



Dear Valued Client,

Re: Your Proposed Property Purchase

Thank you for engaging Lightning Legal for your purchase. Shortly we will be providing comprehensive advice on your matter.

This letter is to confirm some time-critical aspects of your matter and options you should consider as soon as possible.

Please read our EFT Cyber Alert provided to you with this letter.

Time critical issues

A property purchase transaction generally involves some time critical issues that must be considered when the Contract is entered into or shortly after that time. Things that must be considered include:

- **Deposit:** the initial deposit must be paid to the Deposit Holder on the day the Contract is signed unless another time is specified in the Contract
 - If you don't pay the deposit **by the required date as required in the Contract**, the Seller may have a right to terminate the Contract and claim compensation from you even after you pay the deposit.
 - If you don't provide written evidence to the Deposit Holder of any electronic transfer for payment of the deposit and the deposit has not been received by the Deposit Holder by the due date, the Seller may have a right to terminate the Contract until such time as written evidence is provided.
 - To avoid being in breach of the Contract, on or before the due date for payment of the deposit (usually the day you sign the Contract)
 - pay the deposit by cheque directly delivered to the Deposit Holder and ensure you have sufficient evidence of when the payment was made; or
 - pay the deposit by electronic transaction and provide written evidence of the successful transaction to the Deposit Holder at the time the electronic transaction is made.
 - You should not rely on any directions or relaxations about payments that are contrary to the requirements of the Contract. Please call us urgently if your deposit was not paid when required or was not paid in the manner required by the Contract.
- **Insurance:** risk in the Property usually passes to you on the Contract being signed by all parties (and the consequent need for you to immediately insure the Property).

- **Cooling-off:** the time limit to exercise any Cooling-off rights (five business days only - subject to a range of conditions which we need to discuss further with you)
 - o If applicable to your Contract, the Cooling-off period starts on the day you receive from the Seller (or the Seller's agent) a copy of the Contract signed by both parties or, if that day is not a business day, on the next business day.
 - o If the Seller signed the Contract before you did, the Cooling-off period starts on the day you signed the Contract and communicated your acceptance to the Seller. Please tell us immediately when you received the signed Contract so that we can calculate when the Cooling-off period ends.
- **Contract conditions:** steps that must be taken in relation to conditions to which the Contract is subject (such as a finance condition or a building and pest inspection report condition) and the exercise of rights of termination that may arise.
- **Settlement Date:** usually time is of the essence of the Contract which means that both parties to the Contract must perform their obligations strictly by the due date. However, under the standard REIQ Contract, either party may, extend the settlement date by up to five business days by giving notice to the other party without the need for the other party to agree. A party does not need to provide any reason for exercising this right of extension. You should take the possibility of an extension of the settlement date into account particularly if settlement on the nominated settlement date is critical to you or your plans.

Of course, there may be numerous other critical steps and dates that apply to your transaction. You may also need to consider whether relevant dates are affected by:

- the terms of the Contract (for example, days in the period between 27 December and 31 December are not business days under the REIQ Contract for Houses and Residential Land and the REIQ Contract for Residential Lots in a Community Titles Scheme) (however, please note any legislative dates, such as the Cooling-off date are not affected by this definition of business days under the REIQ Contract);
- legislation (for example, in some cases, if you receive a notice, you may have a limited period of time to exercise rights); or
- COVID-19 issues including unavailability of parties (e.g. independent contractors, financiers and agents).

A failure to act in time in relation to a date relevant to the transaction may mean the loss of rights under the Contract or an exposure to liability in connection with the Property.

Potential issues with the Property or Contract

There may be issues later discovered about the Property or the Contract including where there might be no termination rights in relation to a range of matters. Some examples are:

- if the Contract is not subject to finance and you are unable to obtain finance approval for the transaction or otherwise do not have immediately available cleared funds (e.g. you are relying on an inheritance or property sale), you will have no right to use the finance condition to terminate the Contract;
- some issues or search results affecting the Property (adjustments, council charges, unapproved structures, restrictions on use of the Property, flood prone land, services not connected, asbestos);

- contamination of the Property including issues caused by the manufacture or use of illicit drugs which, for example, can be expensive to rectify;
(There are indicative contamination tests you might consider conducting during the Cooling-off period. However, more comprehensive tests may be required to identify the extent of any contamination, and these take longer to obtain and therefore may not be received before the end of the Cooling-off period. Please contact us if you wish to discuss this further.)
- difficulty obtaining search results before condition dates or settlement to exercise rights;
- obligations that come with the Property requiring you to spend money or grant easements (e.g. outstanding development approval conditions, obtaining a pool safety certificate, installing compliant smoke alarms or a safety switch);
- property valuation issues; or
- Contract issues such as a failure to stipulate the correct Buyer entity (for tax or investment purposes), deposit payment issues or the lack of an appropriate condition to deal with your circumstances (e.g. to deal with foreign ownership issues, to obtain finance approval, to provide for contemporaneous settlement of a related transaction including where funds are required from an existing sale).

See the [Options to be considered immediately](#) section below.

Buying in a Community Titles Scheme (if applicable)

If you are buying in a Community Titles Scheme then, in addition to the above issues, there might be issues arising from building defects and work required in relation to:

- external cladding, including identifying if the cladding is combustible, and whether it may need removal or replacement; and
- structural issues which might be noted from inspecting common property areas of the building revealing cracks, water leaks etc.,

which, for example, could result in significant costs for owners and have insurance disclosure and exclusion implications.

(During COVID-19, the Queensland Government permitted a Body Corporate to adopt or adjust the current financial year sinking fund budget to temporarily lower sinking fund levies payable, and refund any difference for that year. If this is relevant, the sinking fund levies disclosed with the Contract might not represent the usual levies payable, and future sinking fund levies may be increased to an amount higher than the usual levies payable while any shortfall is recouped.)

Foreign buyers (if applicable)

It is important to note the following issues for foreign buyers:

- A foreign person (i.e. a person not ordinarily resident in Australia) must obtain approval to purchase residential real estate in Australia regardless of the value of the property.
- Non-resident foreign persons are generally prohibited from purchasing established dwellings in Australia while temporary residents will normally be allowed to purchase only one established dwelling to live in as their principal place of residence in Australia.
- Approvals for foreign acquisitions will generally be given for purchases of vacant land, for residential development and for purchases of newly constructed dwellings.

You should inform us immediately if you believe these restrictions may apply to you. Purchasing property without a relevant approval may lead to significant monetary penalties as well as a forced sale of the Property.

Options to be considered immediately

1. **If the Contract isn't signed:**

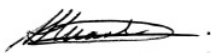
- a. You should consider delaying entering into the Contract so that you may undertake relevant enquiries and searches if you have any concerns about these matters. Even though we can include a due diligence condition in the Contract to provide time for you to investigate these concerns, there is a risk that the Seller may dispute reliance on that condition (unless it is drafted in a way that gives you a broad discretion about proceeding with the Contract).
- b. If the draft Contract is not subject to finance, please contact us urgently if you do not have cleared funds for this purchase so that we can discuss amending the Contract to make it conditional on you obtaining a satisfactory finance approval.

2. **Cooling-off:** If you have entered into a Contract, you may wish to exercise your rights under the Cooling-off provisions now to allow sufficient time to investigate the Property or rectify issues with the Contract, particularly if you have any concerns about the Property, including the property value. You may also wish to fully investigate any insurance issues in relation to the Property (including the cost and availability of insurance). However, if you exercise the right of termination pursuant to the Cooling-off provisions, the Seller may retain a penalty of 0.25% of the purchase price from the deposit paid under the Contract. If you then later decide you would still like to purchase the Property, there is a risk that the Seller will not be willing to enter another contract with you.

If you do have concerns about the Property, and a Cooling-off period applies, you can urgently instruct us to immediately commence some searches before the Contract is entered into or the Cooling-off period expires. Please contact us urgently if you would like to order searches immediately.

Please call us if you have any concerns or queries.

Sincerely



Sandy Stuart
Principal Solicitor