

# Selling a Property

Information Kit



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## WHO IS C-PROPERTY CONVEYANCING?

C-Property Conveyancing is a specialised conveyancing firm.

We do nothing else but help people buy and sell properties. Property is our business. Our staff are fully motivated, well trained, skilled, experienced and importantly, dedicated to providing our clients with our renowned complete conveyancing service.

If our clients have any other needs we are part of the Qld Law Group a leading law firm with worldwide affiliations.

### COMMITMENT

C-Property Conveyancing is totally focussed and committed to giving you simply the best conveyancing service in Queensland.

### CLARITY

C-Property Conveyancing will give you clear and concise advice and help at all times. You will never be in doubt or confused about a thing.

### CO-OPERATION

C-Property Conveyancing will work with you at every step of the conveyance, doing everything we can to make the process what it should be for you, easy and stress free.

### COMMON SENSE

C-Property Conveyancing knows property and has successfully dealt with any problems that may arise. We will take pro-active steps to ensure that problems do not arise, but if they do, they will be dealt with, with commonsense not legal jargon, to ensure your rights are protected sensibly and efficiently at every step.

### OUR VALUES

We value professionalism, respect, openness, honesty and we care about our clients.

### ACCESSIBILITY

We are committed to being accessible to our clients and we will:

- answer promptly any phone calls during normal office hours (8:00 am to 5:00 pm local time);
- have a voicemail answering service activated outside working hours so you can record your message at any time convenient to you;
- be on call after hours on mobile telephones so that you can contact us easily;
- promptly respond to phone messages and emails;
- provide accurate and helpful legal advice and information.



## **COSTS**

We can carry out your property transaction at a fair price by professional persons. In most cases you will not have to pay anything until the day of settlement.

## **CLIENTS**

We value and care for our clients. Satisfying our clients is our key objective. If our client says there is a problem then there is a problem and we will do all we can to fix the problem.

## **CONVEYANCING**

The process of transferring the ownership of a property from a Seller to a Buyer is described as broadly as "Conveyancing". The conveyancing of land, houses, units, and town houses is dealt with in a number of Acts of Parliament in Queensland, the principal ones being:

- 1 *Property Agents and Motor Dealers Act 2000 (PAMDA Act)*, regulates the real estate industry in Queensland;
- 2 *Land Titles Act 1994* regulates the way in property transfers are recorded; and
- 3 *Body Corporate and Community Management Act (BCCM Act)* regulates units and townhouses.

The principal persons that will help you with buying or selling your property will be:

- 4 a Real Estate Agent who should be a member of the Real Estate Institute of Queensland (the REIQ); and
- 5 a Lawyer who should be a member of the Queensland Law Society (the QLS).

By being members of these groups you may be assured that your advisers are properly qualified and hold professional indemnity insurance.

The main Contracts in use in Queensland were developed in co-operation by the REIQ and the QLS. The contracts bear the logos of each entity and unless varied by Special Conditions are fair contracts. You should not sign any contract without first talking to us if you have any doubts but you should not sign any non REIQ Contract under any circumstances without our reading the Contract first.

## SELLING YOUR PROPERTY

### 1 CHOOSING YOUR AGENT

It is important for you to choose your Agent carefully. The Agent is your representative and will handle the sale of your property.

Your Agent should be able to:

- use market analysis and comparative sales techniques to realistically price your property;
- provide a well-balanced and well-reasoned marketing plan;
- if you are selling a unit/townhouse, assist you with the preparation of a Disclosure Statement, which the law requires you give to a potential Buyer.

The Agent should be in your area so the Agent will know your market.

### 2 LISTING WITH THE AGENT

Make an appointment to see the Agent.

- Ask that your property be appraised. The Agent is in daily contact with the market in your area, and will use a comparative market analysis to establish a fair price for your home. Remember Buyers are discouraged by an overpriced property or by a property that remains on the market too long.
- Contact your financier and ascertain the payout figure of any mortgage that may be current over your property. Advise the financier of your intentions.
- Discuss the selling methods with your Agent. The *PAMDA Act*) requires that the Agent must have you sign a regulated form under the Act setting out the actual selling method and their entitlement to commission. The usual selling methods are:

#### 2.2 Exclusive Agency

The Agent is given exclusive selling rights to the sale of the property. The Agent will be entitled to commission if a sale is secured within the exclusive agency period, even if you sell the property yourself or through another Agent. The appointment can only be for a period up to 60 calendar days. It can only be renewed if you want it to be and then only within the last 14 days of the appointment.

#### 2.3 Sole Agency

The Agent is given the sole right to sell the property but if you introduce the Buyer to the property and it is sold to that Buyer, the Agent does not get the commission. The appointment can only be for a period up to 60 calendar days. It can only be renewed if you want it to be and then only within the last 14 days of the appointment.

## 2.4 Multi-list Agreement

This is also a type of exclusive agency. Under the agreement one Agent is appointed who works with other Agents to sell the property. The commission is split between the selling Agent and the Agent who introduces the Buyer. They work it out between themselves. You pay the listing Agent.

## 2.5 Auction

This is also an exclusive agency but one where a marketing plan is instituted in the lead up to the auction (an auction is where potential buyers gather together and make offers to you to buy the property by making public bids and the person making the highest bid buys the property if you are happy with the that price) to maximise exposure of the property. The appointment can be for a maximum of 60 days. Read the agreement carefully particularly in relation to the costs of the marketing plan and the auction costs. You will pay commission to the Listing Agent if the property sells before the auction, at the auction or in an agreed period after the auction.

## 2.6 Open Listing

You list the property with several Agents. The Agents can work individually or with other Agents. Only the Agent that sells the property will receive a commission. Sometimes this is not a good idea. What you want, at least initially, is for the Agent to focus on your property rather than be one of a number of open listings. The REIQ research shows that open-listed properties generally take longer to sell depending, of course, on the quality of the property.

## 3 MARKETING YOUR PROPERTY

The Agent will be able to give you a range of options as to how your property can be marketed. Marketing packages include erection of signs outside the property, media releases, open house inspections, website listings and pictorial advertising.

Clean up your yard and home. Keep it presentable at all times for inspections. Clean marks off walls and ceilings. Clean the stove, ovens and cupboards to the kitchen. Shampoo the carpets. Clean up the garage. Touch up the paintwork where needed. Make it look its absolute best.

What you are trying to achieve is a favourable first impression for all potential Buyers. Listen to the suggestions of your Agent on presentation. Remember your Agent is the expert at obtaining the best price.

## 4 SELLER'S STATEMENT

Under the terms of the Contract you must give certain warranties (assurances) to the Buyer that at the Settlement of the Contract you:

- will be the registered owner of the property;
- are not carrying on any activity on the land that contaminates the land or is a notifiable activity under the *Environmental Protection Act*.

If these warranties are not true, then the Buyer may either terminate the Contract or elect to complete the Contract and claim compensation from you. You must tell the Agent if

you are not able to make these warranties. If there are any problems with the property , tell the Agent so the Buyer is aware of them at the time of contract to avoid what could be an expensive dispute if the Buyer later becomes aware that you were not being open and honest.

## 5 MAINTENANCE AND INSURANCE

You must maintain the property, make any repair to any damage that may occur after the Contract and keep the dwelling and yard clean and mowed right up to the date of settlement.

You should also keep the property insured up to the date of settlement and in most cases a refund can be paid for the unexpired portion of the cover.

Remember if the Contract does not settle the property is still yours and any problems caused by a lack of maintenance or insurance will be yours.

## 6 HOME UNITS/TOWN HOUSES - DISCLOSURE STATEMENT

The *BCCM Act* requires a Seller to complete and sign a Disclosure Statement which the Agent will annex to a Contract of Sale of the property.

The Agent will assist you to complete this Disclosure Statement. If there are any problems, please telephone us. You may be required to contact the Body Corporate Manager to obtain certain information that the law requires you to provide.

You must personally sign this Disclosure Statement. The Agent will not generally do it for you as it exposes the Agent to liability if the information is incorrect.

## 7 YOUR MORTGAGE

If you have given a mortgage over the property to anyone speak with them before listing the property for sale. You need to be clear on their requirements on the sale of the property and ensure the likely sale price will be enough to clear the debt.

Remember to tell them if you sign a Contract as they will need to prepare themselves for settlement and settlement cannot be affected if they aren't ready.

## 8 AGENT'S COMMISSION

The *Auctioneers and Agents Act* regulates the maximum commission that you as the Seller will pay an Agent on the sale of a residential property. Currently this is 5% on the first \$18,000 sale price and 2.5% for the remainder. For example:

Price of Property	Agent's Commission
\$75,000	\$2,325
\$100,000	\$2,950
\$120,000	\$3,450
\$150,000	\$4,200
\$200,000	\$5,450

GST (10% of the commission) is payable on the Agent's commission by you.

## 9 REVENUE LAWS

You should check that there will be no unexpected taxes or levies payable under either the Federal or State revenue laws before listing your property for sale. The three matters that often cause problems are:

- **GST**

There will be no GST applicable to the sale of your property if you are selling your place of residence. GST may be payable in other circumstances and the application of GST is too complicated for the general purposes of this guide. If you require specific advice, please contact your accountant.

- **Capital Gains Tax**

If you are selling an investment property you will have to pay Capital Gains Tax. Depending on how you hold the property there is tax concession of 50% if you have owned the property for more than 12 months. The relevant date is the Contract Date not the Settlement Date. The application of Capital Gains Tax is too complicated for the general purposes of this guide. If you require specific advice, please contact your accountant.

- **Stamp Duty Refund**

If you are selling your place of residence you would have claimed the benefit of the stamp duty concession for home buyers when you purchased the property. At that time you would have given a sworn declaration to the Office of State Revenue that you would:

- 1 enter into occupation of the property within one year of the date of transfer:
- 2 maintain exclusive possession of the property for a minimum period of one year;
- 3 not dispose of the property or any part of it by way of transfer, leasing or otherwise granting exclusive possession, prior to occupying it as a home ;and
- 4 not dispose of all or part of the property, by way of transfer, leasing or otherwise granting exclusive possession, within one year after the date of occupying it as a home.

In the event of a failure to comply with these occupancy requirements, you must notify the Office of State Revenue within 28 days of the date of the failure. If you think you have a problem we would suggest you call Office of State Revenue before listing the property for sale on 1300 300 734 to discuss the issue.

You will be liable for the reassessed duty (the amount of the benefit you got) and if applicable, any assessed unpaid tax interest and penalty tax unless the Office of State Revenue is satisfied that you have a compelling reason to sell such as work transfer, illness, financial hardship or the like.

## THE CONTRACT

The main Contracts in use in Queensland were developed in co-operation by the REIQ and the QLS. The Contracts bear the logos of each entity and unless varied by Special Conditions are fair contracts as we have stated. This guide explains the REIQ Contract, it doesn't deal with other contracts; specific advice is needed for those contracts.

### 1 FORM OF CONTRACT

The Contracts are in four parts:

- a **Warning Notice** regarding cooling off periods;
- the **Reference Schedule** (where the party's particulars and terms of offer are recorded);
- **Special Conditions** (any arrangement peculiar to your needs);
- the **Standard Terms** (these are the REIQ standard provisions).

#### 1.2 Warning Notice and Disclosures

All Contracts, except Contracts formed by a sale by auction, for the sale of residential property in Queensland must have as their first or top sheet a Warning Statement containing the information prescribed by Section 366 (i) of the *PAMDA Act*. The present prescribed form is Form 30c.

If not, the Buyer may terminate the Contract at any time prior to settlement and claim the deposit and the Buyer's reasonable legal and other expenses from the Seller and the party who prepared the Contract.

The form warns of the:

- existence of a five day cooling off period;
- need for the Buyer to obtain independent legal advice;
- need for the Buyer to obtain an independent valuation of the property.

A Contract for a unit or townhouse must also have then attached a Warning Notice in accordance with Section 163 of the *BCCM Act*. The Warning Notice is presently in a form prescribed by the Queensland Government and suggests the matters that a Buyer should investigate about the lot and briefly explains the Buyer's rights in the ownership of a lot in a community title scheme.

If an Agent is involved in the transaction then the Contract must also include a form in accordance with Sections 138 and 268 of the *PAMDA Act*. This is presently Form 27c, which discloses the Agent's beneficial interest in the property and whether the Agent receives any benefit from referring the Buyer or Seller to any third party, such as a financier, Lawyer, pest inspector etc.

A Contract for a unit and townhouse must also have a Disclosure Statement signed by the Seller attached to the Contract. It will inform the Buyer of:



- the contact details of the Body Corporate;
- the contributions and the levies that the Buyer will be obliged to pay to the Body Corporate;
- the insurances that have been taken out by the Body Corporate in respect of the building and the public liability (insurance for the contents is the owner's responsibility);
- improvements on the common property which the Buyer will have to look after and maintain;
- assets the Body Corporate owns;
- any charges over common property given by the Body Corporate to secure loans etc.

In this Disclosure Statement opposite the "Lot Entitlements" there is mention of an "Interest Schedule Lot Entitlement" and a "Contribution Schedule Lot Entitlement". The meanings of these expressions are:

- "Interest Schedule Lot Entitlement" means the number allocated to the Lot in the Interest Schedule and it is the basis for calculating the:
  - lot owner's share of the common property;
  - lot owner's interest on termination on the Scheme including the lot owner's shares in the Body Corporate Assets;
  - unimproved value of the Lot for the purposes of a charge, levies, rate or tax payable to local authorities.
- "Contribution Schedule Lot Entitlement" for a Lot means the number allocated to the Lot in the Contribution Schedule and is the basis for calculating the:
  - lot owner's share of the amounts levied by the Body Corporate;
  - value of the lot owner's vote for voting on ordinary resolutions at a meeting of Body Corporate.

The Contract must also be presented by the Agent to the Buyer under cover of a notice not attached to the Contract or the Agent's letter. The Notice must set out the documents accompanying the notice and direct the Buyer's attention to the Warning Notices and Disclosures.

### 1.3 The Reference Schedule

The Reference Schedule comprises the details of the transaction. Obviously a great deal of attention must be paid to this information as it is not of standard form and is inserted by the Agent based on the information provided by the Buyer and the Seller. Of particular importance are:

### 1.3.1 The Details of the Parties

As this information is the cornerstone of the Contract and is relied upon by us and your other professional advisors, it is essential that you carefully check that the details are correct.

### 1.3.2 Description of the Property

This will include the street address for the property and the real property description, which the Agent will accurately obtain from certain online government departments.

### 1.3.3 Fixtures and Chattels

If any fixtures are to be excluded from the sale or any chattels included in the sale then they must be listed.

### 1.3.4 Title Encumbrances

If there are any title encumbrances they must be disclosed by the Seller, otherwise the Buyer may be able to terminate the Contract.

### 1.3.5 Deposit and Price

Specific care should be taken to ensure that this information is agreed and if any changes have been made the change is initialled by all parties.

### 1.3.6 Finance and Building Inspection

If the Contract is to be subject to the Buyer obtaining finance and/or carrying out a building/pest inspection then these items must be fully completed otherwise the Buyer will have no rights in respect of these two very important matters.

## 1.4 **The Standard Terms of Contract**

To give confidence to Buyers and Sellers, the REIQ Contract includes standard terms of contract which are fair to both parties. The terms are written in plain English and you should carefully read them before signing a Contract. If you have any doubts or uncertainties then you should call us so that we may clarify matters for you.

## 1.5 **Special Conditions**

There may be special conditions which need to be included in the Contract to protect your position. You should call us before signing any Contract to ensure that your rights are protected and any necessary special conditions are included. It is important that the Special Conditions be clear and certain and we would only be too happy to help you.

## 2 **NEGOTIATING A CONTRACT**

### 2.1 **The Buyer's Offer**

The Agent will prepare the contract and ask the Buyer to sign it and pay the deposit. This constitutes the initial "offer" to the Seller and the Agent will present the Contract to the Seller for the Seller's consideration.



At this stage a Buyer or a Seller, may need our help to:

- advise in respect to any special conditions in the offer;
- check that the disclosures and warranties that are required by law have been made.

If the Seller is not prepared to accept the Buyer's offer, the Seller may change the price and/or terms and initial the changes to the Contract. The Seller sends the amended copies back through the Agent to the Buyer as a "counter-offer".

The Buyer can accept the "counter-offer" by initialling the Seller's amendments.

## 2.2 When is an Offer Accepted?

The Seller and Buyer must both agree to the exact terms of the Contract. If new terms or changes to an existing offer are made, then the original offer is rejected and a counter-offer is made.

The Contract is formed if:

- the Seller executes the contract without amendment;
- both Buyer and Seller have agreed to and initial all amendments; and
- the acceptance of the Contract by the last party to sign is communicated to the other party.

If the Contract is for the sale of residential land, other than the sale by auction, then under Section 365 of the *PAMDA Act* the Contract will not be enforceable until the:

- Contract has been signed by the parties, and;
- Agent gives the Buyer the signed Contract.

The Seller must prove that the Buyer received the signed Contract if a dispute arises so the Seller should ensure that the Agent has the Buyer sign a receipt for the Contract.

## 3 COOLING OFF PERIOD

All Contracts for the sale of residential land, excluding a sale by way of auction, are subject to a 5 business day cooling off period should the Buyer change their mind about purchasing the property.

The cooling off period commences on the day that the Seller returns the signed copy of the Contract to the Buyer (if this is not on a business day then the next business day).

A Buyer can waive or shorten the cooling off period upon the obtaining of a certificate by an independent Lawyer, the present prescribed form being Form 32a. We would not recommend any Buyer waive or shorten the cooling off period, unless the property is being sold at auction. If the property is being sold by auction and the parties wish to sign a Contract before the auction date, then the Seller should insist that the Buyer waive the cooling off period to prevent the Buyer subsequently terminating the Contract and the Seller wasting the expenses of the auction.



If a Buyer wishes to exercise their rights to terminate the Contract during the cooling off period then the Seller should immediately contact us so that we may ensure that the Seller's rights are correctly exercised.

It is important to remember that if a Buyer wishes to exercise the rights to terminate the Contract under the cooling off period, that the Seller may deduct a termination penalty equal to 0.25% of the purchase price, i.e. if the purchase price was \$200,000.00 the penalty would be \$500.00.

At the expiration of the 5 day cooling off period, the Buyer will be legally bound to buy the property subject of course to its terms and conditions such as finance, building inspection and the like.

If a Buyer engages a lawyer to assist them in the transaction then, in accordance with Sections 370, 369 and 370 of the *PAMDA Act*, the lawyer must issue a certificate to a Buyer regarding his independence and the waiving or shortening of any cooling off period. Presently the form is part of the Form 32a.

The Lawyer must disclose whether he has any business, family or any other relationship with the Seller, the Agent or any other persons associated with the sale and the benefits he may receive in respect of the transaction from any third party.

#### **4 DEPOSIT**

Only the actual amount of deposit taken at the time when the Contract is signed should be stated in the Reference Schedule as the "Deposit".

The Buyer can pay an initial deposit and the balance at a future date. The amount of the Balance of Deposit and the due date for payment are in the Reference Schedule.

Whilst the usual deposit is 10%, there is nothing to prevent the Buyer from offering any amount below that percentage if the Buyer is unable to pay a full deposit of 10%. It is up to the Seller to accept that lesser deposit as part of the terms of the Contract.

It is only when the deposit exceeds 10% of the purchase price that a problem arises. The Contract will become an "instalment" Contract and our advice will need to be sought as different considerations come into play.

#### **5 AFTER CONTRACT**

Once the Contract has been signed the Agent will forward your copy of the Contract to us. From then, your worries and concerns are at an end and we will;

- take care of the matter and protect you;
- provide you with a detailed Information Kit that tells you all you have to do at any time;
- update you constantly as the matter progresses;
- guide you smoothly through the entire process; and

- give you a detailed written summary of the transaction when it is completed including all financial dealings.

If you have any concerns then make them our concerns and call us. Our role is to make what otherwise may seem to be a daunting experience simple and “stress free” for you.

## 6 **DISCLAIMER**

The information contained in this guide is of a general nature. Each individual conveyance is unique and we would be happy to provide you with specific advice to your transaction if you require. You should place no reliance on this guide for your specific transaction and we accept no responsibility to you whatsoever. If in this guide we make reference to a third party, we are not making any recommendation that you use that third party and you should make your own enquiries and satisfy yourself as to the merits of that third party before engaging their services.

**We are available at any time to assist you whether you are a**

**BUYER**

**or**

**SELLER**

**Property is all we do.**

**We offer you:**

**Real People**

**Real Service**

**Real Solutions**

## **C-PROPERTY CONVEYANCING IS PROUDLY PART OF THE QLD LAW GROUP**



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## HOW TO FIND US



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