Residential Conveyancing Booklet  
(For Sellers)  

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1. **INTRODUCTION**

This Residential Conveyancing Booklet ("the Booklet") is to be read in conjunction with our letter ("the First Letter") and the enclosures to the First Letter.

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

We may give you advice during your transaction on rights that you could have, such as rights to terminate the contract or to claim damages from the buyer. This advice may be general (eg. advice contained in the Booklet) or specific (eg. advice contained in the Report).

Any such rights may be subject to the Court considering you to have lost them by actions or steps you take in the conveyance - particularly those you take after you become aware of those rights. It is critical that if we have advised you about any rights and you consider that you may want to rely on them that you contact us as soon as possible to discuss. Otherwise any rights or options may be lost.

2. **OUR RETAINER**

2.1 **What is included in our retainer?**

Our retainer includes all things the Queensland Conveyancing Protocol (endorsed by the Queensland Law Society) recommends as being usual and necessary for a sale in Queensland.

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

2.2 **What is excluded from our retainer?**

Our retainer does not extend beyond what is usual and necessary in the conveyancing process. We consider the following to be excluded:

(a) **Financial and tax advice**

We do not give advice on the commercial viability, tax and other financial implications of the sale. If you require advice on the commercial viability or the tax implications of the sale (including Capital Gains Tax and Goods and Services Tax) you should seek the advice of a specialist financial advisor or tax professional, such as your accountant. This includes advice on whether or not the standard contract provisions relating to GST are appropriate for your circumstances.

Advice from your tax accountant or financial advisor could be particularly relevant for circumstances which may include if you bought the property before the CGT or GST regimes were introduced or are selling an investment, with or as part of a business, you substantially renovated the property, you are the executor of an estate or you did not use the property solely as your main residence.

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

(b) **Succession and matrimonial advice**

This transaction may affect your succession planning or any arrangements with your current or former spouse (whether a marriage, de facto relationship or registered relationship). We recommend that you obtain legal advice about wills and other succession planning and any family law agreements or other spousal arrangements.

(c) **Survey**

We do not conduct a survey of the property. Issues such as errors in the boundaries, area of the land or encroachments by structures onto or from the land are not likely to be identified unless a survey is conducted. While it is not usual for a seller to conduct a survey, a buyer may have rights of termination or compensation if any encroachments are identified and
notified before settlement. If you are aware of any of these issues affecting the land please tell us so they can be disclosed in the contract.

(d) **Eligibility for grants, schemes and concessions**

If you have previously obtained the first home owners grant, first home owners construction grant, building boost, great start grant or a first home, home or first home vacant land duty concession, your sale of the property may affect your continued eligibility for these schemes. We do not check whether you will have any obligation to refund a part or all of your entitlement to a concession or grant. See paragraphs 7.3 and 7.4 for further information.

(e) **Building contracts and other related agreement**

We recommend that you obtain legal advice on any building contracts or other related agreements as this is beyond the scope of our retainer with you.

(f) **Document Retention**

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

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

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

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

3. **EXPLANATION OF THE CONTRACT TERMS**

3.1 **Method of Sale**

In Queensland property is sold by the following methods:

(a) private treaty, where you usually negotiate the contract price and terms with the buyer, often with the assistance of a real estate agent;

(b) auction, where terms are set by you and the price determined by competitive bid, subject to a reserve; or

(c) tender, this is another form of competitive bidding.

3.2 **Form of contract**

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

(a) Houses and Residential Land (Ninth Edition); and

(b) Residential Lots in a Community Titles Scheme (Fifth Edition).

You should read your contract in detail.

In this section we point out contract terms important to your sale.

3.3 **Reference Schedule**

The reference schedule contains the particulars relevant to your contract. You must check they are accurate and tell us as soon as possible if they are not.

3.4 **Time essential**

Time is of the essence of the contract. This is a legal term that means you must perform your obligations strictly by 5:00pm (or other specified times) on the due date. For example, you must be able to settle on the settlement date or else the buyer may either terminate or seek to enforce the contract. In both cases, the buyer may claim compensation from you.
3.5 Natural disasters

If a party is not able to meet their settlement obligations because of a natural disaster (for example the January 2011 South-East Queensland floods) then in certain limited circumstances time will no longer be of the essence. The party affected must make all reasonable efforts to minimise the effect of the natural disaster on their ability to perform their settlement obligations.

When the natural disaster no longer prevents performance of settlement obligations there are notices that must be served to make time once again of the essence. If this becomes relevant we will advise you.

The suspension of time will then end and both parties are obliged to settle on the date stated in the notice.

3.6 Default interest

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

3.7 Deposit

Payment of the deposit is a sign of the buyer's intention to proceed with the contract. It is usually a substantial amount (but no more than 10%).

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

If the buyer terminates the contract for a valid reason, then the deposit is usually repaid to the buyer. If the buyer does not pay the deposit on time or the buyer otherwise breaches the contract, you may be able to terminate the contract or seek an order from the court requiring the buyer to settle. You may be able to keep the buyer's deposit and recover from the buyer any part of the deposit not paid. If you are obliged to pay GST you will have to pay GST on the kept deposit. You may also be liable to pay your agent's commission but may be entitled to claim this and other compensation from the buyer.

3.8 Finance

If the contract is subject to finance, the buyer is required to take all reasonable steps to obtain finance approval and notify us as to whether finance is approved before 5:00pm on the finance date. If the buyer does not notify us that finance is approved then the contract remains on foot and either party can terminate the contract.

The buyer also has a continuing right to give notice of receipt of satisfactory finance or alternatively to waive the benefit of the finance condition up until the time the contract is terminated by you.

3.9 Building and Pest Inspections

If the contract is subject to building and pest reports, the contract requires the buyer to take all reasonable steps to obtain the reports - although the buyer may elect to only obtain one of the reports.

The buyer must use a licensed building inspector for the building report and both the building and pest reports must be in writing, otherwise the buyer will not be able to terminate the contract on the grounds that they are not satisfied with the building and pest inspection.

The buyer must notify us as to whether the reports are satisfactory before 5:00pm on the inspection date. If the buyer does not notify us that the building and pest reports are satisfactory then the contract remains on foot and either party may terminate.

If the buyer terminates the contract then you are entitled and we recommend that you request a copy of any reports from the buyer. The buyer must provide them without delay. If the buyer gives notice of an unsatisfactory report, you should contact us as soon as possible to discuss getting a copy of the report and whether the buyer would be 'acting reasonably' by terminating in the circumstances.

The information in the report may assist you to negotiate to keep the current buyer or it may assist you to rectify the deficiency in the property or adopt a different marketing strategy.
The buyer also has a continuing right to give notice of receipt of satisfactory reports or to waive the benefit of the building and pest condition up until the time the contract is terminated by you.

3.10 **Cheques for Settlement**

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

3.11 **Fraud, Identity Theft and Hacking**

There has been a recent increase in the number of attempted frauds relating to real estate. It is essential to the conveyancing process that you provide us with a range of private information. Much of that information can be obtained by fraudsters and identity thieves from publicly available records or by hacking, phishing or trolling through unsecure email transmissions.

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

We will take efforts, such as obtaining personal identification from you, to assist to minimise the risk that fraud is committed.

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

(a) verify that all requests for transfers of money have been legitimately requested by our firm or your financier - despite how legitimate the request may appear;

(b) do not transfer any money to any account other than our trust account (at our request - details of which are in the To-Do List) or to your existing bank or mortgage accounts (at your financier’s request) - without first verifying with us that the transfer is necessary for your transaction;

(c) if you are contacted by someone you don’t immediately personally recognise representing themselves to be from our firm, your financier or somehow linked to the transaction, ask the representative some historical questions about the transaction that you can be certain will verify that they are who they say they are;

(d) try to avoid at all costs sending personal and sensitive information such as bank account numbers via email; and

(e) where instructions are requested or advice is provided via email, independently confirm them by another form of communication.

4. **INSURANCE**

The property is at the buyer’s risk from 5:00pm on the first business day after the contract date. Despite this, we strongly recommend that you maintain your insurance policy until we have confirmed that settlement has been effected. There are many circumstances in which the risk will pass back to you without notice (even after the contract is unconditional) and failure to maintain adequate insurance could result in significant loss to you.

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

However, if the property is damaged in any way between the Contract Date and settlement (for example, due to fire or vandalism) then you will likely be able to require the buyer to settle in accordance with the contract irrespective of the damage (unless the buyer has another right of termination it can exercise, such as a residence being so destroyed or damaged as to be unfit for occupation).

5.1 Residential Property - Warning Statement & Information Sheet

PAMDA requires that all contracts for the sale of residential property in Queensland have attached:

(a) a PAMD Form 30c Warning Statement ("Warning Statement"); and
(b) for a unit - a BCCM Form 14 Information Sheet ("Information Sheet").

The only exceptions are where:

(a) the property is sold at auction directly on the fall of the hammer, by outcry, or directly at the end of another similar type of competition (however if the property is passed in, a Warning Statement and Information Sheet must be attached to the contract); or
(b) a buyer drafts and submits a signed contract to a seller as an offer to buy.

PAMDA also requires that a certain process be followed and certain directions be given by a seller or the seller's agent in the formation of a contract. This involves:

(a) ensuring that the correct version of the Warning Statement and Information Sheet have been properly attached to the contract; and
(b) ensuring that the buyer's attention has been properly directed to the Warning Statement, the Information Sheet (if a unit) and the contract.

If the Warning Statement and the Information Sheet (if a unit) are not properly attached or the buyer's attention is not properly directed to the relevant documents in accordance with PAMDA then the buyer may be able to terminate the contract, unless one of the bars to termination apply, namely that:

(a) the buyer signed the Warning Statement and if a unit, the Information Sheet, which were attached to the contract at the time of signing, before signing the contract; or
(b) more than 90 days has elapsed from the day the buyer received the contract signed by both parties.

5.2 Non-Residential Property - Information Sheet

The BCCMA requires that all contracts for non-residential lots in a community titles scheme have attached an Information Sheet when given to the buyer.

If the correct version of the Information Sheet is not attached when the contract is given to the buyer then the buyer may be able to terminate the contract at any time until settlement, irrespective of whether the buyer signed an Information Sheet or how the property was sold.

5.3 Information relevant to PAMDA and BCCMA compliance

You should let us know as soon as possible if you have any concerns about the formation of the contract, for example - you have reason to believe that - for the sale of a residential lot:

(a) the buyer's attention was not directed, either verbally or in writing, to the Warning Statement before the buyer signed the contract;
(b) the Warning Statement was not attached to the contract either when the buyer's attention was directed to it or when the buyer signed the contract;
(c) the buyer signed the contract before signing the Warning Statement;

and if you are selling a residential unit:

(d) the buyers’ attention was not directed, either verbally or in writing, to the Information Sheet before the buyer signed the contract;
(e) the Information Sheet was not attached to the contract either when the buyer's attention was directed to it or when the buyer signed the contract; or
(f) the buyer signed the contract before signing the Information Sheet;

and if you are selling a non-residential unit - if the Information Sheet was not attached to the contract when it was given to the buyer.
5.4 Cooling Off Period

If PAMDA applies, the buyer is entitled to a 5 business day cooling off period unless the buyer waives the benefit of the cooling off by providing a PAMD Form 32a certificate signed by their lawyer to you. This period starts on the day that the buyer or the buyer's lawyer receives the contract signed by both parties, returned in accordance with PAMDA or if you signed the contract before the buyer did, then on the day that the buyer signed the contract and communicated acceptance to the seller. The cooling off period ends at 5:00pm on the fifth business day.

The buyer is entitled to terminate the contract during the cooling off period. If the buyer terminates the contract during the cooling off period, you are entitled to retain a termination penalty of 0.25% of the purchase price from the deposit up to a maximum of the full deposit amount. The balance deposit must be refunded to the buyer within 14 days following termination.

It is possible for a buyer to waive the benefit of the cooling off period by giving a properly completed Lawyer's Certificate in the approved form before signing the contract. It is up to you whether you wish to insist on this from the buyer or not. If you require the buyer to waive the benefit of the cooling off period, please call us to discuss.

5.5 Valuation

The contract provides that you must allow the buyer's valuer access to the property once before settlement for the purpose of valuing the property (after receiving reasonable notice).

5.6 Vacant land - Non-residential use pre-contract notice

If you are selling vacant land through an agent or auctioneer and at the date of the contract the land is not able to be lawfully used for residential purposes your agent or auctioneer is required to give the buyer a notice under sections 149/226 of PAMDA before the buyer enters the contract stating that the land is not able to be lawfully used for residential purposes.

If:
(a) you are selling vacant land;  
(b) the land cannot be lawfully used for residential purposes; and  
(c) your agent or auctioneer has not given a notice under s.149/s.226 of PAMDA that the land cannot be used for residential purposes or the notice was materially defective,

you need to tell us as soon as possible, as the buyer may have a right under PAMDA to avoid the contract by giving a notice within 6 months of the contract date.

If this occurs, you and your agent may both be liable to pay to the buyer all amounts paid by the buyer under the contract and amounts paid for legal and other expenses after the contract was signed. The buyer may also require that the property be reconveyed to you following settlement and that you pay the associated costs. It is therefore important to ensure this notice was given before the buyer signed the contract.

If this notice has been given please forward a copy to us to check.

If the notice has not been given and the contract has not yet been issued we will arrange for the notice to be prepared and issued before the contract.

If the notice has not been given and the contract has issued to the buyer but not yet been signed, we suggest the contract be withdrawn and reissued after giving the notice.

If the notice has not been given and the contract is signed the only sure way to rectify the problem is for the buyer and seller to mutually terminate the contract and reissue in the proper manner. Before taking any action you should contact us for further advice so you can make an informed decision on how to proceed.

6. WARRANTIES AND DISCLOSURE

6.1 Seller's warranties

Under the contract the seller gives warranties about various things which could affect the property, in particular:

(a) that you are the registered owner of the property;
(b) you are capable of completing the sale;
(c) there are no unsatisfied judgments, orders or writs affecting the property (and if a unit, the common property) and no current threats or claims that might lead to a judgment order or writ affecting the property (and if a unit, the common property);
(d) there are no unregistered encumbrances, leases or other dealings;
(e) in relation to the Environmental Protection Act 1994 ("EPA"):
   (i) there is no outstanding obligation to give notice under the EPA of a notifiable activity on the land;
   (ii) you are not aware of facts or circumstances that may lead to the land being classified as contaminated under the EPA.

6.2 Consequence of breach of warranty

If you breach any of these warranties the buyer generally may:
(a) terminate the contract no later than 2 days before settlement; or
(b) claim compensation, before settlement, and proceed to settlement.

6.3 Property adversely affected

If the property (including any part of the Scheme Land if the property is in a body corporate) is affected at the contract date by any of the following:
(a) the present use is not lawful;
(b) the land is affected by a proposal of a competent authority e.g. Transport Infrastructure;
(c) access or any services to the land passes unlawfully through other land;
(d) an authority has issued a current notice to treat, or notice of intention to resume;
(e) the property is affected by the Queensland Heritage Act 1992 or is included in the World Heritage List;
(f) the property is declared acquisition land under the Queensland Reconstruction Authority Act 2011;

and these facts are not disclosed in the contract, then the buyer is entitled to terminate the contract up until 2 business days before settlement. If the buyer does not terminate in accordance with the contract, the buyer will be treated as having accepted the property subject to these issues.

6.4 What you may need to disclose

To enable us to make the appropriate disclosure or to advise you on the consequences of disclosure having not been made, please call us if you are aware of any of the following, or other particular or unusual features affecting the property, such as:
(a) unregistered encumbrances and other government rights or interests that may affect the property, for example, water, sewerage or combine drains through the property;
(b) urban encroachment – if in the Milton Rail Precinct or other declared area – an affected area notice (see comments in clause 6.7);
(c) access rights for geothermal exploration or production under the Greenhouse Gas Storage Act 2009, Geothermal Energy Act 2010, or the Petroleum and Gas (Production and Safety) Act 2004;
(d) notices to do work issued by the local government or any court or tribunal;
(e) building covenants;
(f) easements;
(g) equitable mortgages;
(h) leases;
(i) known minor encroachments by fences or trees;
(j) any heritage listings;
(k) road widening or any notice of a proposed road widening;
(l) proposed resumptions;
(m) any unsatisfied judgments, orders or writs affecting the property, the common property or body corporate assets;
(n) any threatened claims notices or proceedings that may lead to a judgment order or writ (e.g. orders or applications to QCAT in relation to trees on the property); or
(o) ongoing conditions of development approvals, for example, the existence of a bushfire management plan affecting the property.

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

6.5 EPA Disclosure

The EPA requires that you make a specific disclosure before entering into an agreement with the buyer if any of the following are applicable:

(a) if the land (including the common property if in a body corporate) is listed on the Contaminated Land Register or Environmental Management Register;
(b) if the land is the subject of a notice issued under the EPA - these notices are generally about investigations or things to do with contamination or notifiable activities on the land (such as the storage of petroleum on the land); or
(c) if a magistrate issues an order under the EPA for an authorised person to enter the land to conduct an investigation or to conduct work.

If any of these situations arise and they are not disclosed in a notification by you under the EPA before the buyer enters into the contract then the buyer may terminate the contract by notice given before the earlier of settlement or possession. In this event, all money paid by the buyer must be refunded.

Please contact us as soon as possible if you think any of these issues may apply to the land or if you think that it may be contaminated. If the contract has not been signed it is important that these issues be disclosed in a notice to the buyer before entering into the contract.

6.6 Administrative Advices

Administrative advices may also reveal other interests impacting on the land that require disclosure by you such as heritage listing or agreements, coastal protection notices, nature conservation orders, vegetation clearing offences, Milton Brewery notices (for a unit) or water licences.

In addition, if an administrative advice is lodged on the title where land is declared acquisition land under the Queensland Reconstruction Authority Act 2011 (Qld) then the following applies:

(a) you are not able to sell the land other than to the relevant authority; and
(b) if you do want to sell the land the relevant authority must acquire it.

If as at the Contract Date the land is declared to be acquisition land and disclosure has not been made in the contract then the buyer may be entitled to terminate the contract by giving notice no later than 2 business days before the Settlement Date.

If there is an administrative advice of this nature on your land, you should not sign a contract to sell the land to any person other than the relevant authority. However, if you have already signed a contract:

(a) the contract is not invalid and the buyer is treated as having received notice that the land is declared acquisition land;
(b) your rights as seller and any rights that the buyer may have will depend upon the terms of the contract, including possible rights of termination for the buyer.

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

There may also be unregistered interests affecting the title under statute such as access agreements under the Greenhouse Gas Storage Act 2009; Geothermal Energy Act 2010; Petroleum and Gas (Production and Safety) Act 2004. Please tell us as soon as possible if you think any of these issues may affect the property.

The buyer rights in relation to any administrative advice depend on the content of the notification which gives rise to the administrative advice and the extent of disclosure in the contract or otherwise, including possible rights of termination.

6.7 Urban Encroachment

Chapter 8A of the Sustainable Planning Act ("SPA") contains provisions about Urban Encroachment. These provisions provide for the registration of specific administrative advices on title in geographical areas that are known to be affected by the emission of aerosols, fumes, light, noise, odour, particles or smoke.

SPA requires:
(a) registration of existing uses;
(b) mapping of affected areas;
(c) the lodgment of an affected area notation as an administrative advice on the title; and
(d) restrictions on the owner or occupier of affected premises, which are the subject of an application for intensification of use from taking proceedings against any person carrying out an existing use who has acted in compliance with the conditions of its approval and any environmental laws.

There is no statutory or contractual right to terminate a contract if it is discovered that the property being sold is in an affected area, except in the Milton Rail Precinct as set out below.

If you are selling a lot in a CTS in the Milton Rail Precinct which is subject to a current development application made before 27 April 2009 the buyer is entitled to terminate the contract unless the buyer has received an affected area notice at or before entering the contract of sale. If you are unsure as to whether this applies to your lot, please contact us as soon as possible.

In addition, for premises which are in an affected area, you or your agent must before leasing the premises, give a notice to any tenant stating that the premises is in an affected area and noting the restriction on the tenant taking proceedings about the emission of aerosols, fumes, light, noise, odour, particles or smoke from registered premises in the affected area.

6.8 QBSA Owner Builder Notice

If:
(a) building work has been carried out on the property by a person who is not licensed to carry out that building work; and
(b) the land is offered for sale within 6 years after the building work is completed,
you have a statutory obligation before a contract is signed to give the buyer a notice containing details of the work and the warning required by regulation.

If the notice and warning are not given, then you will be taken to have given the buyer a contractual warranty that the building work was properly carried out. The effect of this is that if the work turns out not to have been properly carried out then the buyer may have a right to claim compensation from you.

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

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

(a) the value of each of those goods (if sold separately) is under $40,000; and
(b) the goods are not goods of a kind ordinarily acquired for personal, domestic or household use, for example industrial air-conditioning or other plant,

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

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

6.10 Neighbourhood Disputes

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

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

In relation to trees:

(a) you must give copies of these documents relating to trees to the buyer before the buyer enters into the contract and specific disclosure may need to be made in the contract. If copies of documents relating to trees are not given then you may be liable to pay a significant financial penalty and the buyer may terminate the contract at any time before settlement or you may be liable to comply with the order following settlement;
(b) if the buyer terminates in these circumstances before settlement you may also be liable for the buyer's reasonable legal and other expenses incurred by the buyer in relation to the contract after the buyer signed the contract; and
(c) if the buyer completes the purchase and you have not completed all work in relation to a QCAT tree order which has not been given to the buyer before they entered into the contract, you will remain liable to carry out the work required under the order.

In relation to fences:

(a) you have warranted in the contract that there are no unsatisfied fencing notices, orders or applications existing at settlement that were not disclosed in the contract to the buyer; and
(b) if an unsatisfied notice, order or application exists at settlement then the buyer may be entitled to terminate the contract or claim compensation from you.

You are also obliged under the contract to promptly give the buyer a copy of any notice, proceeding or order, received after the contract date that affects the property. You must not, after the contract date, give any notice to another party or seek or consent to any order or agreement that affects the property without the buyer's prior written consent.

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

7. IMPORTANT CONTRACTUAL INFORMATION FOR YOU TO CONSIDER

7.1 Present Use

If the present use is not lawful under the relevant town planning scheme as at the contract date and this has not been disclosed in the contract then the buyer may be able to terminate the contract up until 2 business days before the settlement date.
7.2 **Instalment Contract**

We need to determine if your contract is an instalment contract. A contract can become an instalment contract for many reasons including:

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

The effect of the contract being an instalment contract is:

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

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

7.3 **Transfer Duty**

Transfer duty is a state tax which is payable on dutiable transactions in Queensland. Transfer duty is calculated on the dutiable value of the property which is generally the higher of the consideration payable under the contract and the unencumbered market value of the property.

It is a liability of both the seller and buyer. However the contract determines that it is the responsibility of the buyer to pay this liability. If the buyer does not pay the duty then the Office of State Revenue may seek recovery of the duty from you as seller. This is, however, unlikely as the buyer will need to pay duty before the property can be registered in the buyer's name.

You must tell us if you have a business or personal relationship with the buyer or if the consideration for the sale is less than market value. If so, this will have duty implications and the buyer will need to obtain a valuation of the property using 3 comparable sales in the last 3 months for duty assessment purposes. If applicable, it is important that we alert the buyer's lawyer to this fact as if the buyer does not fulfil their obligations regarding the payment of duty then the Office of State Revenue can seek to recover any shortfall directly from you including penalties and interest. Recovery of incorrect or unpaid duty from you may occur years after settlement and could compound into substantial amounts. You should call us to discuss if you think this may apply in the circumstances of this sale.

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

(a) purchased an existing home and did not occupy the home within 12 months of settlement;
(b) purchased vacant land to build on and you have not built and occupied the house within 2 years;
(c) had the seller or the seller's tenants in the residence and they did not vacate the property within 6 months of settlement or the tenants stayed longer than the original lease; or
(d) have already transferred, leased, rented, or otherwise granted exclusive possession of your property within 12 months of occupying the house as your principal place of residence; or
(e) never occupied the house as your principal place of residence at all;
then you must notify the Office of State Revenue within 28 days of the event happening as your liability for transfer duty must be reassessed. If you do not, significant additional penalty duty may be payable and interest charged from when you are liable to notify the Office of State Revenue. If applicable, this is your responsibility and is outside the scope of our retainer.

7.4 First Home Owner’s Grant, First Home Owner’s Construction Grant, Qld Building Boost Grant and Great Start Grant

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

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

7.5 Survey

Under the contract the buyer is entitled to survey the land to establish if there are errors in the boundaries or area of the land, there exists any encroachment onto or from the land or there are mistakes or omissions in describing the property. If any of these issues arise then the buyer may be entitled to claim compensation or terminate the contract providing notice is given to you before settlement.

7.6 Pre-settlement Inspection

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

You should ensure that you do not modify the property in any way after the contract date, otherwise the buyer may be able to terminate the contract or claim compensation from you (if the modifications are significant and the issue is raised before settlement).

7.7 Transfer documents

All parties comprising the seller need to sign the transfer documents. Any individuals must sign in the presence of a Justice of the Peace, Commissioner of Declarations or a Legal Practitioner and a company must have two directors, a director and a secretary or if a sole director company, the sole director can sign. You will need to arrange for all signatories to be in a position to sign the transfer documents expeditiously once they are received. If you would like to attend at our office for the purpose of executing transfer documents please let us know and we will call you once the transfer documents are received.

7.8 Keys, codes and combinations

All keys to the property must be delivered at settlement. You will need to make a written record for the buyer of all codes and combinations, if applicable, necessary to fasten or unfasten any lock including electronic devices in the property. If the buyer requests that we deliver the keys at settlement you will need to deliver them to our office before settlement. The usual situation is that the keys are left with the agent before settlement for collection by the buyer after the agent is notified that settlement has been effected.

7.9 Chattels

Before settlement you must remove all chattels not included in the sale and any substantial rubbish on the property. You may also remove any fixtures that have been excluded from the sale.

If the property is currently tenanted and the tenancy is not noted on the contract, then this obligation requires that both your property and any tenant’s property must be removed before the actual time of settlement on the settlement date.
7.10 **Information regarding the property**

If requested before settlement, you must give the buyer:

(a) copies of all documents about any unregistered interest in the property;

(b) full details of all continuing tenancies to allow you to properly manage the property after settlement;

(c) copies or sufficient details of all security interests registered to enable you to undertake a search of the Personal Property and Securities Register;

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

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

7.11 **Utility Services**

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

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

7.12 **Agent's commission**

If your property is being sold through an agent, we will let the agent know when settlement has been effected. If the agent holds the deposit then the usual procedure is for the agent to deduct commission from the deposit and forward the balance (if any) to you.

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

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

7.13 **Land tax**

If you have a land tax assessment for the current year could you please forward a photocopy of it to us as it will be useful in making settlement adjustments under the contract. The standard position under the contract is that the adjustment will be based on the presumption that the seller is a natural person and owned no other land as at the previous 30 June. This means that if you are a corporate entity or you own other properties you may not be able to recover from the buyer the amount of the land tax liability for the parcel being sold attributable to the period following settlement.

7.14 **Rates and Water Notices**

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

7.15 **Land Valuation Act 2010**

An administrative advice called a Land Valuation Act Notice may be recorded on title. If applicable, this notice alerts potential buyers that a deduction for site improvement or an offset allowance applies to the land. You should specifically instruct us if you have applied for or have been granted any deduction or allowance as in certain circumstances the Land Valuation Act Notice may not yet have registered on the title to your property and may register before settlement.
Where there is a change of ownership, a deduction for site improvement or an offset allowance will no longer apply. The unadjusted value will then be used for the calculation of local government rates, state land rent and/or land tax.

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

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

(a) you need to be aware that the deduction for site improvements will be lost on a sale and this will impact on the land value for rating and taxing purposes;

(b) you need to ensure that neither you nor any real estate or other agent acting on your behalf makes representations to the buyer about the rates or tax liabilities that are currently payable or that will be payable by the buyer after the property has settled as this information could potentially be misleading to the buyer and could impact on the buyer's decision to ultimately purchase the property; and

(c) we suggest you check to make sure the offset allowance or deduction has reduced your rates and land tax.

7.16 Smoke Alarms

Failure to install compliant smoke alarms is an offence under the Fire and Rescue Service Act 1990. If the property does not have compliant smoke alarms installed, you should ensure this is done immediately. You will need to declare whether compliant alarms are installed, in the transfer documents.

7.17 Electrical Safety Switch

Please let us know if an approved electrical safety switch for general purpose socket outlets has been installed in the property under the Electricity Regulations.

7.18 Early possession

If you agree to let the buyer into possession of the property before settlement, the contract provides that:

(a) the buyer must maintain the property in substantially its condition at the date of possession (except for fair wear and tear);

(b) the buyer's entry into possession is under a personal licence that you can revoke at any time;

(c) the buyer must insure the property to your satisfaction;

(d) the buyer indemnifies you against any expense or damages incurred by you as a result of the buyer's possession of the property.

You may also choose to impose other conditions that you deem appropriate before agreeing to grant early possession. We can discuss other possible conditions if you receive a request for early possession.

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

(a) the buyer does not settle and has not maintained the property – you may need to seek compensation from the buyer;

(b) the buyer does not settle and has improved the property in any way – although you are not specifically required under the contract to compensate the buyer for any improvements the buyer may commence court action to seek compensation, which may be costly;

(c) you revoke the buyer's licence to possession (which you can do for any reasonable reason and at any time) and the buyer resists eviction from the property, does not repay your costs of eviction or you suffer loss whilst the buyer is being evicted (e.g. you cannot tenant or sell the property) and are not successful in claiming compensation from the buyer for that loss; or

(d) you unsuccessfully seek to enforce the indemnity the buyer has provided to make a claim for any expenses or damage incurred as a result of the buyer's possession (e.g. the buyer becomes bankrupt).
8. PERSONAL PROPERTY SECURITIES

8.1 What are Personal Property Securities and how do they affect this transaction?

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

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

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

8.2 What is affected by the PPSA?

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

All goods other than fixtures will generally be considered chattels and may be affected by the PPSA.

For example:
- An air-conditioning unit, satellite dish, oven, rangehood, window furnishings or carpets are usually fixtures and the PPSA may not apply.
- A clothes dryer, furniture package, fridge or washing machine (if not affixed) are chattels to which the PPSA may apply.

8.3 When do I need a specific release?

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

then we will seek to obtain (on your behalf) from the secured party either a letter or financing change statement, which releases the personal property being sold and provide it to the buyer 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 secured party.

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

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

9. POOL SAFETY

9.1 What is a “swimming pool”?

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

If you have any doubt as to whether a structure on the property is a pool you should contact us.

9.2 Non-shared pool - obligation to obtain Pool Safety Certificate

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

There are questions in the reference schedule of the contract about pools and pool safety certificates.

If there is a pool on the property (or on adjacent land used in association with the property) that is a non-shared pool and there is no Pool Safety Compliance or Exemption Certificate in effect, you must
not enter into a contract to sell the property without giving the buyer a Form 36 Notice of No Pool Safety Certificate.

In addition, if you will not be giving a Pool Safety Compliance or Exemption Certificate you must, before settlement, notify the chief executive of the Department of Housing and Public Works that a Pool Safety Certificate is not in effect. We will provide a copy of the Form 36 Notice of No Pool Safety Certificate to the chief executive.

If you indicated in the contract that a current Pool Safety Compliance or Exemption Certificate exists then you must hand over a copy of a current Pool Safety Certificate, building certificate that may be used instead of a Pool Safety Certificate or an exemption from compliance before settlement, failing which the buyer can terminate the contract. If any of the certificates expire before settlement, you must obtain a new certificate before settlement.

If you indicate that there is no Pool Safety Compliance or Exemption Certificate or do not complete the questions, the contract is conditional upon the buyer obtaining from a licensed pool safety inspector:

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

Under the contract, the buyer has until the Pool Safety Inspection Date to notify us that:

(a) a pool safety inspector has issued a Pool Safety Certificate in which case neither party has further rights; or
(b) if a Pool Safety Certificate is not issued, that the buyer terminates the contract. The buyer must act reasonably in making this decision; or
(c) the buyer elects to waive the benefit of the condition and proceed to settlement, in which case the buyer becomes responsible for obtaining the Pool Safety Certificate within 90 days of settlement.

You are also entitled to obtain a Pool Safety Certificate in this period and if you do then you should tell us and we will give notice that the condition is satisfied and the buyer’s right to terminate will end. You may prefer to obtain the Pool Safety Certificate yourself in circumstances where you want to avoid the possibility of the buyer terminating the contract because a Pool Safety Certificate is not obtained by the buyer, for example if there is some minor non-conformity.

If a Pool Safety Certificate has not issued and the buyer does not give notice the contract remains on foot and both you and the buyer have a right to terminate the contract, unless a copy of a current Pool Safety Certificate is received. The buyer also has the right to waive the benefit of the condition.

9.3 Shared Pool

In the case of a shared pool (e.g. a pool on the scheme land of an apartment building) the body corporate is responsible for obtaining the Pool Safety Certificate. You have an obligation where a Pool Safety Certificate is not in effect, to give a Notice of No Pool Safety Certificate to:

(a) before the buyer entering the contract – to the buyer; and
(b) after settlement - the body corporate (being the owner of the shared pool) and the chief executive of the Department of Housing and Public Works.

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

The owner of the shared pool (usually the body corporate) then has 90 days in which to obtain a Pool Safety Certificate.

9.4 Prohibition on letting

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

9.5 Penalties

There are substantial penalties for non-compliance.
9.6 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 $2,000 fine.

10. IF SELLING A UNIT

10.1 Body Corporate disclosures

You must notify the buyer of any notices of body corporate meetings you receive and of any resolutions passed after the contract date. If the buyer is materially prejudiced by any resolutions passed after the contract date, the buyer may terminate the contract. If disclosure is not made before settlement, the buyer may sue for compensation. Please tell us if you are, or become aware of any of the following:

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

10.2 Implied warranties given about the body corporate

The BCCM Act also contains certain implied warranties that you are deemed to have given to the buyer. Please tell us if you are, or become aware of any of the following:

(a) any patent or latent defects in the common property or body corporate assets (for example, substantial building work that requires repair, which can include common boundary walls of the lot or exclusive use areas);
(b) any actual or contingent or expected liabilities of the body corporate (for example, significant debts or judgments that the body corporate is liable to pay); and
(c) anything else you are aware of regarding the affairs of the body corporate which may affect the buyer.

If any of the above exist and are not disclosed to the buyer before entering into the contract the buyer may have a right to compensation and a right to terminate the contract up until 14 days after the buyer's copy of the contract is received by the buyer or someone else acting on the buyer's behalf.

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

10.3 BCCM Disclosure Obligations

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

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

(a) details of the secretary or body corporate manager or in a specified two-lot scheme, the person responsible for keeping records;
(b) details of the body corporate administrative and sinking fund levies that apply to the lot you are selling;
(c) details of improvements on common property for which you may be responsible;
(d) details of any body corporate assets; and
(e) that there is a committee of the body corporate or a body corporate manager engaged to perform the functions of the committee.
If the disclosure statement contains errors or is incomplete and the buyer would be materially prejudiced if required to complete the contract, then the buyer may have rights to terminate the contract. This may apply where issues are identified that are of particular importance to the buyer's purchase.

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

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

10.4 Community Management Statement

The Community Management Statement ("CMS") contains information relevant to the buyer, including which regulation module applies to the scheme.

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

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

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

The CMS specifies:

(a) the CSLE for the lot you are selling and the aggregate CSLE (which is the total of all CSLE's for all the lots in the scheme and determines what proportion of the body corporate levies you will be liable to pay compared to other lots);

(b) for a scheme established before 14 April 2011 the lot entitlements must be equal unless there is an explanation in the CMS as to why it is just and equitable in the circumstances for them not to be equal (however, no explanation is required if the scheme was established before 4 March 2003);

(c) for a scheme established after 14 April 2011:

(i) must state that the CSLE are based on the equality principle or the relativity principle;

(ii) if the equality principle applies, the lot entitlements must be equal, unless there is an explanation in the CMS as to why it is just and equitable in the circumstances for them not to be equal;

(iii) if the relativity principle applies, the CMS must include an explanation which demonstrates the relationship between the lots by reference to one or more particular relevant factors, including the following:

(A) how the community titles scheme is structured;

(B) the nature, features and characteristics of the lots;

(C) the purposes for which the lots are used;

(D) the impact the lots may have on costs of maintaining the common property; and

(E) the market values of the lots.

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

If you are the original owner for the community titles scheme established on or after 14 April 2011 and the buyer reasonably believes:

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

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

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

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

We are not familiar with your circumstances or the history of the body corporate and specific advice about these changes is outside the scope of our current retainer.

If you are concerned about the potential impact of the Amending Act on your lot or any recent amendment to the CSLEs in the Scheme then you should seek specific legal advice on your particular circumstances as a matter of urgency.

10.5 Body corporate searches

We do not carry out a search of the body corporate records as each body corporate is in different geographical locations and it would be uneconomic for us to do so. We engage a search agent to conduct a body corporate records inspection on your behalf.

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

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

Our advice to you will be limited to interpreting the search results in the reports received.

Accordingly, our retainer does not include specific advice about any issues that would only be discovered by an extensive historical body corporate search, such as, for example:

(a) lot entitlement changes (past, proposed or possible future amendments);  
(b) checking that all meetings, motions, notices and other records of the body corporate are in order and in compliance with body corporate law and regulations (including meetings and motions originally allocating or subsequently re-allocating exclusive use areas);  
(c) checking all past and present infringements of the body corporate by-laws by you and other body corporate members;  
(d) a review of all the body corporate by-laws to check whether any are inappropriate, unenforceable or illegal;  
(e) a review of the body corporate by-laws to check whether pets are allowed and on what conditions or body corporate records for past approvals of pets;  
(f) whether any statutory easements for services run through the lot or allocated exclusive use areas;  
(g) body corporate agreements with body corporate managers, service providers or employees;  
(h) other agreements that the body corporate may have in place, including those with other bodies corporate for the sharing of exclusive use areas such as car parking or facilities such as gyms or common areas;
(i) a review of any Building Management Statement and checking compliance with its terms; or
(j) other body corporate matters that will not generally give rise to statutory or contractual rights of termination or compensation.

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