

Real Estate Realities



- Buying and selling a home
- Purchasing for investment
- Property management
- Moving house

A consumer real estate guide from the Office of Fair Trading



Queensland Government

Department of **Tourism, Fair Trading and
Wine Industry Development**

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German

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Foreword



Buying or selling a home, or investing in real estate, is one of the biggest decisions and financial commitments you can make.

Strong emotions can affect your decision-making process when it comes to real estate, so it is important your decisions are based on objective and thorough information so you are more likely to choose property that suits your current and future lifestyles and priorities.

The Beattie Government knows that a well-educated consumer makes better decisions when buying property.

That is why the Government has produced this indispensable guide – **Real Estate Realities**. The Office of Fair Trading developed the guide in collaboration with the Department of Housing and the Department of Natural Resources and Mines.

It will help you make decisions, understand the paperwork and outline actions you need to take when buying or selling real estate, including investment property. It also gives tips on related issues such as becoming a landlord and moving house.

It will help you avoid common pitfalls and help you understand your rights and responsibilities under the *Property Agents and Motor Dealers Act 2000* (the Act) which safeguards property buyers and sellers.

The guide is for Queensland's laws, so if you are buying property interstate, the laws and consequently your rights and responsibilities, may be different.

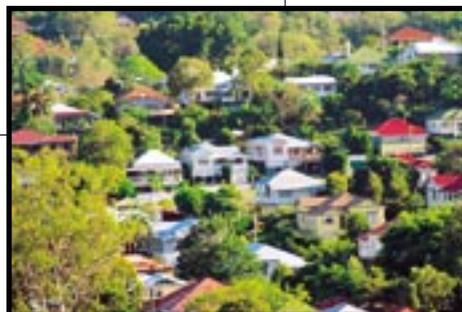
I hope **Real Estate Realities** makes the process of buying or selling real estate easy and enjoyable as you embark on such an important financial commitment.

The Beattie Government is committed to consumer protection. **Real Estate Realities** is a vital link in the consumer education process.

A handwritten signature in black ink that reads "Margaret Keech". The signature is fluid and cursive.

Margaret Keech,
Minister for Fair Trading

Acknowledgements



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- Department of Natural Resources and Mines
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- Consumer Affairs Victoria
- Real Estate Institute of Queensland
- Urban Development Institute of Australia

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Dealing with real estate agents



Key Notes

- Only deal with licensed agents
- Appoint them in writing using the approved form
- Agents must follow their code of conduct and cannot make false or misleading representations

Licensed to deal

If you are looking to buy, sell or let a property, chances are you will deal with a real estate agent or representative from the industry.

Real estate agents, auctioneers and their salespeople, restricted letting agents and property developers (who directly sell more than six of their properties in a year) must be licensed by the Office of Fair Trading and follow a strict Code of Conduct.

Do not deal with an unlicensed person as you will not have the same level of consumer protection if things go wrong. Check you are dealing with a licensee – their licence must be clearly or prominently displayed at their place of business. If you can't see it, ask to be shown and check the date to ensure it is current.

The Office of Fair Trading reviews applications, issues licences and registration certificates and keeps details on a public register. You can inspect and take copies of licence information from the register for a small fee.

Agents who are members of the Real Estate Institute of Queensland (REIQ) must also follow the REIQ's Code of Ethics and required processes. To find an REIQ Member Agent, visit www.reiq.com.au, select Member List, and follow the prompts to find a member in your local area.

Appointing an agent

While you have the freedom to choose any agent you wish when selling a property, engage a rental manager or appoint a buying agent, the agent cannot legally act for you unless you have first appointed them in writing.

If you are employing an agent to conduct work for you, you need to formally appoint them in writing using the appropriate approved form (see Forms page 64).

If you are selling a property, ensure you understand the different types of appointments (open listing/sole agency/exclusive agency), what they offer, cost and how long the appointment period is before you sign up. Note that time restrictions apply to certain appointments and the approved re-appointment form should be used to re-appoint agents (see Forms page 64). For more details on the types of appointment available, see the instructions on each appointment form.

Codes, conduct and consumer complaints

Licensed agents, auctioneers, property developers and restricted letting agents are required to conduct themselves and their businesses according to a mandatory Code of Conduct.

Every type of licence has a Code of Conduct and all require licensees to deal fairly, honestly, professionally and ethically with clients and customers. The Codes also require that there be a complaint handling process in place to resolve disputes.

The Act requires agents to bank monies received from all real estate transactions, or with a direction for use (eg. advertising, marketing expenses and searches), into a trust account and provide receipts. This prevents your money being misused and reduces misunderstandings.

The Act also restricts the way agents can pay monies to a trust creditor (someone who is owed money by the agency). Agents are not allowed to give cash refunds and must provide payment only by:

1. Trust account cheque; or
2. Electronic Funds Transfer from the trust account to the account the person receiving payment specifies.

If you have a complaint about an agent's conduct, you should approach them first to try to resolve the dispute through their complaint process.

REIQ members follow an additional Code of Ethics set by the REIQ, which specifically requires members to notify the REIQ of any charges of unethical practice against them, and provide all relevant facts and documents to the Institute for investigation and judgment. Visit www.reiq.com.au for more information.



Getting legal advice



If you are not satisfied with the result, you can complain in writing to the Office of Fair Trading. Officers will investigate to see if there is evidence that the law has been broken.

Investigations may lead to disciplinary charges, reprimands, fines and suspension or disqualification of licences or registration certificates.

You can obtain a copy of the Codes of Conduct under the *Property Agents and Motor Dealer Act 2000* from www.fairtrading.qld.gov.au under the Legislation section (scroll down the list to Property Agents and Motor Dealers listings), or call **1300 658 030**.

Getting the real picture

You are protected if agents make false or misleading representations about a property.

If an agent provides you with information about anything to do with the transaction, eg:

- the value of a property (including approximate market or selling price);
- the property's income-producing potential;

- the sales history of similar properties; or
- the income tax benefits of buying a property

then it should be factually correct and not misleading.

If you lose money after relying on an agent's false or misleading claims, the agent may be required by the Office of Fair Trading to substantiate any representations they may have made to persuade you to buy, list or rent a property. There are severe penalties for misleading conduct. Also if you lose money as a result of misleading conduct you may make a claim to the *Property Agents and Motor Dealers Act 2000* Claim Fund to seek compensation for any monetary loss (except with respect to investment property purchases).

The situation is different if you lose money after dealing with a property developer, even if they are licensed. You cannot seek reimbursement through the *Property Agents and Motor Dealers Act 2000* Claim Fund. For more information on making a claim, see page 61.

Whether you are buying or selling property, it is important to get independent legal advice.

You might be tempted to do your own legal work, encouraged by the multitude of internet sites and do-it-yourself kits available and the prospect of saving money.

However if you choose not to engage a solicitor you may make mistakes that could cost you both financially and emotionally.

Solicitors can guide you through the potential pitfalls of the law in Queensland. They understand the complexities and consequences of the law and can often find better alternatives which you may not have considered.

Using a solicitor will give you the added protection and peace of mind of knowing they must carry professional indemnity insurance. This protects you if something goes wrong because of action taken, or not taken, by your solicitor.

Choosing a solicitor

When choosing a solicitor, shop around and compare different solicitors' experience, service and costs.

It is always in your best interest to employ a solicitor who is experienced in the area of law you require. If engaging a solicitor to help you buy or sell your home, it is best to choose a legal firm that specialises in conveyancing.

When looking for a solicitor, consider solicitors you or your family or friends have used in the past, preferably to help buy or sell a home. When a solicitor is recommended, take the time to ask about the level and style of service you can expect to receive.

It's also important to ensure your solicitor is independent of any other party you're dealing with in the property transaction.

Remember, you do not have to use the services of solicitors recommended to you by an agent, property developer, or other party involved in the property transaction. It is wise to seek your own independent legal advice.

The Queensland Law Society (www.qls.com.au or **(07) 3842 5842**) has an online and phone referral service which lists solicitors in your area. Solicitors and legal firms also advertise their services in many places such as the Yellow Pages and your local paper.

What they can do for you

If buying, you can ask your solicitor to:

- check the Contract for Sale before you sign, whether for residential, investment, “off the plan”, timeshare properties, etc;
- check disclosure documents, such as *PAMD Form 27c, Selling Agents Disclosure to Buyer*, which reveal financial or other benefits your agent receives from people they refer you to;
- advise on the finance contract;
- check and explain the results of title searches that may be undertaken, mortgage insurance and other documentation;
- assist in negotiations about fixing problems identified in pre-settlement inspections;
- handle final payment on settlement day with the seller’s legal and/or financial representatives; and
- convey your property transaction (legally transfer the property’s title from the seller to you).

If you wish to shorten or forego your 5 day cooling-off period, your solicitor can issue you with a certificate, *Lawyer’s Certification PAMD Form 32a* to do this. However, it is not recommended that you in any way reduce your cooling-off period.

This form disclosing the solicitor’s beneficial interest must be provided to you unless you are buying residential property sold at auction.

If selling, you can ask your solicitor to:

- draft the Contract for Sale or check over what you have prepared if you

are selling privately (not engaging a real estate agent) to make sure it contains conditions of sale that are appropriate for your needs; and

- check the Contract for Sale to sell your property if an agent has drafted it. Remember the agent is not qualified to give legal advice on the contract or to modify or vary it. Discuss any changes with your solicitor.

Fees

Get a detailed quote for the legal work you want done before you appoint a solicitor.

For some routine legal work, such as conveyancing, solicitors will probably provide a set price. The costs for conveyancing work can vary widely, so it is best to shop around.

For other matters, however, it is often difficult for a solicitor to accurately estimate how much it will cost, and they may charge on an hourly rate.

It is important that you discuss costs with your solicitor and understand them. If the work is estimated at more than \$750 or is not urgent, your solicitor will ask you to sign a client agreement which ensures both you and your solicitor have agreed on the terms of employment.

Contact the Queensland Law Society for further details about how to contact a qualified solicitor.

For advice regarding resolving complaints about solicitors, see the Resolving complaints section (page 61).

Getting a valuation

Key Notes

Get independent valuation advice before buying or selling property

Give clear instructions to the valuer

Negotiate the fee with the valuer before the valuation proceeds

Sources of information

Various organisations and brokers offer information products and maps to help buyers, sellers and their agents estimate the market price of houses in specific areas.

The Department of Natural Resources, and Mines (NR&M) offers several products including *SmartMap* which provides the latest property information (including sales prices, dates and property dimensions) for most Queensland houses, units and townhouses and the surrounding properties in that area.

Some of the products include:

- *SmartMap property sales maps* — recent property sales, property boundaries and property identification information within a selected area.
- *SmartMap surveying maps* — showing property boundaries and survey control marks.
- *SmartMap cadastral maps* — showing property area and boundaries.

- *SmartMap valuation maps*— showing property boundaries, sales and unimproved land valuation information for properties within a selected area.
- *SmartMap property unit sales package* — contains a unit sales report for a community titles scheme (unit block or townhouse), registered survey plan for the requested lot, and a cadastral *SmartMap* displaying the location of the building in relation to surrounding properties.
- *Sunmap suburb maps* — high resolution aerial photographs over selected Brisbane suburbs showcasing suburb boundaries, local features, street names and origin of suburb name information.
- *Search of title* — registered title highlighting current property owner and property details.

These products and more are available to consumers, agents and valuers alike at a reasonable price and help reduce the guesswork in determining the market value of your property or desired property.

Purchase these online at www.nrm.qld.gov.au or call **(07) 3896 3216** for more information on mapping products, services and geographical data.

There are a number of private firms (brokers) who also provide access to and compile information about properties

in addition to the information available from government agencies such as the Department of Natural Resources and Mines. A list of external distributors is available in the Services and Information section of www.nrm.qld.gov.au.

Choosing a valuer

If you're thinking about buying a property, the Office of Fair Trading strongly recommends you have the property valued by an independent valuer before you sign a contract (or at least during the cooling-off period). Keep in mind the cooling-off period is only a five day period and you may not have time to appoint a valuer and receive the results in that timeframe. For more information on the cooling-off period, see page 20.

It is in your best interests to find your own valuer and not use someone referred to you by the seller or the seller's agent. If you do want to use the services of a valuer referred to you by the seller or their agent, make sure the seller or their agent discloses the nature of the relationship and any benefit (monetary or otherwise) any other person will receive as a result of the sale. They should disclose this information to you on an official form, *Selling Agent's Disclosure to Buyer PAMD Form 27c*. Copies of this form are available from OFT at www.fairtrading.qld.gov.au.

If you decide to locate your own valuer, make sure he/she is a registered valuer. Check with the Valuers Registration Board on **(07) 3221 3892** or the Australian Property Institute on **(07) 3832 3139**.

Once you choose a valuer, write them a letter of instruction which states your requirements and provides information to help the valuer give you the most accurate advice.

Note that sellers may also engage the services of valuers to determine how much their property is worth. Alternatively, seek property appraisals from a number of agents before you appoint. Beware though that a high appraisal does not guarantee you will be able to obtain this price on your property.

Q What if I disagree with the valuation amount?

A If the valuer is independent you should be able to rely on that information. Consider carefully whether you are taking an emotional view of the property which is clouding your objectivity. If you still disagree with the valuation, you can attempt to negotiate a higher (if seller) or lower (if buyer) sale/purchase price. Alternatively you can seek a further valuation.

If you have serious concerns regarding the valuation process or the conduct of a valuer, contact the Valuers Registration Board.

Your instructions to the valuer

Your instructions should be clear and include:

- your name and contact details and the party or parties to whom the valuation is to be addressed, and on

whose behalf the valuer is to act (in most cases, this will be you);

- the type of property (eg. vacant land, house and land, unit, townhouse), address and legal description of the property (if known);
- what you're going to use the valuation for (eg. to assist you in the decision making process to purchase a property, or for mortgage purposes);
- who the valuer should contact to access the property – they will want to go inside;
- that the basis of the valuation is to be market value unless you specifically want it to be based on some other value. (Market value is the estimated amount at the time of the valuation for which the property should exchange hands between a buyer and seller on the basis that all parties have acted knowledgeably, cautiously and of their own free will.);
- a negotiated agreed fee and payment method;
- the seller's asking or contract price and a copy of the contract if appropriate;
- the date you want the property valued (the valuer will value the property on the date specified unless otherwise requested) and when you want the valuation report by – set a date which is agreed upon by both you and the valuer; and
- whether you want the report sent to you by fax, email, post or courier.

What to expect in the report

The valuer's report should contain all the information you've specifically

requested, and may include any or all of the following (note, reports will vary according to the type of property and the purpose of the valuation):

- valuation summary;
- land and title;
- location;
- site description and services;
- town planning;
- improvements;
- environmental matters;
- comments on the property;
- basis of valuation including valuation rationale or approach and sales evidence;
- market review or summary;
- valuation; and
- qualifications and disclaimers.

The report may also have appendices including:

- location map;
- certificate of title;
- strata/unit plan;
- photographs; and
- any other relevant documentation.

Fees

There is no set fee for the provision of valuation advice. You should negotiate a fee with your chosen valuer before the valuation proceeds. As with the purchase of any service, the Office of Fair Trading recommends you shop around before appointing. Check with friends and family for recommendations and ask several valuers about their fees.

Buying a home



Key Notes

Determine what you can afford and what you need

Research before you shop around – price, location

Check agent is licensed

Check terms of contract, especially including disclosures

Be aware of the five business day cooling-off period (not available on auction) and the cost if you change your mind

Before you buy

Buying a home is a major financial investment – investigate your purchase carefully.

Research the area where you intend to buy. If it's unfamiliar, contact the local council for details about transport, services, climate, topography and local problem spots like contaminated and flood-prone land.

Prioritise your essential needs. Is it important to be close to transport, schools, shops and emergency services such as police, fire or ambulance? Is this area right for you? What size property is appropriate for your family?

If you decide to buy a home unit or townhouse (a property in a community titles scheme) you should be aware that you are buying into a community lifestyle with shared responsibilities and liabilities.

How much can you afford to pay?

Consult financial institutions or finance brokers. Many lenders offer pre-approved loans, so know what you can afford before you look for property.

Shop around to get the best finance deal.

Set aside additional funds to pay for legal fees (including mortgage insurance and mortgage documentation), stamp duty, removalists, security deposits and connection fees for essential services such as electricity and telephone. Also allow for the cost of a formal valuation, and a building and pest inspection.

Building, pest and swimming pool inspections will cost between \$400 to \$500 depending on the type and size of property.

Find out what the different inspections will include. Also make sure you understand what items will not be covered in the inspection report.

Research current market values of property in your chosen area. Peruse property listings at real estate agencies, on the internet and in newspapers. Contact the Department of Natural Resources and Mines for sales data from the area (see Sources of information page 7). Visit open house inspections to compare values of properties in the area.

Ask a reputable real estate agent for market information. See who is most active in the area where you wish to purchase and check them out at houses open for inspection. Ask friends and colleagues for referrals.

Never buy property unseen – what you 'see' may not be what you get. This is particularly important if you are purchasing through the internet or an investment club or timeshare opportunity (see page 37). Always inspect the property personally or have a trusted friend inspect on your behalf.

Q Should I buy privately? I could save money.

A It takes a significant amount of time and effort, is a complex transaction that ought to have legal and valuation advice, and unless you are buying through an agent, you aren't covered by the *Property Agents and Motor Dealers Act 2000*. You would need to seek professional advice to pursue any private civil action for any problems you encounter.

Choosing the right property

The design of the home, how it functions and how it complements your lifestyle should be a major decision-making factor when buying a property. This way, you will end up in a home that will accommodate your needs now and for many years to come that can also save you money. Too often, people fall in love with the 'look' of a home without considering how it will function. If you are aware of the impact that design features have within a home, you will be able to choose a home that is easy to maintain, efficient to run and will suit your lifestyle as your needs inevitably change.



The importance of smart housing design

James, Judy and their family recently relocated to Brisbane to take advantage of the Queensland climate, relaxed lifestyle and a housing market that was less expensive than southern markets. Long-term, they were looking to buy their dream home but in the meantime, the family would rent until the right house came along. Approaching his local real estate agent, James was armed with a list of ‘must-haves’ for the new home – a spa bath, an internal staircase and a media room among the features.

Interestingly, after several months in a rental home, James and Judy began to re-prioritise the features they wanted in their dream home. They began to realise that some of the basic design features in the rental house were not working for their family. For example, their three-year-old son was forever climbing the balustrade on the deck and an accident was just waiting to happen. James’ elderly parents found visiting the family difficult because there were so many stairs to climb. Judy often complained the house was hot and stuffy during the day and the need for air-conditioning meant the energy bills were huge!

James and Judy began to realise how the design elements within a house impact considerably on lifestyle needs. What’s more, they realised their current needs with a young family would be vastly different to their future needs with teenage children or as they got older. With no intention of moving when they found this dream home, they realised a key priority of the new house would be flexibility. It would also have to be cool in summer and warm in winter. It would have to be safe. It would have to be energy efficient. It would have to be functional and look good. In short, it would have to be a Smart House.

The Department of Housing’s *Smart Housing* initiative can guide you. Smart Housing is about simple, common sense housing design. A house that incorporates a range of simple design features and products that have been consciously selected for their benefits makes all the difference to the liveability of a home. Smart Housing uses the balanced approach of sustainable housing to ensure that all the key issues are considered together at the design stage.

There are a range of very simple design features that will work best for you – sustainability features will help you determine what you should look for.

Being an informed buyer and considering simple design principles when buying or renovating a home, will ensure you end up living in a home that is equipped to address the unique lifestyle needs of you and your family. Your home will be efficient, functional, aesthetically attractive and will mean cost savings for you throughout the time you live in the house.

For further information, visit the *Smart Housing* website at www.smarthousing.qld.gov.au or telephone (07) 3238 3683.

Benefits of sustainable housing

How will a sustainable house work for you?

- Increased liveability, comfort and peace of mind.
- Lower expenses and maintenance costs.
- The option of being able to stay in your home longer, among friends and familiar neighbours.
- Helping the environment.
- Improved resale value, your house will meet the needs of more people making it a more marketable property.

Smart Housing sustainability features

Sustainable housing is about choosing features that will best match your lifestyle needs. *Smart Housing* presents a long list of recommended design

features which can be accessed from the Department of Housing.

Some simple features are more important than others. How does your home rate on the ‘smart’ scale checklist for the most important sustainability considerations?

- Efficient water heating** could save you up to 80% on water heating bills and subsequently reduce greenhouse gas emissions.
- A step-free shower** is accessible for people with a wide range of abilities and minimises the risk of tripping.
- Sufficient **space and movement** as a result of accessible, clear pathways throughout the house. Accessible pathways should service the:
 - kitchen;
 - living room;
 - bathroom;
 - toilet and hand basin; and
 - bedroom.
- Water conservation**
 - Water efficient appliances and fittings with a AAA or higher water conservation rating.
 - Landscaping that requires little water.
 - A water tank for collecting roof water for use on the garden and for flushing toilets.
- The way in which the house **addresses the street** should clearly define the separation between public, semi-public and private spaces.

- A prominent, easy-to-read house number to assist visitors and emergency services to locate the house.
- A well-defined and separate driveway and pedestrian entries that are clearly visible from the street or from neighbouring properties.
- Good external lighting for security and surveillance purposes.
- An accessible, step-free entrance that can be managed by a range of people including the elderly, parents with a pram or a furniture removalist.
- The house fits in with the street and neighbourhood.



Good passive design makes use of the sun and wind to increase the thermal comfort of the home, reducing the need for artificial and expensive heating and cooling devices.

Key passive design features include:

- house orientation for breezes and solar access;
- thermal mass versus lightweight construction;
- cross-ventilation;
- insulation;
- wide eaves to shade external walls; and
- window shading.

Safer floors

- Slip-resistant, especially in wet areas, to minimise the risk of falls.
- Not highly polished because of the risk of slipping.
- Highly durable.
- Able to be easily cleaned.

Outdoor living

- At least one covered outdoor play or entertainment area has effective sun-shading.
- Covered outdoor space with a minimum area of 12m² for a house and 9m² for a unit.
- A good relationship to the indoor living space.

Long-term maintenance

- The design of the house considers the maintenance requirements and life expectancy when selecting building materials, fittings and appliances.
- There is easy access to items that require regular maintenance or inspection.
- Low maintenance materials are used in areas which are difficult to access.

Casual surveillance for safety and security purposes.

- There is easy surveillance of play areas from the kitchen or main living areas.
- The design allows for surveillance of the street and adjacent public open space from the main living areas.

When you are ready to buy

Ask to see the real estate agent's licence (it should be clearly displayed at the place of business). If you are dealing with real estate agents, auctioneers, property developers or their sales consultants, they must achieve the best price and terms for the property owner – not you. Unless you appoint the agent (a buyer's agent), the agent acts for the seller and no matter how approachable, friendly or cooperative they appear, they are not working for you.

Buyer's agents

You may wish to appoint a buyer's agent to represent your interests in negotiations (see Forms page 64). A buyer's agent can locate and negotiate the purchase of a property on your behalf. They conduct background checks on the property and area to ensure you pay the fairest price. Please note you would have to pay a fee for this service.



Q Why would I use a buyer's agent?

A To simplify your transaction and save you significant time and effort in the search for appropriate properties which meet your specific needs. Buyer's agents have expertise in price negotiations and have an obligation to achieve the best deal or 'lowest possible buying price' for you. You would be expected to pay a fee for these services which you should factor into the total cost of buying the property.

Title searches, checks and pest and building inspections

Buyers should always conduct their own independent title searches, local government checks and pest and building inspections. Check with the local council if the property has any restrictions such as the use of vacant land (eg. are you allowed to relocate an existing house on to the block or can you only build from new?) or any registered dealings or easements over the property that could reduce its value, use or access. In many older suburbs and undeveloped former bushland converted

to estates there can be problems over uncertain boundaries. Check that features such as a deck, garage, shed or pool comply with local council regulations or building standards.

For your peace of mind, you can carry out a search of the property's title for a small fee at any time to confirm the current details lodged in the land registry. This way you can check the details of any easement, caveat or other interest, registered against the title before you sign. More information about property titles can be found at www.nrm.qld.gov.au/property.

Further, consider getting a physical survey by a qualified person (land surveyor) before you sign a contract for the purchase of property. A physical check is the only way to fully check the property's boundaries and registered land title information are correct (ie. confirms the property you are considering buying is as described and the one identified in the contract). Land titles are paper records of what the boundaries should be, but mistakes can happen and over the years renovations and extensions to your proposed property and neighbouring properties may mean that what you get is not what is listed on the records.

Undertake building and pest inspections before negotiations commence so you

know exactly what condition the property is in and what needs to be spent on it. This will increase your bargaining power. Don't rely on the provision in the standard land contract for the sale to be subject to a satisfactory building and pest inspection.

Ensure your building inspection is conducted by an independent Building Services Authority (BSA) licensed certifier. Be aware the builder's own inspector, not the local council, is responsible for building compliance inspections. Buyers should also investigate appropriate statutory warranties for new buildings and procedures for making claims within the warranty period.

Community living

When you buy a property in a community titles scheme (such as a townhouse or home unit) you buy into a community lifestyle with shared responsibilities and liabilities.

Investigate the affairs of the body corporate, its sinking fund and your obligations to pay body corporate levies (including any known plans to increase levies in the immediate future). For more information, visit the Body Corporate and Community Management website at www.dtftwid.qld.gov.au/disputeres/bccm/ or call **1800 060 119**.



Check for safety features

While you are looking at the features of your potential new home, take a minute to look in the switch box for a safety switch. You should be able to distinguish it from the circuit breakers or fuses by its larger size and the presence of a test button.

All homes built after July 1992 are required by law to have a safety switch installed on both power and light circuits, but it is a legal requirement for the buyer to install a safety switch on all homes bought since October 2002 within three months of the settlement, unless one is already installed.

If there is one on the switchboard it could save you around \$200. If not, then you should budget for a licensed electrical contractor to install one.

Be aware when you're inspecting the house also of any other safety related features which may need to be fixed up if you purchase, such as dangerous blind cords. For more information on safety around your home, get a free copy of the Office of Fair Trading's *Consumerwise* and *About Baby & Children's Safety* publications, and download fact sheets from www.fairtrading.qld.gov.au or call **1300 658 030**.

Negotiating a fair price

Ask if the seller wants a short or long settlement. Finding out why the seller is moving, eg. to build a new home, move interstate, or upsize or downgrade, can be useful indicator as to whether they need to settle fast or are willing or able to negotiate price. This information can assist you later on in negotiations on an attractive offer to the sellers. However, the agent is not obliged to inform you of these reasons if they need to respect the seller's privacy.

New or old – make sure the builder is licensed

If you are building a brand new house, renovating an existing property or purchasing a house and land package, shop around to ensure you are getting a good deal. If you are purchasing a house and land package ensure any variations regarding product inclusions or prices are listed in the contract. Obtain a land valuation to ensure this is the case and get quotes from a number of Building Services Authority (BSA) licensed builders to ensure the building quote is value for money. A free online licence search is available from www.bsa.qld.gov.au to check BSA licensees records as well as other valuable information for consumers thinking of building or renovating a property.

Q Are new buildings covered by statutory home warranty insurance?

A Provided the new domestic building was constructed by a Building Services Authority (BSA) licensed builder, Queensland consumers are protected for six years and six months in cases of major structural problems or six months in the cases of cosmetic defects. However, houses or renovations constructed by owner builders do not enjoy the benefit of this protection.



All residential sales contracts must have a *Warning Statement (PAMD Form 30c)* as the front page (see Forms page 64). Follow the advice in the warning statement recommending you seek independent legal advice and valuation before you sign the contract.

Q Why should I sign the *Warning Statement PAMD Form 30c*?

A To indicate you have received it and read it. It is more important that you have read the document and considered the advisory statements about obtaining legal and valuation advice.

Make sure your solicitor provides you with a completed *Lawyer's Certification PAMD Form 32a*, unless you are buying residential property sold at auction.

The form requires lawyers to disclose to you any relationship with, and benefits received from, people involved in the sale, promotion of the sale or provision of a service in connection with the sale of a property. Lawyers must also disclose the nature and value of the benefit. This same form can also be used to shorten the cooling-off period for the purchase of your property.



When you are ready to sign

It is wise to investigate and appoint your own independent service providers, such as solicitors, valuers, finance agents and building and pest inspectors. Check with your service providers that they are not associated with the agent or the seller. It is common for agents and developers to refer you to these services, however you have no guarantee of their independence in the transaction.

Agents and developers are required to provide a buyer with certain contract disclosures. For instance, you must be informed if the agent or any other party is receiving any benefit from the transaction, such as commissions or referral fees or if they have a personal or business relationship (see Forms page 64).

All community titles scheme contracts must also have as their first page a *Warning Statement (PAMD Form 30c)* and as its second page an information sheet which outlines matters to consider when buying a community titles property and the rights and responsibilities of a property owner (*Body Corporate and Community Management Form 14*).

Before the contract is signed by both you and the seller, the agreement is usually just verbal and not binding. Up until both parties sign the contract both you and the seller have the right to change your minds.

Don't be pressured into signing a contract unless you understand it fully or have had your solicitor check it for you.

Make sure all alterations made to the contract during negotiations are initialled by the parties to the contract and any special conditions can be fulfilled within a reasonable timeframe.

Paying the deposit

Once you have put in a Contract of Sale, you may decide to pay a deposit to the selling agent for which you should receive a trust account receipt. You may choose to do this to show the seller that you are serious about purchasing the property. Alternatively, you may note on the Contract of Sale that a certain deposit will be paid, say, within 48 hours of the seller accepting your offer by counter signing and dating the Contract of Sale. Instead of a cash deposit you may choose to use deposit bonds, which act as a substitute, between signing the contract and settlement of the property.



If a deposit bond is used, at settlement you are required to pay the full purchase price including the deposit. Acceptance of the bond in lieu of a cash deposit is at the discretion of the seller.

Paying a deposit does not mean that the property is yours or that it gets taken off the market. It only proves to the seller that your offer is serious. The seller or agent can take as many preliminary deposits as they like for the one property, and are free to negotiate with you and other purchasers for a higher offer. Some sellers may insist that offers are only made in writing. If your offer is not accepted, your deposit must be fully refunded.

The deal

Once your agent submits your Contract of Sale to the seller and it is counter-signed, the deal is official subject to any special clauses in the contract, eg. subject to finance, or you deciding to exercise your rights to terminate the contract within the cooling-off period.

Under Queensland's standard contract terms, the buyer carries the risk of the property from 5pm the next working day after signing the contract so ensure you

have taken out an appropriate insurance cover note to legally protect you if the property is destroyed or someone is injured (see Home Insurance page 43).

It is wise to appoint a solicitor to undertake your conveyancing as legal issues may affect the sale. Consider getting a physical surveying check by a qualified person before you sign to ensure the accuracy of the title and property boundaries.

Cooling-off period

Contracts for residential property not sold by auction have a cooling-off period of five business days so that you can evaluate your purchase. If you're not totally happy, you can cancel the contract within the cooling-off period.

The five-day cooling-off period starts the day you receive a copy of the residential property contract signed by both you the buyer and seller, if that day is a business day. If that day is not a business day (ie. Sunday or a public holiday) then the cooling-off period will commence on the next business day.

The cooling off period ends at 5pm on the final day of the cooling-off period, eg. if you receive a signed and dated contract at 6pm on a Sunday, then the first day of the cooling-off period shall be Monday. Therefore, the cooling-off period will end at 5pm Friday next occurring, subject to there being no public holidays on or between the start and end of the cooling-off period.

If you wish to shorten or forego the cooling-off period, ask your solicitor to issue you with a certificate, *Lawyer's Certification PAMD Form 32a* (see Forms page 64). Carefully consider the risk you take by shortening the cooling-off period.

If you want to cancel the contract during the cooling-off period, write a letter to the property developer or agent and deliver it before the period ends. You will be refunded your deposit less an amount up to 0.25% of the purchase price of the property.

Cool off when buying residential property

Daniel and Amanda were looking for their first home. It had taken them a long time to save up for the deposit, and they were just waiting for the go ahead from the bank for a loan. They had been searching the web scanning all the new homes that were up for sale, so when the bank approved their loan, they already had a \$250,000 house picked out that they wanted to buy.

However, 3 days after signing a contract to buy the house, and paying a 10% deposit (\$25,000) they found a better property that met all of their needs. That day they notified the real estate agent in writing that they wanted to make use of the cooling-off period and be let out of the contract and have their deposit refunded immediately so they could place it on the new property.

Luckily the couple was still within the 5 day cooling-off period so the sale could be cancelled, but were shocked to find the full deposit would not be refunded immediately. The seller rightfully kept 0.25% of the purchase price (\$625) before refunding the remainder of the deposit paid (\$24,375) within 14 days of the termination notice allowed under the Act. Daniel and Amanda had not fully read *PAMD Form 30c* which gives a warning that the seller may deduct a termination penalty of 0.25% of the purchase price. It is vital to read and understand all of the contract and warning statement, and to get independent legal advice before signing.

Daniel and Amanda were glad they were able to back out of the contract using the cooling-off period, as although it cost them \$625, it was better than having to buy a house they didn't want.

After the sale

Once the sale has been processed, it is important to confirm that the details lodged with the land registry in the Department of Natural Resources and Mines are correct. You can ask for a *Registration Confirmation Statement* from the land registry or from your solicitor, usually within seven working days of lodgement. The statement confirms that your title has been formally recorded in the land registry and confirms the current owners and interests recorded in the register.

For your peace of mind, you can carry out a search of your title for a small fee at any time to confirm the current details held in the land registry. This lets you check that the details of any mortgage, easement, caveat or other interest, registered against your title are correct.

More information about property titles at www.nrm.qld.gov.au/property.

Also, request an inspection of the property a couple of days prior to settlement to check the house and make sure you are entirely happy with the condition it is being left in. Check with your solicitor whether all conditions of the contract have been met before settlement.

Be guided by your legal advice whether you can withhold settlement until any problems are fixed.

Settlement day

Settlement usually takes place between 30 to 90 days from the signing of the contract, but this period can be negotiated.

On settlement day, the balance of the purchase price is paid to the seller in exchange for the title of the property and you can obtain the keys and take possession of the property, unless otherwise arranged.

The final payment is an official process conducted between your and the seller's legal and financial representatives.

At settlement all outgoings such as rates and other charges will be adjusted between you and the seller. The seller is responsible for rates up until and including the day of settlement. You are liable from the day after settlement.

If your new property does not have a safety switch, you are required by law to install a safety switch to power circuits within three months of settlement.

The installation of a safety switch costs about \$200 and must be carried out by a licensed electrical contractor. Contractors can be found in your local paper, the yellow pages, by telephoning the contractor's industry association, the Electrical and Communications Association, or your electricity supplier. You should also ask to see the contractor's licence before agreeing to any work.



Buying at auction

Buying at auction requires more research and preparation than a traditional private sale. Before you intend to buy at auction, attend a few auctions to familiarise yourself with the process.

The terms of a residential auction sale usually require the buyer to bid on an unconditional basis. This means you cannot have any special conditions such as subject to finance or subject to the completion of another sale. You do not have the protection of a cooling-off period. It is essential that you view the property and carry out all necessary checks such as title, building inspection, pest reports, etc. before bidding. If you are the successful buyer, you could be required to settle the contract even if the house is defective or you cannot afford it.

If you need to arrange finance or a building or pest inspection, do this before the auction. Arrange a 10% deposit (or an amount otherwise agreed) for payment at the auction. A personal cheque, bank cheque or deposit bond is usually sufficient.

Under certain circumstances you can request that specific conditions apply

to the auction, eg. the terms of the auction are 10% deposit and a 30 day settlement. Another example is, if you only wish to pay a 5% deposit and settle in 60 days, you can request a variation to the terms of sale before auction.

Bear in mind that the auctioneer is working for the seller and it is the seller's instructions/conditions which will prevail. If the owner agrees you should get this in writing, and you may then bid at auction. A property can be sold or withdrawn prior to auction.

You can seek legal advice regarding the conditions of the auction to ensure you understand the terms and conditions of what you will be bound by if you sign a contract at auction.

You must be given a copy of the terms and conditions of the auction sale at the commencement of the auction. They should also be read out to prospective bidders. Check with the auctioneer on the day to make sure there are no changes to any contract you may have been given initially for your solicitor to peruse and the final version. You have the opportunity to ask questions of the auctioneer or the sales consultant regarding the property before the bidding commences.

Set a bidding limit prior to auction and stick to it.

In Queensland auctioneers are allowed to accept 'vendor' (seller) bids up to the reserve then it is 'on the market'. It is illegal for auctioneers to engage in dummy bidding or take false bids once the property is on the market. Any bid where there is no genuine bidder is a false bid.

Vendor bids must be announced in the conditions of sale at the beginning of the auction that the auctioneer reserves the right to bid on behalf of, or accept, bids from the owners of the property.

If you are the successful bidder, you must sign a contract immediately. There are serious legal ramifications if you cannot settle the sale on time. You may be forced to pay the amount of your winning bid, regardless of whether you had a loan approved or access to the money in time, therefore risking not only bankruptcy, but also losing the house and other possessions to pay for your bid.

Make certain that you understand the conditions of the auction, particularly in relation to the deposit and settlement terms before bidding commences.

If you are the highest bidder and the property doesn't reach the reserve you usually have first right to negotiate after the auction to purchase subject to the conditions of the auction. If you agree to accept a contract after auction you do have the five day cooling-off period protection.

Buying at auction

Jane went to an auction and after inspecting the house fell in love with it. When the auction began the bidding quickly surpassed Jane's limit, but she did not want to miss out on the bargain so she continued to bid.

Jane was the successful bidder at the auction and was now the new owner of the house. The only problem was she paid \$8,000 over what she had originally planned on spending. Jane's heart sank as reality set in that she had gotten herself in too deep financially and could not afford the house she had just bought.

She quickly asked the auctioneer if they had a cooling-off period so she could think about her purchase, but was told that once the hammer had fallen the sale was unconditional. Realising there was nothing she could do to cancel the sale she accepted that she would just have to rearrange her financial commitments and work hard to pay off the house. As she was going to keep it, the next day Jane ordered a pest inspection and found a few problems. Jane asked the sellers to reduce the price due to the defects, but they refused. Jane was now stuck with a house that she could not easily afford and which was riddled with bugs.

Buyers should make sure all appropriate inspections such as pest, building and council searches have been undertaken in advance of the auction and check the conditions of the auction before they bid as on the fall of the hammer, any contract becomes binding and there are no cooling-off periods which apply to sale by auction.



Buying "off the plan"

Many developments are sold "off the plan". This means that the contract for the purchase of the lot (whether land or a unit in a building) is entered into before the title to the lot is created and a building (which may contain the unit being purchased) is constructed on the lot.

In land developments the sale is often associated with a building contract for the construction of a house, either with the developer or a nominated builder.

The purchase of lots bought "off the plan" is regulated by the *Land Sales Act 1984*, *Body Corporate and Community Management Act 1997* (where a community titles scheme is involved) and the *Property Agents and Motor Dealers Act 2000*. Other legislation may also apply to the selling process, eg. *Trade Practices Act 1974* and the *Fair Trading Act 1989*.

If you are considering buying a property "off the plan", be aware there are several pros and cons compared with buying an existing property, and certain protections exist.

One benefit of buying "off the plan" may be that you have more input into certain design aspects of the home before it is completed which will save you renovating or repainting if you were to buy an existing building.

On the flip-side, one major risk is buying your property sight unseen. Although you can view architectural plans and models or visit a display suite, you still cannot actually see the final result until after you've already purchased and the building/your unit is constructed.

Uncertain completion dates for building and therefore 'move in' dates can be a negative, as nobody can ever 100% accurately predict what delays may occur during the building process due to variables such as the weather, reliance on suppliers and other factors.

Further, predicting the highs and lows of the market for the future when the building is constructed can be a gamble as you are guessing about the value of property that has not yet even been built. There have been many cases in the past of people failing to resell "off the plan" properties for the price they purchased them new.

As settlement is usually a significant time after the contract is signed there is no guarantee that the lot's value will reflect the purchase price when settlement occurs. Some buyers enter into "off the plan" contracts intending to "on sell" the lot before settlement to profit from any market increase in the value of the land or unit. However, if there is a market downturn, the lot may not return even the original purchase price.



The two major protections that do exist for buying “off the plan” are:

- the requirement that monies from purchases “off the plan” be safeguarded in a trust account held by real estate agents, lawyers or public trustee; and
- time requirements for settlement to ensure that by the end of a maximum specified time period your property will be complete or you would have the right to cancel without penalty.

If buying “off the plan”, get a firm date from the developer for when the property will be finished. If a development is not completed you may have your money refunded but find it difficult to purchase an alternative property for a smaller price later on. Seek professional legal advice before signing a contract with the developer.

Please note if you are dealing with a developer, you cannot make a claim under the claim fund (see page 61), and must pursue any issues civilly or through the Police.

Disclosures

Developers are required to provide you with certain disclosures and advisory/

warning statements under the relevant legislation before you sign contracts (see Forms page 64). The developer is also required to provide further disclosure if anything changes before settlement. Different types of disclosure apply depending on whether your lot is or will be part of a community titles scheme (CTS), like a unit in a building complex, or is land in a residential subdivision with no scheme involved.

Disclosure documents will contain important information about the lot and any applicable CTS. In a residential subdivision without common property this will include disclosure plans showing the configuration and dimensions of the lot. For a proposed lot in a CTS which is not established, disclosures will include the proposed community management statement (which includes proposed by-laws and lot entitlements), the levies reasonably expected to be payable by the owner of the proposed lot, and information about agreements the body corporate may enter into after establishment of the CTS (such as the engagement of a body corporate manager or a service contractor).



Construction and design

Be aware that you are buying the lot based on the plans and specifications in the contract documents. The lot, as constructed may not be what you imagined, based on the plans and the marketing material provided by the developer. You may not be able to rely on any drawings or illustrations in marketing materials which may be indicative only of what the completed development will look like.

The constructed lot (whether a house or a unit) may vary from the plans and specifications in the documents. “Off the plan” contracts generally allow the developer to make certain changes to the plans, fixtures and fittings and layout during construction. The developer’s fundamental obligation is to provide a lot which is substantially the same as what was promised in the plans and contract. There is statutory protection for you as the buyer if changes cause a significant variation (for land) or material prejudice (material or substantial difference between what was described in the contract and what the buyer would receive on settlement). However, you should carefully read the contract and relevant disclosure statement to

determine what rights you and the developer have in relation to changes and obtain independent advice.

Often developments involving units in a CTS sold “off the plan” are mixed use developments. The residential component may be only one of a number of different uses in a building. You should look at the environment and understand that you may be sharing it with different uses in the building. There are a range of titling structures that are used in mixed use developments and you should obtain advice from the developer about the impact of these in any building which you are considering buying into.

If you are considering buying a lot in a CTS, check whether the by-laws create any rights of exclusive use over any parts of the common property (for example car spaces or storage areas) and whether the unit’s proportion of lot entitlements is appropriate.



Settlement

Settlement of an “off the plan” contract is conditional on creation of title for the lot being sold. Where the developer is also constructing the building, settlement will also depend on completion of construction (as in a unit complex). However you should check that the contract does not require you to take possession before lawful occupation can be given by the developer.

It is not uncommon for settlement periods to be lengthy depending on the nature of the development, and contracts usually give the developer a right to extend the settlement date for delays caused by matters beyond its control.

There are statutory limits on the timeframes for a developer to provide a transfer of the title to the lot. These vary depending on whether the sale is of a lot in a CTS or not. There will usually be a sunset date in the contract. Under the *Land Sales Act 1984*, the developer must provide you with a registrable transfer within 18 months for a residential lot or within 3 ½ years of the contract date for a lot in a CTS. If the transfer cannot be given in these timeframes you can terminate the contract by notifying the developer in writing.

The deposit (usually 10% of the purchase price) is normally paid when the contract is signed. It may be possible to provide the developer with a bank guarantee or deposit bond instead of paying cash, depending on the contract. There is a cost associated with issuing a deposit bond or providing a bank guarantee.

Any cash deposit is required to be held in a trust account and cannot be accessed by the developer until settlement.

Developers generally will not allow “off the plan” contracts to be subject to finance for any extended period because of the long timeframes involved. As a result, you must have sufficient funds to complete the contract. You should carefully consider whether your circumstances are likely to change when entering into the purchase. You should not rely on re-selling the property to secure your purchase with a developer (ie. don’t rely on the promise of another party to buy the property from you, because if your on-sale falls through you will be left with a property you may not want and a debt you didn’t plan for).

If you do not complete the contract, the developer can forfeit your deposit and may be able to recover any loss on the resale of that lot from you.



Q What happens if a developer doesn’t proceed with a plan that you have already bought into?

A The developer must fully refund all monies paid to it by buyers. All deposits received from buyers must be banked into a trust account when received, and not touched until settlement so funds should be readily available for refund if required.

Unit management

Some developments may involve on-site managers and also a letting agent who buyers can appoint to manage their unit. If the development is intended to involve short term accommodation and significant on-site management, the management arrangements may constitute a managed investment scheme under the *Corporations Act 2001*. Buyers should seek separate advice about these issues.

Buying off the plan: what happens when plans change?

John entered into a contract to buy a two bedroom unit off the plan from a developer. The contract said that John’s unit had a large covered balcony for entertaining and use of two car parks. During construction of the unit, the developer notified John that the unit would now only have use of one car park and would not include the balcony. The contract allowed the developer to make changes to the plans. John notified the developer that he didn’t want to proceed with the contract, as he required two car spaces and wanted the entertaining area. John believed that he would be materially prejudiced (there was a substantial material difference to what was promised) by the changes in plans. John would not have entered into the contract if the unit had only had the use of one car park. The developer pointed out the contract allowed for changes to the plans and was hesitant to let John out of the contract or to provide a discount on the purchase price. After John then sought legal advice, the developer agreed to reduce the purchase price of the unit to compensate for the material prejudice caused.

Buyers considering buying off the plan should carefully read the contract and relevant disclosure statements to determine what rights they and the developer have in relation to changes and obtain independent advice before signing up.

Manufactured homes



Generally manufactured (mobile) homes are found in residential parks on sites available for rent. The parks usually also provide common areas and facilities for the personal comfort, convenience or enjoyment of residents.

The *Manufactured Homes (Residential Parks) Act 2003* provides many protections for potential and existing home owners including:

- standard site agreement contracts;
- processes for making and changing park rules;
- collecting and changing rent;
- settling disputes; and
- processes for terminating site agreements and the sale of manufactured homes (including a cooling-off period).

Owning your manufactured home does not give you any rights over the land upon which the home is situated except under the terms of the site agreement and the *Manufactured Homes (Residential Parks) Act 2003*. Park owners are also subject to the terms of the site agreement and the Act but may deal with the land how they see fit, including its use.

NOTE: Some parks do not allow home owners to rent their manufactured home to tenants. Each park can have variations of their rules relating to this issue so make sure you check the Home Owners' Information Documents for the park you are considering buying or moving in to.

Further information, including a consumer fact sheet can be obtained from the Office of Fair Trading – telephone **1300 658 030** or go online at www.fairtrading.qld.gov.au.

Retirement villages

A retirement village is a collection of accommodation units established mainly for the older members of our community. In some cases, the individual village will set an age limit for residents and only people over that age will be able to live there.

A nursing home where nursing care is provided is not a retirement village. Neither is a manufactured home village or a caravan park.

Retirement village living usually involves significant financial commitment. There is an initial payment called an “incoming contribution”, as well as ongoing contributions to maintain the village facilities and the provision of services.

Before you make the decision to move into a retirement village seek advice from financial, legal and health advisers, as well as family and friends. It's worth knowing that many people purchase into retirement villages only to discover they're unhappy later and suffer significant costs in finding alternative accommodation. Do not go into these contracts lightly.

Only sign a contract when:

- you are sure that the village you have chosen is the one which best suits your particular needs; and

- you understand the obligations and rights that you are agreeing to.

Keep in mind that when you sign a contract, you are signing a document that will become legally binding after the 14 day cooling-off period has expired.

The four most common ownership arrangements are:

- *Leasehold* – a resident is granted a registered lease to live in his/her unit for life. In the case of a couple, the lease remains in force for the life of both partners.
- *Licence* – a resident's rights under a licence are similar to their rights under a lease. The major difference is that the licence is not registered at the Titles Office like a lease is.
- *Freehold* – the resident purchases their unit and has their name registered on the title.
- *Rental accommodation* – the most flexible option for seniors, it requires no up-front contribution. The rental arrangement works in a similar way to other property.

For more detailed information about your rights and responsibilities when it comes to living in a retirement village telephone the Office of Fair Trading on **1300 658 030** or go online at www.fairtrading.qld.gov.au.

Buying an investment property



Key Notes

Make sure property as a form of investment will suit your circumstances

Research first – shop around for loans and your property

Seek independent valuation, financial and legal advice

Before signing, fully read and understand the contract, especially disclosures

A five business day cooling-off period applies to residential property

Beware of buying as a result of slick property investment seminars

Know the risks of timeshare investments

Before you buy

Property can be a complex form of investment. It is a physical structure people live and work in that requires maintenance and running costs and involves more financial commitment and supervision than other 'passive' forms of investment.

Investment properties also compete in the marketplace with other forms of investment like shares, can be more exposed to economic highs and lows, and more difficult to sell quickly.

Before you decide which type of property investment is right for you, prioritise your needs. This should be done in consultation with your accountant, financial adviser and solicitor. There are a range of property investment options:

1. Property offering a high rate of return and a positive cash flow (more commonly commercial rather than residential investments).
2. Property offering a lower rate of return (often a loss) but providing positive tax incentives to be offset against other forms of income (this is called negative gearing).
3. Managed investment, controlled by a third party, offering a guaranteed rate of return for a contractual period of time (most commonly hotel/serviced apartments).

The type of investment property most suitable for you will depend on your personal financial situation. Your accountant or financial adviser will help you determine the option that suits your needs and situation. You should not be mainly persuaded by media, friends and advertising promotion.

Be sure of valuations or appraisals you are given regarding the property – ensure you do your homework and research the value of the property yourself and get an independent valuation. Don't just rely on valuations or appraisals provided by the seller or their agent.

When determining how much you can afford to spend, consider all fixed outgoings such as loan repayments and interest, council rates, insurance, land tax, property management and body corporate fees. Also consider variable costs such as interest rates and bank charges. Stamp duty is considerably higher for investment properties.

Research the effects of income returns and capital gains thoroughly before you purchase.

Allow for interest rate increases and unforeseen repairs and maintenance in your calculations. It is important you have sufficient funds available to quickly rectify any problem. Your tenant has rights and can take legal action against you if you do not provide a safe and satisfactory accommodation/work environment.

Who should you buy from?

Over the last few years property investment sales have increased dramatically. Developers may contact you directly with investment opportunities.

It is common for marketing companies appointed by developers to conduct investment planning seminars to attract new investors. Many accountancy, legal

and financial planning companies also invite their clients to participate in 'in house' investment schemes to promote tax benefits through owning real estate.

If you are purchasing an investment property, you should fully investigate the property and likely returns before making a commitment to buy. Consumer protection legislation attempts to protect you from misleading conduct, false or misleading representations or unconscionability under the *Trade Practice Act 1974* and *Fair Trading Act 1989*.

If you are approached by an investment marketing company about an investment that provides you with guaranteed returns or tax benefits, you should seek the independent, informed opinion of your accountant or financial adviser. Don't buy property sight unseen as photographs or video can never tell the whole story.

This includes properties offered to you over the internet, or as part of an investment sales seminar. Avoid the temptation to join a property investment scheme because you feel pressured by colleagues or friends.

If you are buying a property in an unfamiliar area, contact local real estate agents and conduct your own market research to ensure you are paying a fair market price. Some companies have marketed investment properties at premium prices to interstate and overseas buyers who aren't aware of local property values.

If you are purchasing through an investment marketing company or developer, organise an independent valuer to review the market value of the property, particularly if the seller is also providing finance.

Independently verify all information given to you regarding market rental, outgoings and potential capital growth. Beware of agents or investment marketers promising or predicting unsubstantiated high rates of return and growth (if predicted returns seem too good to be true they probably are a lie).

In the case of guaranteed rental returns, assume the properties may not provide the same rate of return after the rental guarantee has expired.

The Australian Taxation Office will usually allow you to claim a tax deduction for depreciation. Ensure your agent/builder/developer provides a depreciation schedule at the time of settlement so you can avoid paying for a quantity surveyor to prepare a schedule for you.

Marketeting

Jenny and Carl were from Cairns, but took a holiday to the Gold Coast. While they were there, they were invited to an investment marketing seminar which interested them greatly as they had been considering buying an investment property. They went to the seminar and it provided buying tips and showcased several hot new investment properties up for grabs on the Gold Coast.

Jenny and Carl were so impressed by the guaranteed high returns from investing at the Gold Coast, that they decided to sign up to buy one of the properties shown for \$495,000. They didn't inspect the property as they were at the end of their holiday and didn't have time.

A week after they returned to Cairns, they mentioned to a neighbour who had recently moved up from the Gold Coast, that they had bought the investment property for the bargain price of \$495,000. The neighbour was horrified when told of the price considering the size of the house and the area it was in, and advised Jenny and Carl to get an independent valuation on the property.

Jenny and Carl ordered a valuation, and were advised that the property was only valued at \$350,000. Jenny and Carl had become victims of a property marketing seminar which preyed on buyers who are not familiar with true values of property in the local areas, and who succumb to high pressure tactics while they are on holidays and have limited time.

Jenny and Carl called the Office of Fair Trading for advice, but were advised as the five business day cooling-off period had passed, they could not cancel the sale. As the property was not a residential property, but an investment property, they were not entitled to make a claim against the claim fund for compensation. The Office of Fair Trading commenced investigations into the agency for possible breaches of the Act for misleading misrepresentations.

Jenny and Carl had not taken notice of the Warning Statement, which was the first page of the contract they signed that would have alerted them to these issues.

If buying property in an unfamiliar area, conduct your own market research to ensure you are paying a fair market price. Beware of the hype of marketing seminars and don't get sucked into the excitement and lofty promises without first doing your research carefully. A *SmartMap* or title search, available from the Department of Natural Resources and Mines can help you make a more informed decision.

Knowing the hidden costs

There are disclosure laws that require licensed agents and their salespeople to fully inform you of the nature and extent of any financial or other benefits they may receive from people they refer you to (ie. finance broker, lawyer or valuer). You do not have to use the services of advisers recommended to you by the agent. It is wise to seek your own independent expert advice.

Agents are also required to disclose the amount, value or nature of any benefit any person has received, receives or expects to receive in connection with the marketing, purchase or sale of the property.

This information is found in the *Selling Agents Disclosure to Buyer PAMD Form 27c* so please read it carefully (see Forms page 64). These forms are also available in translated version (Chinese traditional, German, Greek, Italian, Spanish and Vietnamese) from www.fairtrading.qld.gov.au.

If the amounts disclosed on the form are in percentages, consider the true cost – 4% may not seem a lot, but on a \$300,000 house that's \$12,000.



Other disclosures

If you are dealing with a licensed property developer marketing residential property, they must disclose:

- whether the property developer holds an interest of at least 15% in the property;
- any relationship and the nature of the relationship the developer may have with professional services connected with the sale (eg. valuers and financiers);
- whether the developer will receive any income or benefits from that relationship as a result of the sale; and
- the amount, value or nature of any benefit any person has received, receives or expects to receive in connection with the marketing, purchase or sale of the property.

Non-disclosure during sale/purchase of residential property

Joyce wanted to sell her home. She arranged for the local real estate agent to inspect her home and give her a market appraisal of the property. The agent gave Joyce an appraisal of \$200,000 knowing the house may have been worth at least \$270,000. When it came time to sell the house the agent gave Joyce a Form 28 *Disclosure of beneficial interest to seller*, without reading the form Joyce willingly signed it. She trusted the agent, as he had said he would not charge her commission on the sale as he wanted to get her the best deal he could.

A few months had passed and Joyce had learned that her old home had been sold for an extra \$100,000. Joyce looked over her contract to find an explanation of what was going on when she discovered in Form 28 it stated the agent's intention to buy the property himself, which also explained why he did not charge commission. Joyce rang the agent and told him that if she had known about the agent's intention to buy and re-sell the property she would not have sold her home to him. The agent informed Joyce that there was nothing she could do about it now, and that she should have carefully read the disclosing beneficial interest form and contract before signing.

It is essential to read and understand not only the contract, but all notices attached to the contract, such as Form 28 which gives a clear indication of the agent's intention to buy the property.

When you are ready to buy

In Queensland it is standard practice to negotiate contracts, so negotiate rather than accept the price. Check any residential property sales contract you are about to sign has a *Warning Statement PAMD Form 30c* as its front page – this is a legal requirement (see Forms page 64).

If you are buying an investment property to be managed by a third party (such as a hotel or serviced apartment operator) you must first be given a prospectus and certain disclosures under the *Managed Investment Act 1998*. Consider these and seek legal advice before signing any contractual agreements with the developer or agent.

Be wary of accepting advice from professional experts closely associated with the seller.

Follow the advice in the warning statement – seek independent legal advice and an independent valuation before you sign the contract.

When you are ready to sign

Seek your own service providers (solicitors, valuers, finance agents and building and pest inspectors) to assist you in the purchase.

Check the sales contract is accurate and you agree with its contents including conditions that give you adequate avenues to cancel. If you are unsure, check with your solicitor before you sign the contract.

For residential real estate transactions (except auctions) there is a five business day cooling-off period to give you time to think carefully before you buy a property.

If you wish to shorten or forego the cooling-off period, ask your solicitor to issue you with a certificate, *Lawyer's Certification PAMD Form 32a* (see Forms page 64). Carefully consider the risk you take by shortening the cooling-off period.

If you want to cancel the contract during the cooling-off period, write a letter to the property developer or agent involved and make sure you deliver it before the period ends. You will be refunded your deposit less an amount equal to 0.25% of the purchase price of the property.

Timeshare investments

A timesharing scheme is a scheme where participants are entitled to use, occupy or possess, for two or more periods, property to which the scheme relates, and that is to operate for not less than three years.

Real property timesharing schemes, for example, commonly include title-based schemes in which a purchaser becomes a tenant in common with the right to a share of the real property.

There are several risks involved in buying timeshare investments. If you are looking to buy into a timeshare investment to make money from it further down the track by “on-selling” it, be aware that it can be very hard to sell a second-hand timeshare, and they can have low resale values. These risks are not openly disclosed to prospective buyers.

If you are considering buying a timeshare investment:

- be wary of pressure selling techniques;
- before investing make sure your decision fits into your overall investment strategy;
- understand the risks involved – remember that all types of investments have cycles of profitability and cycles of losses and these cycles can last for years;
- do your homework – find out as much as possible to make sure you really understand the pros and cons and weigh the advantages and disadvantages against your financial goals;
- make sure you understand the tax and social security benefit (eg. pension) issues;
- read and keep all documents you receive;
- seek independent legal advice before you purchase; and
- check the entity has complied with all their legal obligations, (eg. disclosures).

Visit www.asic.gov.au for more information.

Timeshares may also be registered under the *Body Corporate and Community Management Act 1997* and be covered by some of its dispute resolution provisions. For more information on this aspect of timeshares contact the Office of the Commissioner for Body Corporate and Community Management on **1800 060 119** or visit www.dtftwid.qld.gov.au/disputeres/bccm/.

Getting finance

Key Notes

- Determine your budget
- Research different types of loans
- Shop around to get the deal that best suits you
- Check and understand contract before signing
- Check finance/mortgage brokers out carefully – they are currently unregulated
- Avoid wrap loans and vendor finance



Before you choose a loan

A home loan is a large debt that you live with for many years, so carefully research, compare, and fully understand the differences so you choose the one most appropriate for you.

Before shopping around for a loan, work out how much you could afford to pay back each month.

If appropriate, also look into the first home buyers grant offered by the Office of State Revenue (OSR) in Queensland. When you buy or build your first home, you may be eligible for a grant. An additional grant may also be available for the purchase or construction of certain homes as your first home, depending on the timing of the purchase or construction and a number of other factors.

To be eligible you must occupy the home as your principal place of residence within certain timeframes.

For more information visit the Office of State Revenue website at www.osr.qld.gov.au or phone **1300 300 734**.

Also check OSR's website for information on how much stamp/transfer duty will be payable on your desired property – the percentage scale will vary according to the amount of the sale price and whether or not you intend to live there or rent it out to tenants as an investment.

1. Budget

Prepare a budget and work out how much money you earn each week and then assess what your current expenses are along with the expected extra costs associated with buying a house such as:

- mortgage fees and charges;
- interest rates rising to over 10% in the future;
- land and water rates;
- house and contents insurance;
- house repairs; and
- body corporate fees (if applicable).

When determining your budget, set

aside additional funds to pay for:

- legal fees (including mortgage insurance and mortgage documentation);
- removalists;
- security deposits;
- connection fees for essential services such as electricity and telephone;
- formal valuation; and
- building and pest inspection.

2. Shop Around

Shop around to compare loans and understand all the differences and implications of the various types of loans, interest rates, fees and charges before you make any decisions.

You can do this by consulting financial institutions directly yourself or using a finance or mortgage broker. *Choice Magazine* found many loan products could be more cheaply accessed by consumers online than those available via brokers.

If shopping around yourself, make sure you use the comparison rate for fixed term loans to properly compare loans.

Under the Consumer Credit Code, all credit providers are required to quote a uniform comparison rate for fixed term loans - such as personal or home loans – in all forms of advertising, including brochures and websites that quote an annual percentage rate. Credit providers are also required to have available

copies of a comparison rate schedule for members of the public.

The comparison rate includes both the interest rate, fees and charges relating to a loan – as a single percentage figure.

The Australian Securities and Investments Commission (ASIC) recommends using the CANNEX website www.cannex.com.au which lets you search for loans according to the type you need, and find the cheapest one. This site is free, independent and used by the industry professionals.

When shopping around for the best deal you should also consider how the lender will deal with you if things go wrong. You might need to dispute charges added to the account or vary the loan depending on personal circumstances, eg. loss of job or illness.

Many lenders belong to a free independent complaints service that deals with complaints that you are unable to resolve with them. The Banking and Financial Services Ombudsman is an example of one of these services. Some lenders do not belong to any independent complaints service and if you are unhappy with any of the lender's decisions, your only option is to take legal proceedings. This can be very expensive. Make sure you check your potential lender's dispute handling process first before signing up.



3. Signing the Credit Contract

It is your responsibility to read and fully understand the contract before signing.

Make sure you understand the minimum monthly payments, fees, charges and penalties for early termination because these are often what get people into trouble.

Don't forget that the contract isn't set in stone until you sign it, and you don't have to sign it if you don't understand it or agree with it.

Home Loan Checklist

- ✓ Shop around as interest rates can vary.
- ✓ Is the interest fixed (ie. won't change for a set period of the loan) or is it variable?
- ✓ Are there additional fees and charges? These may include establishment fees, legal fees, application fees and insurance. Understand what they are and when you have to pay them.
- ✓ Read and understand the contract before you sign. If you have questions, ASK THEM.
- ✓ Take all the time you need before signing up.

- ✓ The faster you pay back your loan, the less you will pay overall.
- ✓ What are the conditions (eg. terms of payment) and do they suit you? For example, can you change how, when and where you make repayments? If you have spare money, can you pay the loan off early — without penalties?
- ✓ In most cases, the credit contract is separate from the contract to buy the property. You can't cancel the credit contract if you decide you no longer want the property.
- ✓ Keep all your paperwork in a safe place.

The Office of Fair Trading's free *Good Credit Guide* provides practical information on loans, creditors, dealing with debts and contact details of organisations which can assist you. Download the guide from www.fairtrading.qld.gov.au or call **1300 658 030** for a copy.

Dealing with mortgage brokers

Finance or mortgage brokers can assist you with finding the right loan but keep in mind that mortgage brokers in Queensland are currently not regulated.

Before engaging the services of a broker you should:

- find out if they belong to a reputable industry association;
- ask if they are independent or if they only deal with a certain lender;
- check that they have professional indemnity insurance;

- find out if they are a lender as well as a broker, as this may affect their recommendations;
- check that they offer a wide range of loans from a variety of independent lenders;
- ensure you do not pay an upfront fee;
- make sure that they disclose all fees and commissions prior to signing up (as a guide, the fee should not be any larger than 1.5–2% of the loan amount);
- ask them to justify their recommendations – beware that brokers receiving commissions or kickbacks from lenders may recommend the loan that gives them the biggest fee;
- ask to see a copy of the application and any financial details they send to the lender on your behalf;
- make sure you know what you are agreeing to when you sign up – some broker contracts require you to pay the broker if they obtain an offer of finance – even though the interest rate or conditions on the loan found by the broker don't suit you; and
- be wary about brokers coming to your home – some brokers are trained to exploit politeness towards guests and may refuse to leave your home until a sale is made.

A fact sheet on *Using finance/mortgage brokers* is available on Fair Trading's website at www.fairtrading.qld.gov.au.



Dangers of wrap loans and vendor finance

If you are a first home buyer, don't let the dream of your own home influence you to sign a contract you might regret. Vendor financing arrangements may seem like an easy solution, especially if you are having trouble obtaining finance elsewhere, but they have the potential to deprive you of your hard-earned savings and leave you with nothing.

A vendor finance, wrap loan or rent/buy scheme is an agreement where the owner of a property (the seller often called a 'wrapper') offers finance to the purchaser. The purchaser never legally owns the property until all the money owing to the seller has been paid.

The interest rate is usually about 2% to 2.5% higher than the standard home loan, and there may also be a premium over the purchase price of the property payable to the seller.



Wrap loans/vendor finance

Donna and Steve were a young couple trying to save for their first home. While looking through the local newspaper they came across a rent-to-buy advertisement. They enquired about the vendor finance and thought it would be the best way that they could buy a house of their own. All they needed to do was use their First Home Owner's Grant as a deposit, buy the house for \$250,000 (which their research showed was \$50,000 over the market value) and make regular payments.

Although they had to pay a higher market price for the property for the convenience of using the vendor finance, they thought it was worth it as the prospect of continued renting would be virtually lost money anyway, and they were finding it hard to get a bank home loan. Donna and Steve accepted the vendor finance option and bought the house. They used most of their income to keep up with the payments. A few years later Steve hurt his back and was out of work for a few months. Steve and Donna went to the vendor to explain why they had missed a few payments and would only be able to make part payments for the next few months until Steve was back at work, but the vendor evicted them and re-sold the property. Donna and Steve lost all the money they had put into the house including their First Home Owner's Grant and had to pay extra money for expensive legal costs to try to reclaim the money.

Vendor finance may look like an attractive way to get a loan if the banks are turning you down, however the risks in this sort of finance often far outweigh the benefits. Don't overcommit yourself to payments that you really can't afford.

Because the purchaser is not the owner, they have limited rights.

If the vendor or 'wrapper' has borrowed to finance the property and they default on that loan, the purchaser still loses possession and any possibility of ownership or refund of any monies paid even though the purchaser is not in default to the vendor.

Approach vendor finance contracts with extreme caution. The consequences if you default can be very harsh.

If you fall behind on repayments – even one payment – you risk losing the property. This means you risk losing your house, any repayments already paid, your credit rating and your first home owner grant.

A fact sheet on *Vendor finance/wrap loans* is available at www.fairtrading.qld.gov.au or call **1300 658 030**.

Protecting your investment



Home insurance

Make sure you are clear about exactly when you are responsible for the insurance of your property.

Even though the property may be covered by the seller's insurance up until the date of settlement, it is recommended that the buyer take out building and contents insurance, effective from the date of signing the contract.

If you have a mortgage your lender will expect you to have home building insurance. This should be essential even if you have paid off your home because it covers damage or loss to the building and its fixtures.

If you buy into a community titles scheme (eg. townhouse, villa or home unit), the body corporate will generally have to take out insurance to cover common property but you are responsible for insuring your contents.

Loan insurance

If you are heavily mortgaged you may also be obliged to take out mortgage insurance – this protects the lender, not you, if there is any shortfall in your payments or if you default. If the insurance company makes a payment to the lender, the insurance company will pursue you for that payment.

Consider insurance to cover:

- unemployment, sickness and disability;
- death; and
- loss of home contents.

Shop around to get the best deal. Get at least three quotes from authorised insurance companies.

Compare your cover. Read the policy document right through. Most insurance policies cover only what's defined in the policy and nothing else.

For more advice regarding insurance visit the Australian Securities and Investment Commission website at www.fido.asic.gov.au.

Other protections

In addition to the protections offered under the law, the Queensland Government secures your interests in land by registering transfers of ownership, mortgages and other interests in the land registry maintained by the Department of Natural Resources and Mines (NR&M).

The Queensland Government guarantees your interests as a registered proprietor (a property owner or mortgagee) and protects you from loss in a range of circumstances, such as fraud by another party or errors in the land registry. However this guarantee does not apply in cases where you or your lawyer have contributed to the situation.

To obtain the protective benefits provided under this system, you must ensure the timely recording of your land dealings in the land registry. Registration can only occur when the correctly completed and duly witnessed documentation is lodged with the land registry and the prescribed fees are paid.

Under Queensland law only solicitors are allowed to convey property transactions (legally transfer a property's title from the seller to the buyer) on behalf of interested parties. However, individuals may convey their own property dealings (ie. you can convey your own property transaction, but not anybody else's unless you are a solicitor).

Nevertheless, property law is complex and any errors or omissions in property transactions may have significant and

costly consequences. People who are unfamiliar with legal requirements and processes for dealing with property should consider seeking their own independent legal advice.

Whether you use a solicitor or decide to do-it-yourself, conveyancing still incurs costs such as searches of the land registry at the Titles Registration Office, certificates of rates, zoning, stamp duty and registration fees.

For a small fee, information on current or historical interests in land is readily available by undertaking a search of land registry information (see Getting a valuation, Sources of information page 7). Searches can be done over the counter at NR&M offices around Queensland or through authorised online service providers.

More information is available from the NR&M website www.nrm.qld.gov.au or by phoning the land registry on **(07) 3405 6900**.

Once your property has officially settled, as a property owner you should consider having an enduring power of attorney so that if the need arises your property interests can be looked after.

If you have bought the property together with your spouse or another person, and if you hold the property as tenants in common (rather than joint tenants), it is recommended that you have a valid will covering your interests in the property. General information can be obtained from Queensland's Public Trustee – www.pt.qld.gov.au.

Managing your property (becoming a landlord/lessor)



The Office of Fair Trading licenses restricted letting agents (accommodation managers) and real estate agents. If you own a property and rent it out through a restricted letting agent or a real estate agent, make sure that the agent is licensed and that you have an appropriate signed 'Appointment to Act' in the format of *PAMD Form 20a Appointment of Agent - letting and property management* in place (see Forms page 64).

The Property Agents and Motor Dealers Act 2000 requires that an agent must have a written appointment before that agent can act on your behalf to provide real estate services.

You should ensure you have carefully negotiated all commissions, charges and fees, and services to be provided in this agreement. Check the Office of Fair Trading website www.fairtrading.qld.gov.au for more information.

What to look for when choosing an agent to manage your property

Property owners need to do the legwork and compare the property management services on offer before deciding on an agency. Often property agreements last for long periods of time (commonly years), so it is important to know what you're agreeing to and get it right the first time.

When choosing an agent to manage your property:

- shop around to be sure you get the property agent that best suits your needs and payment expectations (if possible talk to other landlords/clients of the agent);
- negotiate the commission and fees involved and the services to be provided;
- carefully read the *PAMD Form 20a Appointment of Agent – letting and property management* and seek independent legal advice before signing;

- get a documented list of the services to be provided under the appointment;
- find out the agency's complaint handling procedure;
- agree on a procedure for any maintenance or repairs, such as providing a number of quotes and a receipt for any work undertaken on your behalf;
- agree on a procedure for the termination of any tenancy or eviction processes, including how long rent can go unpaid; and
- maintain regular contact with your agent and bring issues to their attention quickly for resolution rather than letting them come to the boil.

- develop and comply with a complaint handling procedure;
- complete an inspection report and inventory in line with the agency agreement; and
- accompany prospective tenants on all property inspections (unless otherwise instructed in writing).

Managing your own property

There are several rules and processes under the *Residential Tenancies Act 1994* you must be aware of and follow if you intend to manage your tenants yourself. Visit the Lessor section of the Residential Tenancies Authority website at www.rta.qld.gov.au or phone **1300 366 311** for more information including the relevant forms, links to legislation, publications, and useful contacts.

If you are managing your property only for holiday accommodation, the provisions of the *Residential Tenancies Act 1994* do not apply. However, as a trader you are expected to act fairly to customers under the *Fair Trading Act 1989*.

If you own a lot in a community titles scheme (eg. townhouse, villa or home unit), there may also be an onsite letting agent. While you are not obliged to use this agent you may do so for the sake of convenience. A number of rights and obligations apply to you as an owner and to the onsite letting agent. For more information contact the Office of the Commissioner for Body Corporate and Community Management on **1800 060 119** or visit www.dtftwid.qld.gov.au/disputeres/bccm/.

What your property manager should do for you

Some common complaints received by the Office of Fair Trading about property management include failure to complete inspections or repairs, excessive maintenance costs and poor service, especially when it comes to handling complaints.

Under the Code of Conduct within the *Property Agents and Motor Dealers Act 2000*, real estate agents managing property must ensure they:

- promptly respond to requests for maintenance or repairs;
- act in the client's best interests (which includes obtaining quotes for repairs to get value for money);
- employ only licensed tradespeople for any repair or maintenance work;

Selling real estate

Key Notes

- Shop around for an agent
- Check they are licensed
- If you don't use an agent, you must still follow the law
- Understand different appointment types
- Be clear with your agent about selling price
- Seek independent legal advice before accepting a contract



Before you sell

Research carefully. To get the best price for your property select an effective and ethical agent. Ask people you know and seek out who is active in your area by checking local newspapers and internet sites, and visiting houses open for inspection.

Shop around. Many consumers engage the first agent they visit and are then stuck with a sole or exclusive agency for 60 days with someone they are unhappy with later. Visit a number of agents to find the one you like and who can do it for a price you are prepared to pay, as fees are negotiable up to the maximum set by the legislation. You should be careful that if you engage an agent for a sole or exclusive agency and then engage other agents you may be liable for two or more commissions.

If you are not sure who to appoint, ask two or three agents to inspect your property and provide you with a listing presentation. This will include an

indication of the current market price, an overview of market conditions, and a plan on how the agent will market the property. Don't be sucked in by an agent who simply says they can get the best price. Look at what they can do for you.

Don't have unrealistic ideas about the price for your property. If you overprice your property you may never sell it.

Check prices. Look at several real estate agents' listings, the internet, or newspapers to find out the average market price for a property similar to yours.

Follow market changes or downturns that may influence the price you want.

Do not be influenced by an agent who says they can get you the highest price. Some unethical agents use this tactic to lock you into a sole or exclusive agency and then can't deliver on their appraisal. Ask the agent how they arrived at the price and ask them to show you recent sales and statistics to verify their opinion.



Ask the agent for testimonials from other customers. Contact people to confirm their comments. Also consider whether they are a member of the REIQ.

Find out the different processes and options involved in selling through a real estate agent, auctioneer or as a private seller.

If you have an investment property, talk to an accountant. Ask about any taxation implications to verify claims made by agents seeking to sell your property.

If you consider making improvements to your home before putting it on the market, make sure you engage a suitably licensed electrical contractor to carry out any electrical installation or repair work.

If your home does not already have a safety switch, you may also consider installing one. A safety switch will cost around \$200 to purchase and have a licensed electrical contractor install. A safety switch is another small incentive for buyers to purchase your home over another without one, because if a residential property does not have a safety switch the buyer must install one within three months of settlement.

Selling privately

If you wish to sell your own home rather than engage a licensed real estate agent, do some homework so you're clear about what is involved.

You still have to meet legislative requirements set out in the *Property Agents and Motor Dealers Act 2000* and *Fair Trading Act 1989*, when you market your property to potential buyers.

It's not as simple as putting a sign in the front yard and advertising in the media or on the internet.

Seek legal advice about the form of the Contract of Sale for your property – the Office of Fair Trading does not have a standard contract for the sale of house/land.

You can buy a REIQ Standard House and Land Contract which has been prepared in accordance with relevant legislation and in conjunction with the Queensland Law Society, as part of a full conveyancing kit, or from law stationer, Legal Kit Specialists www.legalkitspecialists.com.au or phone (07) 3878 9066 for a minimal

cost. Visit the Buying, Legal Issues page at www.reiq.com.au to see a sample of this standard contract.

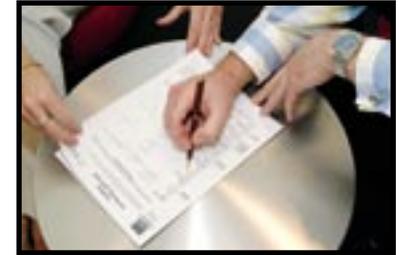
Another standard contract, which is different to the REIQ contract but also legal, is available free to eligible applicants (who are not members of the real estate industry) from ADL software by calling (07) 3367 1982 or emailing sales@adlsoftware.com. A sample can be viewed in pdf format from their website www.adlsoftware.com. However, it is strongly recommended you use the services of a solicitor, even if using a standard contract, to draft your contract. For assistance in selecting an appropriate lawyer, visit the Queensland Law Society's website at www.qls.com.au.

The contract must include the *Warning Statement PAMD Form 30c* which has to be attached to the front page (see Forms page 64). This statement must be signed and read by the buyer before he or she enters into the contract. The form is available on www.fairtrading.qld.gov.au (search 30c).

You must also ensure you provide the legally required five-day cooling-off period to the Contract of Sale.

In the end, the choice between using a real estate agent or selling your home yourself should be a decision informed by the real costs and your ability to generate buyers within the necessary time.

If the main reason you want to sell your home privately is to avoid agent commission costs, consider that it is only the maximum commission that is



set by law. You can negotiate the rate of commission with an agent and shop around for the best deal.

For those who want to do it themselves, there are a number of businesses that do provide sales advice and marketing support, usually for a fee (usually much lower than agency commission). Search the keywords "private sale" on the internet as a starting point.

In summary, the main tips for selling your own home privately are:

- research the local market and seek out advice on the process;
- consider getting an independent valuation to set a realistic price;
- be prepared to invest plenty of time for open houses and inspections;
- check you meet all legal requirements;
- have your conveyancing solicitor prepare the Contract for Sale and make a note of all inclusions such as light fittings, curtains and blinds;
- obtain a building and pest inspection report to allow you to do necessary repair work before the sale. A clear report is a selling feature.



Appointing an agent to sell your property

There are normally three types of appointment:

- open listing appointment;
- sole agency appointment; and
- exclusive agency appointment.

Agents with an open listing appointment only get a commission if they actually sell the property. You can open list your property with several agents and cancel the appointment at any time by giving written notice to the agent.

An agent with an exclusive agency appointment is entitled to receive an agreed commission upon sale, whether or not they actually sell the house. Therefore if you sell the property yourself, you must still pay the agent's commission. If another agent sells your property (and you properly appointed them), you may also have to pay them a commission – potentially you could be obliged to pay two commissions.

A sole agency appointment is very similar to an exclusive agency, but your agent is not entitled to commission if you make the sale yourself and the

agent played no part in attracting or introducing the buyer. Be careful of the distinction between a sole and an exclusive agency.

The appointment form outlines the difference between open listings, sole and exclusive agencies (see Forms page 64).

Open listing appointments give you the flexibility to use a number of agents to compete for the commission on the sale of your house while sole and exclusive agencies allow for more personalised and targeted marketing.

Details on the appointment form must include:

- the proposed term of the appointment;
- the type of service the agent is providing;
- how it is to be performed;
- the fees, charges and any commission payable for the service;
- the expenses, including advertising and marketing expenses, the agent is authorised to incur;

- the source of and estimated amount of any rebate, discount, commission or benefit that the agent may receive in relation to any expenses that the agent may incur;
- any condition, limitation or restriction on the performance of the service;
- when the fees, charges and any commission for the service become payable;
- that where the commission is based on a percentage of the sale price, it is worked out only on the actual selling price (not listing price); and
- if the appointment is for a sole or exclusive agency, the date the appointment ends (which can be no more than a maximum of 60 days).

NOTE: you can negotiate the commission – only the maximum is set by law.

The maximum commission for residential property sales is 5% of the first \$18,000 of the purchase price + 2.5% of the balance of the purchase price.

Appointment length

The length of sole or exclusive agency appointment is set by you up to a maximum of 60 days. Most agents will want 60 days. Open listings can be continuous but you have an absolute right to terminate an open listing immediately at any time by giving written notice.

You may reappoint an agent for a sole or exclusive agency for more than one term if you are satisfied with their services (see Forms page 64). However, the agent cannot be reappointed for more than 60 days at a time or earlier than 14 days before the expiry of the previous appointment.

If you enter into a continuing appointment for the agent to provide a number of services (eg. selling all the units in a building complex or property management for an extended period), the appointment form must state:

- the date a continuing appointment ends; and
- the appointment may be revoked on giving 90 days notice or some lesser period (not less than 30 days) agreed by the parties.

The notice revoking a continuing appointment must be signed and given to the agent. Stopping a continuing appointment does not affect existing contracts the agent may have entered into on your behalf.

Make sure the appointment form is signed and dated by you and the agent or their representative and you receive a signed copy of the form.

Appointing an agent

David was selling his home; his friend Trevor worked as a real estate agent so he arranged for Trevor to sell his property. David signed all the paper work Trevor handed him to sell the property. After the property had been sold David was presented with a bill for not only the maximum prescribed commission of the house's sale price, but also additional costs totalling \$500 for advertising fees, etc. for marketing the property. David was outraged and called Trevor and asked why he had received these extra bills. Trevor explained to David that he had signed the appointment form which included the agreement to market the property in this way and that these costs would be additional to the commission. There was no way out for him, but if David had read the appointment to act carefully he would have been aware of these expenses and could have negotiated a better deal.

Sellers should go over the appointment to act carefully ensuring that fees, charges, commissions, advertising and marketing expenses have been clearly stated and if agreed upon, budgeted for.



the buyer and seller, usually with the assistance of an agent, and concluded with a written contract.

- **Public auction** – An auction is a public sale conducted by an auctioneer either directly or engaged by a real estate agency. It is advertised for a specific place, time and date. Prospective buyers bid and the property is sold to the highest bidder, provided the reserve price has been reached or the seller accepts the bid. You can agree to receive offers before the auction occurs. If the property is “passed in” because it failed to reach reserve, usually the highest bidder has the right of first refusal to further offers on the property.
- **Sale by tender** – A sale by tender invites competitive tenders from potential buyers where all the offers will be considered at a specified time. This method is becoming a growing marketing practice.

The agent will recommend a method of sale based on the type and location of the property, the nature of the market and the seller's available timeframe and personal preference. They should also back up their recommendation with recent sales data.



You should understand all the pros and cons before deciding on a method of sale. The agent's commission is generally the same whether the property is sold privately or at auction. However, there are usually additional costs involved in selling by auction (auction fees and marketing costs if the property is “passed in”).

Although it is best not to be in a hurry to sell, sometimes there is no choice. If a property must be sold quickly, an auction may provide a better opportunity to sell by a specified date. However, there is no guarantee that by doing this the property will be sold, or that the best price will be achieved.

Not all properties are suited to the auction method. The properties most likely to succeed at auction are those with special features which may attract more competitive bidding.

Auctions also do not necessarily provide the best price as the person who wins only has to bid marginally above other bidders – you cannot be sure they have offered the most they were prepared to pay although some people at auction bid more than they wanted in a competitive urge to purchase.

Selling costs

The law permits an agent to be reimbursed for costs and expenses incurred on your behalf while selling your property. Ensure you and your agent discuss the fees to be authorised, when they are to be paid, and ensure these details are on the listing authority. An agent can only seek reimbursement from you if they were authorised to incur the costs and provide a detailed statement of expenditure. The most common costs will be for searches, bank fees and charges, advertising, couriers, telephone and fax.

If you provide money to an agent in advance for any advertising, marketing, searches etc., it must be placed in the agent's trust account. While some agents will not negotiate on their commission amount, many will negotiate on the marketing costs.

You are strongly advised not to give an agent, auctioneer or developer money for advertising or marketing until you have seen a marketing plan with a schedule of how and when the money is to be spent. An agent must be fully accountable to you for how your money is used. The agent is not permitted to



seek a general marketing levy where there is no accountability for the actual cost of the services provided.

Being clear with your agent

An agent must protect your confidentiality in a transaction. Discuss with the agent how the question of “reason for sale” should be disclosed when dealing with buyers. Also discuss how price should be dealt with.

If you advertise a price, make it clear to the agent whether the price can be quoted as negotiable or not.

This instruction should be in writing. Likewise, if you are advertising without price, discuss how buyers will be guided to what is a suitable offer. Many agents will often guide buyers with market research in the form of a Competitive Market Analysis (CMA). Ask to see a copy of this document and approve it in writing before it is given to buyers.

Be careful of agents using low lead-in (initial) and advertising prices. They can damage the price integrity of your property and may breach the *Property Agents and Motor Dealers Act 2000* and

the *Fair Trading Act 1989* for engaging in false or misleading conduct.

Ask the agent to guide you on what items in the property are standard inclusions in a sale. If there are items you wish to retain, make sure the agent excludes them from the sale.

An agent will require a great deal of information from you when listing a property for sale. Provide a copy of your rates notice, a title reference certificate, or some other documentation to verify you own the property and confirm its description details.

If you are listing a tenanted property for sale, ensure your tenant and managing agent have been given the appropriate notices notifying them of the pending sale.

If you’re selling a property with vacant possession, you must ensure vacant possession at settlement.

If you’re selling a property with tenants, you must ensure the contract specifies this and all parties involved are clear on their obligations.

You must ensure all inspections are conducted according to guidelines set out in the *Residential Tenancies Act 1994*. Your appointed agent must also respect your tenant’s right to “peaceful enjoyment” of the property. Sellers often appoint just one agent as a sole or exclusive agency when marketing rented property.

Remember, once you choose your agent, they are working for you and not the buyer. You must tell them about any problems there may be with your property so they can deal honestly with potential buyers and minimise the risk of a contract falling through.

Selling the property

Carefully read any advertising/promotional material prepared by your agent and approve it in writing before it is published or promoted. It is also useful to initial your approval on the copies in case it is altered.

While your property is listed for sale, ask for frequent written activity reports as often as you require (subject to negotiation), that outline who has been through the property, buyer feedback and general market updates.



Instruct the agent through the agency appointment form to inform you both orally and in writing of any offers from buyers for the property (see Forms page 64).

Check all signs relating to the sale of your property are only placed by your agent.

Sometimes interested buyers will knock on your door and contact you directly. You should politely direct them to your agent to avoid being directly involved in the negotiation process.

When the buyer signs a sales contract

Some agents will prepare a draft contract on your property at the time of listing. This gives them an opportunity to conduct searches and ensure that the information it contains is correct before you and a buyer sign. Check the sales contract to make sure it is accurate and reflects your instructions and ask your solicitor to check the draft contract.

Do not accept a contract to sell your property unless:

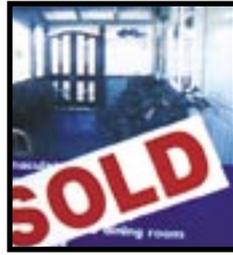
- it has been properly signed by the buyer;
- the terms and conditions of the offer to purchase are acceptable to you;
- you can fully comply with all contractual requirements (including the notices required under various Acts related to the transfer of the property);
- you have made appropriate provision in the contract to pass on to the buyer any restrictive or building covenant or unregistered agreement in the sale contract; and
- you check the address and description of the property are correct.

Check with the agent that they have received the deposit. Check the dates for payment of any additional deposits are stated in the contract and fall within a few days from when the contract is signed. Make sure the agent immediately advises you if these additional deposits are not received.

Make sure you receive every page of a contract, including all standard conditions before you sign it. Read and understand these. Ask if you don't know what they mean.

Remember the agent is not qualified to give legal advice on the contract or to modify or vary it. Discuss any changes with your solicitor.

Don't allow the agent to deter you from seeking legal advice before signing a contract or an agency appointment.



If you have a solicitor acting for you, make it clear the solicitor will be the one who communicates with the buyer or buyer's solicitor or agent on your behalf if that is what you want.

Be aware that it is common in Queensland to conduct negotiations on the sales contract. When a buyer makes an offer that is not acceptable to you, you have at least three options.

1. Accept the offer by signing the contract.
2. Reject the offer by not signing the contract.
3. Respond with a counter offer by altering and signing the contract to suit your terms of sale. If the buyer accepts the counter offer by initialling the changes, the contract becomes binding.

Make sure you understand the process. If either party alters a Contract of Sale in any way, ensure all parties signing the contract initial the changes. Failure to do so may void your contract.

Settlement day

Settlement usually takes place between 30 to 90 days from the signing of the contract, but this period can be negotiated.

On settlement day you, or the person authorised to receive payment on your behalf, are paid the balance of the purchase price in exchange for the title of the property, and the buyer can obtain the keys and take possession of the property, unless otherwise arranged.

It is your responsibility to ensure the house is left vacant (unless otherwise provided in the contract) and clean, and to provide the keys to your agent by the time specified on the settlement day or an earlier agreed time.

Beware that if the buyer is not happy with the condition the house is left in (after inspecting it just prior to settlement), they may seek legal advice regarding whether settlement can be withheld until the problem/s are fixed.

At settlement all outgoings such as rates and other charges will be adjusted between you and the buyer. You are responsible for rates up until and including the day of settlement.



The buyer is liable from the day after settlement.

Under Queensland's standard contract terms, the buyer carries the risk of the property from 5pm the next working day after signing, so it is their responsibility to take out an appropriate insurance cover note to legally protect the property (see Home Insurance page 43).

Settling the contract

Usually, the agent will deduct their commission from the deposit held and forward the balance to you after settlement. The agent is accountable to you for the money received as well as the expenses paid on your behalf.

You may not be obliged to pay a commission to an unlicensed agent or to an agent who does not have a written and current agency appointment.

Hiring removalists



Key Notes

- Plan carefully
- Obtain written quotes
- Ensure your contract contains all relevant elements
- Read and understand the contract before signing

Contract checklist

Check that the company uses a *Standards Australia Contract* that includes:

- ✓ name and address of the company;
- ✓ full details of services provided (specifying if it includes packing and/or unpacking);
- ✓ pick-up/delivery addresses, dates and times (look out for the fine print saying they won't guarantee delivery on the dates specified);
- ✓ rates or fixed price of removal and payment method;
- ✓ insurance details and storage;
- ✓ copy of inventory attached; and
- ✓ any other special requirements.

Insurance

Not taking out insurance can be a risky and expensive mistake.

Some services only have insurance that covers vehicles in the case of an accident.

Consumers are urged to ensure their insurance is comprehensive by:

- choosing the insurance that suits your needs such as transit, contents, replacement, or indemnity:
 - transit insurance covers you from the time your furniture is removed from your old residence until the time it is installed in your new residence;
 - replacement cover is an expensive option as it is calculated on the full replacement value of your goods;

- indemnity cover is cheaper as it is calculated by the value of your goods (second-hand);
- shopping around for insurance and comparing quotes, ensure you are comparing the same type of insurance cover;
- stating your requirements if you let the removalist arrange your insurance; and
- getting a copy of the policy before the move and checking the terms to ensure it covers the replacement value of your belongings.

Preparing for the move

Decide whether or not you want to pack your own boxes. Beware though that some insurance companies may refuse to fully cover you for accidental damage if you have packed the items yourself.

If you pack the items yourself, always use industry standard packaging material. Your removalist can usually sell or hire them to you.

Check with the manufacturers or service agents for advice about moving electrical appliances such as refrigerators and washing machines. You may need to properly secure motors before they are moved.

If you can't be at the property when the furniture arrives, make arrangements with someone you trust to check if items are missing or damaged. Ensure payment has been left for the removalist when they arrive. If you do not have the payment as planned, they may charge you for storage.

Always keep small valuables such as jewellery and important documents with you during a move.

If your furniture is damaged or goes missing and you can prove that your goods were damaged by the removalist, you may be able to ask for a replacement. If damage was not caused by negligence, you will need to arrange the repair or replacement through your insurance.

Fees

Obtain at least three written quotes and then carefully compare the services as well as the price. The cheapest is not always best.

Some removalists quote on the basis of the time it takes to move the goods while others quote on the quantity of goods to be moved.

Some quote over the phone or on the web, placing the onus on you to accurately estimate the volume of goods. If you're wrong the quoted price may vary once the goods are actually moved.

Some removalists also ask for the full amount up front before the move. The Office of Fair Trading recommends consumers do not pay in full until the move is completed.

Some removalists operate on a back-load basis, meaning goods might not be picked up until the company has an empty returning truck. This often results in late delivery to the destination and complaints of missing goods. Although back loaders are a cheaper option there can be extra problems.

Resolving complaints



Making a claim for compensation

You can make a written claim for compensation from the *Property Agents and Motor Dealers Act 2000* Claim Fund, through the Office of Fair Trading, if you have suffered a loss because of the actions of an auctioneer agent or their salespeople in certain situations (not including investment property purchases).

You can make a claim if you have suffered a loss because an agent has:

- engaged in misleading or unreasonable conduct;
- not properly dealt with trust monies or did not hold money as specified in the contract;
- wrongfully received an amount belonging to someone else;
- stolen, misappropriated, misapplied property entrusted to them or falsely accounted, or wrongly converted trust monies, for example, deposit money.
- not told you they had a financial interest in the property you sold or that was sold to you (eg. the agent bought the property you were selling);
- made false representations about a property;
- not provided you with a written disclosure statement about the purchase of vacant land before signing the contract;
- not provided you with a statement identifying the proposed lot being purchased; or
- breached the legislation in specified ways.

The source of the problem

Try to resolve your problem with the business first. Anyone licensed by the Office of Fair Trading, like agents, accommodation providers, etc. are required to have their own complaints handling process by law.

By making a complaint quickly you have a chance to improve your situation and the business involved gets to learn of your problem and try to ensure you are a satisfied customer.

When you make a complaint, get your facts right and always stay calm.

If you telephone the business:

- make a note beforehand of what you want to say;
- have receipts and any other documents handy;
- get the name of the person you speak to and write down the date and time and what is said; and
- follow up your call with a letter, particularly if your complaint is a serious one.

If you need to put it in writing:

- address your letter to the General Manager or the person nominated as the complaint handler;
- describe the item or service;
- say where and when you bought the item or when the service was done, and how much it cost;
- explain what is wrong, any action you have already taken, to whom you spoke and what happened;
- say what you want done to remedy the situation – for example, a refund or repair, or the job done again without charge;
- set a deadline for when you want the matter resolved;
- consider using registered mail so you can be sure your letter was received;
- keep copies of any letters you send. Do not send original documents, such as receipts and guarantees – send photocopies instead; and
- follow up with a reminder letter if you don't get a reply the first time. An agent is obliged under the Code of Conduct within the *Property Agents and Motor Dealers Act 2000* to respond to a complaint within 7 days whether or not they accept or refute your complaint.

If this fails, then call the Office of Fair Trading or the Residential Tenancy Authority, depending on the nature of the problem for advice.

If you are dealing with an agent who is a member of the REIQ, you can also complain to REIQ regarding the agent's conduct. The Office of Fair Trading recommends you lodge the complaint with the agent first, then to the REIQ before contacting the Office of Fair Trading.

If you want to make a complaint against a solicitor, make a written complaint to the Legal Services Commission within the Department of Justice and Attorney-General. Complaint forms can be downloaded from the website www.lsc.qld.gov.au or you can phone the Legal Services Commission on (07) 3406 7737 or 1300 655 754 (if you are calling from outside Brisbane).

There is also a process for dispute resolution in a community titles scheme. For more information contact the Office of the Commissioner for Body Corporate and Community Management on 1800 060 119 or visit www.dftwid.qld.gov.au/disputeres/bccm/.

You can't make a claim if you have suffered a financial loss:

- if you gave a licensee direction to invest money rather than leave it in the licensee's trust account – even if the licensee stole, misappropriated or misapplied your trust monies;
- because you failed to make effective disclosure to a prospective buyer;
- through dealings with a property developer or the property developer's employees (eg. buying off the plan);
- because of a marketeering contravention in relation to a person buying a residential property (other than a principal place of property).

There are time and other limitations for making a claim.

You have to make a claim within one year of becoming aware of your loss or within three years of the event that caused the loss (whichever is the earlier). If you started legal proceedings to recover the loss within that time, you must lodge your claim with the Office of Fair Trading using Claim Against the *Claim Fund PAMD Form 50* within three months after the end of legal proceedings (see Forms page 64).

If you have not lodged your claim within the required timeframes and have a valid reason as to why you couldn't lodge your claim in time, you can apply to the Commercial and Consumer Tribunal

(phone **(07) 3247 3333** or www.tribunals.qld.gov.au) for an extension of time. An application fee applies.

The Chief Executive from the Office of Fair Trading decides minor claims (\$5000 or less), and refers claims over \$5000 to the Commercial and Consumer Tribunal for determination.

For more detailed information, download the Office of Fair Trading's *Making a Minor Claim (for less than \$5,000)* or *Making a claim over \$5,000* fact sheet from www.fairtrading.qld.gov.au or call **1300 658 030** to request a hard copy.

Translated versions of the above fact sheets are also available in Chinese simplified and traditional, Italian, Spanish and Vietnamese.

Making a claim for a property marketeering contravention

You can only make a claim for compensation in relation to property marketeering contraventions if you have suffered capital loss because of the actions of a real estate agent, auctioneer or their employee when purchasing your principal place of residence (not an investment property).

A marketeering contravention includes:

1. Misleading conduct eg. lying, leading someone to a wrong conclusion, creating a false impression, leaving out or hiding important information and making false claims about the property or service.
2. Unconscionable conduct where one party is placed at a disadvantage because of the conduct of another party and unfair advantage is taken as a result, eg:
 - the stronger party imposing conditions that were not necessary to protect their legitimate business interest;
 - using undue influence, pressure or unfair tactics;
 - the stronger party not making adequate disclosure to the weaker party.
3. False representation and other misleading conduct in relation to residential property, eg:
 - selling a property at a grossly inflated price, particularly if large commissions have been paid to marketeering companies which are concealed as part of the sale price;
 - making false or misleading representations about the nature of the interest, price payable, location, characteristics of the property or about the use to which the property can be legally put, or the existence or availability of facilities associated with the property.

You can only make a claim if:

- a marketeering contravention has occurred by a real estate agent, auctioneer or their employee (as described above);
- you have suffered a capital loss;
- you purchased the property as your principal place of residence (not an investment property);
- you have on-sold the property; and
- the property is located in Queensland.

You may recover up to a maximum of \$35,000 for capital loss suffered as a result of a marketeering contravention. Even if your capital loss exceeds \$35,000 you may only recover up to \$35,000 from the claim fund.

If you intend to make a claim, you must lodge a *Notice of Intention to Claim for a Marketeering Contravention Form PAMD Form 50-1* with the Office of Fair Trading within one year after the purchase contract date (see Forms page 64). You are then required to lodge a *Making a Claim against the Claim Fund PAMD Form 50* after you have sold your property (see Forms page 64). You have 6 years from the contract date of the purchase of your property to lodge a claim.

For more detailed information, download the *Making a claim in relation to property marketeering contravention* fact sheet from www.fairtrading.qld.gov.au or call **1300 658 030** to request a hard copy.

Forms summary



The following forms relate to the *Property Agents and Motor Dealers Act 2000*. The approved forms must be used by real estate agents, restricted letting agents, pastoral houses, auctioneers, and property developers when dealing with consumers.

The *Warning Statement PAMD Form 30c* must be used by anyone (not only agents) selling a property. It must be the first page of the contract document.

Download these forms from www.fairtrading.qld.gov.au or call **1300 658 030**.

These forms are often revised and improved, so where a later letter version of a form may exist in the future (eg. Form 20b instead of Form 20a), please use the later letter version of the form (this will be the version of the form on the Office of Fair Trading website).

Appointment forms

- *PAMD Form 20a – Appointment of Agent - Letting and Property Management*
- *PAMD Form 21a – Appointment of Real Estate Agent – Commercial and Industrial Sales, Leasing and Property Management*
- *PAMD Form 22a – Appointment of Real Estate Agent (Sales and Purchases)*

- *PAMD Form 23 – Reappointment of Real Estate Agent, Pastoral House or Auctioneer*
- *PAMD Form 24a – Appointment to Act as Auctioneer*
- *PAMD Form 25 – Sole or Exclusive Agency Notice for Sale of Property (Pastoral House)*
- *PAMD Form 26 – Appointment to Act as Pastoral House*

Disclosure and Warning forms

- *PAMD Form 27c – Selling Agent's Disclosure to Buyer**
- *PAMD Form 28 – Disclosure of Beneficial Interest to Seller*
- *PAMD Form 30c – Warning Statement**
- *PAMD Form 32a – Lawyer's Certifications (independence of lawyer, waiving and shortening cooling-off period)*

Claim Fund Forms

- *PAMD Form 50-1 Notice of Intention to Claim for a Marketeering Convention*
- *PAMD Form 50 – Claim Against the Claim Fund*

* Available in Chinese traditional, German, Greek, Italian, Spanish and Vietnamese

Glossary

Authority to sell – A legally binding document which is signed by the seller. It details the agreement between the seller and the agent. Many aspects of the authority to sell, such as commission and advertising costs, are negotiable between both parties. Usually takes the form of mandatory *PAMD Form 20a, 21a, 22a, 23, 24, 25 or 26* (as appropriate).

Body corporate – Consists of each owner of a lot (eg. townhouse, duplex, apartment, villa or unit) in a community titles scheme. Upon your purchase of a lot, you automatically become a member of the body corporate. A body corporate is generally responsible for the management and maintenance of the scheme's common property, eg. lawns, access roadways, stairs and infrastructure such as pipes and wiring. In addition a committee elected from lot owners, also carries out some decisions on behalf of the body corporate. Lot owners pay contributions to fund the operation of the body corporate. More information about the legislation regulating bodies corporate can be obtained from the Office of the Commissioner for Body Corporate and Community Management within the Department of Tourism, Fair Trading and Wine Industry Development on **1800 060 119**.

Buyer's agent – Specialises in locating and negotiating the purchase of a property on behalf of the buyer. They also conduct background checks on the property and area to ensure buyers pay the fairest price to their advantage. Purchasers may also engage buyer's agents purely to bid for them at auctions.

Certificate of title – A document that shows who owns the property, the size of the land and whether there are any interests registered on the title such as mortgages, easements, encumbrances or caveats.

Commission – Paid by the person who appointed the agent (usually the seller) to the estate agent, normally when the property is sold. It must be a percentage of the selling price of the property and the amount is usually negotiable between the seller and the agent up to a maximum amount set by law.

Claim Fund – The claim fund can compensate consumers who have suffered loss as a result of actions of licensees or their registered employees under certain circumstances.

Community titles scheme (CTS) – A duplex, a residential unit block, a commercial centre or a similar multi-dwelling complex which contains individually owned units and common property managed by the scheme's body corporate.

Consumer Credit Code — Regulates all credit for personal, domestic or household purposes. To ensure fair dealing and protect the interest of consumers, all lenders must comply with the Consumer Credit Code. More information on the Code can be obtained from the Office of Fair Trading or www.creditcode.gov.au

Conveyancing — Transferring the ownership of a property from the seller to the buyer and any associated checks and searches.

Cooling-off period — The five business day period applying to sales of residential property (excluding auction sales) during which the buyer may terminate the contract for any reason.

Deposit bond (deposit guarantee) — Offered by some lenders as an alternative to a cash deposit.

Easement — A right held by one person to make use of the land of another, eg. drainage, sewerage, driveway to second property on a block of land behind another. Usually held by councils, railways, etc.

Joint tenants — The form of ownership where two or more people purchase a property in equal shares. If one dies, his or her share of the property passes to the surviving owner/s. (See also tenants in common).

Material prejudice — A material or substantial difference between what was described in the contract and what the buyer would receive on settlement. The buyer would be materially prejudiced if the buyer would not have entered into the contract for the lot they would receive on settlement.

Mortgage — A written contract giving the lender of finance certain rights over specific property, eg. the house being bought by the borrower as security for the loan, and outlines the terms and conditions of the finance.

“Off the plan” — Purchasing “off the plan” involves buying a property before it has been built. Such purchases are usually based on the architect’s plans and models. “Off the plan” purchases are regulated by the *Land Sales Act 1984*.

Open house — Marketing process whereby a house is opened to the public to inspect during a set time.

“Passed in” — The circumstance where a property for auction is not sold because it has not reached the seller’s reserve price.

Pastoral houses — Predominantly operate in the rural market. They are real estate agents and auctioneers who commonly sell rural real estate and livestock and are restricted to selling four residential properties a year by auction.

Reserve price — A seller’s minimum sale price for the property.

Settlement — When ownership of a property passes from the seller to the buyer and the balance of the sale price is paid to the seller.

Site agreement — A written agreement between a residential park owner and a manufactured home owner that details the rental of particular land (a site) in the residential park, the positioning of the home on the land; the home owner’s non-exclusive use of the park’s common areas and communal facilities; and any special provisions/conditions.

Tenants in common — A form of joint ownership of a property in which each person owns a share of the property, equally or unequally. On the death of one owner, the deceased’s share passes to his or her heir/s, who assume/s the role of tenant in common with the other existing owner/s.

Vendor — The party who owns the property that is for sale.

Warning statement — The first page of all residential sales contracts (excluding auction sales) must have a Warning Statement as its top page. It provides advice to the buyer and must be in the approved form (*PAMD Form 30c*).

Zoning — The permissible uses of an area of land as stipulated by the council.



Feedback

Your feedback is important to us. Please make comment through our website at www.fairtrading.qld.gov.au or write to us at:

The Editor – Real Estate Realities
Marketplace Strategy Division
Office of Fair Trading
GPO Box 3111
Brisbane Qld 4001

Contacts

This section outlines a number of useful government and industry contacts who may assist you in researching or buying or selling real estate.

OFT disclaimer

The contact details listed below are subject to change over time. Some of these organisations and government services may change or discontinue their operation. These details were current at the time of printing. The Office of Fair Trading recommends that you attempt to search for any changed details through telephone directories and internet searches.

Department of Tourism, Fair Trading and Wine Industry Development

Phone: (07) 3224 2018
www.dtftwid.qld.gov.au

Office of Fair Trading

Contact your nearest Office of Fair Trading for the cost of a local call by phoning **1300 658 030**. The mail, e-mail and fax contacts for these offices are listed below. Regional offices shift locations from time to time.

Check www.fairtrading.qld.gov.au for up-to-date addresses or call **1300 658 030**.

For Deaf/Hearing Impaired

Phone: (07) 3246 1588 TTY

If you'd like to receive a regular Fair Trading Update email with news and tips for consumers and businesses, subscribe via the website

www.fairtrading.qld.gov.au

Brisbane

Email: BrisbaneOFT@dtftwid.qld.gov.au
Level 21, State Law Building,
50 Ann Street, Brisbane
GPO Box 3111, Brisbane, QLD, 4001

Cairns

Email: CairnsOFT@dtftwid.qld.gov.au
10-12 McLeod Street, Cairns
PO Box 3067, Cairns, QLD, 4870

Mackay

Email: MackayOFT@dtftwid.qld.gov.au
Level 1, Post Office Square,
Sydney Street, Mackay
PO Box 146, Mackay, QLD, 4740

Maroochydore

Email: MaroochydoreOFT@dtftwid.qld.gov.au
Unit 5, WIN Television Centre,
Cnr Baden Powell St &
Maroochydore Road, Maroochydore
PO Box 870, Maroochydore, QLD, 4558

Rockhampton

Email: RockhamptonOFT@dtftwid.qld.gov.au
Ground Floor,
State Government Building,
209 Bolsover St, Rockhampton
PO Box 303, Rockhampton, QLD, 4700

Southport

Email: SouthportOFT@dtftwid.qld.gov.au
7 Short Street, Southport
PO Box 2565, Southport, QLD, 4215

Toowoomba

Email: ToowoombaOFT@dtftwid.qld.gov.au
137 Herries Street, Toowoomba
PO Box 841, Toowoomba, QLD, 4350

Townsville

Email: TownsvilleOFT@dtftwid.qld.gov.au
Ground Floor,
State Government Building,
Cnr Stanley & Walker Street, Townsville
PO Box 2009, Townsville, QLD, 4810

Wide Bay

Email: WidebayOFT@dtftwid.qld.gov.au
Ground Floor, Brendan Hansen Building,
54 Main Street, Pinalba, QLD, 4655
PO Box 3408, Hervey Bay, QLD, 4655

Queensland Government

Body Corporate and Community Management, Department of Tourism, Fair Trading and Wine Industry Development

Assists people who live, work or invest in community titles schemes by providing a dispute resolution and information service and a database of adjudicator's orders relating to individual community titles schemes.

Phone: 1800 060 119
www.dtftwid.qld.gov.au/disputeres/bccm/

Building Services Authority

A statutory body that regulates the building industry, provides remedies for defective building work, helps resolve building disputes, and provides support, education and advice for consumers and those undertaking building work.

Phone: (07) 3225 2800
www.bsa.qld.gov.au

Commercial and Consumer Tribunal

Independent decision-making body for resolving disputes and reviewing administrative decisions.

Phone: (07) 3247 3333
www.tribunals.qld.gov.au

Department of Housing

Provides housing assistance and influences the overall housing system within Queensland to improve people's lives through housing.

Phone: 1300 880 882
www.housing.qld.gov.au

• Smart Housing

Smart Housing is good practice in designing, planning and building homes to make them more socially, environmentally and economically sustainable.

Phone: (07) 3238 3683
www.smarthousing.qld.gov.au

• Home Assist Secure

Provides free information and referral, and subsidised assistance on home repairs, maintenance, minor modifications and security to eligible people who are 60 years and over or of any age with a disability.

Phone: 1300 880 882

• Home ownership and rental assistance

Provides clients with a range of products and services to assist them with access to and ongoing affordability of home ownership and private rental accommodation.

Phone: 1300 654 322

Department of Emergency Services

• Queensland Fire and Rescue Service

For free checks of your property through the Operation Safehome service (free call 1800 815 080) and advice on home fire safety.

Phone: (07) 3247 8100
www.fire.qld.gov.au

Department of Industrial Relations

• Electrical Safety Office

Responsible for developing and enforcing standards for electrical safety. Licences electricians, investigates electrical incidents, complaints, and unlicensed and unsafe electrical work, and provides electrical safety advice to consumers (including safety switches).

Phone: 1300 650 662
www.eso.qld.gov.au

Department of Justice and Attorney-General

- **Legal Services Commission**

Handles complaints about Queensland solicitors.

Phone: (07) 3406 7737 or
1300 655 754
(if calling outside Brisbane)

www.lsc.qld.gov.au

Department of Local Government and Planning

Provides advice and services for local governance, planning and development services and funding for local government infrastructure and facilities. Assistance for consumers includes a local laws database, advice on pool fencing and plumbing laws.

Phone: (07) 3234 1870
www.lgp.qld.gov.au

Department of Natural Resources and Mines

Manages and allocates Queensland's land, water, mineral and petroleum resources, and manages native vegetation and the control of pest plants and animals. As part of these functions, DNRM produces a range of valuation and sales data in SmartMap products, and manages Queensland's Land Registry.

Phone: (07) 3896 3111
www.nrm.qld.gov.au

- **SmartMap**

SmartMap shows recent sales for properties, houses and unit blocks within your specified area. Other information available includes property boundaries, area of block and survey control marks. Available in a range of types and sizes.

Phone: (07) 3896 3216

- **Land registry**

The Titles Registration Office's Land Registry provides an accurate system for recording property ownership and other transactions in land and water.
Phone: (07) 3405 6900

- **Distributors**

A range of land information products, such as search of title and image of plan of survey, are available from online service providers.

Legal Aid Queensland

Provides legal assistance to financially and socially disadvantaged Queenslanders.

Phone: 1300 651 188
www.legalaid.qld.gov.au

- **Legal Aid Queensland**

(Indigenous Legal Hotline)
Phone: 1300 650 143

Public Trustee of Queensland

Administrator of deceased estates, providing financial management for people with a disability and giving aid in any legal proceedings by or against a disadvantaged person.

Phone: (07) 3213 9288 (Brisbane)
www.pt.qld.gov.au

Residential Tenancies Authority

The RTA assists tenants, lessors, agents, residents and service providers through a rental bond custodial service, tenancy information and education, dispute resolution service, and compliance.

Phone: 1300 366 311
www.rta.qld.gov.au

Valuers Registration Board

Controls the registration and discipline of real estate property valuers for Queensland.

Phone: (07) 3221 3892
www.valuersboard.qld.gov.au

Commonwealth Government

Australian Securities and Investment Commission (ASIC)

Enforces and regulates company and financial services laws to protect consumers, investors and creditors.

Phone: 1300 300 630
www.asic.gov.au and
www.fido.asic.gov.au

Industry and Other Organisations

Australian Consumers Handbook

A guide to public, private and community sector bodies that offers services to assist consumers.

www.consumersonline.gov.au

Australian Furniture Removers Association

Sets professional standards and provides leadership in furniture removals industry.

Phone: (02) 9659 5300
www.afra.com.au

Australian Property Institute – Queensland Division

Sets and maintains standards of professional practice, education, ethics and discipline for its members whose activities include property valuation and analysis, finance investment research, development subdivision, sales and leasing. Investigates consumer complaints against members.

Phone: (07) 3832 3139
www.propertyinstitute.com.au

Australian Spatial Information Business Association

Provides information and intelligence to those interested in spatial information services and products (including surveying, mapping, remote sensing, geographic information systems, etc) and practitioners and suppliers in those areas. It represents most of the surveying business in Queensland.

Phone: (07) 3217 2599
www.xyz.au.com

Cannex

Independent source for consumers to compare financial products, including mortgages.

www.cannex.com.au

Electrical and Communications Association

Non-profit electrical contracting organisation. Can recommend qualified electrical contractors in your area.

Phone: (07) 3251 2444
www.ecaq.asn.au

Housing Industry Association Ltd

National industry association for all building professionals. Also provides consumers with information about industry practices and dispute settlement procedures.

Phone: (02) 6249 6366
www.hia.asn.au

Master Builders Association

The professional body representing the building and construction industry. Offers a Pre-Sale Inspection Booklet for consumers to assist when purchasing a home.

Phone: (07) 3404 6444
www.qmba.com.au

National Association of Exclusive Buyer Agents

Provides expert property advice to buyers of real estate.

Phone: 1300 138 137

Neighbourhood Watch

A community based crime prevention program.

www.police.qld.gov.au/pr/program

Property Buyers Agents Association of Australia

Represents the buyer in the property purchasing process.

Phone: (02) 9904 3444

www.pbaaa.com.au

Property Sales Association of Queensland

Provides industry-based industrial representation for real estate sales people and property managers.

Phone: (07) 3841 6977

www.psaq.org.au

Queensland Consumer's Association

An independent organisation that represents consumers in the marketplace.

Phone: 0419 178 395

Queensland Law Society

Professional body for Queensland solicitors.

Phone: (07) 3842 5842

www.qls.com.au

Real Estate Institute of Queensland (REIQ)

Supports member real estate agents with information, products and resources that complement their business practices.

Phone: (07) 3249 7347

www.reiq.com.au

Standards Australia

A not-for-profit organisation that develops and maintains more than 7000 Australian Standards and related publications.

Phone: 1300 65 46 46

www.standards.org.au

Tenant's Union of Queensland Inc

Tenancy advice service

Phone: (07) 3257 1108 or
1800 177 761

(outside Brisbane only)

www.tuq.org.au

Urban Development Institute of Australia (UDIA)

A non-profit organisation representing all segments of the development industry.

Phone: (07) 3229 1589

www.udiaqld.com.au

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Disclaimer

This publication aims to provide consumers with a general understanding of their rights and responsibilities in the Queensland marketplace. It is not a comprehensive statement of the law and the law may change at any time.

The laws referred to in this guide are complex and various qualifications may apply to the provisions in different circumstances. You are encouraged to obtain independent legal or financial counselling advice if you are unsure of how these laws apply to your situation.

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Real Estate Realities is a plain-English guide to help consumers:

- buy or sell a home
- buy an investment property
- become a landlord
- use real estate agents
- organise credit and insurance
- move house

It is a must read for anyone buying or selling or making decisions about property.

Real Estate Realities is produced by the Office of Fair Trading in partnership with the Department of Housing and the Department of Natural Resources and Mines.



Department of Tourism, Fair Trading
and Wine Industry Development

Phone (07) 3224 2018

Office of Fair Trading
www.fairtrading.qld.gov.au
1300 658 030

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Queensland Government

Department of **Tourism, Fair Trading and
Wine Industry Development**
Department of **Housing**
Department of **Natural Resources
and Mines**