

Essential pre-contract steps: Get Electronic Transmission Consent Form and PAMDA Form 27c signed.

ASSEMBLE DOCUMENTS

- Assemble the contract documents (preferably stapled or bound) in the following recommended order:
1. Letter (or similar) drawing buyers attention to form 30C, BCCM 14, BCCM 206 disclosure & CMS (if applicable) and contract
 2. PAMD Form 30c (Warning Statement)
 3. BCCM 14 information sheet, BCCM 206 & CMS – if a residential lot
 4. Contract for Sale of House & Land/Residential lots
 5. Any other documents referred to in the contract (i.e. plans and annexures)
 6. Copies of any outstanding Applications, Orders or Notices under Chapter 3 of the Neighbourhood Disputes Resolution Act 2011 (NDRA).

IMPORTANT: Failure to "attach" the form 30C and BCCM 14 (if applicable) to the contract is an offence. "Attaching" the form 30C helps guard against unintended terminations. The above order of documents is recommended only, NOT mandatory.

DELIVER TO BUYER

- | | | | |
|--------------------------------------|--------------------------------------|--|---|
| by hand...
- Hand to buyer | by post...
- Post to buyer | by email...
- All documents must be included in the same email (as one single attachment or as multiple attachments) | by fax...
- All documents must be in the same fax transmission (or if more than one transmission, they must be sent "at the same time") |
|--------------------------------------|--------------------------------------|--|---|

...the completed contract documents, and ask them to read the letter drawing buyers attention to the form 30C etc. If by hand, verbally draw one of the buyers' attention to the form 30C, BCCM 14, BCCM 206 & CMS (if applicable) and contract.

Note: Failure to direct buyers' attention to the form 30C, BCCM 14, BCCM 206 & CMS (if applicable) and contract opens up termination opportunities.

SIGNING

Buyers' signing of form 30C, BCCM 14 & BCCM 206 (if applicable) is optional.

Note: Signing by all buyers of attached form 30C, BCCM 14 (if applicable) before contract is signed prevents unintended terminations. As a safeguard, you can also get a "buyer's acknowledgement" signed.

Note: Failure to provide buyer with copies of relevant NDRA items allows buyer termination anytime up until settlement (see item 6 above).

Get all buyers to sign and initial two copies of the contract and annexures.

RETAIN

Retain the signed contract documentation to allow signing by seller; receipt for copies of any NDRA items provided.

PRESENTATION TO SELLER

Present sellers with the contract documents signed by buyers. Then get all sellers to sign and initial both copies of the contract and annexures.

ALTERATIONS

If seller intends to alter the terms of the buyer's signed contract, get seller to initial its counter-offer (by making & initialising changes for consideration by the buyer) and re-present to buyer.

If description of buyer, seller or property, changes

Re-present to buyers, draw their attention again to form 30C, BCCM 14, BCCM 206 & CMS (if applicable) & contract.

If form 30C, BCCM14 & BCCM 206 were previously signed, get buyers to initial. Get buyers to initial sellers' changes on all copies of contract if acceptable.

If no change to buyer, seller or property

Get buyer to initial changes on both copies of contract if acceptable.

DELIVERY

Once contract is fully signed (and changes initialled if required) by everyone, return a copy to the buyer or their solicitor with form 30C (and BCCM 14 if applicable) still attached. Have buyers sign a "Buyer's Acknowledgement (receipt of contract)" specifying the date upon which they have received a copy of the signed contract.

COOLING-OFF

The 5 business day cooling-off period runs from the date of the buyer's (or solicitor's) receipt of the signed contract but if received on a weekend or public holiday, from the next business day thereafter. It ends at 5 p.m. on the fifth business day.

If the buyer signs the contract after the seller (or initials to accept changes made by the seller), the buyer is taken to have received a copy of the contract when the buyer has both signed (or initialed changes) and communicated acceptance to the seller. In other cases, PAMDA does not specify when 'receipt' occurs. For this reason it is important for sellers to have buyers sign a "Buyer's Acknowledgement (receipt of contract)".

When is a Contract Binding?

A contract becomes binding after ALL parties have signed the contract, and the last party to sign (or initial changes) (or their solicitor) communicates acceptance to the other party.

Signing of PAMD 30c, BCCM 14 & BCCM 206

- There is NO legal requirement for the buyer to sign the Warning Statement (PAMD 30C) or Information Sheet (BCCM 14).
- If ALL buyers sign the Warning Statement (PAMD 30C) and Information Sheet (BCCM 14) before they sign the Proposed Relevant Contract, and the forms are 'attached' to the contract, the buyer cannot terminate the sales contract under Chapter 11 of the Act.

Buyer Prepares Sales Contract

If the buyer prepares the sales contract, no 'presentation process' applies and the buyer cannot terminate the sales contract under Chapter 11 of the Act, unless the seller subsequently amends the contract (see below).

Seller Amends a Buyer-Prepared Sales Contract

If the seller subsequently amends a buyer-prepared contract and returns it as a counter-offer, the contract should be treated as a new 'proposed relevant contract' and the full presentation process MUST be adhered to when presenting the counter-offer to the buyer.

Change of Contract Form

If the contract is re-created in a new format (eg. Changed from REIQ version to ADL version), the amended contract should be treated as a new 'proposed relevant contract' and the full presentation process MUST be adhered to when re-presenting the contract to the buyer, regardless of whether the 'presentation process' has already been adhered to in respect to the contract.

Auctions

PAMDA does not apply to contracts formed as a result of a bid accepted during an auction.

Order of Documents

There is no mandatory order in which documents are required to be given to a buyer before they sign.

Termination under PAMDA only available if:

- Warning statement and BCCM 14 (if applicable) not prepared or not in correct form; OR
- If the buyer can prove their attention was not drawn to the PAMD 30c (& BCCM 14 & BCCM 206 if applicable) and contract [and all Buyers have not signed the PAMD 30c and BCCM 14 (if applicable)].

Note: Best Practice is to keep accurate records to ensure you have proof that you drew the buyer's (or if several buyers, one of the buyers') attention to the warning statement. As a safeguard, you can also get a "buyer's acknowledgement" that confirms their attention was drawn, signed.


Termination period: buyer can terminate prior to settlement but only within 90 days following their receipt of the signed contract from the seller. The period runs from the date of the buyer's (or their solicitor's) receipt of a copy of the signed contract.

If NO Swimming pool safety certificate

If the property has a regulated swimming pool that DOES NOT have a current Pool Safety Certificate, present the Buyer before the Buyer signs, with a Form 36 - "Notice of No Pool Safety Certificate" which has been signed by the Seller.

Changes to CMS

If a new CMS is recorded after the contract is entered into but prior to settlement, the Seller must disclose the new CMS to the Buyer within 14 days. The Buyer then has 14 days to terminate if they are "materially prejudiced" by the changes.



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