

POSTAL ADDRESS:
MACKAY OFFICE
PO Box 76
MACKAY QLD 4740

AIRLIE BEACH OFFICE
PO Box 1180
AIRLIE BEACH QLD 4802

PROSERPINE OFFICE
18A Chapman Street
PROSERPINE QLD 4800



MACKAY OFFICE
Phone (07) 4944 0333
Fax No. (07) 4957 3346
Email: mac@macamiet.com.au

AIRLIE BEACH OFFICE
Phone (07) 4948 0611
Fax No. (07) 4948 0699
Email: whitsundays@macamiet.com.au

PROSERPINE OFFICE
Phone: (07) 4945 2399
Facsimile No: (07) 4945 2664
Email: mac@macamiet.com.au

GENERAL INFORMATION FOR BUYERS OF REAL ESTATE IN QUEENSLAND

BEFORE THE CONTRACT IS SIGNED

The Buyer inspects the property and negotiates a purchase price with the Seller or the Seller's agent. In order to put forward a "formal" offer as a Buyer, you will most likely be asked to sign a Contract and pay the deposit amount specified in the Contract. You should consult a Solicitor before you sign the Contract to ensure that you understand the nature of the Contract and its conditions.

Once you have signed the Contract, your offer to purchase is presented to the Seller (usually by the agent). If the Seller accepts your offer, the Seller will sign the Contract. It is at this point that the Contract is dated and becomes a legally binding document. At this point, you have lost the opportunity to change the Contract or include conditions you may have required.

It is important to note that in Queensland, there is no "exchange" of Contracts as is the case in other States and Territories. This means that both the Buyer and Seller must sign the same document in order for the Contract to be legally formed.

In most instances the Contract is not "unconditional" at the time it is signed, meaning that the Contract is made subject to the Buyer (or Seller) satisfying certain conditions as detailed in the Contract. This is dealt with in more detail below.

WARNING STATEMENT/COOLING OFF PERIOD

In Queensland, it is a requirement that a PAMD Form 30C Warning Statement be attached to the front of a Contract for residential property (e.g. vacant land or house and land), and signed by the Buyer before the Contract is signed. If this is not done, the Buyer may terminate the Contract.

Every Contract for residential property is subject to a 5 business day cooling-off period, except in the case of an auction. The cooling-off period begins on the day that you are bound by the Contract, i.e. the day on which the Buyer (or their representative) receives a copy of the fully signed Contract.

During the cooling-off period, you have the right to terminate the Contract. However, should you wish to do so, a signed and dated written termination notice must be provided to the Seller or to the Seller's agent at any time prior to the end of the cooling-off period.

The Seller is obliged to refund your deposit within 14 days of termination of the Contract, but may deduct a termination penalty equal to 0.25% of the purchase price as a result of the Contract having been terminated under the cooling-off provisions.

INSURANCE

Under the signed Contract, the risk of the property passes to you on the first business day after the Contract date, even in cases where the Contract is subject to finance etc. If you are purchasing a dwelling house or any other improvements (shed/pool etc.), you should take out adequate insurance cover with a reputable insurer within twenty-four hours of signing the Contract.

CONTRACT CONDITIONS

Contracts are often made subject to certain conditions being satisfied, and until such time as the conditions are satisfied, the Contract is referred to as being “conditional”. In respect of residential conveyancing, the most common conditions include:-

- ❑ A finance clause, e.g. the Buyer obtaining satisfactory finance approval by a certain date; and
- ❑ A building/pest inspection clause, e.g. the Buyer obtaining satisfactory building and pest inspection reports by a certain date, to determine the structural soundness of the dwelling and whether termites are present in the dwelling.

If you cannot satisfy the conditions, and provided there has been no default under the Contract, the standard Contract conditions usually allow the Buyer to terminate the Contract without penalty, i.e. deposit monies are refunded.

In Queensland, it is your responsibility as the Buyer to conduct all enquiries in relation to the property and any improvements constructed on the property. In addition to building and/or pest inspections, you are able to make enquiries with the local Council to determine whether all required approvals are in place. You should be aware that the Seller is not obliged to comply with a Council requisition where such requisition arose after the Contract date. Unless a condition is included to cause the Contract to be made subject to the results of a Council inspection, your rights may be quite limited and could involve additional expense.

FINANCE

If the Contract is subject to a finance clause, this means that it is conditional upon you taking all reasonable steps to obtain approval of a loan on terms satisfactory to you by the date listed in the Contract. As a Buyer, it is necessary for you to make your application for finance promptly after signing the Contract.

You must notify the Seller in writing prior to the finance date that your finance has been approved or declined. If your finance approval has been declined, you must notify the Seller in writing that the Contract is terminated pursuant to the finance clause.

The Seller may terminate the Contract by notice to you if you fail to advise of your finance approval/decline by 5pm on the finance date. This is the Seller’s only remedy for your failure to give notice.

Once your finance has been approved, it will be necessary for you to call on the bank, building society or other financial institution to sign mortgage and loan documentation.

CONDUCTING SEARCHES/ INVESTIGATION OF TITLE

It is part of your Solicitor's role to conduct searches in respect of the title to the property being purchased. You may require these searches to be carried out before the Contract becomes unconditional so that you are aware of any potential problems, or alternatively you may wish to wait until the Contract becomes unconditional so as to avoid the costs associated with the searches until it is necessary to incur them.

For more information on the types of searches available, please refer to the explanation of searches which forms part of this information sheet. Upon reading the explanation of the different searches available, you may wish to make the Contract specifically subject to the results of a particular search being satisfactory. This is another reason to consult a Solicitor before signing the Contract.

Once all of the Contract conditions are satisfied, and provided that the search results are satisfactory, the Contract becomes "unconditional" and proceeds to completion.

STEPS TO COMPLETION

1. Stamping of the Contract – Stamp Duty

Stamp duty is a charge imposed by the Queensland Government. It affects conveyancing transactions and represents a significant cost factor to the Buyer. Stamp duty becomes payable when the Contract becomes unconditional, and must be paid to your Solicitor before the completion date. This is different to many other States and Territories where stamp duty is paid after completion.

It is important that you are aware of the anticipated stamp duty in respect of your purchase prior to signing the Contract. The amount of stamp duty payable in relation to a Contract depends on:-

- the price you are paying for the property;
- whether any concessions are available to you; and
- your proposed use of the property.

Concessional stamp duty applies if the property is your principal place of residence, provided that you move in within twelve (12) months of the completion date and continue to live in the property for twelve (12) months. Buyers are required to make a refund of stamp duty in some instances and may become liable to penalties.

The Office of State Revenue now has a Transfer Duty Calculator on its website that can be accessed by everyone. The website address for the Transfer Duty Calculator is <http://www.osr.qld.gov.au/calculators/transferduty.htm>

Should you not have access to a computer please contact the Office of State Revenue on Freecall phone number 1300 300 734.

2. Settlement calculations/Preparation for settlement

In the week prior to settlement, the Solicitors will begin calculating the exact amount of money required at settlement. The general rule is that the Seller is responsible for all rates, taxes etc. up to the day of settlement, and your responsibility begins on the day following settlement. The Solicitors will calculate

the necessary adjustments to ensure that each party pays their share of these expenses.

Once the calculations and cheque details are agreed, all parties are notified as to what documents and cheques are required to be made available at settlement. In particular, the Seller's agent is paid the balance of any commission (over and above the deposit amount) from the Seller's sale proceeds.

Under the Contract, you are permitted to enter the property prior to completion to check the state of repair of the property. This inspection is best conducted on the day prior to settlement or upon the property being vacated by the owner/s or tenant/s.

3. Day of Settlement

The settlement date is specifically nominated in the Contract. Prior to the day of settlement all of the parties (including the bank/s) will have arranged a convenient settlement time. Under the Contract, settlement is able to be effected at any time between 9.00am and 5.00pm on the settlement date.

You do not need to attend at settlement as your Solicitors will be attending on your behalf.

If your financier is taking a mortgage over the property you have purchased, it will obtain the necessary paperwork and arrange for the property to be registered in your name/s as the new owner/s. If you do not have a financier, your Solicitors will attend to this.

At settlement, the Seller is required to hand over all keys which they may have possession of. The keys can be collected by your Solicitor at settlement however, the usual practice is that the keys are made available for you to collect from the real estate agent.

BUYING A UNIT

If you are purchasing a unit (otherwise known as a "lot in a Community Titles Scheme"), you should be aware that the law is different to that which applies in relation to the purchase of a house.

Firstly, the Seller must include a Information Sheet as part of the Contract. This Information Sheet suggests matters which you should investigate about the lot before committing to the purchase, and briefly explains the rights and responsibilities involved in owning a lot in a Community Titles Scheme.

Secondly, the Seller must provide you with a Disclosure Statement that sets out basic details about the Body Corporate. The separate Disclosure Statement does not form part of the Contract, and must be given to you by the Seller or Agent before you enter into the Contract. If any of the information in the Disclosure Statement proves to be inaccurate and you are materially prejudiced as a result, you only have fourteen days from the Contract date to terminate the Contract.

Thirdly, the Seller is required to complete a section in the Contract called the "Seller's Disclosure". This section sets out information about the Body Corporate, such as whether there are any latent defects in the Common Property or Body Corporate assets, whether there are any actual, contingent or expected liabilities of the Body Corporate, or whether there are any other circumstances in relation to the affairs of the Body Corporate which require disclosure. If defects are disclosed and you elect to sign the Contract, you do not have a right to rely on the Seller's Disclosure to terminate the Contract. However, if the Seller's Disclosure is inaccurate and you act within fourteen days of the Contract date, you are able to terminate the Contract.

As the right to terminate is lost after fourteen days, it is recommended that a search of the Body Corporate

records be carried out as soon as the Contract is signed.

GENERAL INFORMATION

- **First Home Owner's Grant** – The First Home Owner's Grant (FHOG) is administered by the Office of State Revenue and provides a \$7,000.00 grant to assist individuals in achieving the goal of owning their first home. The main eligibility requirements for the FHOG are:-
 - The individual must be building or buying their first home as a natural person, not in the name of a company or a trust;
 - The individual must be at least 18 years of age when the Contract is entered into (an exemption to this requirement may be applied for in certain circumstances); and
 - The individual must be an Australian Citizen/permanent resident.

The FHOG is not available to married or de facto couples where either person has held an interest in land that had a residence on it or where one person has previously claimed the grant.

All applicants for the FHOG must occupy the home as their principal place of residence for a continuous period of six (6) months commencing within twelve (12) months of the Contract settlement date. Breach of this condition may result in repayment of the grant and the imposition of penalties.

- **Foreign Investment** – In order for a “foreign person” to acquire an interest in property in Australia, they must obtain the consent of the Foreign Investment Review Board (FIRB) under the *Foreign Acquisitions and Takeovers Act 1975* (Cth). The following categories of persons are exempt from the requirement to obtain consent:-
 - Australian citizens resident abroad;
 - Holders of permanent resident visas or special category visas (e.g. New Zealand citizens); and
 - Foreign persons who purchase residential property (as joint tenants) with their Australian citizen spouse.

A foreign person is able to enter into a Contract for the purchase of property in Australia prior to obtaining FIRB approval provided that the Contract is made conditional upon the approval being obtained. If a foreign person enters into an unconditional Contract without obtaining FIRB consent, the Buyer automatically breaches the relevant laws.

If you are a foreign person interested in purchasing property in Australia, it is strongly recommended that you obtain legal advice before signing any Contract.

- **Tenancy** - If there is more than one Buyer in the Contract, you have the option to hold the property as “joint tenants” or as “tenants in common”. Briefly, if a “joint tenant” dies, his/her interest automatically passes to the remaining registered owner/s. In the case of “tenants in common”, on the death of a “tenant in common”, his/her share passes according to that person's Will and if there is no Will, then in accordance with the laws of intestacy.
- **Safety Switch** - If there is no safety switch on the premises, it is legally up to you as the Buyer to have one installed within three (3) months of the date of Settlement. The Seller must declare in

writing whether the home has a safety switch. You should check that the Contract indicates whether or not a safety switch has been installed.

EXPLANATION OF SEARCHES

- **Title Search** – This search is conducted at the Department of Natural Resources, Mines and Water. A copy of the title details are obtained which indicates the current registered owner, and details of all encumbrances e.g. registered mortgages, easements and covenants etc.
- **Plan** – A copy of the Registered Plan is obtained from the Department of Natural Resources, Mines and Water. The Plan provides details of the boundaries and area of the land or building unit you are purchasing. In the case of a unit, the Plan will reveal areas of exclusive use.
- **Rates** – The Rates search will reveal the amount of rates levied on the property and if there are any arrears owing by the existing owner which will need to be paid prior to Settlement. Rates are adjusted pursuant to the Terms of the Contract on a pro-rata basis. The amount of information contained in a Local Authority rates search varies between different councils, for example some councils indicate whether there are outstanding building requisitions, or may include information regarding zoning and flooding. The Whitsunday Shire Council and Mackay City Council do not provide information on flooding.
- **Water Meter Reading Search** – This search provides details of water usage from the date of the last water meter reading. If the Local Authority has a “user pays” system then, an adjustment will be made at Settlement so as to ensure that the Seller pays for all water usage up to the date of Settlement. The purpose of a water meter reading is also to ensure that you do not become liable for any excess use of water by the Seller over and above any applicable amount that is permitted to be used free of charge or for a certain fee.
- **Land Tax Search** – This search will reveal if the Seller is liable to pay Land Tax and whether Land Tax for the property has been paid up to date. Land Tax is required to be apportioned between you and the Seller as at the date of possession and the search will assist your Solicitor to ascertain the amount of the adjustment and whether there are any arrears of Land Tax to be paid. Liability for Land Tax runs with owners and as such you may become liable for any unpaid Land Tax if not adjusted at Settlement.
- **Main Roads Search** – This search is important to establish if the property is, or will be in the future, subject to road works by the Government. For example, it may reveal whether the Government intends to resume part of the property as part of the realignment of a road.
- **Contaminated Land Search** – This search is conducted to establish if the property is listed on the Environmental Management Register or the Contaminated Land Register. If you are concerned about the possible contamination property you should conduct a search prior to signing the Contract.
- **Company Search** – This search will be conducted with the Australian Securities and Investments Commission where the Seller is a company. The search provides particulars of the Directors, details of registered charges which need to be released and whether the company is in receivership or liquidation.

- **Easement/Covenant Search** – If the Contract/Title Search reveals an Easement or Covenant registered over the Title, it is necessary to obtain a copy of the Easement or Covenant to reveal the terms and conditions which may restrict or affect the development or use of the property you are purchasing.
- **Community Scheme Search** – This search confirms that a building unit or group title property is registered within a Community Title Scheme and also discloses the Community Management Statement number so that a copy of the Community Management Statement can be obtained.
- **Community Management Statement** – The Community Management Statement (“CMS”) identifies the Scheme land, the name of the Scheme/Body Corporate, the regulation module applying to the Scheme, the contribution and interest schedules and the relevant By-Laws of the Scheme. It is important to peruse the By-Laws to ascertain whether there are any matters of concern, particularly in relation to a staged or progressive development. Progressive developments include, for example, sub-division of Scheme land to create further Lots, establishment of subsidiary Schemes and the excision of a Lot from Scheme land and the addition of a Lot to Scheme land.
- **Body Corporate Information Certificate** – A Body Corporate Information Certificate is obtained from the Body Corporate. It is issued on an approved form and it provides the following information:-
 - Annual contributions;
 - Special contributions;
 - Other amounts payable to the Body Corporate;
 - The type of Regulation Module applying to the Scheme;
 - A list of Body Corporate Assets required to be recorded in the assets register; and
 - Details of improvements to the Common Property which the Lot owner must maintain.

This information is used for calculating the adjustment of outgoings and for checking the completeness and accuracy of the Disclosure Statement. The relevant legislation provides that a person who obtains such a certificate may rely on the certificate as conclusive evidence of the matters stated in the certificate. This search should not be confused with a physical inspection of Body Corporate Records.

- **Inspection of Body Corporate Records** – Some of the benefits of a physical inspection of Body Corporate records are:-
 - To determine whether all necessary registers have been properly maintained by the Body Corporate;
 - To determine whether there is any evidence of building defects;
 - To determine whether there is any evidence of legal proceedings (actual or threatened); and
 - Minutes of Committee and General Meetings can be viewed and considered.

- **Local Authority Approval and Records Search** – A search of the Local Authority records will reveal if buildings or improvements have been constructed in accordance with relevant regulations. If the standard Terms of Contract are used, you cannot escape the Contract if all the necessary approvals have not been obtained. It is recommended that you either search these records before signing a Contract, or insist that a special condition be included in the Contract to enable the search to be conducted and for the Contract to be able to be terminated in the event that the search results are not satisfactory. This is particularly relevant for approvals for swimming pools and swimming pool fences.
- **Queensland Rail Search** – This search reveals whether Queensland Rail has any current proposal to acquire any part of the property or to take an Easement over it. This search is important where the property is located near a railway line.
- **Queensland Building Services Authority Search** – This search will indicate if the property is covered by the statutory insurance scheme offered by the building services authority. This is important in the case of new dwellings or improvements to dwellings constructed in the last six (6) years. If the building work is defective or the property begins to subside, then recourse may be had to the statutory insurance policy. However, it should be noted that the policy will not apply to a subsequent Buyer where the facts and circumstances giving rise to the claim were apparent, or should have been discovered by the Buyer, prior to entering into the Contract to buy the property. If the Authority has no record of an insurance policy it will alert you to the fact that construction may be more than six (6) years old or that the house may have been built by an owner builder or the house may have been built by an unregistered builder.
- **Heritage Search** – This applies only for older buildings to indicate whether the building is on the Heritage Register which limits/prohibits development and demolition of the building.
- **Ergon Search** – This search establishes if there is an electricity supply to the property and whether there are any underground cables for the property. Where the electricity supply is not protected by easement or statutory authority and passes over the land the Buyer may be entitled to terminate the Contract.
- **Queensland Electricity Transmission Corporation** – The QETC is more commonly known as “Powerlink Queensland”. The QETC is responsible for the transmission of electricity at very high voltages from power stations to regional electricity corporations and certain industrial consumers. This search may only be necessary where a large rural or commercial property is being purchased. It is unlikely that QETC will have an interest in a suburban residential allotment.
- **Identification Survey/Location Certificate** – An Identification Survey identifies the boundaries of and the corners of the property. Such a survey is required for the purpose of fencing, building onto or close to boundaries, boundary disputes and determining the extent of encroachment etc.

A Location Certificate involves a field inspection without full survey and the surveyor does not place any marks on the corners or boundaries. The purpose of a Location Certificate or Conveyance Report is to ensure that the land described in the Contract is accurate, to confirm that the improvements appear to be within the boundaries of the land and that there are no visible encroachments.

A Location Certificate should usually suffice as an indication as to whether or not there are encroachments but if it is apparent that encroachments possibly exist or if the development of the land is to be close to the boundary then, you are advised to conduct an Identification Survey.

- **Bankruptcy Search** – This search is conducted where the Seller is an individual to determine whether the Seller is an undischarged bankrupt.
- **Telstra Search** – This search reveals whether the property is affected by any current or future plans by Telstra to place cabling or other installations on the property. If there is any concern that this may occur a search should be conducted prior to entering into the Contract.
- **Fire Safety Certificate** – This search indicates whether any fire safety requisitions or notices have been issued to the occupier of the building and which have not been complied with. This search would usually only be conducted for the acquisition of a commercial property or a building unit which is not on the ground floor.
- **Environmental Protection Act Search** – This search should be conducted where the Seller of the property advises that it is subject to an Environmental Management Plan or Licence or some kind of Protection Order.
- **Beach Protection Act** – Land within Coastal Management Control Districts or erosion prone areas may be subject to certain restrictions. Consideration should be given to the conduct of this search if the property is situated on or near a coastal area that may be subject to such restrictions. Plans showing Coastal Management and Erosion Prone areas are available for inspection at most Local Authorities.

This information has been prepared by Macrossan & Amiet Solicitors. Should you have any additional queries or require further information, please do not hesitate to contact our offices.



