Webinar: New QLS/REIQ contracts for econveyancing

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New Residential Contracts

• 11th Edition Contract for Houses & Residential Land
• 7th Edition Contract for Residential lots in a CTS
Overview of both contracts

- New clause 11 regarding the terms for electronic settlements.
- Settlement must occur by 4pm – not 5pm - for both PEXA & paper settlements (clause 5.1).
- Land tax is no longer adjusted as an outgoing in the settlement figures (clause 2.6(4)).
- In the CTS Contract, the Seller is only responsible for special contributions for which a levy notice has issued on or before the contract date (clause 2.12(a)).

11th Edition Contract for Houses & Residential Land
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Reference Schedule – Deposit Holder

• Insert name and bank details of the deposit holder’s trust account
• Facilitates the payment of buyer’s deposits by EFT or direct debit
• Recognises the increasing use of electronic payments for deposits rather than cheques.

Reference Schedule – Initial Deposit

• Change to payment of Initial Deposit

• Initial Deposit payable on the day the Buyer signs the Contract or on another time as specified in the panel.
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Terms of Contract – Land Tax

- New definition of Outgoings (clause 1.1(2)(u)) excludes land tax:
  "rates or charges on the land by any competent authority (for example, council rates, water rates, fire service levies) but excludes land tax"

- Clause 1.1(2)(ff) (Site Value) and 2.6(4) (Land Tax Adjustment) deleted.

Terms of Contract – Land Tax

- Old clause 2.6(4) has been deleted
- Clause 2.6(5) renumbered 2.6(4) and amended.
- Renumbered clause 2.6(4) amending by inserting at the start:
  "The Seller is liable for land tax assessed on the Land for the financial year current at the Settlement Date"
- Previous wording deleted:
  "If an amount is deducted under this clause, then land tax will be treated as paid at the Settlement Date for the purposes of clause 2.6(2)"
- Clarifies the Seller is liable to discharge any land tax liability on the land.
Terms of Contract – Pest Inspector

- Clause 1.1(2)(v) (Pest Inspector) definition has been amended
- A person licensed to undertake termite inspections on completed buildings under the \textit{Queensland Building and Construction Commission Regulations 2003}
- Consistent with technical qualifications of a pest inspector in Part 52 of the QBCC Regulations.

Terms of Contract – Pest Inspector

- Clause 4.6 deleted

\textit{If required under the Queensland Building and Construction Commission Act 1991, the Inspector referred to in clause 4.1(1) must hold a current licence under that Act.}
Terms of Contract - GST

- Clause 2.1(2) amended:

\[(2) \text{ If a party is required to make any other payment or reimbursement under this Contract, that payment or reimbursement will be reduced by the amount of any tax input credits to which the other party (or the representative member of a GST group of which it is a member) is entitled.}\]

- Clarifies reimbursement of outgoings where there was a GST component.
- Ensures the purchase price will be excluded and will not be adjusted.

Terms of Contract – Balance Purchase Price

- Clause 2.5(1) amended as follows:

\[\text{On the Settlement Date, the Buyer must pay the Balance Purchase Price by bank cheque as the Seller or the Seller’s Solicitor directs.}\]

- Clarifies the Seller’s Solicitor may give cheque directions.
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Terms of Contract - Notices

• Clause 10.4(3) amended:
  Posted notices will be treated as given 3 Business Days after posting

• Conforms with Australia Post’s recent policy change for “standard mail” deliveries.

7th Edition Contract for Residential lots in a Community Title Scheme
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Terms of Contract – Special Contributions

• Clause 2.6(13) renumbered as 2.6(12) and amended:
  The Seller is liable for:
  (a) any Special Contribution for which a levy notice has been issued on or before the Contract date
• Clarifies seller will not be liable to pay special contributions unless a levy notice has issued before the contract date
• Implied warranties in s 223 of the BCCM Act.

Section 223 BCCM Act – Implied Warranties

At the date of contract, to the seller’s knowledge unless otherwise disclosed:
• no latent or patent defects in the common property or body corporate assets, other than fair wear and tear, and defects disclosed in the contract and body corporate records do not disclose any such defects
• no actual, contingent or expected liabilities that are not part of the body corporate’s normal operating expenses and body corporate records do not disclose any such liabilities.
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Section 223 BCCM Act – Implied Warranties

At the date of completion, to the seller’s knowledge (or ought reasonably to have known) unless disclosed:

- there are no circumstances in relation to body corporate affairs likely to materially prejudice the buyer.

Terms of Contract – Time and Date for Settlement

- Clause 5.1(1) amended:
  
  (1) Settlement must occur between 9am and 4pm AEST on the Settlement Date

- PEXA will not settle any electronic settlements after 4pm AEST

- Applies to paper and electronic settlements.
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**Electronic Settlements**

**Terms of Contract - Electronic Settlement**

- New clause 11 permits parties to settle a transaction electronically using PEXA
- Only applies if all parties to the contract (including financiers) agree to an electronic settlement
- If there is no agreement, use the existing paper based system.
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Terms of Contract - Electronic Settlement

- Payment of balance purchase price electronically in PEXA satisfies buyer’s obligations in clause 2.5(1).
- Digitally signed transfer and release in PEXA system satisfies seller’s obligations under clauses 5.3(1)(b) and (c).
- Clause 11.3(4) allows for documents and keys to be held in escrow on seller’s solicitors undertaking and provided after settlement.

Terms of Contract - Electronic Settlement

- Rights of termination may not be exercised once the PEXA workspace is ‘locked’
- System locked at the nominated time for settlement
- Consistent with s 67A of the Property Law Act 1974 – clause 11.3(6).
Terms of Contract - Electronic Settlement

• Time remains of the essence
• Settlement date is extended if the PEXA system, titles registry, financial institutions or OSR systems are not operative – clause 11.4.

Terms of Contract - Electronic Settlement

• May elect to opt out of the electronic settlement up to 5 business days before settlement – clause 11.5
• Within 5 business days - limited circumstances in clause 11.5(2)
• Ensures seller has sufficient time to arrange for execution of a paper transfer.
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Terms of Contract - Electronic Settlement

For more information refer to the QLS Guidelines for Electronic Settlement.

Questions..........???