

Updates to standard REIQ property sale contracts

Residential House & Land
Contract (the new 15th edition)

June-July 2018

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New editions to be released

QLS and the Real Estate Institute of Queensland are preparing new editions of the standard contracts:

- As a result of the GST withholding at settlement measures taking effect from 1 July 2018;
- To facilitate the signing of the contracts by electronic means; and
- To update references to legislation and notice clauses.

The **TABLE BELOW** summarises the changes to the Residential House & Land Contract (the new 15th edition). These changes will also be applied to the following contracts:

- Contract for Residential Lots in a Community Titles Scheme (to be 11th edition)
- Contract for Commercial Land and Buildings (to be 7th edition)
- Contract for Commercial Lots in a Community Titles Scheme (to be 6th edition)

Overview of key changes

1. **Reference Schedule** updated with a new part for the **GST withholding at settlement measures** taking effect from 1 July 2018
 - a. Buyer must answer the question “Is the Buyer registered for GST and acquiring the Land for a creditable purpose?” and warrants that this information is true and correct, in clause 2.5(6)
 - b. The Seller gives notice to the Buyer in accordance with section 14-255(1)(a) of the Withholding Law (*Taxation Administration Act 1953* (Cth) Schedule 1) that the Buyer is or is not (select whichever is applicable) required to make a payment under section 14-250 of the Withholding Law in relation to the supply of the Property. If the Withholding Law applies, under section 14-255(1) of the Withholding Law, the Seller is required to give further details prior to settlement.
 - c. A warning has been added to advise that “*All sellers of residential premises or potential residential land are required to complete this notice. Section 14-250 of the Withholding Law applies to the sale of ‘new residential premises’ or ‘potential residential land’ (subject to some exceptions) and requires an amount to be withheld from the Purchase Price and paid to the ATO. The Seller should seek legal advice if unsure about completing this section.*”
2. **Signature panels** are updated to include changes facilitating the parties executing the contracts by **Electronic Signature**

3. Footer of contract updated to provide that initials not required if signed by Electronic Signature
4. New definitions added to clause 1.1 of “ATO”, “**Electronic Signature**” and “**GST Withholding Amount**”
5. New clauses 2.5(5) and (6) in relation to the GST Withholding amount process
6. Update to clause 7.6(4) to refer to the *Planning Act 2016*
7. New clause 7.7(e), added following the High Court decision of *Pike v Tighe* [2018] HCA 9. The High Court held that planning and development conditions (as part of a development approval)_attach to the land and are enforceable against subsequent owners. This will include the obligation to grant an easement in favour of another property. New clause 7.7(e) will allow a buyer to terminate the contract if compliance with an outstanding planning condition will result in an interest in land being created. The right to terminate arises if the interest in land is material according to the test in clause 7.5.
8. Amendments to **clause 10.4 Notices**:

Practitioners should note the **following differences to the approach in the 14th edition**:

- a. A notice sent by post will be treated as given **5 Business Days** after posting. (The current provision deems the notice as given after 3 business days)
 - b. A new deeming provision for email was added. A notice sent by **email** will be treated as given **at the time it is sent** (unless sent between 5pm on a Business Day and 9 am on the next Business Day, in which case it is treated as given at 9 am on the second Business Day). An email is sent when the email leaves the mail server of the sender.
 - c. A notice under the contract or statutory notice will be properly sent by email if the notice or information required to be included in the notice is contained within an email, as an attachment to an email or **located in an electronic repository** (such as Dropbox or DocuSign) accessible by the recipient by clicking a link in an email.
9. A new clause 10.10 provides for the contract to be signed in counterparts and for a counterpart to be in electronic form.
 10. A new clause 12 provides the consent of the buyer and seller to execution of the contract in electronic form with an electronic signature. Clause 12 satisfies the consent requirements for application of the *Electronic Transactions (Queensland) Act 2001*. Clause 12.2 ratifies the use of electronic communication for pre-contract disclosure at law or under statute.

Table summarising changes to appear in the Contract for Houses & Residential Land (15th edition)

Reference Schedule

New part added to Reference Schedule

(under “*Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*”)

GST WITHHOLDING OBLIGATIONS

Is the Buyer registered for GST and acquiring the Land for a creditable purpose?

(select whichever is applicable)

Yes

No

[Note: An example of an acquisition for a creditable purpose would be the purchase of the Land by a building contractor, who is registered for GST, for the purposes of building a house on the Land and selling it in the ordinary course of its business.]

WARNING: the Buyer warrants in clause 2.5(6) that this information is true and correct.

The Seller gives notice to the Buyer in accordance with section 14-255(1)(a) of the Withholding Law that:

(select whichever is applicable)

the Buyer *is not* required to make a payment under section 14-250 of the Withholding Law in relation to the supply of the Property

the Buyer *is* required to make a payment under section 14-250 of the Withholding Law in relation to the supply of the Property. Under section 14-255(1) of the Withholding Law, the Seller is required to give further details prior to settlement.

WARNING: All sellers of residential premises or potential residential land are required to complete this notice. Section 14-250 of the Withholding Law applies to the sale of ‘new residential premises’ or ‘potential residential land’ (subject to some exceptions) and requires an amount to be withheld from the Purchase Price and paid to the ATO. The Seller should seek legal advice if unsure about completing this section.

Amendments to Signature panel:

Under “Witness” signature for **both Buyer and Seller**, add:

[Note: No witness is required if the [Buyer/Seller] signs using an Electronic Signature]

Under the Buyer signature panel, add:

“By placing my signature above I warrant that I am the Buyer named in the Reference Schedule or authorised by the Buyer to sign.”

Under the Seller signature panel, add:

“By placing my signature above I warrant that I am the Seller named in the Reference Schedule or authorised by the Seller to sign.”

Footer of document, add:

“(Note: Initials not required if signed with Electronic Signature)”

Definitions

New definitions added:

- (b) “**ATO**” means the Australian Taxation Office;
- (n) “**Electronic Signature**” means an electronic method of signing that identifies the person and indicates their intention to sign the contract;
- (u) “**GST Withholding Amount**” means the amount (if any) determined under section 14-250 of the Withholding Law required to be paid to the Commissioner for Taxation.

Definitions amended as underlined:

“**CGT Withholding Amount**” means the amount determined under section 14-200(3)(a) of the Withholding Law or, if a copy is provided to the Buyer prior to settlement, a lesser amount specified in a variation notice under section 14-235;

- (p) “**Essential Term**” includes, in the case of breach by:
 - (i) the Buyer: clauses 2.2, 2.5(1), 2.5(5), 5.1 and 6.1; and
 - (ii) the Seller: clauses 2.5(5), 5.1, 5.3(1)(a)-(d), 5.3(1)(e)(ii) & (iii), 5.3(1)(f), 5.5 and 6.1;
 but nothing in this definition precludes a Court from finding other terms to be essential.

Clause 2.5(3) amended

14th edition	15th edition
(c) for clause 2.5(1), the Seller irrevocably directs the Buyer to draw a bank cheque for the CGT Withholding Amount in favour of the Deputy Commissioner of Taxation or, if the Buyer’s Solicitor requests, the Buyer’s Solicitor’s Trust Account;	(c) for clause 2.5(1), the Seller irrevocably directs the Buyer to draw a bank cheque for the CGT Withholding Amount in favour of the Deputy Commissioner of Taxation or, if the Buyer’s Solicitor requests, the Buyer’s Solicitor’s Trust Account;
(d) the Buyer must lodge a Foreign Resident Capital Gains Withholding Purchaser Notification Form with the Australian Taxation Office for each person comprising the Buyer and give copies to the Seller with the payment reference numbers (PRN) on or before settlement;	(d) the Buyer must lodge a <i>Foreign Resident Capital Gains Withholding Purchaser Notification Form</i> with the Australian Taxation Office <u>ATO</u> for each person comprising the Buyer and give copies to the Seller with the payment reference numbers (PRN) on or before settlement;
(f) the Buyer must pay the CGT Withholding Amount to the Commissioner in accordance with section 14-200 of the Withholding Law and give the Seller evidence that it has done so within 2 Business Days of settlement occurring;	(f) the Buyer must pay the CGT Withholding Amount to the ATO Commissioner in accordance with <u>section 14-200</u> of the Withholding Law and give the Seller evidence that it has done so within 2 Business Days of settlement occurring;

Clause 2.5(4) amended

14th edition

- (4) For clause 2.5(3) and s 14-215 of the Withholding Law, the market value of the CGT asset is taken to be the Purchase Price less any GST included in the Purchase Price for which the Buyer is entitled to an input tax credit unless ...

15th edition

- (4) For clause 2.5(3) and section 14-215 of the Withholding Law, the market value of the CGT asset is taken to be the Purchase Price less any GST included in the Purchase Price for which the Buyer is entitled to an input tax credit unless ...

New clauses 2.5(5) and (6) added

- (5) If the Buyer is required to pay the GST Withholding Amount to the Commissioner of Taxation at settlement pursuant to section 14-250 of the Withholding Law:
- (a) the Seller must give the Buyer a notice in accordance with section 14-255(1) of the Withholding Law;
 - (b) prior to settlement the Buyer must lodge with the ATO:
 - (i) a *GST Property Settlement Withholding Notification form* ("Form 1"); and
 - (ii) a *GST Property Settlement Date Confirmation form* ("Form 2");
 - (c) on or before settlement, the Buyer must give the Seller copies of:
 - (i) the Form 1;
 - (ii) confirmation from the ATO that the Form 1 has been lodged specifying the Buyer's lodgement reference number and payment reference number;
 - (iii) confirmation from the ATO that the Form 2 has been lodged; and
 - (iv) a completed ATO payment slip for the Withholding Amount;
 - (d) the Seller irrevocably directs the Buyer to draw a bank cheque for the GST Withholding Amount in favour of the Commissioner of Taxation and deliver it to the Seller at settlement; and
 - (e) the Seller must pay the GST Withholding Amount to the ATO in compliance with section 14-250 of the Withholding Law promptly after settlement.
- (6) The Buyer warrants that the statements made by the Buyer in the Reference Schedule under GST Withholding Obligations are true and correct.

Clause 7.6(4) amended

14th edition:

- (4) The Buyer may terminate this contract by notice to the Seller if there is an outstanding notice at the Contract Date under sections 246AG, 247 or 248 of the *Building Act 1975* or sections 588 or 590 of the *Sustainable Planning Act 2009* that affects the Property.

15th edition:

- (4) The Buyer may terminate this contract by notice to the Seller if there is an outstanding notice at the Contract Date under sections 246AG, 247 or 248 of the *Building Act 1975* or sections ~~588~~ 167 or ~~590~~ 168 of the ~~*Sustainable Planning Act 2009*~~ *Sustainable Planning Act 2016* that affects the Property.

Clause 7.7(e) inserted

- (e) there is an outstanding condition of a development approval attaching to the Land under section 73 of the *Planning Act 2016* or section 96 of the *Economic Development Queensland Act 2012* which, if complied with, would constitute a material mistake or omission in the Seller's title under clause 7.5(2)(c);

Clause 10.4 Notices amended and inserted

14th edition	15th edition
<p>(1) Notices under this contract must be in writing and may be given by a party's solicitor.</p>	<p>(1) Notices under this contract must be in writing. and may be given by a party's solicitor</p>
<p>(2) Notices may be given by:</p> <p>(a) delivering or posting to the other party or its solicitor; or</p> <p>(b) sending to the facsimile number or email address of the other party or its solicitor stated in the Reference Schedule or another facsimile number or email address specified in a notice given by the recipient to the sender.</p> <p>[Note: Whilst notices under this Contract may be sent by email they are not 'given' until they are capable of being retrieved by the addressee at the nominated email address in accordance with s 24 of the <i>Electronic Transactions (Queensland) Act 2001</i>]</p>	<p>(2) Notices under this contract or notices required to be given by law may be given and received by the party's solicitor.</p> <p>(3) Notices may be given by: Notices under this contract or required to be given by law may be given by:</p> <p>(a) delivering or posting to the other party or its solicitor; or</p> <p>(b) sending <u>it</u> to the facsimile number or email address of the other party or its solicitor stated in the Reference Schedule (or another facsimile number email address specified in a notice given notified by the recipient to the sender); <u>or</u></p> <p>(c) <u>sending it to the email address of the other party or its solicitor stated in the Reference Schedule (or another email address notified by the recipient to the sender).</u></p> <p>[Note: Whilst notices under this Contract may be sent by email they are not 'given' until they are capable of being retrieved by the addressee at the nominated email address in accordance with s 24 of the <i>Electronic Transactions (Queensland) Act 2001</i>]</p>
<p>(3) Posted notices will be treated as given 3 Business Days after posting.</p> <p>(4) Notices sent by facsimile will be treated as given when the sender obtains a clear transmission report.</p>	<p>(3) Posted notices will be treated as given 3 Business Days after posting.</p> <p>(4) Notices sent by facsimile will be treated as given when the sender obtains a clear transmission report. <u>Subject to clause 10.4(5), a notice given after this contract is entered into in accordance with clause 10.4(3) will be treated as given:</u></p> <p>(a) <u>5 Business Days after posting;</u></p> <p>(b) <u>if sent by facsimile, at the time indicated on a clear transmission report; and</u></p> <p>(c) <u>if sent by email, at the time it is sent.</u></p>

<p>(5) Notices given after 5pm will be treated as given on the next Business Day.</p>	<p>(5) Notices given after 5pm will be treated as given on the next Business Day. <u>Notices given by facsimile, by personal delivery or by email between 5pm on a Business Day (the "first Business Day") and 9am on the next Business Day (the "second Business Day") will be treated as given or delivered at 9am on the second Business Day.</u></p>
<p>(6) Notices or other written communications by a party's solicitor (for example, varying the Inspection Date, Finance Date or Settlement Date) will be treated as given with that party's authority.</p>	<p>(6) Notices or other written communications by a party's solicitor (for example, varying the Inspection Date, Finance Date or Settlement Date) will be treated as given with that party's authority. <u>If two or more notices are treated as given at the same time under clause 10.4(5), they will be treated as given in the order in which they were sent or delivered.</u></p>
	<p>(7) <u>Notices or other written communications by a party's solicitor (for example, varying the Inspection Date, Finance Date or Settlement Date) will be treated as given with that party's authority.</u></p>
	<p>(8) <u>For the purposes of clause 10.4(3)(c) and clause 12.2 the notice or information may be contained within an email, as an attachment to an email or located in an electronic repository accessible by the recipient by clicking a link in an email.</u></p>

Clause 10.10 Counterparts inserted

14th edition

15th edition

- (1) This contract may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same contract.
- (2) A counterpart may be electronic and signed using an Electronic Signature.

Clause 11.3 Electronic Settlement amended

14th edition

15th edition

- (3) The Seller and Buyer will be taken to have complied with clause 2.5(3) (if applicable) if:
- (a) the Buyer complies with clause 2.5(3)(d);
- (b) the Financial Settlement Schedule specifies payment of the CGT Withholding Amount to the account nominated by the Deputy Commissioner for Taxation.
- (3) The Seller and Buyer will be taken to have complied with ~~clause 2.5(3) (if applicable)~~ if:
- (a) ~~the Buyer complies with clause 2.5(3)(d)~~ clause 2.5(3)(c),(e) and (f); and
- (b) clause 2.5(5)(d) and (e),
- (as applicable) if at settlement, the Financial Settlement Schedule specifies payment of the ~~CGT Withholding Amount~~ relevant amount to the account nominated by the ~~Deputy~~ Deputy Commissioner ~~for~~ of Taxation.

New clause 12 Electronic Contract and Disclosure inserted

12. Electronic Contract and Disclosure

12.1 Electronic Signing

If this contract is signed by any person using an Electronic Signature, the Buyer and the Seller:

- (a) agree to enter into this contract in electronic form; and
- (b) consent to either or both parties signing the contract using an Electronic Signature.

12.2 Pre-contract Disclosure

The Buyer consents to the Seller's use of electronic communication to give any notice or information required by law to be given to the Buyer and which was given before the Buyer signed this contract.
