

CONTRACT FOR SALE OF LAND 2018 & 2019 EDITIONS

Clause	Description 2018	Description 2019 changes only
FRONT PAGES	The front page of the contract gives you all of the relevant details of the parties involved, the property, its improvements and inclusions. These details should be checked to ensure they are correct. In addition the 2 <sup>nd</sup> page sets out some of the taxation issues such as whether land tax is adjustable, whether GST is payable and whether the purchases solicitor must withhold that GST and remit it to the ATO at settlement.	<ul style="list-style-type: none"> <li>• <u>'NSW Duty' will be updated to 'NSW DAN'</u></li> <li>• <u>Choice for ELNO</u></li> <li>• <u>If unable to settle electronically information about that process included</u></li> </ul>
Pages 3-6	These pages contain warnings and notifications to the purchaser which should be read carefully such as the warnings in relation to asbestos, smoke alarms and swimming pools. Page 4 contains an explanation of the cooling off period and when no cooling off period applies.	<u>New item 57 "disclosure statement off the plan" has been added to the List of Documents. From December 2019, vendors will have to attach a disclosure statement to the contract. This must contain a draft plan from the surveyor, the proposed lot number, a proposed schedule of finishes, draft by-laws &amp; other information in accordance with s66ZM(2) of</u>

		<p><u>the Conveyancing Act 1919 and 4A of the regulations attached</u></p> <p><u>Page 5: extension of cooling-off periods from 5 business days for off-the-plan contracts to 10 business days</u></p> <p><u>Page 6: The ATO's website contains a number of resources to assist practitioners in relation to the GST at settlement withholding measure.</u></p>
<u>Standard clause number</u>	<u>Page 4 to page 20 contains standard terms and conditions which apply to the contract unless amended by way of special condition.</u>	
1	Definitions of terms used in the contract	<p><u>New terminology:</u></p> <ul style="list-style-type: none"> <li>• <u>'RW Payment' has been renamed 'GSTRW payment' (GST Residential Withholding payment)</u></li> <li>• <u>'Stamp duty' is now 'Transfer duty'</u></li> </ul>
2	Clause 2 outlines conditions of payment of the deposit, using cash and if invested	<u>New reference in clause 2.4 to payment of the deposit by electronic funds transfer</u>
3	Clause 3 outlines conditions of payment of the deposit by deposit bond	
4	Clause 4 deals with the form and service of the transfer document noting that clause 4.1 recently obliging the purchaser to provide details to the vendor of the incoming mortgagee to assist the vendor and the discharging mortgagee with the introduction of optional no certificates of title. A discharging mortgagee who holds Control of the Right to Deal (CoRD) requires the details of the incoming mortgagee to complete the required lodgment case	

5	<p>Clause 5 outlines to use of requisitions on title. There are questions a purchaser has the right to ask of the vendor about the property title within 21 days of exchange. The vendor may attach a form of requisitions to the contract and the purchaser is taken to have made those requisitions</p>	
6	<p>Clause 6 notes that any error or misdescription in the contract, made by the vendor can lead to a purchaser claiming compensation as to the title, property unless the purchaser knew the true position.</p>	
7	<p>Clause 7 grants a right to the purchaser to make a claim against the vendor prior to completion of the contract (Clause 7 Claim). If the amount claimed by the purchaser exceeds 5% of the price, then the vendor can rescind the contract, the deposit is returned to the purchaser and neither party has any further rights under the contract. (Most contracts amend these clauses so as to reduce the standard amount of 5% to 1% or \$1.00).</p> <ul style="list-style-type: none"> <li>• A common example of an error or misdescription is where the inclusions stipulated in the contract do not match those which are actually present on the property.</li> <li>• The Clause details what happens if the vendor does not rescind such that the parties must complete the contract and \$ must be held out of the deposit to finalise the claim</li> <li>• If the claim is made and the vendor serves notice to rescind, the purchaser may waive their rights and withdraw the claim</li> </ul>	
8	<p>Clause 8 details the Vendor's rights to rescind if they are unable or unwilling to comply with a requisition, if they serve a notice of intention to rescind.  Clause 8.2 provides an express right of termination for the purchaser where the vendor does not comply with the contract.</p>	

	<p>This clause was introduced to rebalance the respective rights of the parties, having regard to the unfair contract terms provisions of the Australian Consumer Law specifying the requisitions and grounds and there is not waiving of the requisition by the purchaser within 14 days.</p>	
9	<p>Clause 9 provides for the Vendor's remedies if a Purchaser fails to complete, or settle their purchase, on the agreed date. the Vendor has two options:-</p> <ul style="list-style-type: none"> <li>• If the Vendor has re-sold the property under a contract made within 12 months after termination of the contract with the Purchaser, then the Vendor can sue to recover the deficiency on resale of the property. However, the deposit, which the Vendor is entitled to retain on default by a Purchaser, must be taken into account as a credit. Under this option the Vendor can also claim the reasonable costs and expenses arising out of the Purchaser's non-compliance with the contract.</li> <li>• In the alternative, the Vendor may sue to recover damages under the general law for breach of contract by the Purchaser</li> </ul>	
10	<p>Clause 10 precludes the purchaser from relying on any promises, representations and statements about the property that are not set out in the contract (does not include misrepresentations under Trade Practices Act). They cannot rescind or make claims in respect of fences, services, walls or party walls, changes due to fair wear and tear before completion, reservations in the crown grant, anything disclosed in the contract, or because of a defect in inclusions title or quality.</p>	
11	<p>Clause 11 provides that if there are any work orders by a local authority such as council or Sydney Water, made on or before</p>	

	the contract date, the vendor must comply with them by completion. If a purchaser complies with a work order and the contract is rescinded or termination the vendor must pay for that work.	
12	Clause 12 provides that the vendor must allow inspections (reasonably required) for pre-inspection reports or any other reports reasonably required and allow pre-completion inspection in the 3 days before a settlement date	
13	Clause 13 details the GST provisions. These more of than not do not apply in the majority of residential transactions because if the property is purchased as your primary residence, GST is not payable. A new clause 13.13 has been inserted to provide guidance for the payment of the withholding amount at settlement and provision of evidence of the payment of GST	<u>Clause 13.13.4 has been expanded to provide that the purchaser must serve a copy of the settlement date confirmation form (ATO form two for the GST at settlement measure). This change reflects feedback received from the ATO.</u>
14	Clause 14 details how adjustments at settlement are to be dealt with for amounts such as rent, rates, water and any other periodic outgoings including land tax where that is adjustable.	
15	Clause 15 explains that the parties must complete on the completion date	
16	<p>Clause 16 sets out what occurs on completion/settlement date for the vendor, purchaser and place for completion.</p> <p>Clause 16.6 was recently amended so that no matter who provides the land tax certificate, the vendor must provide a clear certificate on completion if land tax is owed;</p> <p>Clause 16.7 was recently amended to allow purchaser to withhold any necessary payment in the Foreign Resident capital gains tax withholding and exclude it from the amount payable to the vendor along with any GST required to be withheld</p>	<u>Amendment of clause 16.6 in relation to clearance of land tax. This clause has been updated to reflect recent changes in the processes available for the clearance of land tax, including payment of land tax via an Electronic Lodgment Network</u>

17	<p>Clause 17 deals with the vendor giving vacant possession on completion subject to existing tenancies which are disclosed in the contract. This clause notes that if there is a protected tenancy the purchaser may claim compensation to rescind.</p>	<p><u>The legislative reference in clause 17.3 has been replaced with the updated relevant legislative reference in the Residential Tenancies Act 2010.</u></p>
18	<p>Clause 18 details the circumstances where the parties have agreed to early possession by the purchaser. This is often superseded or added to with the drafting of an agreement called Licence or possession under licence. The clause details what occurs if the contract terminates or is rescind and how adjustments are dealt with.</p>	
19	<p>Clause 19 provides for a rescission of the contract noting that where a legal rescission occurs and a written notice of rescission is given, the purchaser is refunded the deposit, adjustments can be made if the purchaser was in possession. Further the contract provides that damages, costs and expenses arising out of a breach are claimable. This is often deleted by way of special conditions.</p>	
20	<p>Clause 20 deals with miscellaneous matters such as:</p> <ul style="list-style-type: none"> <li>• An area or measurement in the contract is only approximate</li> <li>• Parties if more than one are bound separately and together</li> <li>• Detailing service of a document</li> <li>• Confirms that if there is are choice boxes on the front page and neither box is ticked, the choice in BLOCK CAPITALS applies.</li> </ul> <p>Clause 20.8 to take into account some clause 31 obligations continue after completion (eg purchaser to provide evidence of payment of remittance amount to ATO)</p>	

21	<p>Clause 21 details time limits for (unless otherwise stated in the contract), how public holidays and end of month days are dealt with.</p>	
22	<p>Clause 22 provides the undertaking by the purchaser that they are not a foreign buyer without permission to purchase under FIRB legislation</p>	
23	<p>Clause 23 provides the parameters for sale/purchase of strata or community title.          Clause 23.18 &amp; clause 23.18.2: Insert limitations of right exercisable such that the purchaser's right only accrues after expiry of the cooling off period. To avoid a purchaser who subsequently exercises its cooling off rights from participating in that general meeting</p> <p>This clause has been updated to reflect changes in terminology and relevant section references in the Strata Schemes Management Act 2015. Under the revised clause 23.6 if the non-regular periodic contribution is not disclosed in the contract, but was determined on or before the contract date, the vendor or will be liable for the contribution.</p> <p>Under the new clause 23.8.4 a purchaser is given a new right to rescind where a strata renewal has progressed as specified in circumstances where certain documentation associated with strata renewal was not attached to the contract. If the vendor has attached the strata renewal proposal or plan to the contract there is no right of rescission</p>	<p><u>Clause 23.9.2 has been amended to remove the reference to non-disclosure of unit entitlement, to reflect common practice and for consistency with the disclosure obligations under the off the plan reforms.</u></p> <p><u>Clause 23.9.3 has been amended by replacing the words “substantially disadvantages” with the words “materially prejudices”, consistent with the terminology used in the off the plan reforms.</u></p> <p><u>Clause 23.9.4 has been amended to limit the disclosure obligation to a strata renewal plan that has not lapsed at the contract date.</u></p>

24	Clause 24 details what happens in sale of property where there is a tenant in possession including how adjustments are to be made in certain circumstances, transfer of bond monies,	
25	Clause 25 applies where the land is qualified title, limited title and old system title and sets out the details of service of the abstract of title required.	
26	Clause 26 applies only if the purchase money is payable to the Crown	
27	Clause 27 sets out the provisions where there is consent to transfer on land that has restricted title and has been updated and amended to capture obtaining consent to transfer in relation to planning agreements	
28	Clause 28 applies only where the land is described as a lot in an unregistered plan. So called Off the Plan type matters. These provisions are generally altered by the vendor by way of special conditions setting their own time limits for the registration of the title and the conditions which will allow any rescission by parties.	
29	Clause 29 applies only where the contract part or completions is conditional on an event occurring. For example the contract is conditional on the purchaser obtaining finance approval.	
30	<p>This new clause has been added and amended to assist the profession in moving to electronic conveyancing. The clause steps through the new processes required in electronic conveyancing. Matters covered by the clause include:</p> <p>a mechanism for the parties' representatives to confirm it is proposed that the matter will proceed using electronic conveyancing</p>	<p><u>Clause 30.9.2 has been amended to refer to the obligation to confirm adjustment figures at least one business day before the date for completion, rather than to provide payment details in the workspace, to reflect common practice.</u></p> <p><u>New clause 30.9.3 has been added in relation to populating the workspace with payment details for a 'GSTRW payment' or 'FRCGW remittance' at least two business days before the date for completion.</u></p>



	<p>a mechanism for a party's representative to notify the other party that the matter will need to default to the paper environment and the payment of fees and costs associated with that change</p> <p>the manner in which a party would usually <u>create the workspace</u>, <u>populate the workspace</u> with data and send certain invitations to join the workspace and the subsequent communications between the parties as they prepare for settlement</p> <p>time frames for the supply of adjustment figures, completion of the financial settlement schedule and digital signing of all things necessary for settlement</p> <p>Clause 30.11.3 was recently amended to remove need for cheque to be produced &amp; forwarded to ATO after completion when electronically settling</p>	
31	<p>This clause details the Foreign Resident Capital Gains Tax withholding measures such as purchaser obliged to complete a purchaser payment notification with ATO and provide to vendor at least 5 days before completion and produce settlement cheque on completion for remittance amount.</p>	

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## Conveyancing (Sale of Land) Regulation 2017

Current version for 1 December 2019 to date (accessed 16 January 2020 at 11:38)

[Part 2](#) > [Clause 4A](#)

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### 4A Documents to be attached to off the plan contract and disclosure statement

- (1) For the purposes of section 66ZM(2)(a) of the Act, the following information must be included in a draft plan included in a disclosure statement attached to an off the plan contract—
  - (a) the proposed lot number of the subject lot,
  - (b) sufficient information to identify the location of the subject lot,
  - (c) the area of the subject lot,
  - (d) if the contract relates to land that comprises or includes a lot in a proposed strata scheme—the draft floor plan and draft location plan,
  - (e) if the contract relates to land that comprises or includes a lot in a proposed community, precinct or neighbourhood scheme—the draft location diagram, draft detail plan and draft community, precinct or neighbourhood property plan,
  - (f) the site of any proposed easement or profit à prendre affecting the subject lot,
  - (g) the site of any proposed restriction on the use of land or positive covenant affecting only part of the subject lot.
- (2) If the contract relates to land that comprises or includes a lot in a proposed strata scheme, it is not necessary for the draft plan to include the location or area of any parking or storage area.
- (3) For the purposes of section 66ZM(2)(b) of the Act, the following documents must be included in a disclosure statement attached to an off the plan contract—
  - (a) any proposed schedule of finishes,
  - (b) any instrument under section 88B of the Act that is proposed to be lodged with the draft plan,
  - (c) if the contract relates to land that comprises or includes a lot in a proposed strata scheme—the draft by-laws,
  - (d) if the contract relates to land that comprises or includes a lot in a proposed community, precinct or neighbourhood scheme—the draft management statement and the draft of any proposed development contract,
  - (e) if the contract relates to land that comprises or includes a lot in a proposed development scheme—the draft strata development contract,



- (f) if the contract relates to land that comprises or includes a lot in a proposed strata scheme that relates to a part strata parcel and a strata management statement will be required under section 99 of the *Strata Schemes Development Act 2015* for the registration of the strata plan—the draft strata management statement,
- (g) if the contract relates to land that will be subject to a building management statement under Division 3B of Part 23 of the *Conveyancing Act 1919*—the draft building management statement.
- (4) A document specified in subclause (3) is taken to be included in a disclosure statement if it is attached to the contract.
- (5) A draft strata management statement or draft building management statement required to be included in a disclosure statement under this clause is not required to include a provision for the allocation of the costs of shared expenses (as required under clause 2(1)(e) of Schedule 4 to the *Strata Schemes Development Act 2015* or clause 2(1)(e1) of Schedule 8A to the *Conveyancing Act 1919*).
- (6) It is not necessary for the draft plan, or any document included in a disclosure statement, to strictly comply with any applicable lodgment rules or regulations under the *Real Property Act 1900* or any other Act, but substantial compliance is sufficient.
- (7) In this clause—

*community property plan, community scheme, detail plan, development contract, location diagram, management statement, neighbourhood property plan, neighbourhood scheme, precinct property plan* and *precinct scheme* have the same meaning as in the *Community Land Development Act 1989*.

*development scheme, floor plan, location plan, part strata parcel, strata development contract* and *strata management statement* have the same meaning as in the *Strata Schemes Development Act 2015*.

*parking or storage area*, in relation to a contract that relates to land that comprises or includes a lot in a proposed strata scheme, means the part of the subject lot that is to be used primarily for storage or parking (and not for residential purposes) and that is not contiguous to the main part of the subject lot.

*strata scheme* has the same meaning as in the *Strata Schemes Management Act 2015*.

