Queensland Law Society

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Office of the President

13 March 2026

Our ref: KB:EL/PD

Department of Housing and Public Works
Level 21
1 William Street
Brisbane QLD 4000

By email: [redacted]

Dear MH consultation team

Sale agreement for manufactured homes – revised consultation draft

Thank you for the opportunity to provide feedback on the draft revised sale agreement for manufactured homes (**sale agreement**).

The sale agreement has been reviewed by members of the QLS Elder Law and Property and Development Law Committees. In the time available, our members raise the following for consideration:

1. **Corporate party**: We note there is scope for a corporate owner and corporate buyer. However, in our members' experience, this is rare and a park owner is unlikely to accept a buyer that is a company. Notwithstanding this, there does not appear to be a restriction in the legislation relating to corporate parties.

2. **Parties being legally represented**: While the sale agreement recommends seeking independent legal advice, we suggest this be amended to also recommend obtaining legal representation throughout the transaction. Directing parties to a lawyer will address several issues our members see in practice, including parties:
   a. questioning legal matters in the contract.
   b. not understanding various matters during the transaction (e.g. extensions of time for conditions or that settlement is required it to be in writing).
   c. not using email communication, which then forces them to attend the other party's solicitors' offices, increasing costs and delays for everyone.
   d. where there is a negotiated price reduction due to issues with the pest and building report, not documenting the changes and/or not accepting and understanding the terms and variations;
   e. not being subject to VOI by their lawyer. In these matters, VOI can be critical and the other party will need to incur the cost and time to undertake this process themselves.

   Some of our members report declining to act in transactions where the other party is not represented due to the risks and increased costs.

   QLS continues to advocate for increased funding for the legal assistance sector to assist with the provision of these legal services.

3. **Time of the essence:** This is not included in the sale agreement. Our members advise their agreements always provide for this. In many cases, their clients are selling real property under a contract to purchase where "time is of the essence" and using the sale proceeds to purchase a manufactured home. It would be prudent for both contracts to be consistent in this regard.

4. **Conditions**: These sale agreements are often subject to conditions being any one or more of the following:
    a. Finance – subject to sale of their house; and
    b. Pest and Building.

    The sale agreement template does not cater for this at all.

5. **Manufactured home location - clause 2.1.2:** We recommend the Site Plan be attached to the agreement. The site plan for the park is typically attached to the site agreement, but we see no reason why it cannot also be attached to the sale agreement as this often comes well before the site agreement is provided.

6. **Inclusions**: While clause 2.4.1 deals with fixtures; however, there is no clause about inclusions with the sale. This should be included in the sale agreement.

7. **Deposits**: Clause 3.2 suggests a deposit is optional. In our members' view, every sale agreement should require (not make it optional) that consideration is paid. Our members report never seeing a sale agreement without a deposit payable and paid.

    Further, the wording underneath clause 3.2.5 states, "*The parties must ensure the operative terms in Part 5 deal with the payment of the deposit and consequence for non/late payment*". We query what this is meant to achieve. The same wording appears at the end of clauses 3.3 and 3.4.

8. **Risk**: There is no mention of who holds the risk in the home until settlement. We recommend a clause be included to make it clear that the risk in the home remains with the seller until settlement.

9. **Clause 3.3 Settlement**: The place for settlement should be listed. Typically, it is at the park manager's office, but not always, especially where the property is subject to sale.

10. **Foreign buyer**: We query whether there should there be an acknowledgement in the form that the buyer is NOT a foreign buyer. Additional Foreign Acquirer Duty (AFAD) can still apply to chattels. This will not be an issue where the instrument is exempt, perhaps, but nonetheless, we consider the party will still need to report this.

11. **Encumbrances**: Clause 4.1 refers to a security interest. We query the intention of this clause, specifically why a buyer would terminate under "cooling off" to any person the buyer has given security interest in the home as a buyer?

    There should be a warranty given by the seller that the sale of the home is to be free from all encumbrances. It should also motivate buyers to do PPSR searches on the home to check if there is security. We note that years ago, there was a school of thought by certain law firms that all owners of manufactured homes should have PPSR security over their home and advised all buyers to lodge PPSR securities post settlement. That school of thought may exist today still. The problem is that many of these transactions did not identify this issue, and many buyers historically have purchased a home with a security over it without knowing.

12. **Duties Act exemption**: While the instrument is exempt from duty under the *Duties Act 2001* (QLD), the Office of State Revenue still requires parties to stamp the instrument with NIL duty. This should be noted on the form.

13. **CGT withholding certificate**: Our members report some parties are providing CGT withholding certificates on the sale of a manufactured home when this may not be required. The ATO advises it is an option, rather than a mandatory requirement, for this asset sale.[1] We suggest including a note in the sale agreement that this does not apply to the sale of manufactured homes. This will give certainty to parties who might think a certificate is required.

14. **Seller warranties**: Our members' agreements will include seller warranties, such as that the home will be in the same condition and positioned on the same site as inspected by the buyer as at date of agreement. This should be considered.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on [redacted]

Yours faithfully

[redacted]

Peter Jolly
President

[1]https://www.ato.gov.au/individuals-and-families/investments-and-assets/capital-gains-tax/foreign-residents-and-capital-gains-tax/foreign-resident-capital-gains-withholding/vendor-declarations: "*When selling assets other than taxable Australian real property, the vendor may provide the purchaser with a vendor declaration to specify foreign resident capital gains withholding (FRCGW) isn't required*"