



# Residential Conveyancing Booklet

**READ AND RETAIN**

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*Please note: This publication is designed to provide a general overview of relevant issues. It should not be solely relied on. You should also consider focused legal advice from us about your specific circumstances.*

# Part A – All Conveyances

## 1. Why read this booklet?

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Please read this Residential Conveyancing Booklet ('the **Booklet**'). It is important that you read the entire Booklet (including Parts **B** and **C**) as soon as possible because it contains essential information about your rights and obligations when selling property.

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

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

**These rights can be subject to strict time limits or lost as a result of your actions or steps in the transaction** (e.g. if you take steps or actions after you become aware of some rights). It is critical that if we have advised you about any rights and you may want to rely on them or if you otherwise are considering not proceeding with the sale, you contact us as soon as possible to discuss. Otherwise, any rights or options may be lost.

## 2. Explanation of important contract terms

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

**Please read all of your Contract.**

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

### 2.1. Reference Schedule

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

### 2.2. Time is essential

Time is of the essence of the Contract. **This is a legal term that means you must perform your obligations strictly by the due date.** For example, subject to any right of extension you may be entitled to exercise, you must be able to settle by 4pm AEST on the settlement date;

otherwise the Buyer may either terminate or seek to enforce the Contract. In both cases, the Buyer may claim compensation from you.

### ***Extension of Settlement Date***

The REIQ standard contract terms provide both parties with a right to extend the Settlement Date by a period of up to five business days without requiring the agreement by the other party. A party that wishes to exercise this right may give notice of the extension at any time up to 4pm on the Settlement Date.

While the right of extension has been included in the Contract primarily to protect Buyers against the potentially unfair results of being unable to settle on the Settlement Date as a result of delays by financiers, it is important to note that the right of extension is available to both parties and may be exercised for any reason.

**In the circumstances, you should not assume that settlement will take place on the nominated Settlement Date**. If it is important to you that settlement takes place on the nominated Settlement Date or you are proposing to enter into other transactions or make other arrangements that are dependent on settlement of the Contract for the purchase of the Property, please inform us immediately.

The right of extension in the Standard Contract may only be used to extend the Settlement Date. If you are unable to effect settlement of the Contract on the Settlement Date for any reason (for example, due to delays on the part of your financier in preparing a release of a mortgage relating to the Property), it would be appropriate to exercise your right to extend the Settlement Date to avoid the consequences of a failure to settle on time. The right to extend

the Settlement Date is limited to a total period of five business days, regardless of which party exercises that right. Any other extension would require the agreement of the Buyer.

### ***Business Days***

The Contract provides that if anything is to be done on a day that is not a business day, it must be done on the next business day. Under the Contract, business days are days other than:

- a. any public holiday in the Place for Settlement as stated in the Reference Schedule to the Contract for settlement (including if using PEXA). If there is no locality stated in the Reference Schedule, then this may not apply
- b. any day in the period 27 December to 31 December (inclusive); and
- c. Saturdays and Sundays.

However, this date calculation does not apply to statutory dates (e.g. statutory Cooling-off period).

As most transactions use electronic conveyancing for the purpose of settlement of the Contract (see Item 8), if the settlement date falls on a day on which both the Sydney and Melbourne offices of the Reserve Bank of Australia are closed, the settlement date will be taken to be the next business day.

## **2.3. Deposit**

Payment of the deposit is a sign of the Buyer's intention to proceed with the Contract and must be done at the time specified in the Contract. It is usually a substantial amount



(but no more than 10%). If the deposit is only a nominal amount and the Buyer is a corporate entity, you can instruct us to request director or other guarantees prior to the Contract being signed.

### ***Electronic Deposit***

If the Buyer:

- pays the deposit by an electronic transaction to the account of the Deposit Holder;
- provides written evidence of the electronic transaction to the deposit holder; and
- does not take any action to defer payment to the deposit holder to a later day,

the Buyer's payment is taken to be received by the deposit holder on the day the Buyer effects the electronic transaction even if, because of circumstances beyond the Buyer's control, the payment happens on a later day. If the Buyer has complied with the above requirements and the payment has not been received by the deposit holder by the due date, you may give notice to the Buyer that the payment has not been received and, if the payment has not been received by the deposit holder within two business days of your notice, the Buyer will be in default. Contact us in the event that you believe that such notice is required.

### ***All Deposits***

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

If the Buyer terminates the Contract for a valid reason, then the deposit should usually be repaid to them. **If the Buyer does not pay the deposit on time or otherwise breaches the Contract, you may be able to terminate.** If you terminate, you may be able to keep the deposit and recover any part of the deposit not paid. If you are obliged to pay Goods and Services Tax ('GST') you will have to pay GST on the kept deposit. You may also be liable to pay your real estate agent's commission but may be entitled to claim this and other compensation from the Buyer.

## **2.4. Building and pest ('B&P') inspections (if applicable)**

If the Contract is subject to satisfactory B&P inspection reports on the Property, the Buyer must take all reasonable steps to obtain at least one report. The Buyer must use licensed inspectors and the reports must be in writing, otherwise the Buyer will not be able to terminate the Contract on the grounds that they are not satisfied with the B&P inspection. If the lot you are selling is a lot in a Community Titles Scheme, the reports must relate to the lot itself.

**The Buyer must notify us as to whether the reports are satisfactory before 5pm on the inspection date, otherwise the Contract remains on foot and either party may terminate.**

If the Buyer terminates, we recommend that you request a copy of any reports from them. The Buyer must provide them without delay. Therefore, if the Buyer gives notice of an unsatisfactory report, contact us as soon as possible to discuss getting a copy and whether

they would be 'acting reasonably' by terminating in the circumstances.

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

The Buyer also has a continuing right to give notice of receipt of satisfactory reports or waive the benefit of the B&P condition up until the time the Contract is terminated by you.

## 2.5. Finance (if applicable)

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

If the Buyer gives notice to terminate the Contract on the basis that they have not obtained a satisfactory finance approval from the financier specified in the Contract, you may request evidence that they took reasonable steps to obtain approval. If the Buyer has failed to take reasonable steps they may be prevented from relying on the finance condition to terminate.

## 2.6. Default interest

The Contract provides that, at settlement the Buyer must pay interest on any late payment from the due date for payment. Interest

accrues at the Default Interest Rate noted in the Reference Schedule of the Contract or, if no rate is specified, at the Contract rate fixed by the Queensland Law Society.

## 3. Insurance and Risk

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

If damage occurs, we recommend you obtain evidence of any damage (such as photos or video), including the source of the damage. Before you make a claim on your insurance policy while the Property is under Contract, it is important that you consider the terms of your policy of insurance and any obligations (e.g. whether the insurance company needs to be notified of damage early and to be informed that the Property is under contract). Advice on your insurance policy is outside the scope of our retainer. However, you should contact us before making a claim so that we can provide advice on the impact this may have on your Contract obligations, or to make sure you do not act inconsistently with the Contract terms or otherwise compromise any rights you may have.

In some circumstances, the Buyer may also be able to make a claim upon your insurance

policy before taking possession or completing settlement.

You have a continuing obligation until settlement to take reasonable care of the Property and if the Property becomes “unfit for occupation” as a dwelling before settlement, then the Buyer may have a right to withdraw from the Contract.

However, if the Property is damaged in any way between the Contract Date and settlement (for example, due to fire or vandalism) then you will likely be able to require the Buyer to settle in accordance with the Contract irrespective of the damage (unless they have another right of termination, such as a residence being so destroyed or damaged as to be unfit for occupation). If the damage is due to your failure to take reasonable care of the property, the Buyer may be entitled to compensation.

## 4. Cooling-off period

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### 4.1. Application of *Property*

#### *Occupations Act 2014 (Qld) ('POA')*

If POA applies, the Buyer may be entitled to a five-business-day Cooling-off period.

POA Cooling-off provisions apply to the sale of residential property, that is, contracts for the sale of property that is used, or is intended to be used, for residential purposes but do not apply to a contract:

- a. for the sale of property where it is used primarily for industry, commerce or primary production;
- b. formed on a sale by auction (directly on the fall of the hammer by outcry or

directly at the end of another similar type of competition for purchase);

- c. entered into, no later than 5pm on the second clear business day after the Property was passed in at auction with a registered bidder for the auction;
- d. formed because of the exercise of an option granted under an earlier agreement if the parties to the Contract are the same parties as in the earlier agreement; or
- e. where the Buyer is:
  - i. a publicly listed corporation; or
  - ii. a subsidiary of a publicly listed corporation; or
  - iii. the State or a statutory body; or
  - iv. purchasing at least three lots at the same time (even if under separate contracts).

### 4.2. Cooling-off period

If the Cooling-off period applies to your Contract, the Cooling-off period starts on the day the Buyer receives from you or your real estate agent a copy of the Contract signed by both parties or, if that day is not a business day, on the next business day. If you signed the Contract before the Buyer did, the Cooling-off period starts on the day they signed the Contract and communicated acceptance.

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



The Buyer is entitled to terminate the Contract during the Cooling-off period. If they do, you may retain a penalty of 0.25% of the purchase price, up to a maximum of the amount of the deposit, from the deposit paid under the Contract. The balance of the deposit (if any) must be refunded to the Buyer within 14 days after termination.

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

## 5. Warranties and disclosure

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### 5.1. Seller's warranties

Under the Contract the Seller gives warranties about various things which could affect the Property, in particular that:

- a. you are the registered owner of the Property;
- b. you are capable of completing the sale;
- c. there are no show cause notices or enforcement notices affecting the Property and you have not received any communication from an authority that may lead to the issuing of a show cause notice or enforcement notice;
- d. you have not received any communication from a competent authority that may lead to the issue of a notice to do work or spend money on the property;
- e. there are no current or threatened claims or proceedings which may lead to a Court order or writ of execution affecting the Property;
- f. at settlement, there will be no unsatisfied Court orders or writ of execution affecting the Property;
- g. the statements made in the Reference Schedule regarding residential tenancy agreements and rooming accommodation agreements are true and correct;
- h. in relation to *the Environmental Protection Act 1994* (Qld) ('EPA'):
  - i. there is no outstanding obligation to give notice of a notifiable activity on the land (including the scheme land if in a body corporate);
  - ii. you are not aware of facts or circumstances that may lead to the land being classified as contaminated (including the

scheme land if in a body corporate).

## 5.2. Consequence of breach of warranty

If you breach any of these warranties the Buyer generally may terminate the Contract before settlement (except for breach of the warranty in relation to statements regarding residential tenancy agreements and rooming accommodation agreements being true and accurate in which case the Buyer's only right is to seek compensation from you).

The Buyer may also be entitled to claim compensation for any loss arising from a breach of warranty.

## 5.3. Property adversely affected

If the Property is adversely affected at the Contract Date by any of the following:

- a. the present use is not lawful;
- b. the land or, in the case of a lot in a community titles scheme, the scheme land is affected by a proposal of a competent authority to alter the dimensions of any Transport Infrastructure or to locate Transport Infrastructure on the land or the scheme land;
- c. access to the land or, in the case of a lot in a community titles scheme, the scheme land passes unlawfully through other land;
- d. the infrastructure for the provision of services including water, gas, electricity, telecommunications, sewerage or

drainage to the land or, in the case of a lot in a community titles scheme, the scheme land which passes through other land is not protected by a registered easement, building management statement or statutory authority (including a statutory easement);

- e. an authority has issued a current notice to treat, or notice of intention to resume the land or, in the case of a lot in a community titles scheme, the scheme land;
- f. there is an outstanding condition of a development approval attaching to the Property which, if complied with, would constitute a material mistake or omission in your title;
- g. the Property is affected by the *Queensland Heritage Act 1992* (Qld) or is included in the World Heritage List;
- h. the Property is declared acquisition land under the *Queensland Reconstruction Authority Act 2011* (Qld);
- i. there is a charge against the land under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) ('FAATA'),

and this is not disclosed in the Contract, the Buyer is entitled to terminate the Contract up until settlement. If the Buyer does not terminate in accordance with the Contract, they will be treated as having accepted the Property subject to these issues.

## 5.4. What you may need to disclose

To enable us to make the appropriate disclosure or to advise you on the

consequences of non-disclosure, please call us if you are aware of any of the following, or other particular or unusual features affecting the Property, such as:

- a. unregistered encumbrances and other government rights or interests that may affect the Property, (e.g. water, sewerage or combine drains through the Property);
- b. infrastructure on or under the land for any water, gas, electricity, telecommunications, sewerage or drainage services that do not service the land which are not protected by a registered easement or building management statement or by statutory authority;
- c. access rights for geothermal exploration or production under the *Greenhouse Gas Storage Act 2009* (Qld), *Geothermal Energy Act 2010* (Qld), or the *Petroleum and Gas (Production and Safety) Act 2004* (Qld);
- d. notices to do work issued by the local government or any court or tribunal;
- e. building covenants;
- f. easements;
- g. equitable mortgages;
- h. leases;
- i. known encroachments;
- j. any heritage listings;
- k. beach area declarations;
- l. road widening or any notice of a proposed road widening;
- m. proposed resumptions;
- n. any unsatisfied judgments, orders or writs affecting the Property, the common property or body corporate assets;
- o. any threatened claims notices or proceedings that may lead to a judgment order or writ (e.g. orders or applications to QCAT in relation to trees on the Property);
- p. outstanding conditions of development approvals; or
- q. ongoing conditions of development approvals, for example, the existence of a bushfire management plan affecting the Property.

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

While there is no general obligation to disclose physical defects in the Property to a Buyer, you should not do anything to actively conceal defects that may exist (for example, by making cosmetic changes to cover up patent defects in the Property). Similarly, while some specific disclosure obligations may arise in relation to activities that are notifiable under laws relating to environmental protection (see item 5.6), there is no general obligation to disclose to a Buyer past activities or events that may have

occurred on the Property or that the Property may be considered notorious because of its association with a particular event.

You must, however, ensure that neither you nor any real estate or other agent acting on your behalf makes any representations or statements to the Buyer about the Property (including about its physical condition, the rights and benefits attaching to the Property and activities or events that may have occurred at the Property) unless those representations or statements are accurate in every respect. In some cases, silence in response to an enquiry made by the Buyer may amount to a representation. Any representations or statements about the Property that are inaccurate or misleading may give the Buyer a right to terminate the Contract or claim compensation from you.

## 5.5. Information regarding the property

If requested before settlement, you must give the Buyer:

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

Please let us know if there are any documents or details that you have that may be requested. The Buyer may be entitled to claim compensation if this information is not provided and as a result they suffer loss.

## 5.6. EPA disclosure

The EPA requires that you make a specific disclosure before entering into an agreement with the Buyer if any of the following are applicable to the land (including the common property if in a Community Titles Scheme):

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

If any of these situations arise and you do not disclose them under the EPA before the Buyer enters into the Contract then, they may terminate by notice given before the earlier of settlement or possession. If you do not comply, you may still give disclosure after the Contract has been entered into, but then the Buyer has 21 business days after your disclosure to terminate.

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

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

### 5.7. Administrative advices

An administrative advice is a note that is recorded on the title for a property to provide further information about the property. For example, if a property is entered in the Queensland heritage register as a State heritage place, that listing will be noted in an administrative advice on the title.

Some administrative advices prevent the registration of dealings in relation to land. Some administrative advices may reveal issues affecting the land that require disclosure by you such as heritage listing or agreements, coastal protection notices, nature conservation orders, vegetation clearing offences or Milton Brewery notices (for a unit).

The Buyer's rights in relation to any administrative advice depend on the notification which gives rise to the administrative advice and the extent of disclosure in the Contract or otherwise, including possible rights of termination. We will inform you if a title search for the Property reveals an administrative advice.

If you are aware of an administrative advice of this nature being recorded on the title for the Property, you should not sign a Contract to sell the Property without considering the effect of the administrative advice.

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

### 5.8. Owner-builder notice

If:

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

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



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

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

## 5.9. Consumer guarantees

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

- a. the value of each of those goods (if sold separately) is under \$100,000; and
- b. the goods are not goods of a kind ordinarily acquired for personal, domestic or household use, for example industrial air-conditioning or other plant,

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

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

## 5.10. Neighbourhood disputes

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

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

In relation to trees:

- a. You must give copies of these documents relating to trees to the Buyer before they enter into the Contract and specific disclosure may be required in the Contract. If they are not given then, you may be liable to pay a significant financial penalty and the Buyer may terminate the Contract at any time before settlement or you may be liable to comply with the order following settlement.
- b. If the Buyer terminates in these circumstances before settlement you may also be liable for their reasonable legal and other expenses in relation to the Contract incurred after they signed.
- c. If the Buyer completes the purchase and you have not completed all work in relation to a QCAT tree order which has not been disclosed as required, you will remain liable to carry out the work.

In relation to fences:

- a. You have warranted in the Contract that at the Contract Date there are no current or threatened claims or proceedings (which would include a fencing notice or an application in relation to fencing) and that at settlement there will be no unsatisfied orders that were not disclosed in the Contract to the Buyer.
- b. If there are current or threatened claims at the Contract Date or an unsatisfied order exists at settlement, the Buyer may be entitled to terminate the Contract or claim compensation from you.

You are also obliged under the Contract to promptly give the Buyer a copy of any notice, proceeding or order, received after the Contract Date that affects the Property.

You must not, after the Contract Date, give any notice to another party or seek or consent to any order or agreement that affects the Property without the Buyer's prior written consent.

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

## **6. Important information – ownership and payments**

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### **6.1. Real estate agent's commission**

If your Property is being sold through a real estate agent, we will let them know when

settlement has been effected. If they hold the deposit then the usual procedure is for the real estate agent to deduct commission from the deposit and forward the balance (if any) to you.

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

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

### **6.2. Rates and water notices**

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

### 6.3. Transfer duty

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

It is a liability of both the Seller and Buyer. However, the Contract determines that it is the Buyer's responsibility to pay this liability. If they do not pay the duty then the Queensland Revenue Office ('QRO') may seek recovery of the duty from you as Seller. This is, however, unlikely as the Buyer will need to pay duty before the Property can be registered in their name.

In some circumstances, Additional Foreign Acquirer Duty ('AFAD') may be payable in relation to a transaction. See item 15.2 for more details.

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

If you:

- a. purchased an existing home and did not occupy the home within 12 months of settlement;
- b. purchased vacant land to build on and you have not built and occupied the house within two years;

- c. had the previous seller or the previous seller's tenants in the residence and they did not vacate the Property within six months of settlement or the tenants stayed longer than the original lease;
- d. have already transferred, leased, rented, or otherwise granted exclusive possession of the Property within 12 months of occupying the house as your principal place of residence; or
- e. never occupied the house as your principal place of residence at all,

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

### 6.4. Capital Gains Tax ('CGT') withholding payments (if applicable)

Under laws designed to ensure that foreign residents meet their liability for CGT when selling land in Australia, Buyer may be required to pay 15% of the purchase price to the Australian Taxation Office ('ATO').

Unless each Seller produces a valid clearance certificate issued by the ATO or a notice from the ATO varying the CGT withholding amount to nil, the Buyer must pay the required amount to the ATO at settlement.

Under the Standard Contract, if the CGT withholding laws apply, you irrevocably direct the Buyer to pay (from the balance of

purchase price) the required CGT withholding amount to the ATO unless, prior to settlement, you produce a clearance certificate or you produce a notice from the ATO varying the CGT withholding amount to nil.

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

A clearance certificate will usually be given if the Seller is an Australian resident. If you already have a clearance certificate, please provide a copy of it to us as soon as possible so that we may verify its validity and currency. If you do not have a clearance certificate, please apply for a certificate immediately.

If you instruct us to make the application on your behalf, we will need your authority (and other relevant information including tax file numbers) to apply.

If you are a foreign resident, an application can be made to the ATO for the issuing of a variation notice to lower the amount of the required CGT withholding. You should seek independent taxation advice in relation to this issue.

If a clearance certificate cannot be obtained, the amount you receive at settlement will be reduced. **Please contact us immediately if you think this reduction may affect your ability to secure releases of mortgages affecting the Property or to complete associated transactions.**

If a CGT withholding is made, the amount paid is a non-final tax. The Seller will need to lodge an income tax return declaring any capital gain and the CGT withholding amount credit. Any excess credit will be returned to the Seller.

The Seller will only be entitled to a credit if the Buyer has remitted the CGT withholding payment to the ATO. Therefore, it will be important to verify that the Buyer has made the required payment.

## 6.5. Goods and Services Tax ('GST')

For contracts selling **new residential premises** or **potential residential land**, GST withholding laws apply requiring the Buyer to withhold at settlement any GST payable in relation to the Contract.

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

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

- a. the land is permissible to use for residential purposes, but does not contain any buildings that are residential premises;
- b. the land is included on a property subdivision plan;
- c. the land does not contain any building that is in use for a commercial purpose; and

- d. the following exclusion does not apply:
- i. the recipient is registered for GST;  
and
  - ii. the recipient acquires the land for a  
creditable purpose.

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

If applicable, the effect of this GST withholding will be to reduce the amount you receive at settlement of the sale of a lot. Please contact us if you think this reduction may affect your ability to secure releases of mortgages affecting the Property or to complete associated transactions.

If the GST withholding arrangements apply to the Contract, the Standard Contract terms require the Buyer to:

- a. lodge the required notifications with the ATO about the GST withholding; and
- b. pay the GST amount to the ATO at Settlement.

In connection with the sale of residential premises, a Seller must give a written notice to the Buyer before settlement stating whether the Buyer is required to make a payment under the GST withholding provisions referred to above. If a payment is required, the notice must also state your name and ABN, the amount the Buyer will be required to pay, when the Buyer will be required to pay the amount and, if some of the consideration will not be expressed as an amount of money, the GST inclusive market value of that consideration.

## 6.6. Land Tax

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

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



## 6.7. Grants

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

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

## 7. Important information – settlement steps

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### 7.1. Pre-settlement inspection

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

Please ensure that you do not modify the Property in any way after the Contract Date, otherwise the Buyer may be able to terminate the Contract or claim compensation from you (if the modifications are significant and the issue is raised before settlement).

### 7.2. Keys and codes

On or before settlement, you must deliver to the Buyer all keys, codes or devices in your possession or control for all locks or security systems on the Property. You will need to make a written record for the Buyer of all codes and combinations, if applicable, necessary to fasten or unfasten any lock including electronic devices.

If the Buyer requests that we deliver the keys at settlement you will need to deliver them to our office beforehand so that we may hold them escrow for settlement. This request only needs to allow two clear business days. Failure to deliver the keys as requested may result in the Buyer terminating the Contract and seeking compensation from you.

If the Buyer does not request the keys to be delivered at settlement, the usual situation is that the keys are left with the real estate agent before settlement for collection by the Buyer after the real estate agent is notified that settlement has been effected.

### 7.3. Vacant possession

At settlement, you are obliged to give vacant possession of the Property to the Buyer, which means the Buyer must be able to physically and legally occupy the Property after settlement (except where the Buyer agrees

otherwise, such as buying property subject to tenancy).

It also requires your property (or any lessee's property) to be removed prior to the actual time of settlement on the settlement date. In the case of a lot in a Community Titles Scheme, the Property includes any exclusive areas for the lot.

Before settlement you must remove all chattels not included in the sale and any substantial rubbish on the Property. You may also remove any fixtures excluded from the sale. You are deemed to have abandoned any property not removed before settlement and the Buyer can dispose of that property as they think fit.

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

If you do not comply with this requirement, there is a risk that the Buyer may choose to exercise the right to give notice to extend the Settlement Date while your property, or any lessee's property, remains unremoved, or potentially refuse to settle.

Contact us for advice before acting if you think this applies.

## **7.4. Tenancies**

If the Property is being sold subject to any existing tenancies, at settlement, you are obliged to give the Buyer your copy of any tenancy agreements, a notice to each tenant advising of the sale in the form required by law and a notice to transfer to the Buyer your

interest in any bond that is held under a tenancy agreement.

In addition (even if there is no existing tenancy for the Property), if the Property has been subject to a residential tenancy agreement or rooming accommodation agreement at any time within the period of 12 months before the Contract Date, at settlement you must provide to the Buyer evidence of the day of the last rent increase for each part of the Property subject to those agreements. Relevant evidence would include a copy of the residential tenancy agreement or rooming accommodation agreement, a written rent increase notice or the rent ledger.

If you do not provide the documents or material relating to existing or previous tenancy agreements for the Property at settlement, the Buyer may be entitled to terminate the Contract.

## **7.5. Utility services**

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

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

## **7.6. Electrical safety switch**

Please let us know if an approved electrical safety switch for general purpose socket

outlets has been installed in the Property under the Electricity Regulations.

## 7.7. Smoke alarms

A failure to install and maintain compliant smoke alarms in a dwelling is an offence under the *Fire and Emergency Services Act 1990* (Qld).

If the Property does not have compliant smoke alarms installed, you should do so immediately as fines may apply. You will need to make your own enquiries regarding your smoke alarms as you need to declare whether compliant alarms are installed in the transfer documents.

Under the Standard Contract terms, the Buyer is entitled to carry out an inspection for smoke alarms installed in the Property and, if you have not complied with requirements to install compliant smoke alarms in the Property by the Settlement Date, the Buyer is entitled to an adjustment at settlement equal to 0.15% of the Purchase Price. If the adjustment is not claimed before settlement, the Buyer will not be able to make any claim against you in relation to the failure to install compliant smoke alarms.

You should instruct us if compliant smoke alarms are not installed so that we can consider the effect on settlement figures and the funds required to complete Settlement.

## 8. Electronic conveyancing (or eConveyancing)

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### 8.1. What is eConveyancing?

eConveyancing allows for an “electronic” settlement of a conveyancing transaction through an online exchange such as PEXA. The

system operates across Australia and is supported by legislation in Queensland.

The system does not cover all aspects of the conveyancing process but does allow for the preparation and signing of documents and their lodgement at Titles Queensland as well as the completion of financial transactions involved in a conveyance (such as settlement money transfer and transfer duty payment) to occur electronically.

Traditionally, each of these steps is handled by a paper process where printed documents would be signed by parties and documents and cheques for settlement funds are physically exchanged at settlement.

The main advantage of an electronic settlement process is efficiency. Not only does the process make it unnecessary to attend a physical settlement for exchange of documents and funds, when the exchange occurs, cleared funds are credited to the recipient’s account within a very short time (but you should note that, depending on your bank or financial institution, that process could still take up to three business days). This has particular benefits for a Seller who will not be required to wait for cheque clearing procedures following a settlement.

If not using PEXA for your settlement, please see [Part B](#) for more information.

### 8.2. When can eConveyancing be used?

The electronic settlement process must be used for settlement unless it cannot be used for the specific type of conveyancing transaction or one of the parties has not engaged a legal practitioner.

### 8.3. Client authorisation and verification of identity

We require your authority to use eConveyancing for settlement of the transaction. That authority must be provided by each Seller signing a separate Client Authorisation Form (which accompanies our **First Letter**).

As the Client Authorisation Form allows us to undertake the settlement of the transaction on your behalf (and to sign documents for you), we are required to undertake a prescribed process to verify your identity. This will require you to attend at our office for a face-to-face meeting where you will need to produce identity documents and sign the Client Authorisation Form.

Please contact us to discuss details of the identity documents required. If a face-to-face meeting is not possible, a VOI agent can undertake the verification of identity process. Please contact us to discuss this option.

### 8.4. eConveyancing settlement process

eConveyancing uses a "Workspace" for all parties to enter their respective documents and financial settlement details.

Once a party has finalised their obligations in the Workspace, they verify the Workspace by digitally signing the Financial Settlement Schedule. The Workspace will then be in "ready" status for that party.

If all parties are in "ready" status, the Workspace will lock at time scheduled for settlement. Once the Workspace locks, most of your rights in the transaction are suspended.

Once the Workspace has locked:

- a. settlement will proceed even if a document is lodged that prevents registration of the transfer (e.g. A caveat or writ of execution lodged after locking will not stop settlement).
- b. settlement will not proceed if a document is lodged that prevents lodgement of the transfer (e.g. a Change of Name Request);
- c. Settlement will proceed even if lodgement is not possible, provided a lodgement verification from Titles Queensland has been obtained no later than the day before the scheduled settlement time. (It may also be possible for the documents to be signed on the day of settlement as long as a successful lodgement verification has been obtained a day prior to settlement.)

See **Error! Reference source not found.** below for more information. If settlement needs to be stopped before the Workspace locks, we can take steps to 'unsign' a document in the Workspace, so please let us know urgently if you have any concerns about the transaction close to settlement.

### 8.5. Using eConveyancing

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

- a. The electronic settlement may be delayed by system failures. The Contract provides that if a settlement cannot occur by 4pm AEST on the settlement

date because a relevant computer system is inoperative or unavailable, a party will not be in default (despite that time is of the essence of the Contract) and the settlement date is deemed to be the next business day.

The automatic extension of the settlement date may have financial and other consequences. For example, the delay may affect liability for outgoings in relation to the Property (and this may be significant if the extension results in settlement occurring in a new financial year), related transactions, leases over the Property, relevant statutory time periods and the effective periods for caveats or priority notices (which may lapse).

- b. For settlement to occur on the settlement date, all parties are required to ensure their Workspace is in "ready" status before 4pm on the settlement date.

Unfortunately, on some occasions, a party may take steps to put their Workspace in "ready" status just prior to 4pm, and their actions may inadvertently necessitate us to accept their changes (such as minor adjustments). We are then required to re-verify the Workspace on your behalf to return to "ready" status. In these circumstances, there may be insufficient time to return the Workspace to "ready" status on your behalf before 4pm, particularly where the only notification of an issue is by email that can be delayed.

If the Workspace is not in "ready" status by 4pm, then it may be argued by the other party that you are not 'ready willing

and able' to settle and they can seek to argue they have a termination right.

If this situation occurs, we will be seeking your urgent instructions to serve a notice of extension before 4pm. Of course, this means settlement is delayed and this may not meet your objectives. However, if this late change to the Workspace occurs, the settlement may not occur on the settlement date anyway. We will endeavour to discuss this further with you if it becomes relevant in your matter.

- c. One of the main advantages of electronic settlement is the transfer of funds to the recipients of the settlement proceeds within a very short time (but you should note that, depending on your bank or financial institution, that process could still take up to three business days). This will include not only the Seller and the Seller's financial institution but also authorities to whom money is paid to discharge an outgoing. Any arrangement that involves the transfer of funds to a nominated bank account carries with it the risk that an error may result in funds being credited to the wrong account. The speedy transfer of funds may make any wrongfully transferred funds more difficult to track or recover.



- d. An electronic settlement will require the respective parties to commit themselves to settlement at an agreed time (when the electronic workspace for the transaction will lock). Unlike a traditional settlement (where settlement may be aborted until final exchange), the parties will not be able to abort the settlement after the workspace locks and the settlement process has commenced. Any rights that you might have under the Contract are not able to be exercised from locking.

If you have any questions about how eConveyancing works, please contact us to discuss them.

## 9. Important information – searches and use

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### 9.1. Present use

If the present use as stated in the Contract is not lawful under the relevant town planning scheme as at the Contract Date and this has not been disclosed in the Contract then the Buyer may be able to terminate the Contract up until settlement.

### 9.2. Survey

Under the Contract, the Buyer is entitled to survey the land to establish if there are errors in the boundaries or area of the land, there exists any encroachment onto or from the land or there are mistakes or omissions in describing the Property. If any of these issues arise then they may be entitled to claim compensation or

terminate the Contract, providing notice is given to you before settlement.

## 10. Our retainer

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

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

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

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

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

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

a. **Physical inspection**

We do not conduct a physical inspection of the Property. Each transaction and

property is unique and there may be issues that affect the sale that can only be identified by physical inspection. Issues about the Property's location and use may not be discovered by us in our searches. Therefore you must advise us as soon as possible if there is anything we should know that might affect the contract including the disclosure obligations discussed in this letter pack.

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

**b. Commissioning a survey**

Please note that we do not conduct a survey – this is your responsibility (if you decide to do so). Issues such as errors in the boundaries or area of the Property or encroachments by structures onto or from the Property will generally not be identified unless a survey is conducted. Whilst it is not usual for a Seller to conduct a survey, a Buyer may have rights of termination or compensation if any encroachments are identified and notified before settlement. If you are aware of any of these issues affecting the land please tell us so they can be disclosed in the Contract.

**c. Document storage**

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

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

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

If you have previously obtained the first home owners' grant, first home owners' construction grant, building boost, great start grant or a first home, home or first home vacant land duty concession, your sale of the Property may affect your continued eligibility for these schemes. We do not check whether you will have any obligation to refund a part or all of your entitlement to a concession or grant. See item 6.7 for further information.

We do not give advice on your continued eligibility for any other government grant or concessions you received unless that advice has been specifically requested and is included in our retainer.

e. **Financial and tax advice**

We do not give advice on the commercial viability, tax and other financial implications of the sale (including CGT, GST and land tax) and we are not responsible for preparing or reviewing returns or filings relating to your tax affairs. If you require this advice, you should seek specialist advice, such as from your financial advisor, tax consultant, or your accountant. This includes advice on whether or not the Standard Contract provisions relating to GST are appropriate for your circumstances.

Such advice could be particularly relevant for circumstances which may include if you bought the Property before the CGT or GST regimes were introduced or are selling:

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

You need to ensure that (where required) you or your accountant have registered

the selling entity for GST and maintain that registration after settlement. Failure to do so could have significant GST, financial and other consequences.

If you are planning to refinance other property loans as part of this sale, you should urgently discuss this with your financier as new loan applications and conditions may apply affecting any existing loans.

If you are proposing to provide finance to the Buyer to assist the Buyer to purchase the Property, you must tell us. Such an arrangement would raise a number of significant risks that would require separate advice which is not part of our retainer.

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

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

g. **Succession and matrimonial advice**

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

family law agreements or other spousal arrangements you have.

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

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

# Part B – Other advice that might apply

## 11. Electronic signing

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There are specific arrangements when electronically signing and risks that arise when doing so. Contact us to gain specific advice before electronically signing any document.

## 12. Transfer documents

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If not using PEXA, all parties comprising the Seller need to sign the transfer documents.

Any individuals must sign in the presence of a Justice of the Peace, Commissioner of Declarations or a Legal Practitioner. If signing documents in Australia, you will need to ask a suitable witness to witness your signature on the transfer documents and provide a verification of identity as well as supporting documentation (such as local government rates notice or water or other utility notice or land tax assessment) linking you to the Property.

A company must have two directors, a director and a secretary or, if a sole director company, the sole director signs the transfer.

If you are signing documents outside of Australia, an overseas agent will be required to verify your identity and witness your signature. Please contact us to discuss this option.

You will need to arrange for all signatories to be in a position to sign the transfer documents expeditiously once received. If you would like to attend at our office for the purpose of executing transfer documents please let us know and we will call you once the transfer documents arrive.

## 13. Early possession

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There are a range of issues you should consider before agreeing to early possession, such as implications on land tax liability, recovering possession and general risk of damage to the Property. If you agree to let the Buyer into possession of the Property before settlement, the Contract provides that the Buyer:

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

You may also choose to impose other conditions that you deem appropriate before agreeing to grant early possession. We can

discuss other possible conditions if you receive a request for early possession.

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

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

The rights of both parties under the Contract may be affected by the Buyer taking possession of the Property before settlement. In some limited circumstances, it may be to your advantage to grant early possession to the Buyer.

If you are considering granting early possession please contact us.

## 14. Pool safety

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### 14.1. Pool safety laws

The *Building Act 1975* (Qld) requires owners of swimming pools to comply with the pool safety standard in Part MP3.4 of the Queensland Development Code. The standard deals primarily with swimming pool barriers.

### 14.2. What is a “swimming pool”?

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

If you have any doubt as to whether a structure on the Property is a swimming pool please contact us.

### 14.3. Non-shared pool – obligation to obtain certificate

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

If there is a non-shared swimming pool on the Property (or on adjacent land used in association with the Property) and there is no Pool Safety Certificate (‘PSC’) or Exemption Certificate (‘EC’) in effect, you must not enter into a contract to sell the Property without

giving the Buyer a Form 36 Notice of No Pool Safety Certificate.

In addition, if you will not be giving a PSC or EC you must, before settlement, notify the QBCC that a PSC is not in effect. We will provide a copy of the Form 36 Notice of No Pool Safety Certificate to the chief executive.

Prior to settlement, you must hand over a copy of a current PSC, a building certificate that may be used instead of a PSC or an exemption from compliance unless you have done this before settlement or, before the Buyer entered into the Contract, you gave the Buyer a Form 36 Notice of No Pool Safety Certificate. If any of the certificates expire before settlement, you must obtain a new certificate before settlement. A failure to provide the relevant certificate or exemption by settlement may entitle the Buyer to terminate the Contract.

If you or your agent gave the Buyer the Form 36 giving notice that there is no PSC or EC before the Buyer entered into the Contract then (unless there is a general due diligence clause, a Cooling-off period or other clause that allows the Buyer to terminate) you may be able to require the Buyer to settle despite there being no PSC or EC.

You should contact us as soon as possible to discuss your position where a non-shared pool exists.

#### **14.4. Shared pool**

In the case of a shared pool (e.g. a pool on the scheme land of an apartment building) the body corporate is responsible for obtaining the PSC. You have an obligation where a PSC is not

in effect, to give a Notice of No Pool Safety Certificate to:

- a. before the Buyer enters the Contract – the Buyer; and
- b. after settlement – the body corporate (being the owner of the shared pool) and QBCC.

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

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

#### **14.5. Prohibition on letting**

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

#### **14.6. Penalties**

If the Contract does not proceed for any reason in circumstances where the pool safety standard has not been met in relation to a swimming pool on the Property you will obviously be responsible for compliance with the standard. There are substantial penalties for non-compliance.

#### **14.7. Pool Safety Register**

Owners of swimming pools are responsible for ensuring that their pool is recorded in the Pool Safety Register. Failure to do so can result in a fine.

## 15. Foreign ownership

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### 15.1. Foreign resident / becoming a foreign resident

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

If this might apply to you, we recommend you obtain tax advice before you enter into a contract to sell the Property or dispose of the Property in the future. This is outside the scope of our retainer.

### 15.2. Additional Foreign Acquirer Duty

AFAD applies to property transactions which are liable to transfer duty if:

- a. the Property is AFAD residential property (see below); and
- b. the acquirer under the transaction is a foreign acquirer.

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

- established homes and apartments;

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

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

A person will be a “foreign acquirer” if the person is:

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

AFAD is an additional duty imposed on the transaction’s dutiable value. While the Buyer is responsible under the Contract for the payment of AFAD, the QRO may seek to recover AFAD from you as Seller. You should inform us if you think the Buyer is liable for AFAD in relation to the transaction. If AFAD is applicable, we will ask the Buyer to provide evidence of its payment.

You must tell us if you have a business or personal relationship with the Buyer or if the consideration for the sale is less than market



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

## 16. Instalment contract

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

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

The effect of the Contract being an instalment contract is:

- a. if the Buyer defaults in the payment of any instalment or part of the purchase price (other than a deposit) you cannot hold the Buyer in default under the Contract until 30 days after you serve a notice on the Buyer giving them 30 days within which to make payment. If the Buyer chooses to make payment within the 30-day period (including any default interest payable under the Contract) then you cannot terminate. This means that where the default is in the payment of the balance purchase price, the Buyer can effectively obtain another 30 days in which to settle;
- b. you are prohibited from re-selling or re-mortgaging the Property before settlement; and
- c. you may be required to comply with the National Credit Code, including the requirements for pre-contractual disclosure, ongoing notices and certain pre-requisites to enforcement.

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

## 17. Settlement – Delay Event

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If a party, after making all reasonable efforts, is not able to meet their settlement obligations because of a Delay Event then, in certain

limited circumstances, time will no longer be of the essence. A Delay Event is:

- a. a tsunami, flood, cyclone, earthquake, bushfire or other act of nature;
- b. riot, civil commotion, war, invasion or a terrorist act;
- c. an imminent threat of an event in paragraphs a or b;
- d. compliance with any lawful; direction or order by a government agency; or
- e. the computer system operated by the Australian Taxation Office for notifications by the Buyer relating to GST withholding (see Item 6.4) is inoperative.

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

## 18. Urban encroachment

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

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

There is generally no termination right if it is discovered that the Property is in an affected area. However, for premises in the Milton Rail Precinct, if you are an applicant under a development application and, when you enter into a contract for the sale of all or part of the premises, the registration is not recorded in the appropriate register because you have failed to give notice to the Registrar of Titles, the Buyer may end the Contract by giving a notice of termination at any time before settlement. If you are unsure as to whether this applies to your Property, please contact us as soon as possible.

An owner must not lease premises in an affected area (other than registered premises), before you or your agent gives notice to any tenant stating that the premises is in an affected area and noting the restriction on proceedings.

## 19. Land valuation and taxes

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An administrative advice called a Land Valuation Act ('LVA') notice may be recorded on title. This alerts buyers that a land tax deduction for site improvement or an offset allowance applies. You should specifically instruct us if you have applied for or have been granted any deduction or allowance as in certain circumstances the LVA notice may not yet have registered on the title to your Property and may register before settlement.

However, on change of ownership, any existing deduction for site improvement or offset allowance will no longer apply. The calculation of local government rates, state land rent and possibly land tax will be based on the unimproved value (without these deductions).

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

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

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

## 20. Personal property securities

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### 20.1. What are personal property securities and how do they affect this transaction?

*The Personal Property Securities Act 2009* (Cth) (‘PPSA’) applies to security interests in personal property, including goods and chattels,

financial property, shares and intellectual property (personal property).

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

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

### 20.2. What is affected by the PPSA?

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

For example:

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

## 20.3. When do I need a specific release?

If:

- a. personal property is included in the sale; and
- b. a security interest is noted on the PPS register for that property; and
- c. none of the extinguishment rules apply,

then we will seek to obtain (on your behalf) from the secured party either a letter or financing change statement, which releases the personal property being sold and provide it to the Buyer prior to settlement. If you are uncertain about the legal position of the chattels, we recommend you instruct us to request a specific release from the secured party.

To enable us to consider if any of the extinguishment rules apply, please provide your instructions on whether any personal property being sold as part of the Property is worth less than \$5,000, is subject to a security interest and is being sold for "new value".

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

## 21. Combustible cladding – if applicable

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### 21.1. Building Regulation 2006 (Qld)

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

The Cladding Regulations apply to a building if:

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

Most residential homes will not be affected by the Cladding Regulations. For units, determining whether the Cladding Regulations

apply to a particular building may require the advice of a building industry professional.

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

## **21.2. Rectification**

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

## **21.3. Notice that a building is affected**

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

Please inform us if you believe that the building may have cladding, the Cladding Regulations may apply to the Property or if you are aware of any steps being taken by the body corporate in relation to identifying combustible cladding on the Property. You may have an obligation to disclose to the Buyer the presence of non-conforming cladding on the Property.

# Part C – Body

## Corporate

### 22. Selling a lot in a Community Titles Scheme e.g. unit, townhouse

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#### 22.1. Certificate of Occupancy

If you are selling a lot in a Community Titles Scheme, a local government records search will confirm whether a certification of occupancy has issued for all buildings on the Property. If an appropriate certificate has not issued the Buyer may be able to terminate the Contract for a failure to provide vacant possession.

The issue of a certification of occupancy usually demonstrates that the local authority is of the view that the conditions of development approval have been satisfied.

#### 22.2. Body corporate disclosures

You must notify the Buyer of any notices of body corporate meetings you receive and of any resolutions passed after the Contract Date. This includes meetings and resolutions of higher Community Titles Schemes that the body corporate is included in. If the Buyer is materially prejudiced by any resolutions passed after the Contract Date, they may be able to terminate the Contract. If disclosure is not made before settlement, the Buyer may

sue for compensation. Please tell us if you are, or become aware of any of the following:

- a. any meetings or proposed meetings of the body corporate (or of a higher Community Titles Scheme) and any resolutions from those meetings;
- b. any proposal to record a new Community Management Statement or a notice of meeting for that purpose (which may include proposed adjustments to lot entitlements within the Scheme);
- c. whether all body corporate consents to improvements made by you to common property are in place;
- d. whether the exclusive use allocations given to the lot are recorded or changed in the Community Management Statement (for example, car parking); or
- e. a change in the insurance details for the building and public liability for the body corporate.

#### 22.3. Implied warranties given about the body corporate

The *Body Corporate and Community Management 1997* (Qld) ('BCCMA') also contains certain implied warranties that you are deemed to have given to the Buyer. Please tell us if you are, or become aware of any of the following:

- a. any patent or latent defects in the common property or body corporate assets (e.g. substantial building defect that requires repair which can include common boundary walls of the lot or

exclusive use areas and may include repairs required as a result of issues such as concrete cancer, structural or water issues and rectification works required because of the use of combustible cladding on the building);

- b. any actual or contingent or expected liabilities of the body corporate not part of the body corporate's normal operating expenses (for example, significant debts or judgments or other liabilities that may result or have resulted in the levying of a special contribution); and
- c. anything else you are aware of regarding the body corporate's affairs which may affect the Buyer.

If any of the above exist and are not disclosed to the Buyer before entering into the Contract, the Buyer may have a right to terminate the Contract up until 14 days after the Buyer's copy of the Contract is received by them or someone else acting on their behalf. The right of termination given to the Buyer under the BCCMA does not limit the Buyer's rights in relation to a breach of warranty and, if the Buyer does not exercise that right and proceeds to settle the Contract, the Buyer may have a right to pursue you for compensation for any loss the Buyer suffers or incurs as a result of the breach of warranty.

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

## 22.4. BCCMA disclosure obligations

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

The disclosure statement given with the Contract must contain the following information:

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

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

The only way to ensure the relevant information is disclosed is to conduct a full

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

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

## 22.5. Community Management Statement ('CMS')

The CMS contains information relevant to the Buyer, including which regulation module applies to the scheme.

The CMS also contains information regarding the Contribution Schedule Lot Entitlements ('CSLE') and the Interest Schedule Lot Entitlements ('ISLE').

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

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

The CMS specifies:

- a. the CSLE for the lot you are selling and the aggregate CSLE (which is the total of all CSLEs for all the lots in the scheme and determines what proportion of the body corporates levies you will be liable to pay compared to other lots). For a scheme established before 14 April 2011 the lot entitlements must be equal unless there is an explanation in the CMS as to why it is just and equitable in the circumstances for them not to be equal (however, no explanation is required if the scheme was established before 4 March 2003). For a scheme established after 14 April 2011:
  - i. the CSLE are to be based on the equality principle or the relativity principle;
  - ii. if the equality principle applies, the lot entitlements must be equal, unless there is an explanation in the CMS as to why it is just and equitable in the circumstances for them not to be equal;
  - iii. if the relativity principle applies, the CMS must include an explanation which demonstrates the relationship between the lots by reference to one or more particular relevant factors, including the following:
    - the Community Titles Scheme structure;
    - the nature, features and characteristics of the lots;



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

If you are the original owner for the Community Titles Scheme established on or after 14 April 2011 and the Buyer reasonably believes:

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

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

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

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

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

## 22.6. Body corporate levy notices

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

corporate has received payment before settlement.

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

While liability for the regular periodic contributions levied by the body corporate is apportioned between the parties in the same way as rates, you will be solely responsible for the payment of any special contribution for which the body corporate has issued a levy notice on or before the Contract Date. The Buyer is responsible for any special contribution levied after the Contract Date. Special contributions should be disclosed to the Buyer in the Contract (irrespective of which party is responsible for their payment).

## 22.7. Body corporate searches

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

The information received from a search agent is generally limited to a search of the most recent records and levies which are the matters most likely to impact on your sale.

It would generally be too expensive to conduct a more extensive search of all of the body corporate records.

Our advice to you will be limited to interpreting the search results in the reports received. Accordingly, our retainer does not include specific advice about any issues that would

only be discovered by an extensive historical body corporate search, such as, for example:

- a. lot entitlement changes (past, proposed or possible future amendments);
- b. checking that all meetings, motions, notices and other records of the body corporate are in order and in compliance with body corporate law and regulations (including meetings and motions originally allocating or subsequently re-allocating exclusive use areas);
- c. checking all past and present infringements of the body corporate by-laws by the Seller and other body corporate members;
- d. a review of all the body corporate by-laws to check whether any are inappropriate, unenforceable or illegal;
- e. whether any statutory easements for services run through the lot or allocated exclusive use areas;
- f. body corporate agreements with body corporate managers, service providers or employees;
- g. other agreements that the body corporate may have in place, including those with other bodies corporate for the sharing of exclusive use areas such as car parking or facilities such as gyms or common areas;
- h. a review of any Building Management Statement and checking compliance with its terms; or

- i. other body corporate matters that will not generally give rise to statutory or contractual rights of termination or compensation.

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

## **22.8. Caretaking and Letting Agreements**

Unless you specifically instruct us, we will not conduct a review of any caretaking and letting agreements as part of our retainer unless that advice has been specifically requested and is included in our retainer.