property, fair wear and tear accepted.
- 19.5 The Buyer must not part with possession of the Property.
- 19.6 Occupation of the Property shall be at the Buyer's risk.
- 19.7 The Buyer indemnifies the Seller against any loss or damage the Seller may incur arising from the Buyer's occupancy of the Property.
- 19.8 The Buyer will insure the Property, in a sum and on terms approved by the Seller, in both the Buyer's and Seller's names.

**20. Planning/Building Notices**

Should there be outstanding Notices at the Date of Contract under:

- (a) Sections 588 (show cause notice) or 590 (enforcement notice) of the *Sustainable Planning Act 2009*; or
- (b) Sections 246AG (show cause notice - cancellation), 247 (show cause notice) or 248 (enforcement notice) of the *Building Act 1975*.

The Buyer may terminate the Contract by written notice to the Seller.

**21. Property Survey**

The Buyer may inspect the Property and in so doing cause a survey to be made of the Land and fixed and permanent structures thereon and should there be an error or misdescription with respect to the dimensions of the Land or an encroachment onto or from the Land the Buyer may:

- (a) in the case of an error, misdescription or encroachment, any one of which is of a material nature, elect (in writing to the Seller) to complete this Contract or terminate before Settlement.
- (b) in the case of an error, mis-description or encroachment, any one of which is of an immaterial nature, disclosed by survey or otherwise, the Buyer must complete the purchase in accordance with the terms of this Contract.

Should the Contract be terminated in accordance with Clause 21(a), all monies by way of Deposit shall be refunded to the Buyer.

**22. Property Description**

In the case of a material or immaterial error or misdescription of the Property, including the Seller's title thereto, the Buyer may:

- (a) in the case of an error or misdescription, either of which are material, elect (in writing to the Seller) to complete this Contract or terminate before Settlement.
- (b) in the case of an error or misdescription, either of which are immaterial, the Buyer must complete the purchase in accordance with the terms of the Contract.

Should the Contract be terminated in accordance with Clause 22(a), all monies by way of Deposit shall be refunded to the Buyer.

**23. Compensation**

Where the Buyer elects to complete under Clause 21(a) or 22(a) or must complete under Clause 21(b) or 22(b):

- (1) The Buyer shall only be entitled to claim compensation if notice of such claim is given at or before Settlement and such notice clearly details the error, misdescription or encroachment giving rise to such claim. Any claim for compensation shall be limited to monetary compensation only.
- (2) Any such claim for compensation does not entitle the Buyer to delay Settlement or withhold any of the purchase monies.

**24. Property Information**

- 24.1 The Seller must, prior to Settlement, provide to the Buyer current copies of all relevant documents in the Seller's possession reasonably required by the Buyer relating to the Property, in particular those relating to tenancies, licences, warranties, and any unregistered dealings.

- 24.2 The Seller by this Contract consents to and authorises the Buyer to inspect the records of relevant authorities relating to the Land and Improvements.

**25. Property Use**

- 25.1 As far as the Seller is aware, the Present Use of the Property is legal but the Seller gives no warranty in respect thereof. See Item (19).

- 25.2 If at the Date of Contract:

- (a) under the Local Authority planning provisions the Present Use is unlawful; or
- (b) access and utilities to the Land are not legally secured; or
- (c) compliance with or application of any Government or local Government requirements or proposals, statutory or otherwise, with respect to the Land or adjoining land will materially adversely affect the Property; or
- (d) the Land and Improvements are affected by the *Queensland Heritage Act 1992* or included in the WORLD HERITAGE LIST;

and these matters have not been disclosed in this Contract, the Buyer may by notice to the Seller, given not less than 2 days before Settlement, terminate this Contract. If such notice is not given at all or as required, the Buyer will be deemed to have accepted the Land subject to any matters outlined in Clause 25.2.

**26. Requisitions**

The Buyer is not entitled to deliver requisitions on title.

**27. Rights After Settlement**

Notwithstanding the sale has settled and registration of the transfer occurred, each party shall retain the benefit of any provisions of this Contract, which may require the other party to do something or take some action.

**28. Risk**

From 5.00pm on the next Business Day after the signing of this Contract the Property shall be at the risk of the Buyer, however as long as the Seller remains in possession of the Property the Seller shall maintain any current insurance policies and will use and maintain the Property with reasonable care (As provided in Clause 8).

**29. Special Conditions**

Any Special Conditions to this Contract shall form part of this Contract. Should there be any inconsistency between the Terms and Conditions, or any additional conditions, and the Special Condition, the Special Condition shall apply.

**30. Stamp Duty**

Payment of Stamp Duty on this Contract is the responsibility of the Buyer.

**Note:** The Buyer may incur penalties if stamp duty is not paid within 30 days of the conditions of this Contract being satisfied.

**31. Time**

- 31.1 Time shall be of the essence. Settlement must take place on the Settlement Date at any time between the hours specified in Clause 9.1 of this Contract.

- 31.2 Any event that must occur on or before a specified date, in respect to this Contract, which date does not fall on a Business Day shall be extended to the next Business Day following the specified date.

**32. Work Orders and Notices**

- 32.1 (1) The Seller must, by Settlement, comply with any Work Orders or Notices issued by a competent authority on, before or subsequent to the Date of Contract that require compliance by Settlement.
- (2) Provided however, should the Buyer direct the Seller not to carry out the works, the Buyer will indemnify the Seller against any claims in respect of such Work Orders or Notices.

- 32.2 The Buyer must comply with any Work Orders or Notices issued by a competent authority subsequent to the Date of Contract that require compliance after Settlement.
- 32.3 Costs incurred by one party in complying with any Work Order or Notice which, under Clause 32.1, is the responsibility of the other party shall be, to the extent of such costs, an Adjustment to the Purchase Price in favour of the party who has incurred the costs.
- 32.4 Where the Seller has not by Settlement complied with Clause 32.1(1) and no adjustment has been made to the Purchase Price in respect of such works, the Buyer may recover as a debt from the Seller, the costs incurred by the Buyer in carrying out necessary works.
- 32.5 The Buyer shall bear all costs towards construction or repair of any dividing fences between the Land and any adjoining land, unless a Notice served under the provisions of Section 8 of the *Dividing Fences Act 1953*, is in force as at the date of this Contract, in which case such Notice shall be treated in the same manner as a Notice referred to in Clauses 32.1 and 32.3.
- 32.6 In accordance with Clause 32.1 the Seller will forthwith provide the Buyer with copies of all Work Orders and Notices (including those under the *Dividing Fences Act 1953*) received after the Date of Contract and will not carry out any work without written consent of the Buyer which consent will not be unreasonably withheld.
- 32.7 Should the Contract not settle other than through default of the Buyer, the Seller will reimburse to the Buyer any monies reasonably expended by the Buyer in accordance with matters disclosed in Item (20).
- 33. Seller's Agent**  
If an Agent has been appointed by the Seller as outlined in Item (2) to sell the Property for the Seller, authority vested in the Agent by the Seller shall be deemed to be vested in the Agent's authorised employees.
- 34. Severability**  
Should any court or tribunal of competent jurisdiction determine any term, provision or obligation of this Contract to be void, illegal or unenforceable by law, that term, provision or obligation will be removed from the Contract and will not effect the operation of the remainder of the Contract.
- 35.4 Notices given by a party's solicitor will be deemed to have been given by and with the authority of the party.
- 35.5 A Seller's Agent shall, for the purpose of this Clause, be recognised as a party and may receive Notices in accordance with Clause 35.1 on the Seller's behalf if authorised by the Seller. Where notice cannot otherwise be served on the Seller in accordance with this Clause, notice may be served on the Seller's Agent.
- 35.6 Notices must be served before 5pm on a Business Day, failing which, such Notice will be deemed to have been served on the next Business Day.
- 36. Applicable Law**
- 36.1 The laws of Queensland are the laws applicable to this Contract.
- 36.2 A solicitor appointed by a party shall have full authority to act on behalf of such party with respect to all matters relating to this Contract.
- 37. Provision of Documents**
- 37.1 The parties agree and confirm documents may be forwarded electronically to a person if that person has provided an email address or facsimile number, for delivery or service of documents, in the Item Schedule to this Contract.
- 37.2 This Contract may be executed in any number of counterparts. Together all counterparts make up one instrument.
- 37.3 This Contract may be entered into by and becomes binding on the parties by one party signing the Contract that has been signed by the other (or a photocopy or facsimile of that Contract) and transmitting a facsimile of it to the other or to the other party's Agent or Solicitor.
- 38. Privacy Statement**
- 38.1 The Agent collects and uses personal information obtained from you (all parties) as a party to this Contract to provide the services required by you or on your behalf. You as a party to this Contract agree the Agent may collect, use and disclose such personal information in accordance with and subject to the *Privacy Act 1988 (CTH)* for (where applicable):
- (1) marketing; and/or
  - (2) sales promotion and administration; and/or
  - (3) legislative and regulatory requirements relating to promotion, administration and use of the Agent's products and services
- 38.2 Without provision of certain information the Agent may not be able to act effectively or at all on your behalf. The parties have the right to request the Agent provide details of such information and also correct any inaccurate or out of date information.
- 38.3 The Agent may from time to time provide information to a data collection agency such as RP Data Limited. Data collection agencies provide information to the real estate, finance and valuation industries to enable accurate valuations of properties.

#### Notice

#### 35. Notice

- 35.1 Any notice to be served on any party under this Contract shall be in writing and may be served on that party:
- (a) by delivering the notice to the party personally; or
  - (b) by leaving it for the party at the party's address as stated in Items (3) or (5); or
  - (c) by posting it to the party by registered mail as a letter addressed to the party at the address as stated in Item (3) or (5); or
  - (d) by a sender's cleared facsimile transmission to the party's facsimile number in Item (3) or (5); or
  - (e) if both parties agree and it is lawful, by electronic transmission to the party at the email address shown for that party in the Item Schedule. (Refer to Items 2 to 5 of this Contract); or
  - (f) by delivery to the party's solicitor's office by any of the methods outlined in Clauses 35.1(a) to 35.1(e) above.
- 35.2 A notice posted shall be deemed to have been served, unless the contrary is shown, at the time when, by the ordinary course of post, the notice would be delivered.
- 35.3 A facsimile notice shall be deemed to have been served when transmitted to the facsimile number, agreed upon by the recipient, at the time of the facsimile transmission in accordance with Section 24 of the *Electronic Transactions (Queensland) Act 2001* and otherwise complies with legislation.

**DOCUMENTATION FOR CONTRACT**  
**(CONTRACT FOR SALE OF LOTS IN A COMMUNITY TITLE SCHEME)**

**IMPORTANT INSTRUCTIONS**

**READ CAREFULLY:**

**A. This page is part of documentation that comprises:**

1. This Instructions Page (Page 1);
2. The **WARNING STATEMENT - PAMD FORM 30C** (Pages 2 to 3);
3. The **INFORMATION SHEET - BCCM FORM 14** (Pages 4 to 5);
4. The Contract which includes:
  - a) Item Schedule (Pages 6 to 10);
  - b) Signature Section (Page 10);
  - c) Terms & Conditions (Pages 11 to 18);
  - d) Special Conditions (if any)
  - e) Plus any attachments, Annexures and Addendums mentioned or referred to within the Contract Item Schedule as forming part of the Contract.

The above items of this Instruction Page are provided in compliance with Section 368A of the *Property Agents and Motor Dealers Act 2000*.

**\*\*\* TO THE BUYER \*\*\***

**B. THE BUYERS' ATTENTION IS SPECIFICALLY DIRECTED TO:**

1. The **WARNING STATEMENT - PAMD FORM 30C** (Pages 2 to 3);
2. The **INFORMATION SHEET - BCCM FORM 14** (Pages 4 to 5);
3. The **Contract for Sale of Residential Lots in a Community Titles Scheme (Proposed Relevant Contract)** (Pages 6 to 18) *Note: once signed by all parties, the Proposed Relevant Contract will become a Relevant Contract and the provisions of item B will have been satisfied.*

Refer Section 368A (2)(c) of the *Property Agents and Motor Dealers Act 2000*

**C. Read all documentation in the order as provided in A.**

**D. Documentation should be signed in the following order:**

1. Buyer's Acknowledgement (G, Page 1);
2. The PAMD FORM 30C (Page 3);
3. The BCCM FORM 14 (Page 5);
4. The Contract - Signature Section (Page 10);
5. Wherever Applicable on any Attached Documentation.

**E. All Parties MUST Initial any Alterations to the Contract.**

**F. All Parties should initial at the bottom of each page of the Contract.**

**(Note: Failure to do so as required in F does NOT invalidate the Contract)**

**G. Buyer's Acknowledgement**

By signing below I/we the Buyer/Buyer's Agent acknowledge that, prior to signing the Proposed Relevant Contract, I/we:

1. received, read and signed the **PAMD Form 27c - Selling Agent's Disclosure to Buyer;**
2. received, read and signed the **BCCM Section 206 - Disclosure Statement (accompanied by the current Community Management Statement for the Scheme);**
3. read this Instruction Page
4. in the case of a Property with a Regulated Pool (Item 15.3(c) or Item 15.5(b)) where no Pool Safety Certificate is current, received a **Form 36 - Notice of no pool safety certificate.**

**Signatures:**

For Buyer 1: ..... For Buyer 2: .....  
For Buyer 3: ..... For Buyer 4: .....

**Note: Failure to sign this Acknowledgement does NOT invalidate the Contract.**

## Warning statement

*Property Agents and Motor Dealers Act 2000* – Chapter 11

This form is effective from 1 October 2010.

### Instructions

This form is to be attached to a proposed relevant contract of sale for residential property to be read and signed by a proposed buyer **BEFORE** the proposed buyer signs the proposed relevant contract.

**The seller or seller's agent must give the proposed buyer a clear statement directing the buyer's attention to the proposed relevant contract and to this warning statement before the proposed buyer signs the proposed relevant contract. Failure to give the proposed buyer a clear statement may give the buyer a right to terminate the contract under section 370 within 90 days of receiving a copy of the relevant contract unless settlement occurs earlier.**

#### Property address

**Note:** If no street address is applicable, use lot and plan information to identify the property

Street name and number .....

Suburb ..... State  Postcode

# WARNING

**DO NOT sign the proposed relevant contract for the above property until you have read and understood ALL SECTIONS of this form. DO NOT sign if you feel pressured.**

**The relevant contract is subject to a five (5) business day cooling-off period. You may terminate this contract during the cooling-off period. However, the seller may deduct a termination penalty of up to 0.25% of the purchase price from the deposit.**

### You should obtain independent:

- **legal advice** See note 1
- **valuation** See note 2

### Cooling-off period

#### What is the cooling-off period?

The cooling-off period is five (5) business days, during which you can change your mind about purchasing this property. Use this time to seek independent legal advice and an independent valuation of the property.

#### When does the cooling-off period start?

Your cooling-off period starts on the day you receive a copy of the completed relevant contract from the seller or seller's agent. The proposed contract becomes a relevant contract when both parties have signed. In any dispute about the commencement of the cooling-off period, it will be up to the seller to prove the buyer received a copy of the relevant contract. If you receive a copy of the relevant contract on a day other than a business day, the cooling-off period commences on the first business day after you receive a copy of the relevant contract

#### When does the cooling-off period end?

Your cooling-off period ends at **5.00pm on the fifth business day** after the cooling-off period started. A business day is a day other than a Saturday, Sunday or public holiday.

#### Can I waive or shorten the cooling-off period?

Yes, but only if you engage an independent lawyer who must give you a lawyer's certificate explaining the purpose and nature of the certificate. You should seek advice from your lawyer about the effect of waiving or shortening your cooling-off period. If you are waiving the cooling-off period, the lawyer's certificate must be given to the seller or seller's agent before you and the seller enter into the relevant contract.



**Cooling-off period continued**

**What should I do during the five (5) day cooling-off period?**

It is strongly recommended that you seek independent legal advice and obtain an independent valuation of the property during this time and that you understand and agree with the terms and conditions of the contract.

**How do I terminate the contract during the cooling-off period and what happens if the relevant contract is terminated?**

If you want to terminate the contract at any time before the end of the five (5) day cooling-off period, you must give a signed, dated notice to the seller indicating that you wish to terminate the contract during the cooling-off period. The notice must state that the relevant contract is terminated under section 370A of the *Property Agents and Motor Dealers Act 2000*. The seller must refund your deposit within **14 days** of the termination. The seller may deduct a termination penalty of up to **0.25% of the purchase price**. Make sure you terminate any building contract associated with this property if you terminate this contract during the cooling-off period.

**What happens after the cooling-off period ends?**

If you do not terminate the contract during the cooling-off period, you are legally bound by the contract, subject to the terms and conditions of the contract.

**Other important information**

**Read the attached proposed relevant contract. Do not be pressured into signing the proposed relevant contract before you have read it.**

**Note 1 - Independent legal advice**

Do you fully understand the legal consequences of signing the attached proposed relevant contract? Before signing the proposed relevant contract, it is strongly recommended that you seek independent legal advice and clarify any queries or concerns you have about buying the property. Are you sure the person you have obtained advice from is totally independent from the seller or seller's agent? **Exercise extreme caution in accepting the advice of anyone referred to you by the seller or seller's agent.**

**Note 2 - Independent valuation of the property**

Are you sure the purchase price for this property is fair? You should consider obtaining an independent valuation of the property before you sign the contract, or before your cooling-off period ends. When choosing a valuer you should ask whether the valuer has any relationship with any person involved in selling the property and whether they have professional indemnity insurance. Before you engage the valuer ask about the cost of the valuation. For more information about valuations, go to [www.fairtrading.qld.gov.au/house-valuation.htm](http://www.fairtrading.qld.gov.au/house-valuation.htm).

**Building contracts**

For building contracts associated with the purchase of residential property, you should ensure that the building contract price is not over-valued or inflated. Get a valuation or compare homes of similar value advertised or displayed by other home builders.

Domestic building contracts also have a cooling-off period under the *Domestic Building Contracts Act 2000* (section 72). Please check the Building Services Authority of Queensland website at [www.bsa.qld.gov.au](http://www.bsa.qld.gov.au) for further information about building contracts. Remember to terminate any building contracts related to this property if you terminate this contract.

**Claim fund and property developers**

A claim fund exists which, in some cases, enables buyers to make a claim if they suffer financial loss because a real estate agent commits a claimable offence. Strict guidelines and timeframes apply. If you suffer loss while buying an investment property or buying any property from a property developer you can not make a claim for loss against the fund.

**How do I know if I'm dealing with a licensed real estate agent or property developer and/or obtain further information about purchasing real estate?**

The Fair Trading website at [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au) provides you with useful information about purchasing property. You can check that you are dealing with a licensed real estate agent or property developer at [www.fairtrading.qld.gov.au/are-you-licensed.htm](http://www.fairtrading.qld.gov.au/are-you-licensed.htm) or by phoning 13 13 04.

**Buyer's acknowledgment**

I/we have read all sections of this warning statement and I/we acknowledge that by signing this warning statement, my/our attention has been directed to this warning statement and the attached proposed relevant contract by a clear statement and I/we have signed the warning statement BEFORE I/we signed the attached proposed relevant contract.

Signing this Warning Statement negates any termination right I/we may have had under section 370 of the *Property Agents and Motor Dealers Act 2000*.

Name .....

Name .....

Signature ..... Signature .....

Date   /   /

Date   /   /

## Information sheet (body corporate information)

*Body Corporate and Community Management Act 1997*

This form is effective from 29 April 2011

# WARNING

**You are strongly advised to obtain independent legal advice regarding any questions or concerns you have about purchasing the property or your prospective rights and obligations as a member of a body corporate.**

**Notice to agent:** The *Property Agents and Motor Dealers Act 2000* and *Body Corporate and Community Management Act 1997* (the Act) include strict requirements for presentation of prescribed warning statements and information sheets. Failure to comply may result in cancellation of the contract.

**By law the seller or the seller's agent must attach this information sheet to the contract. Do NOT sign the contract of sale without reading this information sheet.**

In addition to the contract, you should have before you:

- a separate warning statement, if the lot is a residential property, provided by the seller under the *Property Agents and Motor Dealers Act 2000*
- a disclosure statement provided by the seller, containing essential information about the body corporate that you will become a member of through purchasing this property (e.g. the amount of annual contributions currently set by the body corporate and payable by the lot owner)
- a community management statement for the scheme provided by the seller, containing important details about the scheme including details of any proposed future development of the scheme, the lot entitlements, by-laws and the regulation module applying to the scheme.

### Community titles schemes

This contract warning contains important information you should read and understand before signing a contract to buy a lot in a community titles scheme. Community titles schemes include duplexes, residential unit blocks, high-rise apartment complexes, townhouse complexes and some commercial premises. They contain individually owned units and common property such as lawns and access roadways.

Some new unit owners do not realise owning a lot in a community titles scheme brings with it certain obligations. You should carefully consider whether living or investing in a community titles scheme suits your lifestyle and financial needs.

When a community titles scheme is established, a body corporate is created to administer the scheme. Each lot owner is automatically a member of their body corporate and enjoys certain rights and responsibilities.

Owners are **NOT** able to decline to be members of their body corporate. Normally, an elected committee carries out day-to-day functions on behalf of the body corporate. Bodies corporate may also engage service providers such as body corporate managers and on-site managers, caretakers and letting agents.

Common obligations of a body corporate include:

- administering the common property and any body corporate assets
- enforcing the by-laws for the scheme, such as noise levels, the keeping of pets, car parking and a range of other matters
- arranging compulsory body corporate insurance
- conducting general meetings of owners, adopting budgets, and levying contributions to fund the operation of the body corporate
- maintaining bank accounts, keeping records, and preparing financial statements.

Common obligations of individual lot owners include:

- making financial contributions towards the body corporate administrative costs
- complying with by-laws
- maintaining their lot in good condition.

## Suggested searches and matters to investigate

There are significant differences between owning a lot in a community titles scheme and owning other types of property (such as a detached house). In addition to carrying out conveyancing searches, it is also recommended you investigate a number of special body corporate matters through the following sources:

### 1. Department of Justice and Attorney-General, Office of the Commissioner for Body Corporate and Community Management

Conduct a search at the Office of the Commissioner for Body Corporate and Community Management for any Adjudicator's Orders (a decision regarding the outcome of a dispute) made concerning the scheme.

General information and fact sheets are also provided about community title living and body corporate rules and regulations. For more information, call 1800 060 119 or visit [www.justice.qld.gov.au/bccm](http://www.justice.qld.gov.au/bccm)

### 2. Body corporate secretary

Obtain a **Body Corporate Information Certificate** from the body corporate secretary or body corporate manager whose name and address is supplied in the disclosure statement. Compare the disclosure statement with the information certificate, as inaccurate information in the disclosure statement may give you grounds to cancel the contract (Section 209 or Section 217 of the Act).

A search of the **body corporate records** can provide other important information, such as whether any improvements to the lot you are purchasing (e.g. balcony enclosure, air-conditioning) were approved, whether any conditions apply, and who is responsible for their maintenance and insurance.

Also, **check for any agreements** the body corporate may have entered into (e.g. caretaking, letting, body corporate management or lift maintenance).

#### Checklist

- By purchasing this property, do you know you will be part of a body corporate?
- Are you aware of any contracts the body corporate is a party to?
- Have you read and understood the body corporate by-laws?
- Do you understand your likely financial contributions to the body corporate?
- Are you aware that an adjustment of lot entitlements may increase or decrease your financial contributions to the body corporate?
- Are you aware that your financial contributions to the body corporate will vary as the financial liabilities of the body corporate change?
- Do you understand your maintenance responsibilities?
- Do you understand the role of the body corporate manager and on-site manager (if appointed)?

## Buyer's acknowledgment

I/we have read all sections of this information sheet and I/we have acknowledged and signed the information sheet BEFORE I/we signed the attached contract.

If the lot is residential property, I/we acknowledge that by signing this information sheet, my/our attention has been directed to this information sheet and the attached proposed relevant contract by a clear statement and that signing this information sheet negates any termination right I/we may have had under section 206A or 213A of the *Body Corporate and Community Management Act 1997*.

Name .....

Signature ..... Date   /   /

Name .....

Signature ..... Date   /   /

# CONTRACT FOR SALE OF RESIDENTIAL LOTS IN A COMMUNITY TITLES SCHEME

(WARNING: This Contract is not, without amendment, suitable for use in respect of off the plan sales)  
The Seller and Buyer agree to be bound by this Contract.

Item	Item Schedule
<b>1. DATE OF CONTRACT</b>	<i>Clause 1(13)</i>
	THE _____ DAY OF _____ 20____ (Note: Seller/Seller's Agent must complete)
<b>2. SELLER'S AGENT</b>	<i>Clause 34</i>
	Name: _____ Address: _____ ABN: _____ Phone: _____ Fax: _____ Mobile: _____ Email: _____ Notices*: <input type="checkbox"/> Licence Number: _____ Expiry Date: ____/____/____
<b>3. SELLER</b>	<i>Clauses 1(33), 11.1, 13, 14.1, 30-32.1 &amp; 34</i>
	<i>Note: If insufficient room list additional Names and Addresses in Item (27) (Special Conditions)</i> Name: _____ Address: _____ ABN / ACN _____ Phone: _____ Fax: _____ Mobile: _____ Email: _____ Notices*: <input type="checkbox"/> Solicitor / Self Acting Address: _____ Phone: _____ Fax: _____ Mobile: _____ Email: _____ Notices*: <input type="checkbox"/> Contact: _____
<b>4. BUYER'S AGENT (If Applicable)</b>	
	Name: _____ Address: _____ ABN: _____ Phone: _____ Fax: _____ Mobile: _____ Email: _____ Notices*: <input type="checkbox"/>
<b>5. BUYER</b>	<i>Clauses 1(12), 12, 14, 15 &amp; 27</i>
	<i>Note: If insufficient room list additional Names and Addresses in Item (27) (Special Conditions)</i> Name: _____ Address: _____ ABN / ACN _____ Phone: _____ Fax: _____ Mobile: _____ Email: _____ Notices*: <input type="checkbox"/> Solicitor / Self Acting Address: _____ Phone: _____ Fax: _____ Mobile: _____ Email: _____ Notices*: <input type="checkbox"/> Contact: _____
<b>6. LOT DESCRIPTION</b>	<i>Clauses 1(27),1(31), 10, 20, 23 &amp; 26</i>
	Address: _____  Lot No. _____ on GTP / BUP / SP _____ Title Reference: _____ Community Title Scheme (Name and No.): _____  Local Government: _____ Present Use: _____
* By checking the Notices box, that party agrees to receive Notices via email to the specified email address. (Clause 36.1(e))	

**7. PURCHASE PRICE** *Where applicable, include GST* Clause 1(28)

Purchase Price \$

*(WARNING: Some property sales may attract GST and require a tax invoice to be issued separate to this Contract. Seek appropriate professional advice if unsure).*

**8. DEPOSIT** Clause 3

Initial Deposit:

Payable:

Balance Deposit:

Payable by a date no later than:

**9. DEPOSIT HOLDER** Clauses 3.1 & 3.7

**10. FINANCE** *Complete all details for Clause 5 to apply.* Clauses 5, 18(2) & 32.2

Finance Amount:

Finance Date:

Lender:

**11. BUILDING / PEST / POOL SAFETY INSPECTIONS** *Only completed details will apply* Clauses 4 & 32

(a) Building Inspection: **Yes / No**

(b) Pest Inspection: **Yes / No**

(c) Pool Safety Inspection: **Yes / No** *(only answer 'yes' where Item (15.3)(c) is ticked)*

Inspection Date:

(Date to be completed by)

*Note: If 'yes' is selected in Item (11)(a), (b) or (c), an Inspection Date must be inserted.*

Acknowledged Defects/Exclusions:

**12. SETTLEMENT DATE/PLACE** Clauses 1(35), 7 & 32

Date: / / OR

days from the Date of Contract

OR

Place:

(Suburb, City or Town)

**13. ELECTRICITY SAFETY SWITCH** Clause 1(2)

An Approved Safety Switch  is  is not installed for general purpose socket outlets.

**14. SMOKE ALARMS** Clauses 9.2(8) & 14.1(9)

Smoke alarms **are / are not** installed on the Property.

**15. POOL SAFETY CERTIFICATE** Clauses 1(24), 1(29), 1(30) & 9.2(9)

Tick the applicable option below:

**Note: If Item (15.1), (15.2), (15.3)(a) or (b), (15.4) or (15.5)(a) or (b) is ticked below, 'no' is the answer to Item (11)(c)**

15.1  **No Shared or Non-shared Regulated Pool** on the Land or included as part of the Property being sold.

15.2  **Non-shared Regulated Pool** included as part of the Property being sold or on Regulated Land adjacent thereto.

*Note: If more than one Regulated Pool Item 15.3 must be completed in respect of each Regulated Pool. Place additional details in Special Conditions.*

15.3 If Item (15.2) is ticked, at the date of the Contract in respect to such Regulated Pool there is a: *(one of the boxes below must be ticked)*

(a) Current Pool Safety Certificate

Certificate No.:

Expiry: / /

(b) Current Form 17 - Final inspection certificate *(issued for newly constructed pools only)*

(c) Form 36 - Notice of no pool safety certificate (see Clause 4.3) *(where there is a Notice of no Pool Safety Certificate the Buyer must indicate their intention with respect to a Pool Safety Inspection in Item (11)(c)).*

15.4  **Shared Regulated Pool** (eg. owned by the Body Corporate) on the Land or on Regulated Land adjacent thereto.

15.5 If Item (15.4) is ticked, at the date of the Contract in respect to such shared Regulated Pool there is a: *(one of the boxes below must be ticked)*

(a) Current Pool Safety Certificate

Certificate No.:

Expiry: / /

(b) Form 36 - Notice of no pool safety certificate

**16. EXCLUDED IMPROVEMENTS**

Clauses 1(18), 8.2 &amp; 14.1(8)

.....  
 .....

**17. INCLUDED CHATELS** *Note: Includes all Improvements unless excluded in Item (16).*

Clauses 1(18), 1(27) &amp; 14.1(2)

.....  
 .....

(eg. Dishwashers, microwaves)

**18. RESIDENTIAL TENANCIES & SHORT TERM / HOLIDAY LETTINGS**

Clauses 6.1, 9.2(4), 9.2(5), 14.1(6), 14.1(7) &amp; 16

**18.1 Residential Tenancies**

Term: ..... Options: .....  
 Rent: ..... Bond: ..... Tenant/s: .....  
 Commencement Date: / / Completion Date: / /

**18.2 Short Term / Holiday Lettings**

	Name	Booking Dates (from & to)	Deposit Paid Yes/No	Deposit Amount	Buyer Accepts Yes/No
1)					
2)					
3)					

Bookings detailed in Item (18.2) which are not accepted by the Buyer must be notified to the Managing Agent not less than  
 ..... days prior to Settlement.

**18.3 Managing Agent:**

Phone: ..... Fax: ..... Email: .....

**19. ENCUMBRANCES** *(If Property is sold subject to Encumbrances details must be inserted)*

Clauses 1(15) &amp; 16

Title: ..... (eg. Easement)

Other: .....

(eg. Statutory Dealings; Unregistered Dealings; Licenses)

*Ambiguous references similar to "searches will reveal" will not impose upon the Buyer an obligation to accept the Encumbrance.*

**20. ORDERS / NOTICES**

Clauses 21 &amp; 33

1. Local Government/Statutory Authorities: ..... Date: / /  
 2. Dividing Fences: ..... Date: / /  
 3. ....: ..... Date: / /

**21. INTEREST ON UNPAID MONIES**

Clauses 13.3(3) &amp; 19

(a) Rate: ..... *(If left blank, Item 21(b) is applicable)*  
 (b) Queensland Law Society Inc Standard Contract Default Interest Rate

**22. BODY CORPORATE ENTITLEMENTS & OTHER MATTERS**

Clauses 1(7), 1(8) &amp; 14.3

	For the Lot	Aggregate
Contribution Schedule Lot Entitlement		
Interest Schedule Lot Entitlement		

**23. BODY CORPORATE INSURANCE**

Clauses 1(7) &amp; 1(8)

Insurer: ..... Policy Number: .....  
 Building: *(Including other Body Corporate Assets)* ..... Public Liability: .....  
 Additional: .....  
*(Please specify)* .....



**28. SIGNING**

**WARNING:** By signing this Contract the parties confirm that no legal advice as to the conditions contained herein was provided by the Agent.  
The parties have been advised to seek legal advice with respect to this Contract.

Seller(s): ..... Witness(es): .....  
.....  
.....

Buyer(s): ..... Witness(es): .....  
.....  
.....

Deposit Holder: ..... (To be signed on receipt of Initial Deposit)

*Copies to be provided to all parties*

Demonstration



# Contract for Sale of Residential Lots in a Community Title Scheme - Terms and Conditions - Whereby the Seller agrees to sell and the Buyer agrees to buy the Property.

## Definitions & Interpretations

### 1. Definitions

Defined terms have the same meaning throughout this Contract.

In this Contract (which includes the Item Schedule and Disclosure Statement) the following terms mean:

- (1) **Adjustment Date:** The earlier of:
  - (a) the date possession being given to the Buyer; or
  - (b) the Settlement Date.
- (2) **Approved Safety Switch:** defined as a residual current device under Schedule 9 of the *Electrical Safety Regulation 2002*.  
Note: Where an Approved Safety Switch is not installed, advice should be obtained from a licensed electrician to ensure compliance with the *Electrical Safety Regulation 2002*.
- (3) **Balance Purchase Price:** Monies payable, by the Buyer, on Settlement after deducting the Deposit, if paid, from the Purchase Price and allowing for Adjustments as provided in this Contract.
- (4) **Bank:** A Bank as defined in the *Banking Act 1959 (Cwth)*, the Reserve Bank or Bank constituted under State Law.
- (5) **Bank Bond/Guarantee:** Deposit Bond or Guarantee issued by a Bank or insurance company to secure the Deposit in accordance with Clause 3.4 of this Contract.
- (6) **Bank Cheque:** An unendorsed Cheque drawn by any Bank or, if authorised by the Seller, some other cheque.
- (7) **BCCMA:** *Body Corporate and Community Management Act 1997*.
- (8) **Body Corporate:** The Body Corporate created for the Scheme.
- (9) **Bond:** Any Bond paid in accordance with the provisions of the *Residential Tenancies and Rooming Accommodation Act 2008*.
- (10) **Building:** The Building in which the Lot is situated in whole or in part.
- (11) **Business Day:** Any day other than a Saturday, Sunday or public holiday in the State of Queensland.
- (12) **Buyer:** The Buyer named in Item (5), including any additional Buyers named in Special Conditions, Item (27).
- (13) **Date of Contract:** The date as set out in Item (1) of the Item Schedule.
- (14) **Disclosure Statement:** The statement complying with Section 206 or Section 213 of the BCCMA.
- (15) **Encumbrance:** Means matters affecting title, both registered and un-registered, including statutory easements and rights referred to in the Certificate of Title.
- (16) **GST:** Where used in this Contract, has the meaning used in the *A New Tax System (Goods & Services Tax) Act 1999* and "GST" includes any applicable rulings issued by the Commissioner of Taxation.
- (17) **GST Act:** refers to the *A New Tax System (Goods & Services Tax) Act 1999*.
- (18) **Improvements:** All fixed or permanent structures comprising the Lot and any fixed items, including fixed carpets and tiles, curtains, blinds and fittings, stoves, hot water systems, fixed antennae, fixed satellite dishes, fixed security systems, fixed clothes lines and all in-ground plants, unless excluded in Item (16).
- (19) **Land:** The Scheme land.
- (20) **Land Tax Clearance Certificate:** A certificate issued by the Commissioner of Land Tax that describes the land charged, and showing whether or not any land tax remains unpaid on the land described in the application and where land tax remains unpaid, the amount thereof. (Section 37 (1A) of the *Land Tax Act 2010*.)
- (21) **New Pool Safety Standard:** means the compliance standard applicable under the *Building Act 1975* to a Regulated Pool from the earlier of the 30th November 2015 or the date a property is sold or leased.
- (22) **Nonconformity Notice:** means the Pool Safety Nonconformity Notice (Form 26) issued where the Pool Safety Inspector is not satisfied the pool complies with the New Pool Safety Standard.
- (23) **Outgoings:**
  - (1) All government and local government rates and charges assessed on the Land including land tax, water and sewerage rates, general rates, fire levy and all periodic charges up to and including the Adjustment Date; and or
  - (2) Contributions to the administrative and sinking funds levied from time to time by the Body Corporate and special contributions levied by the Body Corporate under the Regulation Module or pursuant to a by-law for exclusive use.
- (24) **Pool Safety Certificate:** means the certificate issued under the *Building Act 1975* with respect to a complying Regulated Pool.
- (25) **Pool Safety Standard:** means the compliance standard applicable to the Regulated Pool at the time the pool was constructed.
- (26) **Plan:** The 'Plan' containing the 'Lot' registered under the *Land Title Act 1994 (QLD)*.
- (27) **Property:** The Lot described in Item (6) together with Improvements described in Clause 1(18), and the included chattels described in Item (17) of the Item Schedule.
- (28) **Purchase Price:** The sum referred to in Item (7) of the Item Schedule.
- (29) **Regulated Land:** means regulated land as defined under Section 231A of the *Building Act 1975*.
- (30) **Regulated Pool:** Where used in this Contract has the same meaning as given to it by Section 231B of the *Building Act 1975*.  
Note: a Regulated Pool is a swimming pool as defined under the *Building Act 1975* which will include a spa pool.
- (31) **Regulation Module:** The regulation module for the Scheme, as described in Item (6).
- (32) **Scheme:** The Community Title Scheme containing the Lot.
- (33) **Seller:** The Seller named in Item (3), including any additional Sellers named in Special Conditions, Item (27).
- (34) **Settlement:** The conveyance of the Property from the Seller to the Buyer.
- (35) **Settlement Date:** The appointed date specified in Item (12) for Settlement to occur.
- (36) **Special Contribution:** a levy on the owner of a lot fixed by the Body Corporate, in accordance with the Regulation Module, where a liability arises for which no provision, or inadequate provision has been made in the Body Corporate's budget.
- (37) **Tenancy Documents:** Tenancy Agreements, residential or otherwise, and documents ancillary thereto.

- (38) **Transfer Documents:** All those documents necessary to transfer title to the Property, as defined, to the Buyer, including Queensland Land Registry Transfer and Form 24.

## 2. Interpretation

In this Contract, unless the contrary intention appears:

- (1) the singular includes the plural and vice versa.
- (2) 'person' includes a firm, a Body Corporate together with executors, administrators,
- (3) an agreement, representation or warranty:
  - (1) in favour of two or more persons is for the benefit of them jointly and severally.
  - (2) on the part of two or more persons binds them jointly and severally.
- (4) a reference to:
  - (1) an item number is a reference to an item in the Item Schedule.
  - (2) a person includes the person's executors, administrators, successors and assigns.
  - (3) a document includes any variation to that document.
  - (4) any law includes all regulations and other instruments under it and amendments or replacements of any of them.
- (5) the Item Schedule and any attached addendum pages and annexures shall form part of this Contract.
- (6) words and phrases defined in the BCCMA have the same meaning.

## Events

### 3. Deposit

- 3.1 The Buyer must pay the Deposit to the Deposit Holder as Stakeholder in the amount and at the times required in Item (8).
- 3.2 Time is of the essence when making payment of the Deposit.
- 3.3 Failure to pay any monies on time or by cheque, which is not honoured on presentation, will be an act of default by the Buyer.
- 3.4 The Buyer may secure payment of the Deposit (in whole or in part) by Bank Bond/Guarantee in a form and on terms acceptable to the Seller, in which case on receipt of the Bank Bond/Guarantee the Buyer's obligation to pay the Deposit shall have been satisfied to the extent of the Bank Bond/Guarantee.
- 3.5 The Deposit is payable to the Seller:
  - (a) on Settlement; or
  - (b) in case of the Buyer's Default on default.
- 3.6 Should this Contract be properly terminated by the Buyer, the Deposit will be refunded to the Buyer in which case the Buyer shall have no further claim under this Contract unless there has been a breach of the provisions of this Contract by the Seller, giving rise to a claim for damages.
- 3.7 Investment of Deposit: *(Note: see Section 380 of the Property Agents and Motor Dealers Act 2000)*

Where the Stakeholder is instructed by the parties to invest the deposit, subject to any legislative requirements, then (except in the case of Bank Bond):

  - (1) the Deposit Holder will invest the Deposit in its name as trustee for the Buyer and the Seller in an interest bearing account with a Bank, Building Society or Credit Union until the Settlement Date or as otherwise instructed by the parties.
  - (2) the parties will supply to the Deposit Holder, prior to the investment of the Deposit, their tax file numbers and acknowledge that if the tax file numbers are not provided then they accept that the interest earned on the Deposit may be taxed at the highest rate allowable.

- (3) the Deposit and the interest are at the risk of the party who is ultimately entitled to the Deposit.
- (4) the interest on the Deposit will be paid to the party who becomes, and is, entitled to the Deposit at Settlement and such party will be solely responsible for any tax liability on such monies.
- (5) where the Contract does not proceed to Settlement, the interest is payable to the party entitled to the Deposit in accordance with Clauses 3.5 and 3.6.
- (6) the Deposit Holder will lodge any necessary taxation return, and may pay any tax out of the Deposit and interest. The Buyer and the Seller equally indemnify the Deposit Holder against any tax payable.
- (7) all costs in relation to this investment will be borne by the party referred to in Clause 3.5(3) and may be recovered by the Deposit Holder out of the Deposit and interest.
- (8) the Deposit Holder does not have to account to the Buyer or the Seller for interest for distribution until the investment of the Deposit matures and the bank debits tax and any other charges or expenses are deducted from the interest.
- (9) a Stakeholder, being a licensed Agent, may not invest the Deposit if the sale is to be completed on a contractually ascertainable day less than 60 days after the Deposit is received.

### 4. Property Inspections

*Note: reference to Pool Safety Inspections only applies where Item (15.3)(c) is ticked and applicable.*

- 4.1 The Contract is subject to and conditional upon the Buyer obtaining, at their own expense, by the Inspection Date (or such extended date as may be agreed) the relevant inspection report/s:
    - (1) as specified in Item (11)(a) & (b) (excluding Acknowledged Defects / Exclusions) satisfactory to the Buyer; and
    - (2) where Item (11)(c) applies, report that the Regulated Pool:
      - (a) complies with the New Pool Safety Standard (Pool Safety Certificate Issued); or
      - (b) does not comply with the New Pool Safety Standard (Nonconformity Notice given).
  - 4.2 In compliance with this Clause the Buyer will promptly, after the signing of this Contract by the Seller, take all reasonable steps to obtain the inspection report/s in compliance with Clause 4.1.
  - 4.3 Where Item (15.3)(c) applies and there is no Pool Safety Certificate and the Buyer has indicated their intention to obtain a Pool Safety Inspection in Item (11)(c), the Seller authorises the Buyer to appoint a licensed Pool Safety Inspector for the purposes of carrying out the inspection and to receive the results of such inspection.
  - 4.4 Upon receipt of any inspection report the Buyer must promptly, but no later than 5pm on the Inspection Date, give notice to the Seller:
    - (a) that the Buyer is satisfied with the inspection report/s; or
    - (b) that the Buyer is not satisfied with the inspection report/s and terminates the Contract.
- Note to Buyer:** *Building Act 1975* - If no Pool Safety Certificate is received and the Contract proceeds to Settlement, it shall be the Buyer's responsibility to, at its own cost, obtain such certificate within 90 days after Settlement. The Buyer is referred to Section 4 of the Form 36.
- Note to Seller:** Where a Pool Safety Inspection has been carried out resulting in a Nonconformity Notice issuing and the Contract does not proceed to Settlement, the local authority may require the pool owner, at its cost, to carry out works to comply with the relevant Pool Safety Standard.
- 4.5 The Buyer must at all times act reasonably.

- 4.6 Should the Buyer not give notice to the Seller in accordance with Clause 4.4 by 5.00 p.m. on the Inspection Date the Seller may, by notice, terminate this Contract.
- 4.7 In respect to Clause 4.4 and 4.6, this Contract is not terminated until written notice is given and the Buyer may at any time up to termination, by written notice, waive the benefit of Clause 4.4.  
Provided however, where a Pool Safety Certificate (Clause 4.1(2)(a)) has been issued, the Buyer will be deemed to be satisfied and may not terminate under Clause 4.4.
- 4.8 Where the Buyer has given notice of termination in accordance with Clause 4.4 but has failed, when requested by the Seller, to provide a copy of the relevant inspection report/s (or in the case of a Regulated Pool any Nonconformity Notice issued as a result of the Pool Safety Inspection), the termination will not take effect until after such copy has been provided to the Seller.
- 4.9 Should this Contract be terminated in accordance with the provisions of Clause 4, Clause 3.6 will apply.
- 4.10 In respect of white-ants, risk in itself will not constitute a reason for termination of this Contract.
- 4.11 Inspectors who conduct building inspections for the purposes of this Contract must be licensed as Building Inspectors in accordance with the *Queensland Building Services Authority Act 1991*.
- 4.12 Inspectors who conduct Pool Safety Inspections for the purposes of this Contract must be licensed as Pool Safety Inspectors by the Pool Safety Council.
- 5. Finance**  
This Clause shall not apply unless all details in Item (10) are complete.
- 5.1 This Contract is subject to the Lender approving a loan to the Buyer in the Finance Amount, on terms and conditions satisfactory to the Buyer, for the purchase of the Property by the Finance Date (or such extended date as may be agreed). See Item (10).
- 5.2 In complying with this Clause the Buyer will promptly, after the signing of this Contract by the Seller, make application to the Lender for the Loan and take all reasonable steps to obtain the Finance approval by the Finance Date.
- 5.3 The Buyer must give notice to the Seller immediately upon approval/rejection of Finance in accordance with Clause 36 (Notice).
- 5.4 If the Buyer through no fault on the Buyer's part has not obtained the Finance approval by the Finance Date then the Buyer may by notice to the Seller:  
(a) terminate this Contract; or  
(b) waive the benefit of this condition
- 5.5 Should the Buyer not give notice to the Seller in accordance with Clause 5.4 (a) or (b) by 5.00 p.m. on the Finance Date the Seller may, by notice, terminate this Contract.
- 5.6 The Buyer will, if required by the Seller, provide details of compliance with Clause 5.2 or written proof of rejection of the Buyer's application for finance.
- 5.7 This Contract is not terminated until notice is given.
- 5.8 Should the Buyer not obtain Finance Approval by the Finance Date and then subsequently obtains Finance Approval and notifies the Seller prior to the Seller giving notice to terminate this Contract in accordance with Clause 5.5, then the Buyer will have complied with the requirement to obtain a loan in the Finance Amount.
- 5.9 All monies paid by way of Deposit will be forthwith refunded to the Buyer once this Contract is terminated in accordance with this Clause.
- 6. Adjustments**
- 6.1 The Seller is entitled to the Rents and Income and is liable for and will make payment of all Outgoings on the Property up to and including the Adjustment Date. Thereafter the Buyer shall be entitled to Rents and Income and be liable for all Outgoings.
- 6.2 All Outgoings paid and Rents and Income received (including post Settlement reassessments) by either party must be apportioned based on the Adjustment Date and paid or received at Settlement or as otherwise appropriate. This excludes water rates charges based on usage.
- 6.3 All Rents and Income received by the Seller in relation to periods subsequent to the Adjustment Date must be apportioned between the parties as at the Adjustment Date.
- 6.4 Unpaid Rent, as at Settlement, will not be adjusted until paid.
- 6.5 Land tax will be apportioned as if the Land were the Seller's only land in Queensland and the Seller is a natural person, resident in Queensland.
- 6.6 (1) Where Outgoings have not been assessed at the Adjustment Date any apportionment will be based on the sum advised by the relevant authority or Body Corporate, or where no such information is available on the latest assessment.  
(2) Outgoings on a "per lot" basis shall be adjusted by dividing the total assessment by the number of lots included in the assessment.
- 6.7 Any amount, other than Land Tax, adjustable under this provision which relates to lots other than that included in the Property shall be (where no specific assesment is issued) adjusted.  
(a) Where charges are imposed on a 'per lot' basis:  
$$\text{Adjustment} = \frac{\text{Amount assessed}}{\text{The number of lots in that assessment}}$$
  
(b) Otherwise:  
$$\text{Adjustment} = \frac{\text{Amount assessed} \times \frac{\text{Interest schedule lot entitlement of the Lot}}{\text{aggregate interest schedule lot entitlement of the Scheme}}}{1}$$
- 6.8 (1) Should the Commissioner of Land Tax not have issued a Land Tax Clearance Certificate to the Buyer by the Adjustment Date, then in such case the parties agree the Buyer will retain in his Solicitor's Trust Account such sum, from the settlement monies, as the Commissioner of Land Tax specifies in writing would be prudent to cover any land tax liability outstanding for the period up to and including 30th June immediately preceding the Adjustment Date.  
Upon a Land Tax Clearance Certificate issuing, the Buyer undertakes and agrees to direct the Solicitor to pay from the funds held in the Trust Account so much of those funds as may be necessary to obtain for the Buyer a Land Tax Clearance Certificate. Any balance funds remaining shall be paid to the Seller.  
This obligation is a continuing obligation and does not lapse at Settlement.  
(2) Where a Land Tax Clearance Certificate has been issued by the Adjustment Date the Buyer may deduct, as an adjustment, the amount specified in such a certificate and same shall forthwith be paid to the relevant authority and the Seller will be released from any obligations in respect to Land Tax on the Land.
- 6.9 Should the Seller be entitled to any discount on Outgoings then, for the purpose of this Clause, the discount shall not be taken into account, unless already received.

6.10 Adjustments will be made with respect to water rates when the rates charged are based on the average daily usage using the following formula:

$$\text{Adjustment} = \text{TC/RD} \times \text{AD}$$

Where:

TC = Total Usage Charge as at the Adjustment Reading Date

RD = Days between the previous reading and Adjustment Reading Date

AD = Adjustment Days. The number of days between the Adjustment Reading Date and Settlement Date.

(ie. Settlement Date minus Adjustment Reading Date. The Adjustment Reading Date is the date the water metre was read for the purpose of issue of Local Government water usage assessment)

6.11 The Buyer is responsible for;

- (1) obtaining an accurate water meter reading within a reasonable time period prior to Settlement for the purpose of Clause 6.10
- (2) determining an Adjustment amount to be paid in accordance with Clause 6.10
- (3) disclosing the information in Clause 6.11 (1) & (2) to the Seller not less than 48 hours prior to the Adjustment Date

6.12 The Seller may direct the Buyer to provide on Settlement a cheque payable to the relevant authority or Body Corporate for Outgoings assessed but unpaid at the Adjustment Date. It shall be the Buyer's responsibility to forward such cheque to the relevant assessing authority or Body Corporate forthwith. This will be an adjustment for purposes of Clause 6.1.

6.13 It shall be the Buyer's responsibility to obtain at its own cost all details of Outgoings from relevant government and Local Government authorities.

6.14 Any Special Contributions or exclusive use levy levied prior to the Date of Contract will be the responsibility of the Seller and thereafter will be the responsibility of the Buyer.

#### 7. Preparation and Completion of Documents

7.1 The Buyer will have delivered to the Seller, at a reasonable time before Settlement for execution by the Seller, Transfer Documents for the Lot and any assignment or other document reasonably necessary for Settlement of this Contract.

7.2 Upon compliance by the Buyer with the provisions of this Contract and where the Seller is legally represent (payment by the Buyer of the Seller's reasonable legal expenses), the Seller will upon request, produce the Transfer Documents (prior to Settlement or payment of the Balance Purchase Price) for the purposes of assessment and payment of transfer duty.

7.3 It is agreed to by the parties hereto that the Buyer shall be under no obligation to pay any production fee to the Seller pursuant to Clause 7.2 if the Seller is not represented by a solicitor.

#### 8. Handover

8.1 The Seller must hand over the Property at Settlement without damage or loss to the condition, as at the Date of Contract (fair wear and tear excepted). Should there be damage or loss to the condition of the Property the Buyer may not delay Settlement or withhold monies.

8.2 The Seller will, prior to Settlement, remove all chattels and other property not included in the sale, and repair damage, if any, caused by such removal.

8.3 Property not removed in accordance with Clause 8.2 shall be deemed abandoned and may be dealt with by the Buyer in any way the Buyer considers appropriate without obligation to account to the Seller.

8.4 Where the Seller has not satisfied its obligations under Clauses 8.1, 8.2 & 8.3 the Buyer may serve a notice on the Seller giving details of the failure to comply and requiring rectification prior to Settlement.

8.5 The Buyer may claim from the Seller the reasonable costs of effecting rectification of any damage or failure to carry out repairs in relation to Clauses 8.1 and 8.2 and costs incurred in dealing with property not removed in accordance with Clause 8.3 as liquidated damages notwithstanding Settlement may have taken place.

8.6 With respect to Clauses 8.1, 8.2 & 8.3, the Buyer must notify the Seller prior to Settlement, of its intention to make a claim. A notice provided in accordance with Clause 8.4 and not complied with will satisfy this obligation.

8.7 Where a dwelling house which forms part of the Property the subject of this Contract is before the date of possession or completion, whichever earlier occurs, so destroyed or damaged as to be unfit for occupation as a dwelling house, the Buyer may, at the Buyer's option, rescind the Contract by notice in writing given to the Seller or the Seller's solicitor not later than the date of completion or possession whichever the earlier occurs.

#### 9. Settlement

9.1 Settlement shall take place on the Settlement Date specified in Item (12) (or if the Settlement Date is not a Business Day on the next Business Day following) between 10.00 am and 5.00 pm:

- (a) at the settlement office of the Seller's mortgagee or solicitor; or
- (b) as otherwise agreed upon by the parties; or
- (c) failing agreement, at the nearest office, to the nominated place for Settlement, at which land title documents may be lodged for registration.

9.2 On payment of the Balance Purchase Price, adjusted as provided in this Contract, by Bank Cheque/s (as directed by the Seller or its Solicitor in writing) and compliance by the Buyer with the conditions of this Contract the Seller must deliver (or cause to be delivered) to the Buyer (or as directed by the Buyer):

- (1) the instrument of title, if any, for the Lot.
- (2) Transfer Documents free of un-notified Encumbrances executed by the Seller in a form capable of immediate registration (save for stamping) in accordance with the *Land Title Act 1994*.
- (3) all the Seller's keys and other devices and codes for entry, exit and security unless an alternative time and place for delivery is agreed to in writing.
- (4) all Tenancy Documents, including all documents and forms required to comply with the provisions of the *Residential Tenancies and Rooming Accommodation Act 2008* including Bond transfers and notice to Tenants advising of the sale.
- (5) in the case of short term and/or holiday lettings where the Buyer agrees to accept same, any monies paid by way of letting deposits or where such deposits have been paid to a letting Agent, and assignment thereof in favour of the Buyer.
- (6) Rents and Income unpaid for any period prior to the Settlement Date and not adjusted between the parties at Settlement is not assigned to the Buyer but remains a debt due to the Seller in which case the provisions relating to Rent of Section 117 of the *Property Law Act 1974* are not applicable.
- (7) title to any chattel forming part of the Property including assignable warranties and documentation relating thereto, to which the Buyer may be reasonably entitled.
- (8) a properly completed property transfer information form in accordance with the *Fire and Rescue Service Act 1990*.

(9) current copies of any other relevant documents in the Seller's possession reasonably required by the Buyer relating to the Property, in particular those relating to tenancies, licenses, warranties, Pool Safety Certificates and any unregistered dealings and in so doing assigns to the Buyer the benefit of such tenancies, licenses and warranties.

9.3 The Buyer shall be required to bear the cost of no more than four Bank Cheques in payment of the Balance Purchase Price.

9.4 If the Title document on Settlement relates to other lots, the Seller must produce that document to enable registration of the Transfer.

9.5 Vacant possession of the Lot (except if tenanted) and title to all the Property shall be given and pass to the Buyer on payment of the Balance Purchase Price.

#### Other Matters Affecting this Contract

#### 10. BCCMA

This Lot is sold subject to BCCMA and the Body Corporate By-laws.

#### 11. Body Corporate Matters

11.1 The Seller must give to the Buyer forthwith upon receipt from the Body Corporate, copies of any notices from or resolutions passed by the Body Corporate or any new or amended community management statement recorded for the Scheme received after the Date of Contract.

11.2 The Buyer may terminate this Contract by written notice to the Seller if, after the Date of Contract but prior to Settlement, any action taken, resolution passed or difference in any new or amended community management statement (particulars of which have not been disclosed to the purchaser prior to the signing of this Contract) by the Body Corporate would materially prejudice the Buyer if compelled to complete the Contract.

11.3 Notice of termination must be given to the Seller within 14 days after the Seller gives the Buyer the information set out in Clause 11.1 hereof.

#### 12. Buyer's Default

12.1 If the Buyer does not pay any monies due or is otherwise in default then, providing the Seller is not in default, the Seller may, in addition to and without limiting other remedies, including action for damages and/or specific performance, by notice in writing to the Buyer specifying the default, terminate or affirm this Contract.

12.2 Should the Seller terminate this Contract the Seller may, without prejudice to any other rights:

- (1) claim forfeiture of the Deposit or call up any Bank Bond or Bank Guarantee provided in accordance with Clause 3.4; and/or
- (2) resell the Property and provided such resale is completed within 12 months, any deficiency, including the expense of such resale, shall be recoverable by the Seller from the Buyer as liquidated damages.
- (3) may retain the Property and sue the Buyer for damages for breach of this Contract.
- (4) claim any Deposit monies that are in arrears as a liquidated debt.
- (5) appropriate the profit, if any, on resale.

12.3 Should the Seller affirm this Contract the Seller may, without prejudice to any other rights:

- (1) sue the Buyer for specific performance of the Contract and/or damages for breach as well as, or in lieu of, specific performance of the Contract; and
- (2) recover from the Buyer, the Deposit or any part thereof the Buyer has failed to pay as a liquidated debt.

12.4 Damages will include:

- (1) professional fees and costs incurred to satisfy the terms of this Contract.

(2) legal costs on an indemnity basis.

#### 13. Seller's Default

13.1 If the Seller is in default under this Contract then, providing the Buyer is not in default, the Buyer may, in addition to and without limiting other remedies, including action for damages and/or specific performance, by notice in writing to the Seller specifying the default, terminate or affirm this Contract.

13.2 Should the Buyer affirm this Contract the Buyer may, without prejudice to any other rights, sue the Seller for specific performance of the Contract and/or damages for breach as well as, or in lieu of, specific performance of the Contract.

13.3 Should the Buyer terminate this Contract the Buyer may, without prejudice to any other rights:

- (1) recover from the Seller/Stakeholder the Deposit and any other monies paid by the Buyer under the Contract.
- (2) the Buyer will be entitled to any interest earned on a Deposit invested in accordance with Clause 3.7.
- (3) the Buyer, in addition is entitled to claim interest on any monies paid by the Buyer under the Contract (other than the Deposit) at the rate prescribed in Item (21) to be calculated from and including the date of payment by the Buyer up to, but excluding the date on which the money is repaid.
- (4) sue the Seller for damages.

13.4 Should the Seller fail to provide information as required by Clause 11.1 before Settlement, the Buyer may sue the Seller for damages.

13.5 Damages will include:

- (1) professional fees and costs incurred to satisfy the terms of this Contract.
- (2) legal costs on an indemnity basis.

#### 14. Seller's Warranties

14.1 The Seller warrants, unless otherwise disclosed in this Contract, that at the time of Settlement:

- (1) the Seller will be the Registered Owner of an estate in fee simple in the Lot.
- (2) it is the owner of all the Property.
- (3) there is no impediment to the Seller completing the sale.
- (4) the Seller is not insolvent or bankrupt.
- (5) there are no legal actions including unsatisfied judgments, Orders or writs affecting or which may affect the Property or any part of it.
- (6) the Seller has complied with the requirements of the *Residential Tenancies and Rooming Accommodation Act 2008* with respect to the Tenancies as set out in Item (18.1) of the Item Schedule.
- (7) the details set out in Item (18.2) of the Item Schedule are correct and the Seller has caused notice of sale of the Property to be given to the Managing Agent mentioned in Item (18.3).
- (8) any Improvements to the Property not excluded in Item (16) will not have been removed by the Seller.
- (9) the Seller has complied with Division 5A of the *Fire and Rescue Service Act 1990* with respect to smoke alarms.
- (10) in respect to a non-shared Regulated Pool on the Property, where there is a current Pool Safety Certificate, no alterations or additions have been made to the non-shared Regulated Pool/s or its surrounds prior to Settlement which would affect the Pool Safety Certificate/s.
- (11) the Seller has complied with all relevant environmental legislation in respect to the Property. The Land is not subject to a notice or order under the *Environmental Protection Act 1994*, nor are particulars of the Land recorded under the Environmental Management Register or Contaminated Land Register.

14.2 It is acknowledged and agreed by the parties hereto that any building approval defect listed as a requisition in the local authority's building records does not constitute a Notice or an Order as contemplated by Clause 33.1.

14.3 The Seller warrants at the Date of Contract, unless otherwise disclosed in Item (26):

- (1) the community management statement for the Scheme provided prior to signing this Contract is in full force of effect and except as otherwise disclosed in this Contract there is no proposed change or Body Corporate meeting called proposing any change, or resolution in respect to current community management statement.
- (2) there are no impediments registered or unregistered with respect to or affecting indefeasibility of common property or Body Corporate assets.
- (3) the Scheme community management statement is complete in its allocations with respect to details affecting the Lot, and/or the registered owner.
- (4) improvements to the common property and exclusive use rights which benefit the Lot or the registered owner are current and have all necessary consents, approvals and by-laws from the Body Corporate.
- (5) the information contained in Item (22) is correct.
- (6) the information contained in Item (25) is correct.

14.4 If a warranty set out in Clause 14.1 (1) to (6) (excluding matters disclosed in Item (20) or Item (27)) is incorrect or is breached by the Seller, the Buyer may by notice to the Seller, terminate this Contract.

14.5 If a warranty set out in Clause 14.1(7) to (11) is incorrect or is breached by the Seller, the Buyer may by notice to the Seller given within 14 days after the Buyer's copy of the Contract is received by the Buyer:

- (a) forthwith terminate this Contract; or
- (b) elect to complete this Contract and reserve its rights to claim compensation.

14.6 If a warranty set out in Clause 14.3 (1) to (5) (excluding matters disclosed in Item (26)) is incorrect or is breached by the Seller, the Buyer may by notice to the Seller given prior to Settlement, where the Buyer would be materially prejudiced if compelled to complete the Contract:

- (a) forthwith terminate this Contract; or
- (b) elect to complete this Contract and reserve its rights to claim compensation providing notice to this effect has been given to the Seller in writing at or prior to Settlement.

14.7 If the warranty set out in Clause 14.3(6) is incorrect or is breached by the Seller the Buyer may by notice to the Seller given within 14 days after the Buyer's copy of the Contract is received by the Buyer, terminate this Contract.

14.8 Any notice of termination given to the Seller under Clause 14.4, 14.5, 14.6 or 14.7 must set out clearly, details of the incorrect or breached warranty.

14.9 Nothing in this Contract precludes the Buyer from terminating this Contract under the provisions of Section 224 of the BCCMA.

#### 15. Buyer Warrants

- (a) It is not required to obtain consent to this purchase under the *Foreign Acquisitions and Takeovers Act 1975*; or
- (b) It has obtained any and all consents under the *Foreign Acquisitions and Takeovers Act 1975* to this purchase.

#### 16. Encumbrance

The Property is sold free of Encumbrances and Tenancies except as notified in Items (18.1) and (19) (But subject to all reservations in favour of the Crown).

#### 17. Further Acts

Each party must do whatever is reasonably necessary, at that party's own expense, to carry out its obligations under this Contract.

#### 18. Inspection (Pre Settlement)

On the giving of reasonable notice to the Seller, the Buyer, or designated representative, may at reasonable times, prior to Settlement, inspect the 'Property' for the purposes of:

- (1) Inspections in accordance with Clause 4.
- (2) valuation, if required (under Clause 5 or otherwise).
- (3) reading of the water meter.
- (4) one pre-settlement inspection in addition to Clause 18(1) & 18(2)
- (5) survey in accordance with Clause 23.

#### 19. Interest on Unpaid monies

Any monies payable under this Contract, (or any judgment given in respect of this Contract) not paid when due, will attract Interest from the due date, to the date of payment at the rate prescribed in Item (21) and the party, to whom those monies are owed, when such monies are paid, may recover the interest thereon from the other party as liquidated damages.

#### 20. Lot Use

20.1 As far as the Seller is aware, the Present Use of the Property is legal but the Seller gives no warranty in respect thereof.

20.2 If at the Date of Contract:

- (a) under the Local Authority planning provisions the Present Use is unlawful; or
- (b) access and utilities to the Lot are not legally secured; or
- (c) compliance with or application of any Government or local Government requirements or proposals, statutory or otherwise (including Transport Infrastructure), with respect to the Land or adjoining land will materially adversely affect the Property; or
- (d) the Lot and Improvements are affected by the *Queensland Heritage Act 1992* or included in the WORLD HERITAGE LIST;

and these matters have not been disclosed in this Contract, the Buyer may by notice to the Seller, given not less than 2 days before Settlement, terminate this Contract. If such notice is not given at all or as required, the Buyer will be deemed to have accepted the Property subject to any matters outlined in Clause 20.2.

#### 21. Planning/Building Notices

Should there be outstanding Notices at the Date of Contract under:

- (a) Sections 588 (show cause notice) or 590 (enforcement notice) of the *Sustainable Planning Act 2009*; or
- (b) Sections 246AG affecting the Lot (show cause notice - cancellation), 247 (show cause notice) or 248 (enforcement notice) of the *Building Act 1975*.

The Buyer may terminate the Contract by written notice to the Seller.

#### 22. Possession Prior to Settlement

22.1 Should possession be given before the Settlement Date set out in Item (12) it shall be given solely at the Seller's discretion and then only on terms agreed between the parties in writing.

22.2 Such possession shall not give rise to a tenancy (unless otherwise agreed) but is a license only.

22.3 The Buyer accepts the Property in the condition it is in at the date of possession.

22.4 The Buyer must maintain and not alter the Property, fair wear and tear accepted.

22.5 The Buyer must not part with possession of the Property.

22.6 Occupation of the Property shall be at the Buyer's risk.

22.7 The Buyer indemnifies the Seller against any loss or damage the Seller may incur arising from the Buyer's occupancy of the Property.

22.8 The Buyer will adequately insure the Property in both the Buyer's and Seller's names.

### 23. Property Survey

The Buyer may inspect the Property and in so doing cause a survey to be made of the Lot and fixed and permanent structures thereon and should there be an error or mis-description with respect to the dimensions of the Lot or an encroachment onto or from the Lot the Buyer may:

- (a) in the case of an error, mis-description or encroachment, any one of which is of a material nature, elect (in writing to the Seller) to complete this Contract or terminate before Settlement.
- (b) In the case of an error, misdescription, or encroachment, any one of which is of an immaterial nature, disclosed by survey or otherwise, the Buyer must complete the purchase in accordance with the terms of this Contract.

Should the Contract be terminated in accordance with Clause 23(a), all monies by way of Deposit shall be refunded to the Buyer.

### 24. Property Description

In the case of a material or immaterial error or misdescription of the Property, including the Seller's title thereto, the Buyer may:

- (a) in the case of an error or misdescription, either of which are material, elect (in writing to the Seller) to complete this Contract or terminate before Settlement.
- (b) in the case of an error or misdescription, either of which are immaterial, the Buyer must complete the purchase in accordance with the terms of the Contract.

Should the Contract be terminated in accordance with Clause 24(a), all monies by way of Deposit shall be refunded to the Buyer.

### 25. Compensation

Where the Buyer elects to complete under Clause 23(a) or 24(a) or must complete under Clause 23(b) or 24(b):

- (1) The Buyer shall only be entitled to claim compensation if notice of such claim is given at or before Settlement and such notice clearly details the error, misdescription or encroachment giving rise to such claim. Any claim for compensation shall be limited to monetary compensation only.
- (2) Any such claim for compensation does not entitle the Buyer to delay Settlement or withhold any of the purchase monies.

### 26. Property Information

- 26.1 The Seller must, prior to Settlement, provide to the Buyer current copies of all relevant documents in the Seller's possession reasonably required by the Buyer relating to the Property, in particular those relating to tenancies, licenses, warranties, and any unregistered dealings.
- 26.2 The Seller by this Contract consents to and authorises the Buyer to inspect the records of relevant authorities including body corporate and obtain any necessary certificates relating to the Land and/or Lot and Improvements.

### 27. Requisitions

The Buyer is not entitled to deliver requisitions on title.

### 28. Rights After Settlement

Notwithstanding the sale has settled and registration of the transfer occurred, each party shall retain the benefit of any provisions of this Contract, which may require the other party to do something or take some action.

### 29. Risk

From 5.00 p.m. on the next Business Day after the signing of this Contract the Property shall be at the risk of the Buyer, however as long as the Seller remains in possession of the Property the Seller shall maintain any current insurance policies and will use and maintain the Property with reasonable care (As provided in Clause 8).

### 30. Special Conditions

Any Special Conditions to this Contract shall form part of this Contract. Should there be any inconsistency between the Terms and Conditions, or any additional conditions, and the Special Condition, the Special Condition shall apply.

### 31. Stamp Duty

Payment of stamp duty on this Contract is the responsibility of the Buyer.

**Note:** The Buyer may incur penalties if stamp duty is not paid within 30 days of the conditions of this Contract being satisfied.

### 32. Time

- 32.1 Time shall be of the essence. Settlement must take place on the Settlement Date at any time between the hours specified in Clause 9.1 of this Contract.
- 32.2 Any event that must occur on or before a specified date, in respect to this Contract, which date does not fall on a Business Day shall be extended to the next Business Day following the specified date.

### 33. Work Orders and Notices

- 33.1 (1) The Seller must, by Settlement, comply with any Work Orders or Notices, issued by a competent authority on or before the Date of Contract that require compliance by Settlement.  
(2) Provided however, should the Buyer direct the Seller not to carry out the works, the Buyer will indemnify the Seller against any claims in respect of such Work Orders or Notices.
- 33.2 The Buyer must comply with any Work Orders or Notices issued by a competent authority subsequent to the Date of Contract that require compliance after Settlement.
- 33.3 Costs incurred by one party in complying with any Work Order or Notice which, under Clause 33.1, is the responsibility of the other party shall be, to the extent of such costs, an Adjustment to the Purchase Price in favour of the party who has incurred the costs.
- 33.4 Where the Seller has not by Settlement complied with Clause 33.1(1) and no adjustment has been made to the Purchase Price in respect of such works, the Buyer may recover as a debt from the Seller, the costs incurred by the Buyer in carrying out necessary works.
- 33.5 The Buyer shall bear all costs towards construction or repair of any dividing fences between the Land and any adjoining land, unless a Notice served under the provisions of Section 8 of the *Dividing Fences Act 1953*, is in force as at the date of this Contract, in which case such Notice shall be treated in the same manner as a Notice referred to in Clauses 33.1 and 33.3.
- 33.6 In accordance with Clause 33.1 the Seller will forthwith provide the Buyer with copies of all Work Orders and Notices (including those under the *Dividing Fences Act 1953*) received after the Date of Contract and will not carry out any work without written consent of the Buyer which consent will not be unreasonably withheld.
- 33.7 Should the Contract not settle other than through default of the Buyer, the Seller will reimburse to the Buyer any monies reasonably expended by the Buyer in accordance with matters disclosed in Item (20).

### 34. Seller's Agent

If an Agent has been appointed by the Seller as outlined in Item (2) to sell the Property for the Seller, authority vested in the Agent by the Seller shall be deemed to be vested in the Agent's authorised employees.

### 35. Severability

Should any court or tribunal of competent jurisdiction determine any term, provision or obligation of this Contract to be void, illegal or unenforceable by law, that term, provision or obligation must be read down to the extent possible or removed from the Contract whilst keeping the operation of the remainder of the Contract in effect.

### Notice

### 36. Notice

36.1 Any notice to be served on any party under this Contract shall be in writing and may be served on that party:

- (a) by delivering the notice to the party personally; or
- (b) by leaving it for the party at the party's address as stated in Items (3) or (5); or
- (c) by posting it to the party by registered mail as a letter addressed to the party at the address as stated in Items (3) or (5); or
- (d) by a sender's cleared facsimile transmission to the party's facsimile number in Items (3) or (5); or
- (e) if both parties agree and it is lawful, by electronic transmission to the party at the email address shown for that party in the Item Schedule. (Refer to Items (2) to (5) of this Contract); or
- (f) by delivery to the party's solicitor's office by any of the methods outlined in Clauses 36.1(a) to 36.1(e) above.

36.2 A notice so posted shall be deemed to have been served, unless the contrary is shown, at the time when, by the ordinary course of post, the notice would be delivered.

36.3 A facsimile notice shall be deemed to have been served when transmitted to the facsimile number, agreed upon by the recipient, at the time of the facsimile transmission in accordance with Section 24 of the *Electronic Transactions (Queensland) Act 2001* and otherwise complies with legislation.

36.4 Notices given by the party's solicitor will be deemed to have been given by and with the authority of the party.

36.5 A Seller's Agent shall, for the purpose of this Clause, be recognised as a party and may receive Notices in accordance with Clause 36.1 on the Seller's behalf if authorised by the Seller. Where notice cannot otherwise be served on the Seller in accordance with this Clause, notice may be served on the Seller's Agent.

36.6 Notices must be served before 5pm on a Business Day, failing which, such Notice will be deemed to have been served on the next Business Day.

### 37. Applicable Law

37.1 The laws of Queensland are the laws applicable to this Contract.

37.2 Notwithstanding the provisions of this Contract the Buyer is not precluded from the protection of statutory rights which cannot be excluded.

37.3 A solicitor appointed by a party shall have full authority to act on behalf of such party with respect to all matters relating to this Contract.

### 38. Provision of Documents

38.1 The parties agree and confirm documents may be forwarded electronically if the recipient has provided an email address or facsimile number, for delivery or service of documents, in the Item Schedule to this Contract.

38.2 This Contract may be executed in any number of counterparts. Together all counterparts make up one instrument.

38.3 This Contract may be entered into by and becomes binding on the parties by one party signing the Contract that has been signed by the other (or a photocopy or facsimile of that Contract) and transmitting a facsimile of it to the other or to the other party's Agent or Solicitor.

### 39. Privacy Statement

39.1 The Agent collects and uses personal information provided by you (all parties) as a party to this Contract to provide the services required by you or on your behalf.

39.2 You as a party to this Contract agree the Agent may subject to the *Privacy Act 1988 (CTH)* (where applicable), collect, use and disclose such personal information to:

- (1) third parties as may be required by the Agent for the purposes of marketing, sales promotion and administration relating to the use of the Agent's products and services and complying with legislative and regulatory requirements; and/or
- (2) data collection agencies.

39.3 Without provision of certain information the Agent may not be able to act effectively or at all on your behalf.

39.4 The parties have the right access such personal information and may require correction or amendment of any inaccurate, incomplete, out of date or irrelevant information.

39.5 The Agent may from time to time provide information to a data collection agency such as RP Data Limited. Data collection agencies provide information to the real estate, finance and valuation industries to enable accurate valuations of properties.



**Gail Easton**

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**From:** Alan [redacted]  
**Sent:** Wednesday, 24 August 2011 4:42 PM  
**To:** Legal Affairs Police Corrective Services and Emerg Svc Committee  
**Cc:** Peter Carter  
**Subject:** Attention: Gail - Further to Sample Sales Contracts  
**Attachments:** Warning\_Statement\_and\_Presentation\_Process\_V7.pdf

Hi Gail,

Further to our previous conversation, I managed to dig up our original submission to the committee in charge of changing the Warning Statement 30c back in 2009. At the time we proposed something a little different to what we ended up having to produce. I have attached a copy of that submission for your reference as well. I believe now, that a combination of what we originally proposed and our current Instruction Page is a more appropriate way to go.

I hope this helps.

Regards,

**Alan Liddle**  
*(Director)*  
**A.D.L. Software**  
P.O. Box 364  
Wilston, QLD 4051  
Ph: +61 (07) 3367 1982

[redacted]  
<http://www.adlsoftware.com>

Fax: +61 (07) 3861 0830



## Submission for Change Warning Statement and Presentation Process

(by Alan Liddle on behalf of ADL Software's Client Base)

As a major Stake Holder in the Real Estate Industry, with over 1,350 offices using our legal forms services in Qld, we at ADL Software are in a position to provide valuable consultation, information and advice to the Government in respect to many aspects of legislation affecting the Real Estate industry and forms design.

Outlined below is a summary of the current position and recommended changes to the Warning Statement and Presentation Process as outlined in Chapter 11 of the *Property Agents and Motor Dealers Act 2000*.

### Legislation Objective

The PAMD 30c Warning Statement was designed to make Buyers of residential property aware of their rights in respect to the purchase of Real Estate Property in Qld and encourage them to take full advantage of those rights. The key points the Buyer should be aware of are:

- Their Right to a 5 Day Cooling Off Period
- The Advisability of Seeking Independent Legal Advice
- A Penalty of 0.25% of the Sale Price May Apply for Termination Within the Cooling Off Period
- The Advisability of Seeking an Independent Valuation
- Their Right to Refuse to Sign a Contract if They Feel Unduly Pressured to Do So

### Current Implementation

Chapter 11 of the Act outlines the ways that a Real Estate Agent MUST present the Warning Statement (as a separate Government Form) and Sales Contract to a prospective Buyer. The Presentation Process may vary dependant on whether the Contract is presented by hand, fax, mail or email and varies again depending whether the contract is being presented to the Buyer prior to them Signing the contract or being presented to the them after the Contract has been Completed by the Seller.

The use of a 'separate Warning Statement' is in actual fact in direct contradiction to the defined purpose of the legislation. Section 363 (Purpose of ch 11) is worded as follows:

#### **363 Purposes of ch 11**

The purposes of this chapter are—

- (a) to give persons who enter into relevant contracts a cooling-off period; and
- (b) to require all proposed relevant contracts or relevant contracts for the sale of residential property in Queensland to include consumer protection information, including a statement that a relevant contract is subject to a cooling-off period; and
- (c) to enhance consumer protection for buyers of residential property by ensuring, as far as practicable, the independence of lawyers acting for buyers.

It is quite clear that the Warnings MUST form part of the Sales Contract.

## Reality

### Warning Statement

#### Agent

Many Agents pass the Warning Statement off as a mere matter of formality required by the Government and the Buyer often has the impression it is of no more value than nuisance value.

#### Buyer

Feedback from Agents and Lawyers indicates that the Warning Statement is glossed over by Buyers because it is just another Government form (ie. Nuisance Value).

#### Seller

Sellers are normally not made aware of the Warning.

### Presentation Process

Chapter 11 of the Act is extremely confusing to the point that many Lawyers throughout the State don't understand it, let alone Sellers & Real Estate Agents.

#### Agent

Many Agents are confused by the legislation and the whole process and continually get the process wrong. We at ADL Software still continue to receive on average one enquiry per day about the presentation process. Many of these enquiries are in response to Lawyers incorrectly interpreting the legislation and attempting to terminate a contract on behalf of a Buyer.

The most common issues, as understood from feedback from Agents, are as follows:

- There has been a total lack of education by the OFT.
- There are eight completely different presentation scenarios making the whole process very hard to understand. The scenarios vary depending on whether they present the contract by hand, fax, mail or email, each of which can apply either to 'Prior to Signing' or 'On Completion'.
- There is confusion over the fact that the PAMD Form 27c CANNOT form part of the presentation process. It is a requirement for the 27c to be executed and acknowledged by the Buyer prior to the Buyer entering into a Sales Contract (Section 138(2)).

'Acknowledgement' would require the Agent to be in receipt of a copy of the 27c duly signed by the Buyer. Such 'acknowledgement' is required by law to be made prior to the Buyer signing the Sales Contract. Yet, in Chapter 11 of the Act it specifically mentions the ability for the Agent to append 'any other documentation' to the back of the Sales Contract when presenting.

If the 27c is appended to the back of the Sales Contract (as is quite often taught to Agents) the only obvious result would be that it would be 'acknowledged' after the Buyer enters into the Sales Contract.

- There is confusion between the BCCM 206 Sellers Disclosure Statement and the BCCM Form 14. The BCCM Form 14 is referred to in Chapter 11 as 'the information sheet' yet the form itself is actually headed 'Contract Warning – Body Corporate Information'.

Agents know 'the information sheet' is supposed to be a BCCM form but the wording in the legislation doesn't indicate which one.

- The purpose of the Cover Page is not truly understood and quite often is attached to the Warning Statement and Contract in one attachment when emailing.

- The complexity of the presentation process and the dire repercussions of getting it wrong, has forced Agents to use Buyer's Acknowledgement forms which the Buyer signs acknowledging that the documents were presented correctly. This adds yet another complexity to the overall process which in itself can lead to error.
- When a Buyer wishes to terminate a sales contract without genuine cause, the first thing their Lawyer will do is claim that documents were not presented correctly. It is then up to the Agent/Seller to prove that they were. In many cases the threat of litigation is enough to have the contract terminated. If neither party agrees to termination this can result in costly litigation.

If the contract is terminated, more often than not the Seller will litigate against the Agent for damages. At the moment it is too easy for Buyers to terminate under Chapter 11 of the Act, greatly disadvantaging both Sellers and Agents.

The ability to terminate contracts for inadvertent non-compliance appears to be an unintended consequence of the legislation.

### **Buyer**

Feedback from Agents and Lawyers shows:

- Buyers don't really care how the documents are presented or even that there is a Warning Statement involved at all.
- The main pages of all documentation for a Buyer are the reference schedule page and the page where they sign the Sales Contract. When signing the Contract it is the only time where there is any hesitation on their behalf or any signs of second thoughts. It is the final act, which in their eyes, locks them into the purchase.
- Most Buyers act strictly on emotion when buying a home. Seeking legal advice *before* signing could cause enough of a delay for them to lose their dream home.
- Most Buyers aren't sufficiently aware of the cooling off period or how it works.

### **Seller**

- The Seller is put at a total disadvantage in respect to sections Chapter 11 of the Act.
- The Seller is generally totally unaware of the Buyer's rights in respect to these sections.

### **Lawyer**

Feedback from many Lawyers indicates that neither the Warning Statement nor the Presentation Process have had any effect on Real Estate sales in Qld.

Lawyers must, in advising their clients and in the best interests of their clients, utilise legislation notwithstanding that it is written poorly, difficult to interpret or is hard to comply with. When representing Buyers, they have an obligation to point out "errors" that have arisen as a result of failure to comply with the legislation. A clear example of poor legislation being Chapter 11 of the Act.

Carter Capner Law have estimated that the complexity of compliance issues increase transaction costs in a standard residential conveyancing contract by at least 100% for sellers and by 50% for buyers.

## **Material Consideration**

Chapter 11 of the Act has cost the Real Estate industry inestimable Millions of dollars since its introduction, severely affecting both consumers and Agents, without achieving any of the objectives of the legislation.

The legislation gives absolutely NO protection to the Seller, who is also a consumer in the sales transaction process.

Legislators have failed to understand the sales process or the reasons why people buy homes. They have approached the whole process too clinically and imposed unnecessary burdens on the industry and consumers which have had a major negative affect on the conveyancing process.

Good legislation should not impede the conveyancing process in any way. It should enhance it.

It is a paradox that legislation intended to protect consumers has had the opposite effect in a large number of cases:-

1. unscrupulous sellers can be fully exculpated by their disclosure and the delivery of compliant warning notices – in such cases the PAMDA measures actually protect unscrupulous sellers from genuine complaints and lawsuits;
2. consumers are exposed to unanticipated transaction costs and disputation costs;
3. the complexity of the warning has a tendency to befuddle buyers, thereby negating any benefit to them; and
4. innocent sellers must often endure expensive lawsuits and resultant damages awards because of inadvertent non-compliance with complex requirements.

Carter Capner Law reports the following in respect to the disputation costs to consumers and the industry:

### ***Actual disputes***

*Lawcite lists about 18 reported cases on sections 365 & 366 that went to a verdict over a three-year (approx.) period. Assuming this represents 2% of all actually disputed matters where a lawsuit was started, there could have been around 900 such matters.*

*At an average cost to each side (buyer and seller) of \$20,000 (this is a conservative average), this equates to \$36 million in legal costs (900 x \$20000 x 2). The parties solicitors and the relevant real estate agents would also incur legal costs in such matters fondly around the same amount. Total \$72 million.*

### ***Other PAMDA confrontations that do not reach dispute stage***

*Many contract PAMDA terminations are simply accepted without a dispute, mainly to avoid the high costs of the type referred to above. Buyers and sellers incur costs as a result including aborted sale fees including advertising, fees for the aborted conveyance, moving fees thrown away etc.*

The above figures suggest significant unwarranted expense. They do not include additional costs to the real estate industry associated with PAMDA irregularities concerning agent appointments.

## Submission

- My personal experience within the industry (over 12 years) indicates that Agents are only too happy for the Government to implement effective means to provide maximum consumer protection.
- The OFT is currently reviewing Chapter 11 of the Act and should be looking for a better way to 'sell' the concept of seeking independent legal advice and an independent valuation to the Buyer. Simply re-designing the existing form is not the answer. In our suggested Implementation (see below) we believe that we have come up with a far better way to 'sell' the concept to the Buyer.

It would be prudent of the OFT to run our suggestions past professionals in the areas of Marketing and Psychology to maximise the effect of our suggested Implementation through possible enhancements to the concept.

- In my opinion the Warning Statement, as a separate document, will always be glossed over regardless of the wording used, font size, order of presentation or manner of presentation.
- Simplifying the Sales Contract presentation process to the point of minimal possible error would be paramount to ensure that the conveyancing process runs smoothly without risk of either Consumer being litigated against simply because of a mere technical error or the allegation that one has occurred. Elimination of a Presentation Process altogether is the ideal situation.
- I believe that the Seller should also be made aware of the Buyers rights in respect to the transaction as a fellow consumer in that transaction.
- Government forms are seen by all parties to be simply bureaucratic meddling resulting in unnecessary paperwork.
- In reality, Buyers will seldom seek legal advice prior to signing on the dotted line, but if prompted in the correct manner will be more likely to do so during the Cooling Off period.
- I also believe that there should be NO or a reduced penalty in respect to termination during the Cooling Off Period, increasing the likelihood of legal advice actually being sought. In NSW a Seller can terminate a contract by accepting a better offer from another Buyer prior to the original Buyers' contract becoming legally binding. The onus is on the Buyer to ensure a prompt conveyancing process.

We are not advocating that Qld adopts policy that reflects methodologies used in NSW but it helps to remind you that the sales process is a two way street. Both Seller & Buyer should be treated equally in respect to consumer protection.

- To really get the Buyer to take notice of the key points of the Warning Statement they must be truly confronted with these points and **FORCED TO ACKNOWLEDGE** them **IMMEDIATELY PRIOR TO SIGNING THE CONTRACT**.
- The industry will be extremely unhappy if they have to go through further costly change that results in minimal positive outcome.

## Proposed Solution

Our recommended Implementation is based on feedback through consultation with Legal professionals, Registered Training Organisations and Agents with an active interest in the overall viability of the Industry. It has been drafted with the sole purpose of maximising Consumer Protection against unnecessary costs in the overall sales process of residential real property in Qld.

As part of our suggested Implementation we have designed a draft Warning Statement which could be used as a basis for final form.

The draft Warning Statement uses wording that exists in the current Warning Statement and forces the Buyer to acknowledge the key points that the OFT is keen to 'sell' to them. No attempt has been made to simplify the wording, only to simplify the method of presentation for maximum effect.

We recommend that the form PAMD 30c be designed to be a functional part of the Sales Contract and NOT seen to be a Government form. Legislation should require that the warning MUST form part of any residential sales contract which attracts a cooling off period and MUST appear as the LAST TWO PAGES of the contract. The page numbering on the Warning Statement pages should be representative of the overall page numbering of the Sales Contract being used (eg. Page 11 of 12 and Page 12 of 12).

Advice we have received from a number of legal professionals, in particular Carter Capner Law, indicates that this concept, apart from being already legislated for in the current legislation, is a legally viable solution which should be vigorously pursued by the Government.

The first page of the new form should be headed, "Buyer's Information Statement - Important Information for Buyers". This page should contain the information currently on the second page of the Warning Statement, shown as numbered items (as you would expect in a sales contract). The Cooling Off Period should be item #1 being, as I believe, the most important piece of information on the page.

The second page of the new form should be headed "Sales Contract Signature Page". The page should then be split into two sections headed as follows:

1. Warning Statement for Buyers                      and
2. All Party's Signatures

In the "Warning Statement for Buyers" section there should be key warnings that the Buyer MUST acknowledge by manually ticking (in pen) and initialling to indicate their understanding of the warnings. Each warning must be ticked and initialled separately to all other warnings. Each warning will have a reference to the "Warning Statement for Buyers", quoting the appropriate Item Number.

In order to ensure that the Warning Statement has the maximum effect the OFT should seek professional Marketing and psychological advice in respect to wording and presentation of the Warning.

The OFT should draft an information statement that is readily available, on their website, to both real estate Agents and consumers.

The OFT should provide seminars to Agents to educate them on the new changes.

The termination penalty within the Cooling Off Period should be abolished or reduced and replaced or supplemented with legislation that allows sellers to enter into other contracts during the Cooling Off Period. These secondary contracts will have the same rules apply to them as the original contract and automatically be terminated upon the successful expiry of the first contract's Cooling Off Period. Contracts are to be treated in order of the last signing date on the last page of the contract.

**Note:** Refer to attached draft Sales Contract for an example of how the Warnings would form part of a Sales Contract.

### **Benefits**

- All objectives of current legislation will be met with maximum effectiveness, assuring the required consumer protection.
- The Warning Statement would now form part of the actual Signature page of the sales contract. This will maximise the affect of the Warning Statement and the individual key warnings will be taken in when the Buyer is most likely to hesitate in respect to the purchase, taking full advantage of their emotional state.
- As the Warning Statement is now part of the Sales Contract the Seller, as a fellow consumer, will rightly become aware of the Buyers' rights in respect of the sales transaction.
- A presentation process will be eliminated saving the industry and consumers millions of dollars in unnecessary litigation & ancillary costs.
- The need for a Cover Page is eliminated.
- The need for an acknowledgement form will be eliminated.
- There will be greater certainty given to the contracting process.
- Conveyancing will become a far smoother process.
- There will be greater confidence throughout the industry within the ranks of consumers, Agents and Lawyers.
- Legislation will be easier to understand.
- There will be minimal cost to changing the legislation.

### **Disadvantages**

- None





7	<b>PURCHASE PRICE</b> <i>Unless otherwise stated in Special Conditions the Purchase Price includes, where applicable, GST.</i>  <i>Clause 1(17)</i>	Figures \$  Words: (optional) <span style="border: 1px solid black; display: inline-block; width: 150px; height: 20px; vertical-align: middle;"></span>  <i>(WARNING: Some property sales may attract GST and require a tax invoice to be issued separate to this Contract. Seek appropriate professional advice if unsure).</i>
8	<b>DEPOSIT</b>  <i>Clause 3</i>	Initial Deposit: Payable: Balance Deposit: Payable by a date no later than:
9	<b>DEPOSIT HOLDER</b> <i>Clauses 3.1 &amp; 3.7</i>	
10	<b>FINANCE</b> <i>Complete all details for Clause 5 to apply. Clauses 5 &amp; 29.2</i>	Finance Amount: Finance Date: Lender:
11	<b>BUILDING &amp;/OR PEST INSPECTIONS</b> <i>Complete for Clause 4 to apply. Clauses 4 &amp; 29</i>	Building Inspection: <b>Yes / No</b> Pest Inspection: <b>Yes / No</b> Inspection Date: _____ (Date to be completed by) Acknowledged Defects/Exclusions: <span style="border: 1px solid black; display: inline-block; width: 150px; height: 20px; vertical-align: middle;"></span>  Pool/pool fencing to be included in the inspection: <b>Yes / No</b>
12	<b>SETTLEMENT DATE/PLACE</b>  <i>Clauses 7 &amp; 29</i>	Date:    /    / <b>OR</b> _____ days from the Date of Contract <b>OR</b> Place: _____ (City or Town)
13	<b>ELECTRICITY SAFETY SWITCH</b>	An electricity safety power switch <input type="checkbox"/> is <input type="checkbox"/> is not installed for general purpose socket outlets. <i>The Electrical Safety Regulation, 2002 requires the transferor of land on which a domestic residence is constructed to give notice of whether a safety switch has been installed. If one is not installed, then within 90 days from the date of possession, the new owner of the land must install a safety switch.) A licensed Electrician can advise in relation to this requirement.</i>
14	<b>SMOKE ALARMS</b>  <i>Clauses 7.3(5) &amp; 10.1(12)</i>	Smoke alarms <b>are / are not</b> installed on the Property. {From the 1st July 2007 owners of all houses and units (domestic dwellings) in Queensland must install and maintain smoke alarms in compliance with the <i>Fire and Rescue Service Act 1990</i> as amended.}
15	<b>EXCLUDED IMPROVEMENTS</b>  <i>Clauses 1(13), 7.10 &amp; 10.1(10)</i>	<span style="border: 1px solid black; display: inline-block; width: 100%; height: 40px;"></span> Other: _____
16	<b>INCLUDED CHATTELS</b>  <i>Clauses 1(13), 1(16) &amp; 10.1(2)</i>	<span style="border: 1px solid black; display: inline-block; width: 100%; height: 40px;"></span> <i>Note: Includes all Improvements unless excluded in Item (15). (eg. Dishwashers, microwaves)</i> Other: _____
17	<b>RESIDENTIAL TENANCIES</b>  <i>Clauses 6.1, 7.3(4), 10.1(8) &amp; 13</i>	<b>17.1 Term:</b> _____ <b>Options:</b> _____ <b>Rent:</b> _____ <b>Tenant:</b> _____ <b>Commencement Date:</b> /    / <b>Completion Date:</b> /    / <b>Bond:</b> _____  <b>17.2 Managing Agent:</b> <b>Phone:</b> _____ <b>Fax:</b> _____ <b>Email:</b> _____
18	<b>PRESENT USE</b>  <i>Clause 23</i>	Residential <input type="checkbox"/> Rural <input type="checkbox"/> Vacant Land <input type="checkbox"/> Rural Residential <input type="checkbox"/> Other: _____



# Contract for Sale of House and Land - Terms and Conditions

## Definitions & Interpretation

### 1. Definitions

In this Contract (which includes the Item Schedule) the following terms mean:

- (1) **Adjustment Date:** The earlier of:
  - (a) the date possession being given to the Buyer; or
  - (b) the Settlement Date.
- (2) **Balance Purchase Price:** Monies payable, by the Buyer, on Settlement after deducting the Deposit, if paid, from the Purchase Price and allowing for Adjustments as provided in this Contract.
- (3) **Bank:** A Bank as defined in the *Banking Act 1959 (Cwlth)*, the Reserve Bank or Bank constituted under State Law.
- (4) **Bank Bond/Guarantee:** Deposit Bond or Guarantee issued by a Bank or insurance company to secure the Deposit in accordance with Clause 3.4 of this Contract.
- (5) **Bank Cheque:** An unendorsed Cheque drawn by any Bank or, if authorised by the Seller, some other cheque.
- (6) **Bond:** Any Bond paid in accordance with the provisions of the *Residential Tenancies and Rooming Accommodation Act 2008*.
- (7) **Business Day:** Any day other than a Saturday, Sunday or public holiday in the State of Queensland.
- (8) **Buyer:** The Buyer named in Item (5), including any additional Buyers named in Special Conditions, Item (22).
- (9) **Date of Contract:** The date as set out in Item (1) of the Item Schedule. The date the Contract becomes binding on the Buyer and Seller, as detailed in the Warning notes of PAMD Form 30c is not necessarily, for the purposes of this Contract, the Date of Contract.
- (10) **Encumbrance:** Certain matters affecting title, both registered and un-registered, including statutory easements and rights referred to in the Certificate of Title.
- (11) **G.S.T.:** Where used in this Contract, has the meaning used in the *A New Tax System (Goods & Services Tax) Act 1999* and "GST" includes any applicable rulings issued by the Commissioner of Taxation.
- (12) **G.S.T Act:** refers to the *A New Tax System (Goods & Services Tax) Act 1999*.
- (13) **Improvements:** All fixed or permanent structures on the land and any items fixed to them, including domestic dwelling, sheds, car accommodation, pergolas, in-ground or fixed pools, fixed carpets and tiles, curtains, blinds and fittings, stoves, hot water systems, fixed antennae, fixed satellite dishes, fixed security systems, fixed clothes lines and all in-ground plants, unless excluded in Item (15).
- (14) **Land Tax Clearance Certificate:** A certificate issued by the Commissioner of Land Tax that describes the land charged, and showing whether or not any land tax remains unpaid on the land described in the application and where land tax remains unpaid, the amount thereof. (Section 37 (1A) of the *Land Tax Act 1915*)
- (15) **Outgoings:** All government and local government rates and charges assessed on the Land including land tax, water and sewerage rates, general rates, fire levy and all periodic charges up to and including the Adjustment Date.
- (16) **Property:** The Land described in Item (6) together with Improvements described in Clause 1(13) and the included chattels described in Item (16) of the Item Schedule.
- (17) **Purchase Price:** The sum referred to in Item (7) of the Item Schedule.
- (18) **Seller:** The Seller named in Item (3), including any additional Sellers named in Special Conditions, Item (22).
- (19) **Settlement:** The conveyance of the Property from the Seller to the Buyer.
- (20) **Settlement Date:** The appointed date specified in Item (12) for Settlement to occur.
- (21) **Tenancy Documents:** Tenancy Agreements, residential or otherwise, and documents ancillary thereto.
- (22) **Transfer Documents:** All those documents necessary to transfer title to the Property, as defined, to the Buyer, including Queensland Land Registry Transfer and Form 24.

### 2. Interpretation

In this Contract, unless the contrary intention appears:

- (1) the singular includes the plural and vice versa.

- (2) 'person' includes a firm, a body corporate.
- (3) an agreement, representation or warranty:
  - (1) in favour of two or more persons is for the benefit of them jointly and severally.
  - (2) on the part of two or more persons binds them jointly and severally.
- (4) a reference to:
  - (1) an item number is a reference to an item in the Item Schedule.
  - (2) a person includes the person's executors, administrators, successors and assigns.
  - (3) a document includes any variation to that document.
  - (4) any law includes all regulations and other instruments under it and amendments or replacements of any of them.
- (5) Column notes in the Item Schedule form part of this Contract.

## Events

### 3. Deposit

- 3.1 The Buyer must pay the Deposit to the Deposit Holder as Stakeholder in the amount and at the times required in Item (8).
- 3.2 Time is of the essence when making payment of the Deposit.
- 3.3 Failure to pay any monies on time, or by cheque which is not honoured on presentation, will be an act of default by the Buyer.
- 3.4 The Buyer may secure payment of the Deposit (in whole or in part) by Bank Bond/Guarantee in a form and on terms acceptable to the Seller, in which case on receipt of the Bank Bond/Guarantee the Buyer's obligation to pay the Deposit shall have been satisfied to the extent of the Bank Bond/Guarantee.
- 3.5 The Deposit is payable to the Seller:
  - (a) on Settlement; or
  - (b) in case of the Buyer's Default on default.
- 3.6 Should this Contract be properly terminated by the Buyer, the Deposit will be refunded to the Buyer in which case the Buyer shall have no further claim under this Contract unless there has been a breach of the provisions of this Contract by the Seller, giving rise to a claim for damages.
- 3.7 Investment of Deposit: (*Note: see Section 380 of the Property Agents and Motor Dealers Act 2000*)

Where the Stakeholder is instructed by the parties to invest the deposit, subject to any legislative requirements, then (except in the case of Bank Bond):

  - (1) the Deposit Holder will invest the Deposit in its name as trustee for the Buyer and Seller in an interest bearing account with a Bank, Building Society or Credit Union until the Settlement Date or as otherwise instructed by the parties.
  - (2) the parties will supply to the Deposit Holder, prior to the investment of the Deposit, their tax file numbers and acknowledge that if the tax file numbers are not provided then they accept that the interest earned on the Deposit may be taxed at the highest rate allowable.
  - (3) the Deposit and the interest are at the risk of the party who is ultimately entitled to the Deposit.
  - (4) the interest on the Deposit will be paid to the party who becomes, and is, entitled to the Deposit at Settlement and such party will be solely responsible for any tax liability on such monies.
  - (5) the interest is payable to the party entitled to the Deposit in accordance with Clauses 3.5 and 3.6.
  - (6) all costs in relation to this investment will be borne by the party referred to in Clause 3.7(4).
  - (7) a Stakeholder, being a licensed Agent, may not invest the Deposit if the sale is to be completed on a contractually ascertainable day less than 60 days after the Deposit is received.

### 4. Property Inspections

- 4.1 The Contract is subject to and conditional upon the Buyer obtaining, by the Inspection Date (or such extended date as may be agreed) specified in Item (11), a building and/or pest report, satisfactory to the Buyer, excluding Acknowledged Defects/Exclusions.
- 4.2 In compliance with this Clause the Buyer will promptly, after the signing of this Contract by the Seller, take all reasonable steps to obtain the building and/or pest report.
- 4.3 If any inspection report specified in Clause 4.1 is not satisfactory to the Buyer, the Buyer must, promptly upon receipt of the inspection report, give notice to the Seller terminating this Contract. The Buyer may however, waive the benefit of this condition at any time prior to termination of the Contract.
- 4.4 The Buyer must at all times act reasonably.

- 4.5 Should the Buyer not give notice to the Seller in accordance with Clause 4.3 by 5.00 p.m. on the Inspection Date the Buyer will be deemed to be satisfied with the Inspections.
- 4.6 Where the Buyer has given notice of termination in accordance with Clause 4.3 but has failed, when requested by the Seller, to provide a copy of the relevant report, the termination will not take effect until after such copy has been provided to the Seller.
- 4.7 All monies paid by way of Deposit will be forthwith refunded to the Buyer once this Contract is terminated in accordance with this clause.
- 4.8 In respect of white-ants, risk in itself will not constitute a reason for termination of this Contract.
- 4.9 Inspectors who conduct building inspections for the purposes of this Contract must be specifically licensed as Building Inspectors in accordance with the *Queensland Building Services Authority Act 1991*.
- 5. Finance**  
This Clause shall not apply unless all details in Item (10) are completed.
- 5.1 This Contract is subject to the Lender approving a loan to the Buyer in the Finance Amount, on terms and conditions satisfactory to the Buyer, for the purchase of the Property by the Finance Date (or such extended date as may be agreed). See Item (10).
- 5.2 In complying with this Clause the Buyer will promptly, after the signing of this Contract by the Seller, make application to the Lender for the Loan and take all reasonable steps to obtain the Finance approval by the Finance Date.
- 5.3 The Buyer must give notice to the Seller immediately upon approval/rejection of Finance in accordance with Clause 32 (Notice).
- 5.4 If the Buyer, through no fault on the Buyer's part, has not obtained the Finance approval by the Finance Date then the Buyer may by notice to the Seller:
- terminate this Contract; or
  - waive the benefit of this condition.
- 5.5 Should the Buyer not give notice to the Seller in accordance with Clause 5.4 (a) or (b) by 5.00 p.m. on the Finance Date the Seller may, by notice, terminate this Contract.
- 5.6 The Buyer will, if required by the Seller, provide details of compliance with Clause 5.2 or written proof of rejection of the Buyer's application for finance.
- 5.7 This Contract is not terminated until notice is given.
- 5.8 Should the Buyer not obtain Finance Approval by the Finance Date and then subsequently obtains Finance Approval and notifies the Seller prior to the Seller giving notice to terminate this Contract in accordance with Clause 5.5, then the Buyer will have complied with the requirement to obtain a loan in the Finance Amount.
- 5.9 All monies paid by way of Deposit will be forthwith refunded to the Buyer once this Contract is terminated in accordance with this Clause.
- 6. Adjustments**
- 6.1 The Seller is entitled to the Rents and Income and is liable for and will make payment of all Outgoings on the Property up to and including the Adjustment Date. Thereafter the Buyer shall be entitled to Rents and Income and be liable for all Outgoings.
- 6.2 All Outgoings under Clause 6.1 must be apportioned as at the Adjustment Date.
- 6.3 All Rents and Income received by the Seller in relation to periods subsequent to the Adjustment Date must be apportioned as at the Adjustment Date.
- 6.4 Apportionment of Outgoings with respect to those which have been paid will be adjusted on the amount paid and for those assessed but not paid on the non discounted assessment.
- 6.5 All Outgoings paid and, Rents and Income received, including post Settlement reassessments, by either party must be apportioned based on the Adjustment Date. This excludes water rates charges based on usage. Payment must be made within 14 days of monies being received.
- 6.6 Unpaid Rent, as at Settlement, will not be adjusted until paid.
- 6.7 Land tax will be apportioned as if the Land were the Seller's only land in Queensland and the Seller is a natural person resident in Queensland.
- 6.8 (1) Should the Commissioner of Land Tax not have issued a Land Tax Clearance Certificate to the Buyer by the Adjustment Date, then in such case the parties agree the Buyer will retain in his Solicitor's Trust Account such sum from the settlement monies, as the Commissioner of Land Tax specifies in writing would be prudent to cover any land tax liability outstanding for the period up to and including 30th June immediately preceding the Adjustment Date. And, upon a Land Tax Clearance Certificate issuing, the Buyer undertakes and agrees to direct the Solicitor to pay from the funds held in the Trust Account so much of those funds as may be necessary to obtain for the Buyer a Land Tax Clearance Certificate. Any balance funds remaining shall be paid to the Seller.  
This obligation is a continuing obligation and does not lapse at Settlement.
- (2) Where the Land, subject to this Contract, forms part of a larger lot and no separate assessment of Land Tax is issued in respect to the Land, Land Tax will be adjusted based on the proportion the area of the Land bears to the area of the whole of the Lot.
- 6.9 (1) Where Outgoings have not been assessed at the Adjustment Date any apportionment will be based on the sum advised by the relevant authority or where no such information is available, on the latest assessment.
- (2) Outgoings on a "per lot" basis shall be adjusted by dividing the total assessment by the number of lots included in the assessment.
- 6.10 Any amount adjustable under this provision which relates to land other than that included in the Property shall be (where no specific assessment is issued) adjusted proportionately based on the area of the whole of the land relative to the area of the Land included in the Property.
- 6.11 Should the Seller be entitled to any discount on Outgoings then, for the purpose of this Clause, the discount shall not be taken into account, unless already received.
- 6.12 Adjustments will be made with respect to water rates when the rates charged are based on the average daily usage using the following formula:  
Adjustment = TC/RD x AD  
Where:  
TC = Total Usage Charge as at the Adjustment Reading Date  
RD = Days between the previous reading and Adjustment Reading Date  
AD = Adjustment Days. The number of days between the Adjustment Reading Date and Settlement Date.  
(ie. Settlement Date minus Adjustment Reading Date. The Adjustment Reading Date is the date the water metre was read for the purpose of issue of Local Government water usage assessment)
- 6.13 The Buyer is responsible for;
- obtaining an accurate water meter reading within a reasonable time period prior to Settlement for the purpose of Clause 6.12.
  - determining an Adjustment amount to be paid in accordance with Clause 6.12.
  - disclosing the information in Clause 6.13 (1) & (2) to the Seller not less than 48 hours prior to the Adjustment Date.
- 6.14 The Seller may direct the Buyer to provide on Settlement a cheque payable to the relevant authority for Outgoings assessed but unpaid at the Adjustment Date. It shall be the Buyer's responsibility to forward such cheque to the relevant assessing authority forthwith. This will be an adjustment for purposes of Clause 6.1.
- 6.15 It shall be the Buyer's responsibility to obtain at its own cost all outgoing details from relevant government and local government authorities.
- 7. Settlement**
- 7.1 Settlement shall take place on the Settlement Date specified in Item (12) (or if the Settlement Date is not a Business Day on the next Business Day following) between 10.00 am and 5.00 pm:
- at the Settlement office of the Seller's mortgagee or solicitor; or
  - as otherwise agreed upon by the parties; or
  - failing agreement, at the nearest office to the nominated place for Settlement at which land title documents may be lodged for registration.
- 7.2 The Buyer will have delivered to the Seller, at a reasonable time before Settlement for execution by the Seller, Transfer Documents for the Land and any assignment or other document reasonably necessary for Settlement of this Contract.

7.3 On payment of the Balance Purchase Price, adjusted as provided in this Contract, by Bank Cheque/s (as directed by the Seller or its Solicitors in writing) and compliance by the Buyer with the conditions of this Contract the Seller must deliver (or cause to be delivered) to the Buyer (or as directed by the Buyer):

- (1) the instrument of title, if any, for the Land.
- (2) Transfer Documents free of un-notified Encumbrances executed by the Seller in a form capable of immediate registration (save for stamping) in accordance with the *Land Title Act 1994*.
- (3) all the Seller's keys and other devices and codes for entry, exit and security unless an alternative time and place for delivery is agreed to in writing.
- (4) all Tenancy Documents, including all documents and forms required to comply with the provisions of the *Residential Tenancies and Rooming Accommodation Act 2008* including Bond transfers and notice to Tenants advising of the sale, provided however *Section 117 of the Property Law Act 1974* does not apply.
- (5) a properly completed property transfer information form in accordance with the *Fire and Rescue Service Amendment Act 2006*.
- (6) title to any chattel forming part of the Property including assignable warranties and documentation relating thereto to which the Buyer may be reasonably entitled.
- (7) documents in the Seller's possession reasonably required by the Buyer relating to the Property, in particular those relating to tenancies, licenses, warranties and any unregistered dealings.

7.4 The Buyer shall be required to bear the cost of no more than four Bank Cheques in payment of the Balance Purchase Price.

7.5 Upon compliance by the Buyer with the provisions of this agreement and payment, by the Buyer, of the Seller's reasonable expenses the Seller will, upon request, produce the Transfer Documents (prior to Settlement or payment of the Balance Purchase Price) for the purposes of payment of transfer duty.

7.6 It is agreed to by the parties hereto that the Buyer shall be under no obligation to pay any production fee to the Seller pursuant to Clause 7.5 if the Seller is not represented by a solicitor.

7.7 If the Title document on Settlement relates to other land, the Seller must produce that document to enable registration of the Transfer.

7.8 Vacant possession of the Land (except if tenanted) and title to all the Property shall be given and passed to the Buyer on payment of the Balance Purchase Price.

7.9 The Seller will, prior to Settlement, remove all chattels and other property not included in the sale, and repair damage, if any, caused by such removal. Should the Seller fail to carry out such repairs the Buyer may do so and recover the cost of such repairs as liquidated damages from the Seller notwithstanding Settlement may have taken place.

7.10 Property not removed in accordance with Clause 7.9 shall be deemed abandoned and may be dealt with by the Buyer in any way the Buyer considers appropriate without obligation to account to the Seller. Any cost incurred by the Buyer in dealing with this property may be recovered from the Seller as liquidated damages notwithstanding Settlement may have taken place.

## 8. Handover

The Seller must hand over the Property at Settlement without damage or loss to the condition, as at the Date of Contract (fair wear and tear excepted). Should there be damage or loss to the condition of the Property the Buyer may not delay Settlement or withhold monies. However, the Buyer may claim the reasonable costs of effecting rectification from the Seller as liquidated damages notwithstanding Settlement may have taken place. The Buyer must however notify the Seller, prior to Settlement, of its intention to make a claim.

## Other Matters Affecting this Contract

### 9. Buyer's Default

9.1 If the Buyer does not pay any monies due or is otherwise in default then, providing the Seller is not in default, the Seller may, in addition to and without limiting other remedies, including action for damages and/or specific performance, terminate or affirm this Contract.

9.2 Should the Seller terminate this Contract the Seller may, without prejudice to any other rights:

- (1) claim forfeiture of the Deposit or call up any Bank Bond or Bank Guarantee provided in accordance with Clause 3.4; and/or

- (2) resell the Property and provided such resale is completed within 12 months, any deficiency, including the expense of such resale, shall be recoverable by the Seller from the Buyer as liquidated damages.
- (3) may retain the Property and sue the Buyer for damages for breach of this Contract.
- (4) claim any Deposit monies that are in arrears as a liquidated debt.
- (5) appropriate the profit, if any, on resale.

9.3 Should the Seller affirm this Contract the Seller may, without prejudice to any other rights:

- (1) sue the Buyer for specific performance of the Contract and or damages for breach as well as, or in lieu of, specific performance of the Contract; and
- (2) recover from the Buyer, the Deposit or any part thereof the Buyer has failed to pay as a liquidated debt.

9.4 Damages will include professional fees and costs incurred to satisfy the terms of this Contract.

## 10. Seller's Warranties/Buyer's Right to Rescind

10.1 The Seller warrants, unless otherwise disclosed in this Contract, that at the time of Settlement:

- (1) the Seller will be the Registered Owner in the case of freehold land or the Lessee in the case of leasehold land.
- (2) it is the owner of all the Property.
- (3) there is no impediment to the Seller completing the sale.
- (4) the Seller is not insolvent or bankrupt.
- (5) there are no legal actions affecting or which may affect the Property or any part of it.
- (6) there are no outstanding or unsatisfied Notices, Orders or demands with respect to any Act, Regulation or By-Law, required to be complied with by the Seller pursuant to Clause 30.1, which have not been fully complied with or which may adversely affect the Property or the Seller's ability to complete this Contract, unless disclosed in Item (19).
- (7) the Seller has complied with all relevant environmental legislation in respect to the Property.
- (8) the Seller has complied with the requirements of the *Residential Tenancies and Rooming Accommodation Act 2008* with respect to the Tenancies as set out in Item (17) of the Item Schedule.
- (9) the Seller has caused notice of sale of the Property to be given to the Managing Agent mentioned in Item (17.2).
- (10) any Improvements to the Property not excluded in Item (15) will not have been removed by the Seller.
- (11) in the case of vacant land, the Property has been provided with a separate sewerage connection, unless otherwise disclosed in Item (22) (Special Conditions). This clause shall not apply to Property where other disposal systems are required and permissible by the local authority or council.
- (12) the Seller has complied with the *Fire and Rescue Service Amendment Act 2006* with respect to smoke alarms.

10.2 It is acknowledged and agreed by the parties hereto that any building approval defect listed as a requisition in the local authority's building records does not constitute a Notice or an Order as contemplated by Clause 10.1 (6).

10.3 If a warranty set out in Clause 10.1 is incorrect or is breached by the Seller, the Buyer may:

- (a) where the Buyer is materially prejudiced, by notice to the Seller given not later than 5pm on the Business Day immediately preceding the Settlement Date (except in the case of matters disclosed in Item (19) with relation to Clause 10.1 (6) or disclosed in Item (22)), rescind this Contract; or
- (b) elect to complete the Contract and reserve its rights to claim compensation providing notice to this effect has been given to the Seller in writing at or prior to Settlement.

10.4 Any notice given to the Seller under Clause 10.3 must set out clearly, details of the incorrect or breached warranty.

## 11. Buyer's Warrants

- (a) It is not required to obtain consent to this purchase under the *Foreign Acquisitions and Takeovers Act*; or
- (b) It has obtained any and all consents under the *Foreign Acquisitions and Takeovers Act* to this purchase.

## 12. Consent

- 12.1 If the Seller must obtain consent to transfer the Property, as is the case with Leasehold Property, the Seller shall at his own cost promptly take every reasonable action to obtain such consent.
- 12.2 The Buyer will, if required, do all things as may reasonably be necessary to assist in obtaining such consent.
- 12.3 If consent is not obtained by the Settlement Date, providing neither party is in default, either party may by written notice to the other party terminate this Contract.

## 13. Encumbrance

The Property is sold free of Encumbrances and Tenancies except as notified in Items (17) & (20) (But subject to all reservations in favour of the Crown).

## 14. Further Acts

Each party must do whatever is reasonably necessary, at that party's own expense, to carry out its obligations under this Contract.

## 15. Inspection (Pre Settlement)

On the giving of reasonable notice to the Seller, the Buyer, or designated representative, may at reasonable times, prior to Settlement, inspect the Property for the purposes of:

- (1) Inspections in accordance with Clause 4.
- (2) valuation, if required (under Clause 5 or otherwise).
- (3) reading of the water meter
- (4) one pre-settlement inspection in addition to Clauses 15(1) & 15(2)
- (5) survey in accordance with Clause 19.

## 16. Interest on Unpaid Monies

Any monies payable under this Contract (or any Judgment given in respect of this Contract) not paid when due will attract Interest from the due date, to the date of payment, at the rate prescribed in Item (21) and the party, to whom those monies are owed, when such monies are paid, may recover the interest thereon from the other party as liquidated damages.

## 17. Possession Prior to Settlement

- 17.1 Should possession be given before the Settlement Date set out in Item (12) it shall be given solely at the Seller's discretion and then only on terms agreed between the parties in writing.
- 17.2 Such possession shall not give rise to a tenancy (unless otherwise agreed) but is a licence only.
- 17.3 The Buyer accepts the Property in the condition it is in at the date of possession.
- 17.4 The Buyer must maintain and not alter the Property, fair wear and tear accepted.
- 17.5 The Buyer must not part with possession of the Property.
- 17.6 Occupation of the Property shall be at the Buyer's risk.
- 17.7 The Buyer indemnifies the Seller against any loss or damage the Seller may incur arising from the Buyer's occupancy of the Property.
- 17.8 The Buyer will insure the Property, in a sum and on terms approved by the Seller, in both the Buyer's and Seller's names.

## 18. Planning/Building Notices

Should there be outstanding Notices at the Date of Contract under:

- (a) Sections 4.3.9 (show cause notice) or 4.3.11 (enforcement notice) of the *Integrated Planning Act 1997*; or
- (b) Sections 247 (show cause notice) or 248 (enforcement notice) of the *Building Act 1975*.

The Buyer may terminate the Contract by written notice to the Seller.

## 19. Property Survey

The Buyer may inspect the Property and in so doing cause a survey to be made of the Land and fixed and permanent structures thereon and should there be an error or misdescription with respect to the dimensions of the Land or an encroachment onto or from the Land the Buyer may:

- (a) in the case of an error, misdescription or encroachment, any one of which is of a material nature, elect (in writing to the Seller) to complete this Contract or terminate before Settlement.
- (b) in the case of an error, mis-description or encroachment, any one of which is of an immaterial nature, disclosed by survey or otherwise, the Buyer must complete the purchase in accordance with the terms of this Contract.

## 20. Property Description

In the case of a material or immaterial error or misdescription of the Property, including the Seller's title thereto, the Buyer may:

- (a) in the case of an error or misdescription, either of which are material, elect (in writing to the Seller) to complete this Contract or terminate before Settlement.
- (b) in the case of an error or misdescription, either of which are immaterial, the Buyer must complete the purchase in accordance with the terms of the Contract.

## 21. Compensation

Where the Buyer elects to complete under Clause 19(a) or 20(a) or must complete under Clause 19(b) or 20(b):

- (1) The Buyer shall only be entitled to claim compensation if notice of such claim is given at or before Settlement and such notice clearly details the error, misdescription or encroachment giving rise to such claim. Any claim for compensation shall be limited to monetary compensation only.
- (2) Any such claim for compensation does not entitle the Buyer to delay Settlement or withhold any of the purchase monies.

## 22. Property Information

22.1 The Seller must, prior to Settlement, provide to the Buyer current copies of all relevant documents in the Seller's possession reasonably required by the Buyer relating to the Property, in particular those relating to tenancies, licences, warranties, and any unregistered dealings.

22.2 The Seller by this Contract consents to and authorises the Buyer to inspect the records of relevant authorities relating to the Land and Improvements.

## 23. Property Use

23.1 The Seller gives no warranty regarding the Present Use of the Property. See Item (18).

23.2 If at the Date of Contract:

- (a) under the Local Authority planning provisions the Present Use is unlawful; or
- (b) access and utilities to the Land are not legally secured; or
- (c) compliance with or application of any Government or local Government requirements or proposals, statutory or otherwise, with respect to the Land or adjoining land will materially adversely affect the Property; or
- (d) the Land and Improvements are affected by the *Queensland Heritage Act 1992* or included in the WORLD HERITAGE LIST;

and these matters have not been disclosed in this Contract, the Buyer may by notice to the Seller, given not less than 2 days before Settlement, terminate this Contract. If such notice is not given at all or as required, the Buyer will be deemed to have accepted the Land subject to any matters outlined in Clause 23.2.

## 24. Requisitions

The Buyer is not entitled to deliver requisitions on title.

## 25. Rights After Settlement

Notwithstanding the sale has settled and registration of the transfer occurred, each party shall retain the benefit of any provisions of this Contract, which may require the other party to do something or take some action.

## 26. Risk

From 5.00pm on the next Business Day after the signing of this Contract the Property shall be at the risk of the Buyer, however as long as the Seller continues to occupy the Property the Seller shall maintain any current insurance policies and will use and maintain the Property with reasonable care (As provided in Clause 8).

## 27. Special Conditions

Any Special Conditions to this Contract shall form part of this Contract. Should there be any inconsistency between the Terms and Conditions, or any additional conditions, and the Special Condition, the Special Condition shall apply.

## 28. Stamp Duty

Payment of Stamp Duty on this Contract is the responsibility of the Buyer.

**Note:** The Buyer may incur penalties if stamp duty is not paid within 30 days of the conditions of this Contract being satisfied.

## 29. Time

29.1 Time shall be of the essence. Settlement must take place on the Settlement Date at any time between the hours specified in Clause 7.1 of this Contract.

29.2 Any event that must occur on or before a specified date, in respect to this Contract, which date does not fall on a Business Day shall be extended to the next Business Day following the specified date.

### 30. Work Orders and Notices

- 30.1 (1) The Seller must, by Settlement, comply with any Work Orders or Notices issued by a competent authority on, before or subsequent to the Date of Contract that require compliance by Settlement.
- (2) Provided however, should the Buyer direct the Seller not to carry out the works, the Buyer will indemnify the Seller against any claims in respect of such Work Orders or Notices.
- 30.2 The Buyer must comply with any Work Orders or Notices issued by a competent authority subsequent to the Date of Contract that require compliance after Settlement.
- 30.3 Costs incurred by one party in complying with any Work Order or Notice which, under Clause 30.1, is the responsibility of the other party shall be, to the extent of such costs, an Adjustment to the Purchase Price in favour of the party who has incurred the costs.
- 30.4 The Buyer shall bear all costs towards construction or repair of any dividing fences between the Land and any adjoining land, unless a Notice served under the provisions of the *Dividing Fences Act, Section 8*, is in force as at the date of this Contract, in which case such Notice shall be treated in the same manner as a Notice referred to in Clauses 30.1, and 30.3.
- 30.5 In accordance with Clause 30.1 the Seller will forthwith provide the Buyer with copies of all Work Orders and Notices (including those under the *Dividing Fences Act 1953*) received after the Date of Contract and will not carry out any work without written consent of the Buyer which consent will not be unreasonably withheld.
- 30.6 Should the Contract not settle other than through default of the Buyer, the Seller will reimburse to the Buyer any monies reasonably expended by the Buyer in accordance with matters disclosed in Item (19).

### 31. Seller's Agent

If an Agent has been appointed by the Seller as outlined in Item (2) to sell the Property for the Seller, authority vested in the Agent by the Seller shall be deemed to be vested in the Agent's authorised employees.

### Notice

#### 32. Notice

- 32.1 Any notice to be served on any party under this Contract shall be in writing and may be served on that party:
- (a) by delivering the notice to the party personally; or
  - (b) by leaving it for the party at the party's address as stated in Items (3) or (5); or
  - (c) by posting it to the party by registered mail as a letter addressed to the party at the address as stated in Item (3) or (5); or
  - (d) by a sender's cleared facsimile transmission to the party's facsimile number in Item (3) or (5); or
  - (e) if both parties agree and it is lawful, by electronic transmission to the party at the email address shown for that party in the Item Schedule. (Refer to Items 2 to 5 of this Contract); or
  - (f) by delivery to the party's solicitor's office by any of the methods outlined in Clauses 32.1 (a) to 32.1 (e) above.
- 32.2 A notice posted shall be deemed to have been served, unless the contrary is shown, at the time when, by the ordinary course of post, the notice would be delivered.
- 32.3 A facsimile notice shall be deemed to have been served when transmitted to the facsimile number, agreed upon by the recipient, at the time of the facsimile transmission in accordance with Section 24 of the *Electronic Transactions (Queensland) Act 2001* and otherwise complies with legislation.
- 32.4 Notices given by a party's solicitor will be deemed to have been given by and with the authority of the party.
- 32.5 A Seller's Agent shall, for the purpose of this Clause, be recognised as a party and may receive Notices in accordance with Clause 32.1 on the Seller's behalf if authorised by the Seller. Where notice cannot otherwise be served on the Seller in accordance with this Clause, notice may be served on the Seller's Agent.
- 32.6 Notices must be served before 5pm on a Business Day, failing which, such Notice will be deemed to have been served on the next Business Day.

#### 33. Applicable Law

- 33.1 The laws of Queensland are the laws applicable to this Contract.
- 33.2 A solicitor appointed by a party shall have full authority to act on behalf of such party with respect to all matters relating to this Contract.

### 34. Provision of Documents

- 34.1 By signing this Contract all parties acknowledge having given prior approval, in accordance with the *Electronic Transactions (Queensland) Act 2001*, for electronic transmission of this Contract and any other related documents, for signing purposes or otherwise, as far as such means of communication have been indicated in this document and/or any completed electronic consent form (ie. Facsimile numbers & email addresses).
- 34.2 This Contract may be executed in any number of counterparts. Together all counterparts make up one instrument.
- 34.3 This Contract may be entered into by and becomes binding on the parties by one party signing the Contract that has been signed by the other (or a photocopy or facsimile of that Contract) and transmitting a facsimile of it to the other or to the other party's Agent or Solicitor.

### 35. Privacy Statement

The Agent collects and uses personal information obtained from you (all parties) as a party to this Contract to provide the services required by you or on your behalf. You as a party to this Contract agree the Agent may collect, use and disclose such personal information in accordance with and subject to the *Privacy Act 1988 (CTH)* for (where applicable) marketing, sales promotion and administration and as required for legislative and regulatory requirements relating to promotion administration and use of the Agent's products and services. Without provision of certain information the Agent may not be able to act effectively or at all on your behalf. The Client has the right to request the Agent provide details of such information and also correct any inaccurate or out of date information.

# Buyer's Information Statement

## Important Information for Buyers

### 1. Five Day Cooling-Off Period

- You can change your mind about purchasing a property during a five day cooling-off period. Use this time to seek independent legal advice and an independent valuation of the property.
- The five day cooling-off Period begins on the day you are bound by the attached contract and it ends at 5:00 pm on the fifth business day (a day other than a Saturday, Sunday or a public holiday) after the cooling-off period started.

Both the buyer and the seller are bound by the contract as soon as the buyer or their agent, lawyer or personal representative receives a copy of the signed contract.

In any dispute concerning the commencement of the cooling-off period, it will be up to the seller to prove the buyer received a copy of the contract.

**Note:** If the buyer is bound by the contract on a day other than a business day, the cooling-off period commences on the first business day after the day the buyer is bound by the contract.

- The cooling-off period may be waived or shortened by the Buyer by obtaining a lawyer's certificate from your solicitor. If you waive the cooling-off period you will be bound by the contract from that time, subject to the terms of the contract.
- You can terminate the contract during the cooling-off period by giving a signed and dated notice to the seller or the seller's agent indicating that you wish to terminate the contract.
- If you terminate, the seller must refund your deposit within 14 days of termination of the contract but may deduct a termination penalty equal to 0.25% of the purchase price.
- At the end of the five day cooling-off period you are legally bound to buy the property, subject to the terms in the contract. Make sure you're happy with all of the terms in the contract before you sign it and before the cooling-off period ends.

### 2. Independent legal advice

Do you fully understand the legal consequences of signing this contract? Are you sure the advice you've been given is totally independent? Before signing the contract, the Office of Fair Trading strongly recommends you seek independent legal advice and clarify any queries or concerns you have about buying the property. Exercise extreme caution in accepting the advice of anyone referred to you by the seller or his/her agent.

If you engage any lawyer in relation to purchasing the property, they must give you a certificate about their independence from the seller or anyone else included in the sale, and about benefits the lawyer expects to receive from the sale.

### 3. Valuation of property

Are you sure the purchase price is fair? Before the cooling-off period expires seek independent advice from a registered valuer. Ask the valuer if they have Professional Indemnity Insurance, have a relationship with any person involved with the property you're buying, and about the valuation cost.

Further information on how to deal with valuers is available on [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au) (search 'valuations').

### 4. House and land package buyers

Is the building contract fairly valued? Seek quotes from several different builders.

### 5. Building contracts

For building contracts associated with the purchase of residential property.

- Domestic building contracts have a cooling-off period (Section 72 of the *Domestic Building Contracts Act 2000*. Please refer to the Building Services Authority of Queensland for further information on building contracts). Ensure that if you exercise your cooling-off right under the residential property contract that you also give written notice to terminate the building contract.
- Ensure that the building contract price is not over valued or inflated. Get a valuation or compare homes of similar value advertised or displayed by other home builders.

### 6. Claim fund

A Claim Fund exists which, in some cases, enables a buyer who suffers financial loss as a result of dealing with a real estate agent to make a claim. Strict guidelines apply. If you suffer financial loss because of buying an investment property or buying residential property directly from a property developer you **CANNOT** make a claim for compensation against the Fund. There are restrictions on claims made due to property marketeering.

### 7. Identifying a licensed real estate agent or property developer

The Office of Fair Trading can help you to identify if the person you are dealing with is a licensed real estate agent, property developer or a registered salesperson of one. Ask the person you are dealing with for proof of their licence or registration.

### 8. Further information:

Contact [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au) or your nearest Office of Fair Trading on 13 13 04.

Before signing or during the five day cooling-off period the Office of Fair Trading strongly recommends you:

- contact the Queensland Law Society on 07 3842 5842 or [www.qls.com.au](http://www.qls.com.au) for advice on finding a solicitor.
- contact the Australian Property Institute on 07 3832 3139 or [www.propertyinstitute.com.au](http://www.propertyinstitute.com.au) or the Valuers Registration Board on 07 3221 3892 or [www.valuersboard.qld.gov.au](http://www.valuersboard.qld.gov.au) to find a suitable valuer.
- arrange a search for the property's sales history from your local Department of Environment and Resource Management on 07 3227 6626, or for a map of latest sales [www.nrw.qld.gov.au](http://www.nrw.qld.gov.au).



# Sales Contract Signature Page

## Warning Statement for Buyers

Do NOT sign below without reading, understanding and acknowledging the following.

I/ we (the Buyer(s)) acknowledges & understands that I/we:

Buyer(s) Initials

- can change our mind about purchasing the property during a 5 day cooling-off period. *(Item (1) of the Buyer's Information Statement)*
- may seek independent legal advice &/ or an independent valuation of the property up until the expiry of the cooling-off period. *(Item (2) & (3) of the Buyer's Information Statement)*
- may be required to pay to the Seller a termination penalty of up to 0.25% of the purchase price if I/we terminate the contract during the cooling-off period. *(Item (1) of the Buyer's Information Statement)*
- have read and understand the Buyers Information Statement *(Previous Page)*
- have read all pages of this Contract.
- have not felt pressured into signing this Contract.

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You should obtain independent legal advice and an independent valuation of the property.

## All Party's Signatures

### Buyer(s) Signatures:

(1) Buyer Name: .....	Witness Name: .....	
Signature: .....	Signature: .....	Date: / /
(2) Buyer Name: .....	Witness Name: .....	
Signature: .....	Signature: .....	Date: / /
(3) Buyer Name: .....	Witness Name: .....	
Signature: .....	Signature: .....	Date: / /
(4) Buyer Name: .....	Witness Name: .....	
Signature: .....	Signature: .....	Date: / /

### Seller(s) Signatures:

(1) Seller Name: .....	Witness Name: .....	
Signature: .....	Signature: .....	Date: / /
(2) Seller Name: .....	Witness Name: .....	
Signature: .....	Signature: .....	Date: / /
(3) Seller Name: .....	Witness Name: .....	
Signature: .....	Signature: .....	Date: / /
(4) Seller Name: .....	Witness Name: .....	
Signature: .....	Signature: .....	Date: / /

Deposit Holder: ..... (To be signed on receipt of Initial Deposit)