

Comparison of REIQ Houses and Residential Land Contracts 6th and 7th editions

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	REIQ 6 th ed	REIQ 7 th ed	Reason for change
Ref	Place of Settlement	Inserted new note:	Disputes between parties about the meaning of “Brisbane” in Place for Settlement
Sch		[If Brisbane is inserted this is a reference to Brisbane CBD]	
Clause 1	Pest and Building Inspection	Deletion of Warning in notes.	Removed for consistency with changes to clause 4. No longer any deemed satisfaction.
	Change to definition of Bond to refer to new Residential Tenancies legislation	“ Bond ” means a bond under the <i>Residential Tenancies and Rooming Accommodation Act 2008</i>	Change name of Residential Tenancies Act 1994 to <i>Residential Tenancies and Rooming Accommodation Act 2008</i>
	New definition of Court	“ Court ” includes any tribunal established under statute.	Inserted for clause 7.6 to clarify court includes QCAT
	New definition of Essential Term	‘Essential Term’ includes, in the case of breach by: (i) the Buyer: clauses 2.2, 2.5(1), 5.1 and 6.1; and (ii) the Seller: clauses 5.1, 5.3(1) (a)-(c), 5.3(1) (d) (ii) & (iii) 5.5 and 6.1, but nothing in this definition precludes a Court from finding other terms to be essential.	Inserted for clause 9.1 which is amended to allow termination by either buyer or seller for breach of an essential term
Clause 2	New clause 2.2(3)	(3) The Seller may recover from the Buyer as a liquidated debt any part of the Deposit which is not paid when required.	Inserted for consistency with REIQ Residential Lots in a Community Title Scheme 3 rd ed

	New clause 2.6(11), (12)	<p>(11) If Rent payments are reassessed after the Settlement Date for periods including the Settlement Date, any additional Rent payment from a Tenant or refund due to a Tenant must be apportioned under clauses 2.6(8), (9) and (10).</p> <p>(12) Payments under clause 2.6(11) must be made within 14 days after notification by one party to the other but only after any additional payment from a Tenant has been received.</p>	Inserted for consistency with REIQ Residential Lots in a Community Title Scheme 3 rd ed
Clause 3	Amendment to clause 3.2(1) (underlined)	<p>3.2 The Buyer must give notice to the Seller that:</p> <p>(1) approval has not been obtained by the Finance Date and <u>the Buyer terminates</u> this contract; or</p> <p>(2) the finance condition has been either satisfied or waived by the Buyer.</p>	Added for consistency with new clause 4.2
Clause 4	Amendment of clause 4.2-4.5	<p>New clause:</p> <p>4.1 This contract is conditional upon the Buyer obtaining a written building report from the Building Inspector and a written pest report from the Pest Inspector (which may be a single report) on the Property by the Inspection Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain the reports (subject to the right of the Buyer to elect to obtain only one of the reports).</p>	<p>Clause 4 was potentially an unfair term under the Australian Consumer Law.</p> <p>Clause 4 has been amended to be consistent with clause 3:</p> <p>(i) no automatic satisfaction of building and pest;</p> <p>(ii) buyer must exercise rights of termination or notify of satisfaction in the same way as finance.</p> <p>(iii) if buyer does not notify in accordance with the</p>

		<p>4.2 The Buyer must give notice to the Seller that:</p> <p>(1) a satisfactory Inspector’s report has not been obtained by the Inspection Date and the Buyer terminates this contract. The Buyer must act reasonably; or</p> <p>(2) clause 4.1 has been either satisfied or waived by the Buyer.</p> <p>4.3 f the Buyer terminates this contract and the Seller asks the Buyer for a copy of the building and pest reports, the Buyer must give a copy of each report to the Seller without delay.</p> <p>4.4 The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.2 by 5pm on the Inspection Date. This is the Seller’s only remedy for the Buyer’s failure to give notice.</p> <p>4.5 The Seller’s right under clause 4.4 is subject to the Buyer’s continuing right to terminate this contract under clause 4.2(1) or waive the benefit of this clause 4 by giving written notice to the Seller of the waiver.</p> <p>4.6 If required under the <i>Queensland Building Services Authority Act 1991</i>, the Inspector referred to in Clause 4.1 must hold a current licence under that Act.</p>	<p>clause, the seller may terminate the contract under cl 4.4</p> <p>(iv) if the contract is terminated under this clause the deposit is returned to the buyer.</p>
<p>Clause 5</p>	<p>Clause 5.4(2) change to name of Residential Tenancies Act (as underlined)</p>	<p>(2) guarantees and Bonds (subject to the requirements of the <u><i>Residential Tenancies and Rooming Accommodation Act 2008</i></u>) supporting the Tenancies</p>	<p>Change name of Residential Tenancies Act 1994 to <i>Residential Tenancies and Rooming Accommodation Act 2008</i></p>

<p>Clause 7</p>	<p>Clause 7.6(2) inserted.</p> <p>Existing clause 7.6(2) renumbered as 7.6(3)</p> <p>Clause 7.6(4) amended</p>	<p>New clause 7.6(2) and (4):</p> <p>(2) If any Work or Expenditure that is the Seller’s responsibility under clause 7.6(1)(a) is not done before the Settlement Date, the Buyer is entitled to claim the reasonable cost of work done by the Buyer in accordance with the notice or order referred to in clause 7.6(1) from the Seller after settlement as a debt.</p> <p>(4)The Buyer may terminate this contract by notice to the Seller if there is an outstanding notice at the Contract Date under sections 247 or 248 of the <i>Building Act 1975</i> or sections 588 or 590 of the <i>Sustainable Planning Act 2009</i> that affects the Property.</p>	<p>Clause 7.6(2) inserted to clarify right of buyer to claim the cost of work performed under a notice issued prior to contract as a debt after settlement.</p> <p>Clause 7.6(4) amended to update reference to <i>Sustainable Planning Act 2009</i></p>
<p>Clause 9</p>	<p>Clause 9.1 – 9.5 amended</p> <p>Clause 9.6 renumbered as 9.9</p>	<p>New clauses 9.1-9.8</p> <p>9.1 Seller and Buyer May Affirm or Terminate</p> <p>Without limiting any other right or remedy of the parties including those under this contract or any right at common law, if the Seller or Buyer, as the case may be, fails to comply with an Essential Term, or makes a fundamental breach of an intermediate term, the Seller (in the case of the Buyer’s default) or the Buyer (in the case of the Seller’s default) may affirm or terminate this contract.</p> <p>9.2 If Seller Affirms</p> <p>If the Seller affirms this contract under clause 9.1, it may sue the Buyer for:</p>	<p>Clause 9 was a potential unfair term under the Australian Consumer Law because the term gave rights to terminate to the seller for a breach of any term. The buyer did not have the same rights.</p> <p>Clause 9.1 now provides for termination by either party for breach of an essential term, which is defined in clause 1.</p> <p>Clause 9.2 is in the same terms as clause 9.2 in the 6th ed.</p> <p>Clause 9.3 is new and lists the rights of the buyer upon affirmation.</p> <p>Clause 9.4 is the same as clause 9.3 in the 6th ed and gives the seller the right to claim all of the remedies in the list.</p>

		<p>(1) damages;</p> <p>(2) specific performance; or</p> <p>(3) damages and specific performance.</p> <p>9.3 If Buyer Affirms</p> <p>If the Buyer affirms this contract under clause 9.1, it may sue the Seller for:</p> <p>(1) damages;</p> <p>(2) specific performance; or</p> <p>(3) damages and specific performance.</p> <p>9.4 If Seller Terminates</p> <p>If the Seller terminates this contract under clause 9.1, it may do all or any of the following:</p> <p>(1) resume possession of the Property;</p> <p>(2) forfeit the Deposit and any interest earned;</p> <p>(3) sue the Buyer for damages;</p> <p>(4) resell the Property.</p> <p>9.5 If Buyer Terminates</p> <p>If the Buyer terminates this contract under clause 9.1, it may do all or any of the following:</p> <p>(1) recover the Deposit and any interest earned;</p>	<p>Clause 9.5 is new and lists the rights of the buyer upon termination.</p> <p>Clause 9.6 is substantially in the same terms as clause 9.4 of the 6th edition but is amended in light of the decision in <i>Riggall v Thompson</i> [2010] QCA 144 which held that clause 9.4(1)(b) was a penalty. The right of the seller to claim the expenses of the contract has been deleted.</p> <p>Clause 9.7 is in the same terms as clause 9.5 of the 6th ed.</p> <p>Clause 9.8 is new and sets out the right of the buyer to damages.</p>
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Clause 10	Clause 10.8 is added	<p>New clause 10.8</p> <p>10.8 Severance</p>	<p>A severance provision was added to clause 10.8 to ensure any unfair terms can be severed leaving the remainder of the contract enforceable.</p>

		<p>If any term or part of a term of this contract is or becomes legally ineffective, invalid or unenforceable in any jurisdiction it will be severed and the effectiveness, validity or enforceability of the remainder will not be affected.</p>	
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