



Dear Valued Client,

Re: Your Proposed Property Purchase

Thank you for engaging Lightning Legal for your purchase. Shortly we will be providing comprehensive advice on your matter.

This letter is to confirm some time-critical aspects of your matter and options you should consider as soon as possible.

Please read the EFT Cyber Alert provided to you with this letter.

IMPORTANT:

Conveyancing in Queensland can be complex and many things in a conveyance may not go as expected.

To help ensure a good outcome, during your conveyance:

1. Read all the information provided. Courts require us to provide you with this advice.
2. Complete the documents requested and return them to us as soon as possible.
3. Give us clear instructions as soon as possible, particularly before critical dates expire.
4. Tell us if you have any concerns, including about the Contract or the Property.
5. Tell us if your contact phone number, email or address change or if you expect communication difficulties at any time - **we must be able to contact you at all times** otherwise you may lose rights, suffer loss or be unable to purchase the Property simply because we were unable to contact you at a critical stage.

Your active involvement in this conveyance is critical to achieving a successful result.

Time critical issues

A property purchase transaction generally involves some time critical issues that must be considered when the Contract is entered into or shortly after that time. Things that must be considered include:

- **Deposit:** the deposit must be paid to the Deposit Holder as required by the Contract terms which can sometimes be immediately.
 - o If you don't pay the deposit **by the date as required in the Contract**, the Seller may have a right to terminate the Contract and claim compensation from you even after you pay the deposit.
 - o If you don't provide written evidence to the Deposit Holder of an electronic transfer for payment of the deposit and the deposit has not been received by the Deposit Holder by

the due date, the Seller may have a right to terminate the Contract and claim compensation from you until such time as written evidence is provided.

- o To avoid being in breach of the Contract, **on or before the due date** for payment of the deposit (usually the day you sign the Contract)
 - pay the deposit by cheque directly delivered to the Deposit Holder and ensure you have sufficient evidence of when the payment was made; or
 - pay the deposit by electronic transaction and provide written evidence of the successful transaction to the Deposit Holder at the time the electronic transaction is made.
- o If you are intending to pay the deposit by electronic transaction, you should check with your financial institution about any daily limits on transferring funds that may affect your ability to pay the deposit when required.
- o You should not rely on any directions or relaxations about payments (including those given by the real estate agent) that are contrary to the requirements of the Contract. Please call us urgently if your deposit was not paid when required or was not paid in the manner required by the Contract.
- **Insurance:** risk in the Property usually passes to you on the Contract being signed by all parties (and the consequent need for you to immediately insure the Property).
- **Cooling-off:** the time limit to exercise any Cooling-off rights (five business days only - subject to a range of conditions which we need to discuss further with you).
 - o If applicable to your Contract, the Cooling-off period starts on the day you receive from the Seller (or the Seller's agent) a copy of the Contract signed by both parties or, if that day is not a business day, on the next business day.
 - o If the Seller signed the Contract before you did, the Cooling-off period starts on the day you signed the Contract and communicated your acceptance to the Seller. Please tell us immediately when you received the signed Contract so that we can calculate when the Cooling-off period ends.

We do not recommend that you waive or shorten any Cooling-off period in case you need to exercise your rights during that time.

- **Contract conditions:** steps that must be taken in relation to conditions to which the Contract is subject (such as a finance approval, a satisfactory building and pest inspection report or satisfactory body corporate records inspection) and the exercise of rights of termination that may arise.
- **Settlement Date:** usually time is of the essence of the Contract which means that both parties to the Contract must perform their obligations strictly by the due date. However,
 - o under the Standard Contract, either party may extend the Settlement Date by up to five business days by giving notice to the other party, without the need for the other party to agree. A party does not need to provide any reason for exercising this right of extension; and
 - o there are other circumstances where the Settlement Date will automatically be extended under the Standard Contract or legislation.

You should take the possibility of an extension of the Settlement Date into account particularly if settlement on the nominated Settlement Date is critical to you or your plans. Special Conditions may need to be included in the Contract to achieve your desired outcome(s).

Of course, there may be numerous other critical steps and dates that apply to your transaction. You may also need to consider whether relevant dates are affected by:

- the terms of the Contract (for example, days in the period between 27 December and 31 December are not business days under the Standard Contract) (however, please note any legislative dates, such as the Cooling-off date are not affected by this definition of business days under the Standard Contract);
- legislation (for example, in some cases, if you receive a notice, you may have a limited period of time to exercise rights); or
- any other issues that may affect the availability of parties (e.g. independent contractors, financiers and agents) or funds required for settlement.

A failure to act in time in relation to a date relevant to the transaction may mean the loss of rights under the Contract or an exposure to liability in connection with the Property.

Potential issues with the Property or Contract

There may be issues later discovered about the Property or the Contract including where there might be no termination rights in relation to a range of matters. Some examples are:

- if the Contract is not subject to finance and you are unable to obtain or maintain finance approval for the transaction or otherwise do not have immediately available cleared funds (e.g. you are relying on an inheritance or property sale), you will have no right to use the finance condition to terminate the Contract;
- some issues or search results affecting the Property (adjustments, council charges, unapproved structures, restrictions on use of the Property, flood prone land, services not connected, asbestos);
- contamination of the Property including issues caused by the manufacture or use of illicit drugs which, for example, can be expensive to rectify.

(There are indicative contamination tests you might consider conducting during the Cooling-off period. However, more comprehensive tests may be required to identify the extent of any contamination, and these take longer to obtain and therefore may not be received before the end of the Cooling-off period. Please contact us if you wish to discuss this further.);

- difficulty obtaining search results before condition dates or settlement to exercise rights;
- obligations that come with the Property requiring you to spend money, to maintain, repair or replace improvements or infrastructure, to grant easements (e.g. under an outstanding development approval condition), to comply with covenants in registered easements, to obtain a pool safety certificate or to install compliant smoke alarms or a safety switch);
- council or planning restrictions may mean you are not able to develop or use the Property as intended (e.g. you may not be able to use the Property for short-term letting, rent out part of the Property or create a second dwelling on the Property etc.);
- property valuation issues; or

- Contract issues such as a failure to stipulate the correct Buyer entity (for tax or investment purposes), deposit payment issues or the lack of an appropriate condition to deal with your circumstances (e.g. to deal with foreign ownership issues, to obtain finance approval, to provide for contemporaneous settlement of a related transaction including where funds are required from an existing sale).

See the [Options to be considered immediately](#) section below.

Buying in a Community Titles Scheme or BUGTA Parcel (if applicable)

If you are buying in a Community Titles Scheme or BUGTA Parcel then, in addition to the above issues, there might be issues arising from building defects and work required in relation to:

- external cladding, including identifying if the cladding is combustible, and whether it may need removal or replacement;
- structural issues which might be noted from inspecting common property areas of the building revealing cracks, water leaks etc.; and
- improvements on common property completed without authorisation from the body corporate, which, for example, could result in significant costs for owners and have insurance disclosure and exclusion implications.

Foreign buyers (if applicable)

It is important to note the following issues for foreign buyers:

- A foreign person (i.e. a person not ordinarily resident in Australia) must obtain approval to purchase residential real estate in Australia regardless of the value of the Property. There may be significant fees required to obtain the approval, which are not refundable if the Contract does not settle.
- Non-resident foreign persons are generally prohibited from purchasing established dwellings in Australia. While temporary residents are sometimes allowed to purchase an established dwelling to live in as their principal place of residence in Australia, the Government has placed a ban on the purchase of established dwellings for a period of two years, from 1 April 2025. Therefore it is important that you seek advice on whether you are currently permitted to purchase Australian property.
- Approvals for foreign acquisitions will generally be given for purchases of vacant land, for residential development and for purchases of newly constructed dwellings.
- If the Property is not occupied or genuinely available for rent for at least half of the year, the Australian Taxation Office may charge you an annual fee equal to the relevant foreign investment application fee imposed on the Property. This fee may be significant, and you should make urgent enquiries to ensure you are aware of the ongoing costs if this may apply to you.

You should inform us immediately if you believe these restrictions may apply to you. Purchasing property without a relevant approval may lead to significant monetary penalties as well as a forced sale of the Property.

If buying at an auction (if applicable)

If you are buying at auction, you should ensure that all of your affairs are in order before you bid at the auction. This is because you will be bound by the Contract upon signing the Contract on auction day. We recommend that you:

- confirm the correct entity bidding at the auction and to be named on the Contract as buyer - consider whether you will be purchasing the Property in your personal name, with another person, or a company or trust (if via a company or trust, you must ensure that you establish the purchasing entity before the auction);
- make sure that you will have sufficient funds to complete your purchase on the settlement date nominated in the proposed auction contract (e.g. by making enquiries of your financiers and financial advisors to confirm that all required approvals have been given on acceptable conditions, and that the required funds will be available);
- ensure that you will have sufficient funds to, and the practical ability to, pay the deposit on auction day;
- inspect the Property and ensure you are satisfied with the state and condition of the Property - you should obtain any pest and building inspection reports before the auction;
- arrange for any searches to be done before the day of auction (with sufficient time for them to be returned); and
- seek urgent legal advice to review the draft Contract and Seller Disclosure and, if necessary, negotiate the terms of the Contract with the Seller so that the Contract can be amended to reflect your agreed terms prior to auction day.

If you are signing the Contract pursuant to a power of attorney, you will need to ensure appropriate arrangements are put in place.

As you will not be entitled to any Cooling-off period, we recommend that you consider the above matters and provide us with instructions immediately. If you have already bought at auction, then please let us know immediately if you have not already attended to any of the above matters. It may assist us in identifying and advising you on potential rights and options.

Options to be considered immediately

1. If the Contract isn't signed:

- a. You should consider delaying entering into the Contract so that you may undertake relevant enquiries and searches if you have any concerns about these matters. You should also retain us to review the Contract and Seller Disclosure **before** you sign it, so that we can check them. Even though potentially we can include a due diligence condition in the Contract to provide time for you to investigate any concerns, there is a risk that the Seller may dispute reliance on that condition (unless it is drafted in a way that gives you a broad discretion about proceeding with the Contract) or otherwise not agree to amending the Contract to correct any inaccuracies or issues.
- b. If the draft Contract is not subject to finance, please contact us urgently if you do not have cleared funds for this purchase so that we can discuss amending the Contract to make it conditional on you obtaining a satisfactory finance approval.

2. **Cooling-off (if applicable):** If you have entered into the Contract, you may wish to exercise your rights under the Cooling-off provisions now to allow sufficient time to investigate the Property or rectify issues with the Contract, particularly if you have any concerns about the Property, including the Property value. You may also wish to fully investigate any insurance issues in relation to the Property (including the cost and availability of insurance). However, if you exercise the right of termination pursuant to the Cooling-off provisions, the Seller may retain a penalty of 0.25% of the purchase price from the deposit paid under the Contract. If you then later decide you would still like to purchase the Property, there is a risk that the Seller will not be willing to enter another contract with you.

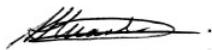
If you do have concerns about the Property, and a Cooling-off period applies, you can urgently instruct us to immediately commence some searches before the Contract is entered into or the Cooling-off period expires. Please contact us urgently if you would like to order searches immediately.

While we have given general advice above, we cannot advise you about the specifics of your Contract or time critical steps relating to your transaction until we are formally engaged to act for you and we have reviewed a copy of the Contract or have been able to advise you about the terms before it is entered into.

If you wish to protect your rights under the proposed Contract, we strongly recommend that you formally retain us to act for you in relation to the transaction or seek other appropriate legal representation as soon as possible and preferably before you sign any Contract or seek to exercise any rights.

Please contact us if you have any concerns or queries.

Sincerely



Sandy Stuart
Principal Solicitor

CYBER WARNING



Funds Transfer Critical Information

Cyber criminals have been hacking into communications. Do not act on any communication (from us, or anyone else) that requires you to send, deposit, pay or transfer funds above \$1,000 (Australian dollars or equivalent in another currency) or give any funds transfer information you receive to someone else - until you:

1. check the phone number of the apparent original sender of the communication – use a source other than the communication that asks for money;
2. contact the apparent original sender (including us) of that communication by using that phone number;
3. read out and read back the account and BSB numbers (or other specific payment details where applicable, e.g. if not a bank account) contained in the communication; and

4. confirm any instructions.

You may wish to also consider checking for amounts less than this on a case-by-case basis.

Please send a copy of any funds transfer or deposit confirmation as soon as possible after a funds transfer or deposit is made over \$1,000.