

REIQ Fact Sheet

REIQ Residential Contracts Reviewed



From 1 July 2010 the *Trade Practices (Australian Consumer Law) Act 2010* (ACL) will target unfair contracts, in particular terms that cause a significant imbalance in the parties' rights and obligations. Where the ACL applies to a standard form contract, any terms within the contract that are deemed to be unfair will be void. As with the existing provisions of the Trade Practices Act, this amendment has significant penalties associated with a breach of the legislation.

As a result the REIQ and the Queensland Law Society (QLS) have completed amendments to the REIQ residential contracts to ensure that the principles of the ACL are incorporated within the terms of the contract. The revised contracts are the *Contract for Houses and Residential Land (Seventh Edition)* and *Contract for Lots in a Community Title Scheme (Third Edition)*. These have been fully endorsed by the QLS.

Changes to the *Contract for Houses and Residential Land* are;

- **Place of settlement** - If Brisbane is inserted here, this is a reference to Brisbane CBD. In cases where the parties intend settlement to be outside the Brisbane CBD, this should be expressly identified in the Reference Schedule.
- **Clause 1** - Some definitions have been added or amended. **"Bond"** means a bond under the *Residential Tenancies and Rooming Accommodation Act 2008*. **"Court"** includes any tribunal established under statute.

The new definition of **"Essential Term"** was amended from previous versions to allow for the termination by either the Buyer or Seller for a breach of an essential term. Essential Term includes, in the case of breach by:

- the Buyer: clauses 2.2, 2.5(1), 5.1 and 6.1; and
- the Seller: clauses 5.1, 5.3(1) (a) - (c), 5.3(1) (d) (i) (ii) and (iii), 5.5 and 6.1

but nothing in this definition precludes a Court from finding other terms to be essential.

- **Clause 3 - Finance** - In the notice from the Buyer to the Seller regarding lack of finance approval the Buyer must also notify the Seller that it terminates the contract.
- **Clause 4 - Building & Pest Inspection Reports** - In the past, a Building and Pest Inspection Clause was considered satisfactorily met if no advice to the contrary was received by 5pm on the inspection due date. However, this 'guillotine' effect of the previous building and pest inspection report has been removed and now sets out the process a buyer must follow in regards to the results of a building or pest inspection report.

A buyer must notify by 5pm on the Inspection Date (as stated in the Schedule of the Contract), if a satisfactory Inspector's report has not been obtained or that this clause has either been satisfied or waived by the Buyer.

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- **Clause 4 continued**

The Seller has the right to terminate the contract by notice to the Buyer if the Buyer has not given notice by 5pm on the inspection date.

These amendments bring in line the rights and obligations under both the finance condition and the building and pest inspection condition to ensure that the process is consistent in both cases.

- **Clause 7 - Matters Affecting the Property - *Contracts for Residential Lots in a Community Title Scheme*** - amendments have been made to Clause 7 to be consistent with the *Contracts for House & Land*. Some of the amendments include;

- **Clause 7.4(2)** The Seller warrants at the Contract date and at settlement there are no current or threatened claims, notices or proceedings that may lead to a judgement, order or writ affecting the Property.

Amendments have been made to be consistent with the *Contracts for House & Land* and now only apply to the lot and not common property.

- **Clause 7.6 - Requirements of Authorities** - Amendments have been made to outline the Seller's obligations in the event there is a notice or order by any competent authority or Court that requires work to be done or money spent in relation to the Property. Also outlined is that in the event that the Seller has not complied with this clause before settlement, a Buyer is entitled to claim the reasonable cost of work done by the Buyer in accordance with the notice or order referred to in this particular clause from the Seller after settlement as a debt.

- **Clause 9 - Parties' Default** - the earlier versions of the REIQ contracts made specific provision for a seller's rights in the event of a default by the Buyer. However, there were no reciprocal rights expressed in the contract covering the Buyer's rights against the Seller. The amendments to Clause 9 now expressly provide rights for both the Seller and Buyer to take action in the event of default by either party. In effect, these amendments balance up the rights of the Seller and Buyer by expressly providing contractual terms in the event of default.

- **Clause 10.8 - Severance** - This new clause allows for an offending term (or part of a term) to be severed from the contract but allow the continued operation of the rest of the contract.

To ensure consistency, the *Contracts for Lots in a Community Title Scheme (Third Edition)* has incorporated those amendments referred to above. Provisions relating to seller's warranties have also been included.

Reminder of Agents' obligations

The ACL provides a timely reminder of the importance of ensuring that agents exercise care not to step outside their role, as permitted under the *Legal Profession Act*, and to ensure that clients and customers are referred to their own legal representatives for advice on the ACL. The REIQ has finalised the review of common special conditions available on Realworks. It is further recommended that agents should have any special condition checked by a qualified legal practitioner to ensure compliance with ACL.

REIQ Contracts available from 1 July

Copies of the *Contract for Houses and Residential Land (Seventh Edition)* and *Contract for Lots in a Community Title Scheme (Third Edition)* contracts will be available through Realworks and the REIQ shop from 1 July 2010.