

Residential Conveyancing Booklet

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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?

Please read this Residential Conveyancing Booklet ('the **Booklet**') together with our letter ('the **First Letter**') and the **First Letter's** attachments. **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 buying 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 Seller. This advice may be general (e.g. advice contained in this Booklet) or specific to your circumstances (e.g. advice contained in the **Contract, Disclosure and Property Report**).

Alternatively, you may decide you no longer wish to buy the Property and need advice about any possible termination options that might exist.

These rights can be subject to strict time limits or lost as a result of your actions or steps in the transaction. For example, if you take steps or actions after you become aware of some rights (e.g. receiving some types of notices or search results) it may impact that right and a Court may even consider you have lost that particular right. It is critical that, if we have advised you about any rights and you may want to rely on them or if you otherwise are considering not proceeding with the purchase, you contact us as soon as possible to discuss. Otherwise, any rights or options may be lost.

Throughout this Booklet, the term 'Standard Contract' refers to the REIQ Standard Residential Contract.

2. Explanation of important contract terms

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

Please carefully read your Contract in full, Seller Disclosure and our review in the Contract, Disclosure and Property Report we provided.

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

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

Extension of Settlement Date

The Standard Contract terms provide both parties with a right to extend the Settlement Date by a collective period of up to five business days without requiring 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.

The right of extension has been included in the Standard 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. However, it is important to note that the right of extension is available to both parties and may be exercised for any reason.

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 having funds available for settlement), 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 collective total period of five business days, regardless of which party exercises the right, and any other extension would require the agreement of the Seller.

There are also other circumstances where the Settlement Date will automatically be extended under the Standard Contract or legislation.

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.

Business Days

The Standard Contract provides that if anything, other than payment of deposit, 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 or special holiday in the Place for Settlement as defined in the Contract for settlement, which is either where the Seller's Solicitor's office is located, or the Brisbane Central Business District.

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).

2.3. Deposit

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

Electronic Deposit

If you:

- pay the deposit by an electronic transaction to the account of the Deposit Holder;
- provide written evidence of the electronic transaction to the Deposit Holder; and
- do not take any action to defer payment to the Deposit Holder to a later day,

your payment is taken to be received by the Deposit Holder on the day you effect the electronic transaction even if, because of circumstances beyond your control, the payment happens on a later day. If you have complied with the above requirements and the payment has not been received by the Deposit Holder by the due date, the Seller may give notice to you that the payment has not been received and, if the payment has not been received by the Deposit Holder within two business days of the Seller's notice, you will be in default.

If you propose to pay the deposit by an electronic transaction, you should effect the transaction on the due date stated in the Contract and, as soon as reasonably practicable after the transaction is effected, provide written evidence of the electronic transaction to the Deposit Holder.

All Deposits

If you do not pay the deposit on time or otherwise breach the Contract, the Seller may be able to terminate the Contract. The Seller may also keep your deposit and recover any part of the deposit not paid. If the Seller is obliged to pay Goods and Services Tax ('**GST**') then GST will apply to the kept deposit. The Seller may also be entitled to sue you for compensation, which may include commission payable to the real estate agent.

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 the Seller. If you terminate the Contract for a valid reason, then the deposit should usually be repaid to you.

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

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

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

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

Please see Part C if purchasing a lot in a Community Titles Scheme ('**CTS**') e.g. unit, townhouse.

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

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

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

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

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

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

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

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

2.5. Finance (if applicable)

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

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

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

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

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

If you do not obtain satisfactory finance approval from the financier specified in the Contract, you can instruct us to terminate the Contract or seek an extension of time for finance. Agreement from the Seller is required for any extension and your request may be declined.

Alternatively, you may instruct us to give notice to the Seller waiving the benefit of the finance condition. This means you are bound to complete the Contract regardless of whether your financier approves finance or the finance terms are satisfactory.

If we do not notify the Seller in writing that finance is approved, waived or not approved and you terminate by the finance date then, the Contract continues and both you and the Seller have a right to terminate the Contract. You also have a continuing right to give notice of satisfactory finance or waiver but only if it is received by the Seller before they terminate.

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

2.6. Settlement funds

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

a. transfer the funds to your financier (if your financier agrees), and instruct your financier to complete settlement with all the settlement money; or

b. deposit the funds to our trust account as cleared funds at least one day before the day of settlement. Note that an ordinary bank transfer is not cleared funds and we cannot draw on those funds. The amount needs to be deposited in cleared funds by:

   i. telegraphic transfer; or

   ii. real time gross settlement ('**RTGS**').

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

You will need to liaise with your financier and with us to ensure that logistically all settlement funds and any other payments are available when required. This includes ensuring that any deposits to our trust account are cleared with sufficient time for settlement.

You will need to verify with your financier the net amount of any loan funds that will be available for settlement after taking into account any deductions to be made by the financier for costs and expenses (including, for example, loan establishment fees and mortgage insurance premiums).

If you are using a grant or super saver scheme towards your settlement funds, you must ensure the grant or superannuation funds will be available for settlement.

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

2.7. Default interest

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

3. Insurance and Risk

The Property is at your risk from 5pm on the first business day after the Contract Date.

It is your responsibility to attend to any necessary insurance for the Property. Please see below about insurance requirements.

Generally, it is recommended you make enquiries about insurance availability and cost before entering into the Contract. Insurance can be expensive and, for some properties, may only be available in relation to certain risks. Despite the Property being at your risk, the Seller has an obligation until settlement to take reasonable care of the Property.

If the Property is damaged between the Contract Date and settlement (e.g. extreme weather event, fire or vandalism) you are still required to settle in accordance with the Contract (unless it is a dwelling or residential unit so destroyed or damaged as to be unfit for occupation as a residential dwelling and you haven't taken possession).

If the damage arises from the failure of the Seller to take reasonable care you may be able to seek compensation from the Seller.

If any residential dwelling is unfit for occupation as a residential dwelling, the Seller may restore the property to the condition it was immediately prior, and must give you notice of this restoration as soon as practicable. Once you receive this notice, you may inspect the Property provided you give reasonable notice to the Seller of your intention to do so.

If the Contract provides for risk to remain with the Seller until settlement you may still be required to settle in accordance with the Contract despite the damage unless there is a residence that is unfit for occupation (see above). You are also unlikely to be able to make a claim on the Seller's insurance or to insist the Seller make a claim.

If damage occurs, we recommend you obtain evidence of any damage (such as photos or video), including the source of the damage. In some circumstances you may gain the benefit of the Seller's insurance by making a claim upon the Seller's policy before taking early possession or completing settlement. We do not recommend that you rely upon this as:

a. the Seller may not take out insurance;

b. the Seller may cancel its insurance;

c. the event that causes the damage may not be covered; or

d. other factors may preclude recovery.

We strongly recommend that in all cases you take out insurance as advised below. You can arrange insurance by contacting an insurance broker or home insurance company directly. Advice on your insurance policy is outside the scope of our retainer.

If you are purchasing a residential house, not in a CTS, we recommend in all cases you arrange property insurance cover for house, contents and public liability.

If you are purchasing a lot in a CTS, please see our advice in Part C.

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

4. Cooling-off period

4.1. Application of the *Property Occupations Act 2014* (Qld) ('POA')

If POA applies, you 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.

POA Cooling-off provisions 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;

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 you receive from the Seller or the 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 the Seller signed the Contract before you did, the Cooling-off period starts on the day you signed the Contract and communicated your acceptance to the Seller.

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

You are entitled to terminate the Contract during the Cooling-off period. If you do, the Seller may retain a penalty of 0.25% of the purchase price, 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 you within 14 days after termination.

If you terminate the Contract and later decide you would like to purchase the Property, there is a risk that the Seller will not enter into another contract with you.

If you decide to terminate the Contract during the Cooling-off period you should tell us as soon as possible so we can give notice before the Cooling-off period ends.

You may shorten the Cooling-off period or waive the benefit of it entirely by giving written notice to the Seller of the shortening or the waiver. It is up to you whether you wish to do this. However, we do not generally recommend doing so, as you may wish to exercise your rights later.

5. Important information - general

5.1. Particular issues of concern

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

a. Is the purchase subject to sale of the Buyer's existing property?

b. Is payment of deposit intended to be by insurance bond or bank guarantee?

c. Rights of termination if particular searches are adverse.

5.2. Promises made by the Seller or the real estate agent

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

a. terminating under any applicable Cooling-off period or some other contractual term (where applicable); or

b. a claim for compensation.

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

5.3. Seller's warranties

The Seller warrants various things that could affect the Property, such as

- correctness of title,
- capacity to complete,
- no show cause notices or enforcement notices under the *Building Act 1975* (Qld) or *Planning Act 2016* (Qld) affecting the Property (or communications that may lead to such a notice),
- no notice or order from a competent authority that may lead to the issue of a notice to do work or spend money on the Property or communications that may lead to the issue of such a notice or order,
- no current or threatened claims or proceedings which may lead to a Court order or writ of execution affecting the Property,
- no unsatisfied Court order or writ of execution affecting the Property,
- that the statements in the Reference Schedule regarding residential tenancy agreements and rooming accommodation agreements are true and correct,
- no notices of body corporate meetings,
- not being aware of facts or circumstances that may lead to the Property being classified as contaminated land, and
- no obligation to give an *Environmental Protection Act 1994* (Qld) ('**EPA**') notice.

If the Seller breaches any of these warranties you may have rights to terminate the Contract before settlement, unless the matters were disclosed to you before signing the Contract.

However, your only right is to seek compensation for breach of the warranty in relation to statements regarding residential tenancy agreements and rooming accommodation agreements being true and accurate.

Even if the Contract settles, you may also be entitled to claim compensation for any loss arising from a breach of warranty.

5.4. Property adversely affected

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

a. the present use is not lawful;

b. the land or, in the case of a lot in a CTS, the scheme land is affected by a proposal or notice of any 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 CTS, 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 CTS, 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 of intention to resume the land or, in the case of a lot in a CTS, 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 the Seller's 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),

and this is not disclosed in the Contract or Seller Disclosure (where applicable), you may generally be able to terminate the Contract up until settlement.

However, if the Seller Disclosure includes the matters in **e** and **g** above, you may only have a right to terminate if the disclosure was inaccurate or incomplete in relation to a material matter, you weren't aware of the correct state of affairs prior to signing, and if you had been aware, you would not have signed the Contract.

If you do not terminate in accordance with the Contract, you will be treated as having accepted the Property subject to these issues.

5.5. Information regarding the Property

If requested before settlement, the Seller must give you:

a. copies of all documents about any unregistered interest in the Property;

b. full details of all continuing tenancies to allow you to properly manage the Property after Settlement;

c. sufficient details (including the date of birth of each Seller who is an individual) to enable you to undertake a search of the Personal Property and Securities Register;

d. the Local Government rate account number for the Lot; and

e. further copies or details if any information previously given ceases to be complete and accurate.

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

6. Important information – ownership and payments

6.1. Purchasing entity / tenancy

If any of the following apply:

a. There is more than one Buyer:

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

The effect of **joint tenancy** ownership is that on the death of one owner their share in the Property passes to the surviving joint tenants despite any provision in a will.

If you purchase as **tenants in common**, then on the death of a co-owner the share in the Property of that co-owner will pass in accordance with their will or in accordance with the laws of intestacy if they do not have a valid will.

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

A joint tenancy is not appropriate where parties wish to hold interests in the Property in unequal shares (for example, where the contributions to the purchase price are not equal).

If you wish to hold the Property other than equally (for example, a 99% and 1% split or some other unequal percentage ownership) for taxation, duty (e.g. Additional Foreign Acquirer Duty) or asset protection reasons then you must hold the Property as tenants in common.

You will need to advise us of the percentage of ownership each owner is to have as this needs to be set out on the Property transfer. Any later change to ownership proportions will result in transfer duty being imposed.

You may wish to consider obtaining independent legal advice (each from another law firm) on any co-ownership agreement to deal with future issues that may arise, such as where one party wishes to sell the Property.

Before you provide your instructions on how you want the Property to be held, ensure you consider and (where applicable) obtain urgent independent legal advice on:

- the impact of your instructions on matters such as your succession plans, family law arrangements or any Foreign Investment Review Board approval that might be relevant; and

- whether your financier requires the Property to be held in a certain way,

as this is not part of our retainer.

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

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

i. whether to purchase (and borrow) as an individual, company, trustee or other entity such as a SMSF;

ii. tax implications and structuring; and

iii. land tax and other holding costs).

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

6.2. Outgoings and adjustments

When you become the owner of the Property, you will assume responsibility for all rates and statutory charges payable in relation to it (including for any outstanding liabilities of the Seller).

The Standard Contract terms provide for rates and other outgoings to be apportioned as adjustments to the price at settlement. The Seller is liable for all amounts up to and including settlement and you are responsible for the proportion of the outgoings relating to the period from settlement onwards, unless otherwise agreed. An amount will usually be deducted from the purchase price for any outstanding liabilities of the Seller.

The Standard Contract provides three options for adjustment of land tax:

a. no adjustment is to be made for land tax. This means that the Seller will be responsible for any land tax for the land tax year current at the settlement date and they will not be able to adjust the amount of the land tax liability for the period following settlement.

b. the adjustment is on the basis that this is the Seller's only land and they owned no other land as at the previous 30 June. If this option is selected, this means that if the Seller owns other properties, they may not be able to adjust the full amount of the land tax liability for the period following settlement.

c. the adjustment is on the basis of the Seller's actual land tax liability.

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

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.

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

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

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

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

Transactions under which foreign persons acquire land for residential use or development will attract additional duty. See Part B item 15.2 for further details.

6.4. Home concessions to transfer duty

You may be eligible for a home concession on the transfer duty if you meet the following occupancy requirements:

a. the Property is being purchased as your first home and will be occupied as your principal place of residence within 12 months after settlement ("first home concession"); or

b. the Property is vacant land and is being purchased to construct your first principal place of residence that you will occupy within 24 months after settlement ("first home vacant land concession"); or

c. the Property is being purchased to be occupied as your principal place of residence within 12 months after settlement;

and

d. you satisfy all the Queensland Revenue Office's strict eligibility requirements; and

e. you do not dispose of the Property within 12 months of occupying the residence.

First home concession

If you are eligible, no transfer duty is payable, or a reduced transfer duty is payable, for purchases of a first home depending on the value of the home and whether it is a 'new home'.

Even if you do not qualify for the first home concession you may still be eligible for a home concession.

First home vacant land concession

If you are eligible, no transfer duty is payable, or a reduced transfer duty is payable, for purchases of first home vacant land, depending on the value of the land.

Home concession

If you are eligible, concessional duty rates apply to part or all of the transfer duty payable, depending on the value of the home.

Concession value thresholds and eligibility requirements

Strict eligibility requirements apply to each of these home concessions. You can check the current concession value thresholds and your eligibility by visiting the QRO's website (https://qro.qld.gov.au/duties/transfer-duty/concessions/homes/) or telephoning directly on 1300 300 734.

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

a. you are purchasing an investment property;

b. you are purchasing using a company, unit trust or discretionary trust;

c. you are applying for a first home concession and

   i. have held an interest in residential land somewhere in the world before; or

   ii. have claimed the concession before;

d. you are applying for a first home vacant land concession and:

   i. have held an interest in residential land somewhere in the world before; or

   ii. there will be more than one home constructed on the vacant land; or

iii. there was a building, or part of a building, on the land when you bought it.

You should tell us as soon as possible if:

a. a concession applicant is under 18 years old; or

b. a trustee or guardian is purchasing for the benefit of legally disabled beneficiaries.

Loss of concessions

You may lose your entitlement to the full or part of the concession if you:

a. do not move into the property within 12 months of settlement or for vacant land, do not construct and move into a house on the land within two years of settlement;

b. sell or transfer the property before occupying it or within 12 months after occupying it;

c. enter into a lease to another person for the whole Property after settlement and before occupation;

d. extend an existing lease for the whole Property;

e. allow the Seller to stay, or for any existing lease to continue, for longer than 6 months after settlement and before you occupy the Property;

f. otherwise grant possession of the whole Property to another person within 12 months of you occupying the home.

However, you can grant possession or lease out part of the Property within the first 12 months provided you continue to occupy the Property. You will not lose the transfer duty concession for a home, first home or vacant land in this situation.

Otherwise, if any of the above circumstances apply you cease to be eligible for a concession that you have claimed and repayment of all or part of the concession may be required and penalties and interest can apply.

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

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

a. the Seller or existing tenants remain in the Property for no longer than six months after settlement or until the expiry date of the lease, whichever is earlier (NOTE: the concession will be lost if the expiry date of the lease is longer than 6 months and the tenant does not vacate within 6 months, or if the lease is a periodic lease and the tenant does not vacate at the expiry of the first period of the lease);

b. an intervening event such as a natural disaster, incapacity or death prevents you from occupying the home;

c. you occupy the home as your principal place of residence, then leave it vacant for the rest of the one-year occupancy period and you make no other claim for a home concession; or

d. you transfer part of the Property to your spouse.

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

6.5. General exemptions to transfer duty

Your transaction may also be exempt from transfer duty if:

a. the Contract is terminated or comes to an end;

b. it is a transfer pursuant to a Family Court order, maintenance agreement or binding financial agreement;

c. it is a transfer between de facto spouses under a recognised cohabitation or separation agreement;

d. it is the distribution of a deceased's property to beneficiaries, surviving joint tenants or to a trust set up to distribute the estate;

e. the Property was won in an art union competition;

f. you are a registered charitable institution (for example a religious body or educational institution);

g. the transfer is to correct a clerical error in a previous transaction;

h. it is a transfer between complying superannuation funds or entities;

i. it is a transfer to a registered industrial organisation under the *Industrial Relations Act 1999* (Qld).

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

6.6. Related parties

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

6.7. Aggregation of transfer duty

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

Please contact us as soon as possible if you have:

a. previously bought a property from any of the Sellers noted in the Contract (including family members or associates of any of the Sellers, such as companies or officeholders related to any of the Sellers);

b. bought an adjoining or nearby property from anyone - particularly to develop together with this Property;

c. bought a business in conjunction with this transaction;

d. negotiated this Contract or Property together with or shortly after other contracts or property; or

e. otherwise have reason to believe that the QRO may consider this transaction as one transaction with another contract or agreement.

6.8. Capital Gains Tax ('CGT') withholding payments

Under laws designed to ensure that foreign residents meet their liability for CGT when selling land in Australia, a Buyer may be required to pay 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 variation notice from the ATO varying the CGT withholding amount to nil the Buyer must pay the required amount to the ATO promptly after settlement.

Under the Standard Contract, the Seller irrevocably directs you to pay (from the balance of purchase price) the required CGT withholding amount to the ATO unless, prior to settlement, the Seller produces a clearance certificate or produces a notice from the ATO varying the CGT withholding amount to nil.

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

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

6.9. Goods and Services Tax ('GST') withholding payments (if applicable)

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;

d. the following exclusion does not apply

   i. the recipient is registered for GST; and

   ii. the recipient acquires the land for a creditable purpose.

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

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

6.10. Rates and Land tax

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

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

7. Important information – settlement steps

7.1. Pre-settlement inspection

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

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

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

7.2. Priority notice

We will lodge a priority notice on title before settlement. This helps protect your interest in the Property by preventing the registration of any conflicting interest (such as a mortgage or transfer to an unrelated third party, but not a caveat or a writ of execution) until the earlier of:

a. 60 days after we lodge the notice (subject to any extension); or

b. your transfer and all related documents are registered; or

c. it is withdrawn.

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

7.3. Keys and codes

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

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

7.4. Chattels and Fixtures

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

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

7.5. Vacant possession

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

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

The Seller is required to give notice to the Tenant to ensure that any tenancy of the Property has been brought to an end and possession delivered by the tenant prior to settlement. Minimum periods of notice will generally apply to the termination of any tenancy, which can often exceed the Contract period. For example, the current notice period for most tenancies is two months, whereas most Contracts are for 30 days.

If the Seller cannot comply with the obligation to deliver vacant possession of the Property, you may be entitled to refuse to settle.

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

7.6. Utility services

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

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

7.7. Electrical safety switch

The Seller must, on or before the date of possession for the Property, give you a written notice of whether an approved electrical safety switch for general purpose socket outlets has been installed in the Property under the *Electrical Safety Regulation 2013* (Qld). If it hasn't been installed, you are required to have one installed within 90 days following the date of possession. Failure to do so could result in a penalty.

7.8. 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).

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

You should instruct us if the inspection finds that compliant smoke alarms are not installed so that we can seek your instructions on whether you would like to adjust the settlement figures.

In any event, if the Property does not have compliant smoke alarms installed, you should arrange for their installation immediately following settlement as fines may apply.

8. Electronic conveyancing (or eConveyancing)

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 is eConveyancing 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 Buyer signing a 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 8.5 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

You should be aware of the following:

a. An electronic settlement may be delayed by system failures. If:

- settlement cannot occur by 4pm AEST on the settlement date because a relevant computer system is inoperative or unavailable, the settlement date is deemed to be the next business day. This will continue while the relevant computer system is inoperative or unavailable. Time remains of the essence;

- the Buyer can't verify the Seller's title on the day of Settlement due to inoperative computers of the land registry, time stops being of the essence. The Seller or Buyer may give a notice to the other party to the contract to complete the contract.

A party will not be in default provided they are without fault.

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, another party may make changes to the Workspace between 3pm and 4pm, and their actions may necessitate us 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.

On the first occasion that this situation occurs, the Standard Contract provides for an automatic extension of the Settlement Date until the next Business Day.

However, if this occurs more than once, 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. In some circumstances, settlement may proceed (and settlement funds will be disbursed) even though the electronic lodgement of documents at Titles Queensland that would normally be part of the electronic settlement process is not available. Lodgement of a priority notice (see item 7.2) will help to protect a Buyer's position. In addition, PEXA provides insurance for loss incurred if a dealing is lodged prior to lodgement of the Buyer's documents which prevents registration of the Buyer's documents or takes priority over them.

d. Any arrangement that involves the transfer of funds to a nominated bank account carries with it the risk that an error may result in funds being credited to the wrong account. The speedy transfer of funds may make any wrongfully transferred funds more difficult to track or recover.

e. An electronic settlement requires the respective parties to commit themselves to settlement at an agreed time (when the electronic workspace for the transaction will lock). Unlike a traditional settlement where settlement may be aborted until final exchange, the parties will not be able to abort the settlement after the workspace locks and the settlement process has commenced. In limited circumstances, this may mean you discover issues with the Property and, while the Contract has not settled, you may be unable to exercise any rights.

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

9. Important information – searches and use

9.1. Buyer beware - the Contract does not protect against unsatisfactory search results in some circumstances

In Queensland the Seller is obligated to disclose certain information, documents and searches relating to the Property. However, the onus is on the Buyer to obtain any additional searches and satisfy itself about the Property. **There is no obligation on the Seller to tell you about the Property or any of its defects or other issues, except for limited contractual warranties and statutory disclosure.**

Common practice is that the Seller provides prescribed disclosure prior to the Contract being signed and then searches are conducted afterwards. This often leads to problems as issues in search results (not included in the Seller Disclosure) may not be identified in sufficient time for you to exercise any remedy against the Seller.

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

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

The searches we recommend are essential and should be conducted as soon as possible. We make this recommendation as:

a. it might be possible to identify unsatisfactory search results before the Contract becomes unconditional; and

b. if we are able to obtain search results early, we can give you advice on any contractual or other rights you may have so you may exercise them in time.

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

The Contract also does not contain any rights to terminate if searches reveal that the improvements, or any additions to the improvements, do not have appropriate approvals. The lack of a required approval may have significant ramifications for the lawful use of a building on the Property and for the ability to obtain insurance cover for the building. The only opportunity to terminate for building issues is if a property notice, such as a show cause or enforcement notice exists, when the Contract was entered into, and this wasn't disclosed to you in the Seller Disclosure information before you signed the Contract.

If searches reveal unsatisfactory results we will give you specific advice about your contractual or statutory rights and any remedies you may have. The advice will depend on the nature of the unsatisfactory search result and your particular Contract.

9.2. Present use

If the present use of the Property 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, you may be able to terminate the Contract at any time before settlement.

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

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

9.3. Future use

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

9.4. Unregistered encumbrances

Unregistered encumbrances and other government rights or interests may affect the Property or the title.

The Seller is required to provide details of all unregistered encumbrances to which the Property will remain subject after Settlement, such as:

a. unregistered water, sewerage or combine drains;

b. infrastructure on or under the land for any services;

c. Statutory Encumbrances including a statutory charge over land arising from the non-payment of money to a government; or a statutory right to keep infrastructure on the Property; or a statutory right to access land to repair or maintain infrastructure on the Property (e.g. sewerage or drainage rights, telecommunications or electrical facility).

d. access, opt-out, deferral or conduct and compensation agreements under the *Mining and Energy Resources (Common Provisions) Act 2014* (Qld);

e. unregistered charges, mortgages, easements, profit a prendre known or reasonably expected to be known, to the Seller (including the names of the parties to the agreement, the term of the agreement and the amounts payable by the owner of the land, a copy of any written agreement and a copy of any plans showing the encumbrance); or

f. unregistered lease or residential tenancy agreement including the start and end day of the term, the amount of rent and bond payable and whether the lease has an option to renew.

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

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

9.5. Neighbourhood disputes

Please tell us if you hear about or receive any copies of documents relating to disputes between the Seller and neighbouring property owners about dividing fences or trees. In particular, please tell us if you are aware of any:

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

a. For trees

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

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

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

b. For fences

The Seller warrants in the Contract that, except as disclosed in the Contract, 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. If there are current or threatened claims at the Contract Date or an unsatisfied order at settlement you may be entitled to terminate the Contract or claim compensation from the Seller.

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

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

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

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

9.6. Environmental protection

The Seller must disclose, before entering into the Contract, if any of the following are applicable to the land (including the common property if in a CTS):

a. the land is listed on the Contaminated Land Register or Environmental Management Register (the '**Registers**');

b. the land is the subject of any of the following under the 'EPA:

- a show cause notice issued about the proposal to include particulars of the Property in the Registers;
- an environmental evaluation that includes a requirement to conduct or commission a site investigation;
- an environmental enforcement order is issued that includes a requirement to provide a validation report; or
- a notice is issued requiring the preparation of a draft site management plan for the Property or the administering authority gives notice that it has prepared a draft site management plan for the Property;

c. there is an outstanding obligation to give notice to the administering authority under the EPA of a notifiable activity being conducted on the Property;

d. a Magistrate has issued an order under the EPA for an authorised person to enter the land to conduct an investigation or carry out work;

e. the Seller is aware of any facts or circumstances that may lead to the Property being classified as contaminated land;

f. any notice required in relation to a transitional environmental program; or

g. any environmental enforcement order.

If any of these apply and the Seller does not give disclosure before you enter the Contract then, you may terminate before the earlier of settlement or possession. If the Seller has not complied with these disclosure obligations, the Seller may still give disclosure after the Contract has been entered into, but you will be given a period of 21 business days after disclosure to terminate the Contract.

If you do not terminate in that time you will lose the right. **Given the limited time period available for termination, it is important that you contact us promptly if you receive a notice from the Seller to remedy a failure to comply with its disclosure obligations.**

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

The searches we undertake only identify land on the Contaminated Land Register or the Environmental Management Register but not notices and orders. If you think the land (including the common property if in a CTS) may be contaminated, consider the prior or current use of the land might contribute to any contamination issues or any notices or orders may affect the land, please contact us as soon as possible so that we can take necessary steps.

9.7. Administrative advices

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

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

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

If you have any particular concerns relating to any of these matters then you should contact us.

9.8. Survey

The searches we conduct cannot ascertain if there is:

a. an error in the boundaries / area of the land; or

b. any encroachment onto or from the land.

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

Mistakes or omissions in how the Contract describes the Property may also be identified by a survey.

A survey can sometimes also identify other issues, such as:

a. an unallocated road reserve;

b. unregistered encumbrances;

c. encroachments; and

d. easements,

that are not noted on the title nor identifiable by the searches we conduct.

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

A survey might also assist you in identifying whether:

a. a retaining wall or revetment wall is within the boundaries of the land which may give rise to future maintenance obligations; or

b. the natural level of the land has been altered by excavation or filling which may give rise to obligations to retain or support land (including neighbouring land).

In the case of waterfront land, a survey may also establish whether the boundaries are affected by erosion. If land is beachfront land, in some cases, the State government can declare a public access right over the beach area of your land. If declared, the public will be entitled to use the affected land and the State or local government may create conditions for how it may be used (including by you).

The Seller should disclose any existing declarations to you. However, if a declaration is made after settlement, there is no compensation available to you. While any declaration must be registered, it may be important to establish whether erosion has affected boundaries and whether circumstances exist which might lead to a declaration or an unregistered declaration already exists. If you are aware of any of these circumstances, please inform us as soon as possible.

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

9.9. State Government – prescribed projects

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

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

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

9.10. *Queensland Building and Construction Commission Act 1991* (Qld) ('QBCC Act')

a. Home warranty insurance

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

While we can undertake a search to establish whether a statutory insurance policy is in place, whether or not a claim is accepted may depend on issues such as the nature of the defect and when you became aware of the defect.

It is beyond the scope of our retainer to advise on the statutory insurance or any issues which may impact on or limit your coverage. You may wish to contact the Queensland Building and Construction Commission ('**QBCC**') if you have any concerns.

b. Seller as owner-builder

If:

i. building work was carried out on the Property by a person who was not licensed to carry out that work; and

ii. the land is offered for sale within six years after the building work is completed,

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

If a required notice and warning are not given, the Seller is taken to give a contractual warranty that the building work was properly carried out. This means that if the work was not properly carried out then, rather than claiming under the QBCC statutory insurance regime (if it applies to the Property), you may only have a right to claim compensation from the Seller.

Please let us know if you are aware of the Seller conducting any work as an owner-builder or if you received any notice from the Seller.

You should note that if the Seller fails to disclose owner-builder work to you, and you discover this before settlement, your only remedy (except for other rights related to other matters etc.) is the Seller's warranty that the building work was properly carried out – you will have no right to terminate the Contract for this specific issue.

9.11. Building covenants

Are you aware of any building covenants affecting the Property or have you signed any document relating to any covenants? For example, there may be requirements about the type of house you may construct or landscaping requirements for the Property. If so, please provide us with details and a copy of any documents signed, as these may impact on your proposed use of the Property or bind you to additional contractual obligations or liabilities. A failure to comply with these covenants may be enforced by the Seller.

10. Our retainer

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

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

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

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

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. It is up to you and also better if you do this. Each transaction is unique and each Buyer has different requirements for a property that may only be identified by physical inspection.

Issues about the Property's location, impact of nearby infrastructure, noise or properties or proposed developments or road works are not likely to be discovered by us in our searches. Therefore you must advise us as soon as possible of any concerns following your physical inspection.

b. Building and pest inspection

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

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

c. Commissioning a survey

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

d. Valuation

The note that appears in the Contract immediately above and on the same page where you sign the Contract recommends that you obtain an independent valuation of the Property. We do not provide valuation advice. The price is something you need to satisfy yourself about. The Contract is not conditional on a valuation. If you do not want to proceed without a valuation, you will have to obtain it before entering the Contract (or the expiry of any applicable Cooling-off period).

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

e. Document storage

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

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

f. Obtaining finance and loan advice

If needed, you must apply for any finance required and tell us before the date specified whether your finance approval is satisfactory to you.

Finance approval is often subject to conditions including satisfactory valuation. If so, it is up to you to satisfy any conditions of the finance approval before notifying us of approval. If you are planning to refinance other property loans as part of this purchase, you should urgently discuss this with your financier as new loan applications and conditions may affect your existing loan.

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

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

g. Eligibility for grants and other schemes advice

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

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

An entitlement to a grant or other assistance will generally depend on strict compliance with eligibility criteria including as to your personal circumstances, the type of property that you are acquiring, the timing of the acquisition or building works, and the characteristics of the property.

You should not assume an entitlement to a grant or assistance without carefully examining the relevant eligibility criteria. If a grant or assistance is wrongly claimed, it may need to be repaid and penalties may be imposed. In addition, a wrongly paid amount may give rise to a charge being registered over the Property, which may affect any later sale.

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

h. Financial and tax advice

We do not give advice on the commercial viability, tax and other financial implications of the purchase (including CGT, 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 buying the Property:

i. as an investment;

ii. with or as part of a business;

iii. to substantially renovate or develop the Property;

iv. as the executor or beneficiary of an estate;

v. as a foreign resident or someone who intends to reside overseas in the future; or

vi. where you are not intending to use the Property solely as your main residence.

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

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

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

i. you may not be eligible for any benefits from the NRAS scheme;

ii. the NRAS lease or arrangement may not be enforceable; or

iii. you may suffer loss.

j. Self-managed superannuation fund ('SMSF') advice

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

k. 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.

l. Building contracts and other related agreements advice

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

m. Consumer guarantees advice

In some circumstances where goods are being supplied as part of the sale, implied consumer guarantees may apply to those goods. They cannot be contracted out of. Our retainer does not extend to providing advice on the applicability or effect of any consumer guarantees to your purchase.

10.3. Other consultants

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

a. an accountant – about the commercial viability, appropriate purchasing entity, tax considerations of the purchase and (if applicable) compliance with your SMSF's investment strategy;

b. a surveyor – to survey the Property to check for boundary, area and encroachment issues;

c. an engineer– to assess the structure and fabric of the buildings;

d. a building industry professional / fire engineer – to report on fire safety issues including cladding;

e. a valuer – with respect to a rental valuation and projected returns, or to assure yourself that the price represents the market value of the Property;

f. a soil tester – if you are planning on building (particularly in a new estate) to assure yourself that the soil condition does not require any special construction requirements; and

g. a town planner – to assess planning compliance issues or give advice regarding proposed future development.

Part B – Other advice that might apply

11. Electronic signing

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

Title to the Property will be transferred to you after settlement when transfer documents are registered at Titles Queensland. If not using PEXA, physical transfer documents must be signed by the Seller and by you although we are able to sign the transfer documents on your behalf. We will prepare the transfer documents and send them to the Seller to sign. At the same time, we will send a copy of the transfer documents to you for your records.

After settlement, we will lodge the transfer documents for registration unless you have a financier, in which case they will be responsible for lodging the transfer documents for registration. Registration of the transfer is critical to your ownership of the Property and you should follow up your financier after settlement to ensure registration. If you require us to follow up your financier, please let us know (but this will be an extra cost to you).

13. Early possession

If the Seller agrees to let you into possession of the Property before settlement, the Contract provides that:

a. you must maintain the Property in substantially the same condition at the date of possession except for fair wear and tear (which obliges you not only to look after the Property but also to refrain from making any alterations to it including any improvements on the land and any landscaping);

b. your entry into possession is under a personal licence that the Seller can revoke at any time;

c. you must insure the Property to the Seller's satisfaction; and

d. you indemnify the Seller against any expense or compensation incurred as a result of your possession.

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

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

a. you do not settle and have not maintained the Property – as the Seller may claim compensation from you;

b. you do not settle and have improved the Property in any way – as the Seller is not specifically required under the Contract to compensate you for any improvements and court action to seek compensation may be costly;

c. the Seller revokes your licence to possession (for any reasonable reason and at any time) and you resist eviction from the Property – as the Contract requires that you repay the Seller's eviction costs and the Seller may claim compensation from you for loss (e.g. if they cannot tenant or sell the Property); or

d. the Seller seeks to enforce the indemnity you provided to claim for any expenses or damage incurred as a result of your possession.

Other rights (including some possible termination rights) may be lost once you take possession. For example, taking possession means that you will lose your statutory right to terminate the Contract if the Property is a dwelling or residential unit that is or later becomes so destroyed or damaged as to be unfit for occupation as a residential dwelling (see "Insurance and Risk" section above).

There may be other issues that need to be considered such as any effect early possession may have on land tax liability in relation to the Property.

If you are considering taking early possession please contact us before you enter into possession of the Property or you make an agreement with the Seller to do so.

14. Pool safety

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 that is subject to these laws please contact us.

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

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

If there is a non-shared swimming pool on the Property (or on adjacent land used in association with the Property), as part of Seller Disclosure, the Seller must give you a Pool Safety Certificate ('**PSC**') or Exemption Certificate ('**EC**') or a Form 36 Notice of No Pool Safety Certificate (if there is no PSC or EC in effect).

If you settle without a current PSC or EC you will be responsible for obtaining a PSC and carrying out all works (at your cost) required to meet the standard (e.g. upgrading the pool fence).

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

14.4. Non-shared pool – Seller Disclosure and Contract requirements

Under the *Property Law Act 2023* (Qld) ('**PLA**'):

- Unless the Seller gives you a Form 36 Notice of No Pool Safety Certificate or PSC or EC before you enter into the Contract, you can terminate the Contract;

- If the Seller provides a PSC or EC before you sign the Contract that is inaccurate or incomplete in relation to a material matter, then you may have rights to terminate the Contract if you would not have signed the Contract had you been aware of the correct state of affairs.

If you do not terminate the Contract pursuant to your rights under the PLA, the Seller must give you a PSC or EC at or before settlement, failing which you can also terminate the Contract.

14.5. Shared pool

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

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

a. before you enter the Contract – to you as the Buyer; and

b. before settlement – to the body corporate (usually the owner of the shared pool) and the QBCC.

The consequences for you are that the body corporate must obtain a PSC at its cost and may be liable for a financial penalty for not already having obtained the certificate. You may be called upon to contribute your proportionate share of the cost to obtain the PSC and any penalties imposed on the body corporate, through body corporate levies.

14.6. Prohibition on letting

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

14.7. Penalties

There are substantial penalties for non-compliance.

14.8. Pool Safety Register

Owners of swimming pools are responsible for ensuring that their pool is recorded in the Pool Safety

Register. Failure to do so can result in a fine. We do not give this notice on your behalf.

14.9. Retainer exclusion

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

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

15. Foreign ownership

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

a. obtain a notification from the Foreign Investment Review Board ('**FIRB**') under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) ('**FAATA**') that it has no objection to your acquisition of the Property ('**No Objection Notification**');

a. notify Titles Queensland under the *Foreign Ownership of Land Register Act 1988* (Qld);

b. register the asset on the Register of Foreign Ownership of Australian Assets under FAATA within 30 days after settlement; and

b. pay additional foreign acquirer duty in addition to transfer duty (see below).

Please call us if you think this applies to you. There may be significant fees required to obtain the No Objection Notification, which are not refundable if the Contract does not settle.

The Contract contains a warranty by the Buyer that the purchase of the Property is not a notifiable action under FAATA or that the Buyer has obtained a No Objection Notification under that FAATA.

For the purposes of applying FAATA:

a. a corporation is considered to be a foreign person if an individual not ordinarily resident in Australia, a foreign corporation or a foreign government holds a substantial interest in the corporation (at least 20% voting entitlements or shares) or two or more persons, each of whom is an individual not ordinarily resident in Australia, a foreign corporation or a foreign government, hold an aggregate substantial interest;

b. a trustee of a trust is considered to be a foreign person if an individual not ordinarily resident in Australia, a foreign corporation or a foreign government holds a substantial interest in the trust (at least 20% of the income or property of the trust) or two or more persons, each of whom is an individual not ordinarily resident in Australia, a foreign corporation or a foreign government, hold an aggregate substantial interest in the trust; and

c. the trustee of a discretionary trust where a foreign person holds any beneficial interest in the trust is generally considered to be a foreign person in their capacity as trustee of the trust.

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

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

Australian Taxation Office ('ATO') Requirements

If the Property is not occupied or genuinely available for rent for at least half of the year, the ATO may charge you an annual fee equal to the relevant foreign investment application fee imposed on the Property. From April 2024, this fee was significantly increased by the Australian Government.

If this applies, this is your responsibility to seek advice on and comply with the relevant foreign ownership occupancy requirements and is outside the scope of our retainer.

A foreign person who has purchased residential real estate in Australia must register their acquisition on the Register of Foreign Ownership of Australian Assets maintained by the ATO within 30 days of settlement. It will be your responsibility to attend to any required registration (which is outside the scope of our retainer). Required reporting must be made using the ATO's online notification system. You will need to create a 'myID' to access this service.

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 not part of the scope of our retainer.

15.2. Additional Foreign Acquirer Duty ('AFAD')

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:

a. established homes and apartments;

b. vacant land on which a home or apartment will be built;

c. land for development for residential use; and

d. refurbishment, renovation or extension of a building for residential use.

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

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

a. a foreign individual 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);

b. a foreign corporation i.e. a corporation incorporated outside Australia or a corporation in which foreign persons have a controlling interest; or

c. 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.

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

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

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

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

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

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

16. Residential tenancies

16.1. Existing Residential Tenancy

The Seller Disclosure must include details of any tenancy or lease (including any unregistered or oral tenancy or lease). If the Property is sold subject to an existing residential tenancy.

You can also request the entry condition report; the most recent routine inspection report the RTA Form 2 Bond Lodgement form; and the current Tenant's tenancy application, and if any of these documents are in the Seller's possession, they will have to provide them to you.

We recommend you instruct us to request and review all relevant tenancy documents to ascertain:

a. if the tenancy is an enforceable agreement under the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) and if the Seller complied with disclosure required under it;

b. whether the term is fixed or periodic and the time left to run;

c. if the tenancy is longer than three years, that it is registered;

d. if the rent or any other payments are in arrears;

e. if there are any special arrangements between the Seller and the tenant not in the tenancy agreement;

f. any discrepancies between the Contract and the tenancy agreement;

g. any unusual provisions in the tenancy agreement;

h. whether a bond is held by the Residential Tenancies Authority;

i. that the Seller can provide you with sufficient evidence of the last rental increase; and

j. whether the Seller is in dispute with the tenant,

so that we may advise you about your rights and any circumstances in which you may terminate the Contract if anything adverse is discovered. If you do not instruct us, then a review of this nature is outside the scope of our retainer.

16.2. Current and Proposed Tenancies – Limits on rent increases

Rent for each residential premises comprising the Property may only be increased once per year. This applies even if there is a change in owner and tenant, or there is no existing tenancy in place for the Property.

A tenancy may have been granted in the past 12 months on all or part of the Property on an informal basis, i.e. where a residential tenancy agreement was not signed by the parties, and the amount charged for rent was below market rent.

Such an informal tenancy arrangement may still fall within the definition of a 'residential tenancy agreement', and therefore affect the amount of rent you may be able to request for the Property, until the expiry of 12 months from such prior informal agreement (if that was the last rent increase).

While the Seller warrants that the statements made in the Contract regarding residential tenancy agreements and rooming accommodation agreements are true and correct, it is important that you let us know if you are aware of any formal or informal tenancies in the Property in the past 12 months as this may affect the rental you may recover after settlement, and you may have a right to compensation if this was not correctly disclosed in the Contract.

16.3. Bond transfer – residential tenancy

The usual process for the transfer of the tenancy agreement and bond is as follows:

a. A Residential Tenancies Authority Form 5 Change of Lessor or Lessor's Agent is prepared by us or your proposed management agent. Please instruct us who you intend to appoint as management agent or organise your appointed management agent to complete the Form 5 and send it to us.

b. We will send the Form 5 to the Seller's Solicitors for the Seller or their management agent to sign.

c. The Seller's Solicitors will deliver the completed and signed Form 5 to us at settlement.

d. Following settlement we will forward the Form 5 to you for you or your management agent to lodge with the Residential Tenancies Authority.

e. Upon receipt, you must immediately

   i. send a copy of the Form 5 to the Residential Tenancies Authority; and

   ii. send a copy to the tenant so that the tenant knows to pay future rent to you as landlord.

17. Instalment contract

A Contract can become an instalment contract if a buyer is bound to make one or more payments by instalment of the purchase price of the land, other than a deposit of not more than 10%, and is not entitled to receive title in exchange for the payments.

In some cases, a Contract may allow for the Buyer to elect to perform it in a way that would make the Contract an instalment contract (e.g. by paying a deposit of greater than 10%). In that case, the Contract will not be an instalment contract unless the Buyer gives notice to the Seller electing to perform the Contract in that way.

The effect of the Contract being an instalment contract is:

a. If you default in the payment of any instalment or part of the purchase price (other than a deposit), the Seller cannot terminate the Contract until 30 days after having served a notice, in the approved form, giving you 30 days within which to make payment. If you choose to make payment within the 30-day period then the Seller cannot terminate the Contract as a consequence of your initial non-payment. This means that where the default is in the payment of the balance purchase price, you can effectively obtain another 30 days in which to settle;

b. The Seller is prohibited from re-selling or re-mortgaging the Property before settlement without your consent;

c. You may lodge a caveat under s93 PLA which forbids the Seller to register any document affecting the land until Settlement;

d. Provided you are not in default, you may give notice to the Seller that they require settlement on a nominated date in exchange for the balance of purchase money owing. The notice must make time of the essence and be given at least thee months before the day of settlement;

e. The Seller may be required to comply with the National Credit Code, including the requirements for pre-contractual disclosure, ongoing notices and certain pre-requisites to enforcement.

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

18. Settlement - adverse events

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

An adverse event means an event that causes serious disruption to a community, including, for example:

a. a cyclone, fire, flood, landslide, seismic event, storm, storm tide, tsunami or tornado; and

b. a public health emergency under the *Public Health Act 2005* (Qld); and

c. a requirement to comply with a lawful direction or order given by a government entity under a law of the Commonwealth or a State; and

d. an act of terrorism, activity related to war, civil commotion, public disturbance or riot; and

e. an explosion or sudden impact of an object, including, for example, an aircraft or object from space;

As soon as practicable after the adverse event, the parties can agree to a new settlement date and time, otherwise the non-attending party can give a notice to the other party to settle on a date that is at least 5 business days and not more than 10 business days after the notice is given.

19. Water entitlements

Water rights or entitlements may often be important in relation to the use of some land (particularly land which is used for agricultural purposes). A land owner may require a licence for taking or interfering with surface water, overland flow water or underground water or a water allocation to take and use water from a particular catchment for use on the land.

If water entitlements are critical to your objectives, the current or future use of the land or property finance arrangements, you should be aware that there are risks associated with water entitlements and that they may be affected by future government changes in the management of water resources including a reduction in entitlements or a change in classification of entitlements. This may result in a significant reduction in the value of those water entitlements (and a consequent reduction in the value of land which benefits from the entitlements). You should be aware that there are very limited options to challenge or seek a review of any reduced or changed water entitlements (regardless of any property ownership rights you have). Seeking to review any water

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

20. Town planning

20.1. Retainer

a. Town planning information and advice

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

Site Issues and Planning Laws

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

If you are concerned about the impact of any of these things on your use of the Property then you should engage a town planner, a solicitor with town planning experience or make your own enquiries with the relevant local council.

Other Laws

Local laws concerning:

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

20.2. Planning and development certificates

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

a. Limited certificate - (takes approximately five business days) provides:

i. information as to the town plan area or zone in which the Property is located;

ii. by reference to the plan, a description of the planning scheme provisions applying to the Property; and

iii. a copy of any information recorded for the Property in the infrastructure charges register kept by the local authority (including the amount of any unpaid charge applying to the Property).

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

b. Standard certificate - (takes approximately 12 business days) provides:

i. the same information as in a limited certificate; and

ii. a copy of every decision notice or negotiated decision notice for a development approval that has not lapsed, which has been issued by the local authority for the Property.

By looking at the existing use of the Property, the local authority area or zone and the approvals obtained, it is possible to ascertain if the Property is capable of being lawfully used for its existing use or for other uses.

The certificate does not identify compliance with any approval conditions.

c. Full certificate - (takes approximately 30 business days) provides:

i. the same information in a limited certificate and standard certificate; and

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

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

As a consequence, a full certificate takes a minimum of 30 business days to obtain and you may not receive it in sufficient time to exercise any rights under the Contract. The certificate is legally binding on council and the search may discover non-compliance issues that the other town planning certificates will not.

Recommendation on Planning and Development Certificates

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

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

If it is discovered that at the Contract Date there is an outstanding condition of a development approval which, if complied with, would require the grant of an interest in land such as an easement, you may be able to terminate the Contract (see item 5.4).

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

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

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

In some circumstances, it may be sufficient to obtain a limited or standard certificate, or to make alternative investigations such as obtaining a copy of the Development Approval if available online, then

consulting with town planners and checking title and other searches however, this may not identify all the conditions that might not be fulfilled. In the case of a unit in a building, the issue of a certificate of occupancy usually demonstrates that the local authority is of the view that the conditions of development approval have been satisfied.

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

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

21. Urban encroachment

The *Planning Act 2016* (Qld) enables registration of a premises' existing use with the Registrar of Titles to provide protection from legal proceedings for nuisance in relation to the emission of aerosols, fumes, light, noise, odour, particles or smoke. This is particularly relevant for areas where residential use is expanding 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 purchase from a seller who is the applicant under a development application and, when the Contract is entered into, the registration is not recorded in the appropriate register because the applicant failed to give notice to the Registrar of Titles, then you may end the Contract by giving a notice of termination at any time before settlement.

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

22. Land valuation and taxes

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

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

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

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

a. a concession under the *Land Tax Act 2010* (Qld) in relation to land tax payments for a principal place of residence; or

b. a rates concession, if you are a pensioner.

If you think you are entitled to these concessions, you should contact QRO or your local government.

23. Personal property securities

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

The Personal Property Securities Act 2009 (Cth) ('**PPSA**') applies to security interests in personal property, including goods and chattels, financial property, shares and intellectual property (personal property).

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

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

23.2. 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).

23.3. When do I need a specific release?

If:

a. personal property is included in the sale; and

b. a security interest is noted on the PPS register for that property; and

c. none of the extinguishment rules apply,

then the Seller is required to obtain from the secured party either a letter or financing change statement, which releases the personal property, and provide it at settlement. If you are uncertain about the legal position of the chattels, we recommend you instruct us to request a specific release from the Seller.

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

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

24. Combustible cladding

24.1. *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 CTS), the body corporate is taken to be the owner of the building.

24.2. Rectification

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

24.3. Notice that a building is affected

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

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

Part C - Body Corporate

25. Purchasing a lot in a Community Titles Scheme e.g. unit, townhouse

25.1. Community Titles Scheme

This Part applies if you are buying a lot in a Community Titles Scheme ('**CTS**').

A CTS contains individually owned lots and common property (for example driveways, pedestrian access ways and landscaped areas). The common property is owned by all lot owners (as tenants in common) and is administered by a body corporate.

The body corporate members are the owners of lots in the scheme.

Each body corporate member has the right to participate in general meetings of the body corporate where major decisions affecting the scheme will be made. The day-to-day administration of the scheme is generally conducted by a committee.

A scheme may be a basic scheme or it may be part of a layered arrangement. A basic scheme is one where land is subdivided into lots and common property to create a scheme with a single body corporate. A layered arrangement is a grouping of CTS's under a principal scheme. Both basic schemes and layered arrangements may be developed in stages. If there are stages of the development after your purchase, you may experience some disturbance as a result of further development works.

25.2. Living in a Community Titles Scheme

When purchasing a lot in a CTS, it is important to understand there are some practical differences, and often restrictions, when compared to living in a standalone house.

We have set out in this section important information that you should carefully consider when providing your instructions in relation to this purchase. For example, some issues that may exist within a CTS might only be discovered by a search of the Body Corporate records. These issues can have a significant impact on your use, enjoyment and potential future costs of the Lot.

One of the main differences of living in a CTS is that, while you own the Lot and may have exclusive use of certain areas of common property, the Body Corporate legislation and the Scheme by-laws may also impose restrictions on your use and any proposed changes you wish to make to the Lot.

As an owner of a Lot you are automatically a member of the Body Corporate, will be required to pay contributions toward the running of the Body Corporate and must comply with the by-laws.

Further, you may be required to seek approval for use or proposed changes to the Lot or exclusive use area.

For example:

a. Pets: The by-laws may specify whether pets are allowed and on what conditions or body corporate records for past pet approvals (noting that the law provides that by-laws must not prohibit pets but may impose certain conditions);

b. Smoking: The by-laws may prohibit or restrict the smoking or inhaling of all or some smoking products on all or part of the common property (unless an exclusive use area) and all or part of an outdoor area (including your own balcony, courtyard, patio or verandah);

c. Electric charging facilities for EV Cars: You may require Body Corporate approval to install an electric charging facility in your car park (whether as part of your Lot, or on common property), and there may be ongoing conditions attached to that approval. Some older Body Corporate infrastructure may not be suitable for charging facilities to be installed;

d. Improvements or changes to the exterior of the Lot: By-laws may restrict altering the look and feel of the exterior of a lot (which may also form part of common property) to ensure the Scheme remains aesthetically uniform and of a certain standard. This may affect your future proposed changes to the lot, such as renovations, installation of external air-conditioning units, or other improvements.

e. Use of shared (common) areas, such as pools, gym, BBQ facilities: There may be restrictions of the times and use (e.g. noise) of shared areas and facilities which could impact your intended use and enjoyment. It is important to understand what you are purchasing and what you will need to share with other people in the Body Corporate.

f. Hard floors: the CMS may prohibit the installation of hard flooring in the unit (particularly if the Lot is in a multi-level building).

g. Rules about balconies/patios: the development conditions and the CMS may prohibit you from enclosing any balcony/patio or from erecting any screening on any balcony/patio, which may reduce the privacy you can achieve on the Lot.

It is important that you read the information contained in the Body Corporate Certificate that was provided with the Seller Disclosure. There is also helpful information on the Office of the Commissioner for Body Corporate and Community Management website.

25.3. Building and pest reports

Please see item 2.4 in this Booklet and consider the following additional advice. If the Property you are purchasing is a lot in a CTS, under the Standard Contract the reports must relate to the Lot itself and fixed improvements on the lot. If the Contract has not yet been signed, you may wish to instruct us to request extending the clause's effect to cover inspecting any larger structure containing the lot and the common property of the scheme.

25.4. Certificate of occupancy

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

We recommend you instruct us to order a building search for a certification of occupancy. 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. You must check the building class of the lot to ensure that the certification of occupancy allows for your intended use.

25.5. Insurance

Please see item 3 in this booklet and consider the following insurance advice.

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

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

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

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

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

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

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

25.6. Body corporate disclosures

In addition to the information required to be provided in the Seller Disclosure, under the Standard Contract the Seller must notify you of any notices of body corporate meetings they 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 you are materially prejudiced by any resolutions passed after the Contract Date, you may be entitled to terminate the Contract. If disclosure is not made before settlement, you may sue for compensation. Please tell us if you are or become aware of any of the following:

a. any meetings or proposed meetings of the body corporate;

b. any resolutions of the body corporate (and where the scheme is a subsidiary scheme, any resolutions of a body corporate of a higher scheme);

c. any proposal to record a new Community Management Statement or amend, add to or repeal the by-laws or a notice of meeting for that purpose (which may include proposed adjustments to lot entitlements within the Scheme);

d. whether all body corporate consents to improvements made by the Seller to common property are not in place;

e. whether the exclusive use allocations given to the Lot are recorded or changed in the Community Management Statement or by-laws (for example, car parking);

a. a change in the insurance details for the building and public liability for the body corporate; or

f. whether the Seller has received any notice of a by-law contravention relating to the Lot from the Body Corporate or a Principal Body Corporate which has not been fully complied with or otherwise remains in effect.

25.7. Implied warranties given about the body corporate

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

a. any patent or latent defects in the common property or body corporate assets (for example, substantial building defects that require repair which can include common boundary walls of the lot or exclusive use areas and may include repairs required as a result of issues such as concrete cancer, structural or water issues and rectification works required because of the use of combustible cladding on the building);

b. any actual or contingent or expected liabilities of the body corporate not part of the body corporate's normal operating expenses (for example, litigation costs, significant debts or judgments or other liabilities that may result or have resulted in the levying of a special contribution); and

c. anything else you are aware of regarding the body corporate's affairs which may affect you.

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

We recommend you instruct us to conduct a full search of the body corporate's records so we may determine if any of the above exist and to identify if you have any potential right of termination or to compensation.

25.8. Community Management Statement ('CMS')

The CMS contains information relevant to you, 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 purchasing and the aggregate CSLE (which is the total of all CSLEs for all the lots in the scheme and determines what proportion of the body corporates levies you will be liable to pay compared to other lots). 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 CTS 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 will be liable to pay compared to other lots). For a scheme established after 14 April 2011, the CMS includes either a statement that the ISLE reflects the respective market values of the lots or an explanation as to why it is just and equitable in the circumstances for the ISLE not to reflect the respective market values of the lots;

c. the by-laws which apply to the scheme. You should read these by-laws carefully as they are the rules which apply to the scheme.; and

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

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

a. the CSLE are inconsistent with the principle upon which they were decided; and

b. you would be materially prejudiced if compelled to complete the Contract,

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

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

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

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

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

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

25.9. Review of caretaking and letting agreements

We will not conduct a review of any caretaking and letting agreements as part of our retainer unless that advice has been specifically requested and is agreed to be included in our retainer (for an additional cost).

If you would like us to review those agreements and provide a summary to you then please call us as soon as possible.

If you are purchasing the lot as an investment and will be relying on the income from the letting arrangements then we recommend you instruct us to review the letting arrangements that apply to your lot and advise you of the foreseeable legal risks arising from the transaction.

There are many possible letting arrangements that may apply to your lot. Below is a list of documents that may exist and may apply to your lot:

a. a product disclosure statement under the *Corporations Act 2001* (Cth) issued by the letting manager;

b. a caretaking and letting agreement entered into by the body corporate with the manager, and related compliance documentation (e.g. minutes, licence requirements);

c. an agreement appointing a letting agent for your Lot;

d. a tenancy agreement or lease between the Seller and any tenant of the Lot;

e. a leaseback agreement with the Seller; or

f. a rental guarantee offered by the Seller.

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

If we review any of the above documents that apply to your Lot we will not be providing financial or commercial advice about the Lot's viability as an investment. Our advice will be limited to the associated legal risks, for example issues such as:

a. costs associated with the entry into the investment, including commissions, entry fees, furniture;

b. costs associated with exiting the investment including penalties;

c. the terms and option periods of any leaseback to the Seller or letting agent;

d. legal risks which could impact on the Property's income stream, such as default by the Seller or third party under the leaseback, possibility of insolvency, default under any rental guarantees, the lack of a guarantee, the adequacy of the guarantees;

e. protecting you from risks of default by the Seller or a third party;

f. protecting yourself from future interest rate rises over the period of the investment;

g. the practical difficulties of renegotiating leases after the expiry of the leaseback arrangement; and

h. any restrictions on the use of the Lot for residential purposes if you wish to cease the investment at some stage.

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

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

25.10. Body corporate levies

The Standard Contract terms provide for the regular periodic contributions levied by the body corporate to be apportioned between the parties in the same way as rates.

Body Corporate budgets (including the amount required for levies and sinking fund) are usually reviewed every financial year at the Annual General Meeting. It is likely that your levies will increase each financial year.

The sinking fund contribution is an estimate of the annual contributions required in order to maintain a fund for the ongoing capital maintenance associated with the buildings within the scheme. Under the BCCMA, the original owner is required to prepare a Sinking Fund Analysis and present it to the body corporate at the first annual general meeting.

The Sinking Fund Analysis then dictates the sinking fund levy that applies to the building for the next 10 years.

Annual contributions to the sinking fund from the commencement of the scheme are intended to ensure that when major painting and repair work is required, the body corporate has collected sufficient funds in order to undertake the work required and does not have to issue a special levy at that point in time. The sinking fund may need to be revised upon receipt of the Sinking Fund Analysis.

The administrative fund contribution is an estimate of the annual contributions required for maintaining common property and Body Corporate assets, insurance charges and other recurrent expenditure such as Body Corporate management fees.

The Seller will be solely responsible for the payment of any special contribution for which the body corporate has issued a levy notice on or before the Contract Date. **You will be responsible for any special contribution levied after the Contract Date.** To comply with warranties the Seller gives to you, the Seller should disclose any special contribution to you in the Contract (irrespective of which party is responsible for their payment).

25.11. Body corporate notices

The Seller must notify you of any notices of body corporate meetings or any resolutions passed at a body corporate meeting after the Contract Date.

If you are materially prejudiced by any resolutions passed after the Contract Date and the detail of these were not disclosed in the Contract, you may be able to terminate.

If you are notified of or become aware of a body corporate meeting proposed to be, or actually, held after the Contract Date you should contact us.

25.12. Body corporate searches

If the Contract is subject to satisfactory Body Corporate Records Inspection, you must take all reasonable steps to inspect the records. We can assist you in obtaining a report.

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 inspect the records.

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

However, this option is available if you require. 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.

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

a. lot entitlement changes (past, proposed or possible future amendments);

b. checking that all meetings, motions, notices and other records of the body corporate are in order and in compliance with body corporate law and regulations (including meetings and motions originally allocating or subsequently re-allocating exclusive use areas);

c. checking all past and present infringements of the body corporate by-laws by the Seller and other body corporate members;

d. a review of all the body corporate by-laws to check whether any are inappropriate, unenforceable or illegal;

e. a review of the body corporate by-laws to check whether pets are allowed and on what conditions or body corporate records for past pet approvals (noting that the law provides that by-laws must not prohibit pets but may impose certain conditions);

f. whether any statutory easements for services run through the lot or allocated exclusive use areas;

g. body corporate agreements with body corporate managers, service providers or employees;

h. other agreements that the body corporate may have in place, including those with other bodies corporate for the sharing of exclusive use areas such as car parking or facilities such as gyms or common areas;

i. a review of any Building Management Statement and checking compliance with its terms; or

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

In addition, our retainer does not include advice about the effect of proposed future meetings of the body corporate.

There is a risk that not all adverse issues with a body corporate will be discovered.

We must notify the Seller in writing on or before 5pm on the inspection date as to whether you are satisfied that you will not be materially prejudiced by any circumstances discovered in the Body Corporate records inspection (or elect to waive) or whether you are not satisfied and wish to terminate the Contract.

If the records have not been inspected by the inspection date you can instruct us to seek an extension, however, the Seller may not agree to the extension.

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

If you have taken all reasonable steps to do so, but have been unable to inspect the Body Corporate's records by the Records Inspection Date, then you may instruct us to terminate.

After the records inspection, if you are not satisfied with the results on the basis that you are materially prejudiced by circumstances discovered in the inspection, then you may instruct us to terminate. Contact us as soon as possible to discuss the issue of material prejudice arising from the inspection of Body Corporate records.

If you terminate, the Seller is entitled to request your written reasons, and you must provide them without delay.

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

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