

### **SELLING A PROPERTY IN QUEENSLAND**

At Ferguson Cannon we feel it is very important to advise our clients and other interested parties as to the important information that is required when a Contract is prepared for the sale of property.

Conveyancing has become much more complex in recent times because of increased consumer protection laws for Buyers and the introduction of the Conveyancing Protocol by the Queensland Law Society.

This Fact Finder contains important information about the preparation of a Contract for the sale of property.

### **IMPORTANT DATES**

The Contract that you sign will provide for the following important dates:

- Payment of Initial and Balance Deposit;
- Cooling off period;
- Finance;
- Building and Pest inspections;
- Special conditions;
- Settlement.

### **PROPERTY AGENTS AND MOTOR DEALERS ACT 2000 ("PAMDA") COMPLIANCE**

The PAMDA sets a specific procedure as to how the Contract is to be forwarded to the Buyer or their Solicitor both before and after it is signed.

It is very important that your Agent presents the Contract properly. If the Contract is not presented properly, the Buyer may terminate the Contract at any time before settlement and you can be fined up to \$15,000.00.

At Ferguson Cannon Lawyers, we have prepared training and precedent documentation to ensure that your Agent complies with your obligations under PAMDA.

If you sell your property under the hammer at an auction, then the procedure prescribed by the PAMDA does not apply.

### **COOLING OFF PERIOD**

Unless the property is sold at auction or the Buyer waives the cooling off period, the Contract will be subject to a five (5) business day cooling off period. A business day is a day other than a Saturday, Sunday or a public holiday.

The cooling off period commences on the day the Buyer or their Solicitor received a copy of the signed Contract in accordance with the PAMDA.

The Buyer may terminate the Contract before 5.00 pm on the cooling off period expiry date. If the Buyer terminates the Contract under the cooling off provisions, you may retain an amount equal to 0.25% of the purchase price from any deposit that has been paid as a termination penalty.

### **RELEASE OF MORTGAGE**

If there is a mortgage registered over your property, it will need to be released at Settlement.

Once the Contract is signed we will forward to you a Discharge Authority and will ask you to complete it and return it to your financier as soon as possible so that all necessary release documentation will be prepared in time for settlement.

Please note some financiers require up to 21 days notice prior to settlement to prepare the appropriate documentation and attend settlement.

### **CERTIFICATE OF TITLE**

If there is a Certificate of Title (Title Deed) issued for your property it will need to be available to hand to the Buyer at settlement.

### **DEPOSIT**

The deposit must be paid by the Buyer on the due date. If the Buyer does not pay the deposit as required by the Contract, then the Buyer is in default which entitles you to terminate the Contract.

### **FINANCE**

The Contract may be subject to the Buyer obtaining satisfactory finance approval on or before the finance date.

The Buyer must advise if finance has been approved, on terms satisfactory to the Buyer, prior to 5.00 pm on the due date. If the Buyer does not comply with this deadline, your options are:

- wait for the Buyer to advise if finance approval has been obtained;
- terminate the Contract; or
- consider whether you will give the Buyer an extension of time to meet this deadline, if requested.

### **BUILDING AND PEST INSPECTION**

The Contract is subject to the Buyer receiving satisfactory building and pest inspection reports by the building and pest inspection due date.

The Buyer must advise if the reports are unsatisfactory prior to 5.00 pm on the due date. If the reports are unsatisfactory to the Buyer, the Buyer cannot require you to rectify certain items, however the Buyer can terminate the Contract or request your agreement that the terms of the Contract be amended on terms suitable to the Buyer (e.g. that certain items be attended to prior to settlement) .

If the Buyer does not advise us if the Buyer is satisfied with the reports by 5.00 pm on the due date, the Buyer is deemed to be satisfied with the reports.

### **SPECIAL CONDITIONS**

The Contract may include some special conditions. It is very important that you obtain legal advice as to the meaning and effect of these conditions. We would be more than happy to provide this advice, and draft special conditions for you, if needed.

### **SETTLEMENT DATE**

The Contract will stipulate a settlement date. It is not necessary for you to personally attend settlement as we will do this for you. Normally, you can expect your settlement to occur between 11.00 am to 4.00 pm. We will advise you of these arrangements as soon as they are finalised with all parties, which is usually a couple of days prior to settlement. We will telephone you immediately after settlement has been completed.

### **UNIT CONTRACT – DISCLOSURE**

If you are selling a Unit, you need to provide a signed Disclosure Statement to the Buyer before the Buyer enters into the Contract. You should check with your Agent or Body Corporate Manager to complete and sign this document prior to Contracts being presented to any prospective Buyers.

### **SALIENT FEATURES OF THE CONTRACT**

#### **1. Time of the Essence**

Time is of the essence in the Contract. The effect of this is that any time stipulated in the Contract (i.e. for the date of settlement, payment of deposit, finance, special conditions, etc) the obligation must be met by 5.00 pm on that date.

#### **2. Entering the Property**

The Buyer is entitled to enter the property after the Contract Date to:

- a. obtain a valuation;
- b. obtain a water meter reading;
- c. conduct a survey of the property; and
- d. attend a pre settlement inspection.

### 3. Risk/Insurance

The risk of the property will pass to the Buyer at 5.00 pm on the first business day after the Contract date. This means that if the property is damaged the Buyer will still have to buy your property despite the fact that it may, by that stage, be worth only half its present value. The Buyer has an insurable interest in the property at the Contract Date. You also have an insurable interest in the property and your Contract requires you to maintain all insurance policies in relation to the property until settlement has been effected. You also have an obligation to take reasonable care of the property up to settlement.

### 4. Seller's Warranties

The Contract outlines a number of warranties by you that are deemed to be correct as at settlement. These include:

- a. You are the registered owner of the land;
- b. You are capable of completing the Contract;
- c. There is no unsatisfied judgment, order or writ affecting the property;
- d. As at the Contract date there are no current or threatened claims, notices or proceedings that may lead to a judgment, order or writ affecting the property;
- e. There are no notices provided under the Environmental Protection Act.

If any of these warranties are breached the Buyer may be entitled to terminate the Contract. It is therefore very important that you instruct us or your agent prior to a Contract being prepared whether any of the above warranties may in fact not be correct.

### 5. Survey

The Buyer is entitled to survey the land. If there is any error in the boundaries, encroachments, or mistakes in the description of the property the Buyer may terminate the Contract if the mistake, encroachment or misdescription is material. If the mistake, encroachment or misdescription is immaterial or material but the Buyer elects to complete this Contract, the Buyer may claim compensation against you if notified to you before settlement.

### 6. Chattels and Fixtures

Under the terms of the Contract, unless otherwise agreed between you and the Buyer, any fixtures, fittings or chattels not included in the sale which are left on the premises after settlement has been

effected will be deemed to be abandoned by you and the Buyer may appropriate, remove or dispose of them. Any costs incurred by the Buyer in the removal of such property may be recovered from you.

You should ensure you remove all fixtures, fittings and chattels that are not included in the sale and any substantial rubbish prior to settlement. Please note the Buyer is entitled to inspect the property before settlement to ensure these matters have been attended to, and the property is in substantially the same condition as it was when the Contract was entered into.

### **7. Loss, Damage and Maintenance in Property**

Any break downs to equipment such as hot water systems, plumbing, air conditioners, and the like will not be your responsibility to repair if it occurs between the first business day after the Contract date and settlement and did not result from your negligence.

You have an obligation to maintain the property until settlement, to the same standard as when the Buyer initially inspected it. This means, that if the property was clean and tidy when the Buyer inspected it, it is expected that you should leave the property in the same condition when you vacate the property. There is no obligation under the Contract for you to have a pest controller treat the property or to have the property professionally cleaned.

### **8. Body Corporate Records Inspection**

If you are selling a Unit, by law the Buyer may terminate the Contract within 14 days of the Contract being received by the Buyer if the Body Corporate Disclosure Statement is inaccurate and the Buyer is materially prejudiced by that inaccuracy.

## **DISCLOSURE OBLIGATIONS**

Under the Contract and pursuant to legislation you have disclosure obligations towards the Buyer. Failing to comply with these obligations may entitle the Buyer to terminate the Contract.

### **1. Encumbrances**

You must disclose any encumbrances on the property including unregistered encumbrances.

Please immediately advise your Agent or us if you are aware of any unregistered encumbrances affecting the property (i.e. sewer lines) as these must be disclosed to the Buyer in the Contract. If not disclosed and the Buyer is materially prejudiced by the non disclosure, the Buyer may terminate the Contract.

### **2. Warranties**

You must disclose the warranties relating to the property as outlined in point 4 of the Salient Features of the Contract (above).

### 3. Adverse Issues

You must disclose any adverse issues relating to the property including:

- a. whether the present use is not lawful under the relevant Town Planning Scheme;
- b. whether the land is affected by a proposal of any Government Authority such as Main Roads or Railways;
- c. whether any access or service to the land passes unlawfully through other land;
- d. whether any authority has issued a notice to treat, or notice of intention to resume regarding the property;
- e. whether the property is affected by the Queensland Heritage Act or is included in the World Heritage List.

If these issues exist and are not disclosed the Buyer may terminate the Contract.

### 4. Title Defects

You must disclose any defects in the title to the property.

### 5. Contaminated Land

You must disclose whether the property is contaminated land under the Environmental Protection Act or whether there are any other environmental management issues.

### 6. Owner Builder

If applicable, you must disclose if the building was constructed by an owner builder as described in the Queensland Building Services Authority Act 1991.

### 7. Electrical Safety Switch

Under the provisions of the Electrical Safety Regulation 2002 you are obligated to notify the Buyer in writing as to whether an approved safety switch has been installed in the residence. The Buyer is responsible for checking the switch is actually installed.

### 8. Smoke Alarm

Under the provisions of the Fire and Rescue Service Amendment Act 2006 you are obligated to notify the Buyer in writing as to whether a compliant smoke alarm has been installed in the residence.

### **VACANT POSSESSION**

If the Contract does not list any tenancies, it provides for the property to be vacant at the time of settlement. It is usually most convenient for all keys to the property to be left with the real estate agent prior to settlement, or if there is no agent, please leave them at our office. Please also provide with the keys a written record of all codes for all combination locks as well as any devices for control of security systems (if any) on the property.

### **TENANCY**

If you have a Tenant, the details of the tenancy must be listed in the Contract. If you have a Property Manager it is their responsibility to make a rental adjustment at settlement and issue a RTA Form 3 Transfer of Bond and Form 5 Change of Lessor to the tenant. Once the Contract is signed please directly liaise with your Property Manager to ensure this occurs. Further, in accordance with the Contract, we will need to provide the following documentation to the Buyer at settlement:

1. copy of any residential tenancy documents (i.e. all agreements, deeds of covenant and other documents relating to the tenancy);
2. copy of RTA Form 3 Transfer of Bond; and
3. copy of RTA Form 5 Change of Lessor.

Please kindly provide this documentation to us prior to settlement.

If you have a tenant but have indicated that the Buyer is to receive vacant possession of the property at settlement, it is your responsibility to provide to the tenant a RTA Form 12 Notice to Leave at least 28 days prior to settlement to ensure vacant possession is given. It is important to note that if you do not provide vacant possession to the Buyer at settlement then the Buyer may be entitled to terminate the Contract. Please immediately contact us should you have any concerns.

### **ACCOUNTING AND INDEPENDENT FINANCIAL ADVICE**

We cannot advise you in relation to any accounting or taxation aspect in relation to the sale of your property.

We recommend you seek advice from your accountant as to any tax implications that may be involved in the sale of your property.

If you have any queries at all relating to the sale of your property please contact Byron Cannon, Director, Ferguson Cannon on 07 5443 6600.