

# Retainer Instructions

## Sale of Real Property NSW

### Key legislation:

Real Property Act 1900, Conveyancing Act 1919, Conveyancing (Sale of Land) Regulation 2017

**PLEASE ENSURE YOU FULLY COMPLETE THIS FORM paying particular attention to the red highlighted areas (any questions please call the solicitor acting for you in the matter, being either Vince D'Arcy or Chris Peacock of this office)**

- 1) If the title deed to the property is in two or more names please provide full details for all parties whose names appear on the title deeds.
- 2) If only one person is to be a contact for all parties on the title please provide written or emailed instructions from all parties whose names appear on the title deeds to that effect.

Date: \_\_\_\_\_

### CLIENT 1 CONTACT

Name: \_\_\_\_\_

Preferred method of contact:  Email  Post  Phone  Other: \_\_\_\_\_

Email: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

TFN \_\_\_\_\_

DOB \_\_\_\_\_

Existing client  New client

Client Details and Verifying Identity:

**VOI (verification of identity) – you will need to provide 100 points of ID (e.g., Passport plus Drivers Licence or Birth Certificate/Medicare/Centrelink card) - this can be done in person at our office or a link can be sent to you via our third-party provider (infoTrack) online at a cost of est \$19.90**

Conflict of Interest Check:  Completed

### Client 2 contact

Name: \_\_\_\_\_

Preferred method of contact:  Email  Post  Phone  Other: \_\_\_\_\_

Email: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

TFN \_\_\_\_\_

DOB \_\_\_\_\_

Existing client  New client

Client Details and Verifying Identity:

**VOI (verification of identity) – you will need to provide 100 points of ID (e.g., Passport plus Drivers Licence or Birth Certificate/Medicare/Centrelink card) - this can be done in person at our office or a link can be sent to you via our third-party provider (infoTrack) online at a cost of est \$19.90**

Conflict of Interest Check:  Completed

Is this sale subject to Family Law Court orders (if so, extra costs may apply)

Yes  No

## 1. PROPERTY BEING SOLD

The lot & DP/SP numbers can be found on your rates/levies notices

**NB: Please provides copies of recent council and water rates notices**

Address: \_\_\_\_\_

Lot: \_\_\_\_\_ Section: \_\_\_\_\_ DP/SP: \_\_\_\_\_

Selling agent: \_\_\_\_\_

Address: \_\_\_\_\_

Office email: \_\_\_\_\_

Contact name: \_\_\_\_\_ Phone: \_\_\_\_\_

Contact email \_\_\_\_\_

Co-agent  No  Yes: \_\_\_\_\_

Details: \_\_\_\_\_

The property is sold with:  Vacant possession  Existing tenancy - **PLEASE PROVIDE LEASE EVEN IF EXPIRED**

Managing agent  
(Rental only): \_\_\_\_\_

Contact name: \_\_\_\_\_ Phone: \_\_\_\_\_

Going to auction?  Yes  No Auction date: \_\_\_\_\_

Who will obtain s10.7(2) Zoning Certificate?  Client  Agent  Solicitor

**NB: If the property is to be sold at auction and your agent has marketing deadlines, PLEASE NOTE THAT A PROPERTY CANNOT BE MARKETED WITHOUT A COMPLETE CONTRACT - accordingly an additional "urgency fee" of approx \$200 may apply with some Councils on ordering an urgent section s10.7(2)&(5) zoning certificate. Otherwise the certificate takes approx. 2-5 working days to obtain.**

**If we order the s10.7(2)&(5) through our Infotrack provider the cost is (est) \$198.45 (urgent \$401.45)**

**If you obtain it yourself over the counter or by fax – e.g. from Leichhardt Council on a 5-day turnaround basis the fee is (est) \$133 (additional urgency fee \$203.30).**

**For Inner West properties see <https://www.innerwest.nsw.gov.au/develop/development-support/planning-certificates>**

### STRATA ONLY

(Strata) Holder of strata/

community title records: Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact name: \_\_\_\_\_ Phone: \_\_\_\_\_

If no strata manager has been appointed is this a 2-lot self-managed strata?  Yes  No

**NB: Please provide current strata levies notice or, in the case of self-managed strata, provide latest Minutes and insurances**

Are you aware of any special levies (if so please provide details/Minutes)  Yes  No

### STRATA REPORT

Have you organised to provide a strata report through your agent  
(if so please provide copy)  Yes  No

## Property

- House  Vacant land  
 Rural  New subdivided land - Sunset period: \_\_\_\_\_  
 Unit/townhouse  Commercial/industrial  
 Other: \_\_\_\_\_

## Improvements

- Garage  Carport  Other: \_\_\_\_\_

## Inclusions

- air conditioning  clothes line  Fixed floor coverings  Range hood  
 Blinds  Curtains  Insect screens  Solar panels  
 Built-in wardrobes  Dishwasher  Light fittings  Stove  
 ceiling fans  EV charger  Pool equipment  TV antenna  
 Other

Other inclusions: \_\_\_\_\_

Any inclusions subject to a mortgage/charge/security agreement:  Yes  No

Exclusions: \_\_\_\_\_

## Mortgage: **Important:**

**Please provide loan account no and bank details or a copy of a recent loan account statement - we need this to arrange follow up with your discharging mortgage (if any)**

Mortgagee name: \_\_\_\_\_

Loan account no.: \_\_\_\_\_

Client signed discharge authority:  Yes  No If eCT a Request for CoRD holder consent to be submitted with discharge authority  
**Is the Mortgage on this property linked to any other mortgage** (e.g. for another property) – please call us to discuss if  
understand this question.  Yes  No

## Electronic settlement

Electronic Settlement

*The client must sign a Client Authorisation which will be sent out on return of this form.*

## Foreign resident capital gains withholding payments - \$750,000+

From 1 July 2017 **all Australian residents** selling real estate with a market value of \$750k or more will need to apply for a clearance certificate from the Australian Taxation Office (ATO) to ensure amounts are not withheld from the sale proceeds. Where a valid clearance certificate is not provided by settlement, the purchaser is required to withhold 12.5% of the purchase price and pay this to the ATO.

Accordingly, each property owner/vendor must make the application and provide us with the clearance certificate/s as soon as you receive it/them, with thanks.

You can complete an application for this certificate online at [https://www.ato.gov.au/FRWT\\_Certificate.aspx](https://www.ato.gov.au/FRWT_Certificate.aspx) - if you are unsure of how to complete the form you can contact ATO on **13 28 66**.

Clearance certificate  Yes  No *(Yes applies if you expect your property to sell for more than \$750,000)*

Variation notice  Yes  No

*After 1 July 2017 – applies to contract price \$750,000 and over and rate is 12.5%.*

*Applications for clearance or variation are made online.*

*Price is accepted as value in an arms-length transaction.*

*Where a certificate cannot be provided the purchaser must remit 12.5% of the price to the Australian Taxation Office.*

## 2. TAX

*Please note we do not provide advice in relation to Tax issues such as Capital Gains Tax or Land tax. If you have a query in relation to Capital Gains Tax you should seek your accountant's advice.*

### GST

**NO**

- Input taxed sale of eligible residential premises
- Not in the course or furtherance of an enterprise
- Going concern
- Farm land used for farming or sale of subdivided farm land to an associate
- Vendor not registered or required to be registered as GST turnover < \$75,000

**YES**

- Purchaser entitled to an input tax credit
- Margin scheme applies
- To an extent

### GST withholding

- Notice required to be given by vendor

Property includes residential premises or potential residential land and Subdivision 14-E Taxation Administration Act 1953 applies

- Withholding **IS** required by purchaser - 1/11<sup>th</sup> of the purchase price or 7% if the margin scheme applies

- No withholding payment for residential premises because:

- the premises are not new
- the premises were created by substantial renovation
- the premises are commercial residential premises

- No withholding payment for potential residential land because:

- the land includes a building used for commercial purposes
- the purchaser is registered for GST and acquires the property for a creditable purpose

### Capital gains tax

**NO**, and reason is:

- Principal place of residence
- Pre 20 September 1985

**YES**

- 50% concession available for individuals, trusts not companies.
- Small business concession – *Less than \$6M and sale of active asset.*
  - Rollover – *Defer capital gain until a later year.*
  - Discount – *You can reduce the capital gain on a business (active) asset by 50%.*
  - Exemption – *15 years ownership, over 55 and retiring.*
  - Exemption – *Up to a lifetime limit of \$500,000 contribution into superannuation.*

### Income tax

Does income tax apply: *e.g. developer*     Yes     No

**Land tax**

**Important:**

*If you pay Land Tax and require an adjustment please provide us with a copy of your current year Land Tax Assessment Notice. If you are unsure whether you pay Land Tax or not we will mark the contract Land Tax adjustable if a s47 Land Tax search obtained by us indicates that Land Tax is payable.*

Payable:  Yes  No

Surcharge land tax payable:  Yes  No

Is an adjustment required:  Yes  No

Single holding basis:  Yes  No

Vendor must supply a clear s 47 land tax certificate.

**3. HOME BUILDING LEGISLATION – WARRANTY**

Home Building Act 1989

House build date: \_\_\_\_\_

Was the house built or any building work done within last 6 years costing more than threshold?  Yes  No  
\$20,000 for work after 1 Feb 2012 and \$12,000 for work prior. If yes, then the \*insurance certificate is required on the contract.

Home Building Act certificate required:  Yes  No

Provided on the contract: *If no, request a copy.*  Yes  No

Seek from vendor although not required on contract:  Yes  No

*Insurance is not available to owner builders. If the vendor is an owner builder a consumer warning must be included in the contract.*

*\* An insurance certificate is required if the house was built or any building work done within the last 6 years costing more than \$20,000 for work after 1 February 2012 and \$12,000 for work prior. If the vendor is the developer or an owner builder, then insurance certificate should be on the contract; if not, the purchaser can rescind.*

*While Home Warranty Insurance does not apply to contracts for work under \$20,000, if you are doing renovations and you are putting in e.g. a new kitchen/bathroom/etc and these jobs are part of one renovation you cannot get around Home Warranty Insurance by claiming they are individual jobs. There is case law specifically on this point*

Please list in detail any works that you have had undertaken by you, or on your behalf, whether structural or non-structural.

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Was the work at your property done as an owner-builder?  Yes  No

***If so, please provide date of issue of owner-builder permit***

Was a DA required for any of the work you did, or had done on your behalf?  Yes  No

*If so please provide us with the DA details. If work was done that required a DA and no DA was applied for an obtained please list that work in detail below or at item 15. Notes if there is not enough room below .*

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Please list the name/s, contact details and licence number/s of any contractor/s performing the work – or provide copy receipts/building contract.

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#### 4. IMPROVEMENTS, REPORTS & CERTIFICATES

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Have improvements been approved by:

Council:  Yes  No  Don't know

Water authority:  Yes  No  Don't know

Information: \_\_\_\_\_

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Have any notices been served?  Yes  No

Is there a survey report / boundary definition survey? *(if Yes, please provide)*  Yes  No

Is there a building certificate? *(if Yes, please provide)*  Yes  No

Is there an occupation certificate? *(if Yes, please provide)*  Yes  No

Do the premises contain loose-fill asbestos insulation?  Yes  No

Do you authorise the purchaser to check the council file?  Yes  No

Are there boundary discrepancies affecting the property?  Yes  No

#### 5. SWIMMING POOL OR SPA

*A valid certificate of compliance must be attached to the contract for sale of properties with a swimming pool or spa from 29 April 2015. Therefore, from 29 April 2015, when a property with a swimming pool or spa is being sold, a valid certificate of compliance (or an occupation certificate issued within the last three years) and a valid Certificate of Registration must be attached to the Contract for the Sale of Land. Failure to attach the certificate means that the purchaser may be entitled to rescind the Contract at any time within 14 days of exchange, unless settlement has already occurred. **Please ensure your pool or spa is registered** -*

*<http://www.swimmingpoolregister.nsw.gov.au/> and contact your local council to obtain the required compliance or non-compliance certificate.*

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Is there a swimming pool or spa?  Yes  No

Does the pool fencing comply with legislation?  Yes  No  Don't know

If no, will vendor fix prior to settlement?  Yes  No

Client has: *(if Yes, please provide)*

compliance certificate or relevant occupation certificate

non-compliance certificate

*Certificate must be annexed to the contract. If a certificate of non-compliance is annexed to the contract the purchaser has 90 days from settlement to rectify the issues.*

## 6. SOLAR PANELS *(provide documents if applicable)*

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Are solar panels included in the sale?  Yes  No

If so, will the purchaser be taking over the electricity account of the premises?  Yes  No

Is there an energy buy back arrangement in place?  Yes  No

If so, can this arrangement be assigned to the purchaser?  Yes  No

Is the vendor obliged by contract to purchase electricity from the solar installer to pay for the panels?  Yes  No

If so, can the contract be assigned to the purchaser?  Yes  No

If not, who is liable to pay out the contract?  Vendor  Purchaser

## 7. SETTLEMENT

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Usual 6 weeks (42 days) from exchange:  Yes  Or preferred date: \_\_\_\_\_

Is vendor purchasing another property?  Yes  No

If yes, consider whether it can be negotiated that the purchase is dependent upon this sale.

Vendor advised to maintain insurance until settlement?  Yes  No

New address and phone numbers: \_\_\_\_\_

## 8. PLEASE PROVIDE BANK ACCOUNT DETAILS FOR THE PROCEEDS OF SALE

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Name: \_\_\_\_\_

BSB: \_\_\_\_\_ Account no: \_\_\_\_\_

*For prevention of fraud, changes to the bank account will be confirmed by phone.*

## 9. ADDITIONAL CONSIDERATIONS RURAL MATTER

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**Consider and discuss with client the following:**

- Risk for fencing passing on exchange/completion;
- Give and take fences or fencing disputes;
- Disease issues such as Brucellosis or Ovine Johne's disease;
- Road permits;
- Water rights;
- Need for soil tests as to suitability for growing crops;
- Chemical residues;
- Sheep dips;
- Share farming agreements;
- Existing crops to be given in;

- GST purposes – property use for farming over the last 5 years;
- Apportionment of land house and buildings for tax purposes; and
- Depreciation schedule of plant and equipment for tax purposes.

## 10. FOR ANSWERS TO REQUISITIONS

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- Is anybody other than you in possession of the property?  Yes  No
- Have you ever been bankrupt or insolvent?  Yes  No
- Is any inclusion subject to hire purchase or other commitments?  Yes  No
- Do you pay land tax?  Yes  No
- Do the improvements meet council requirements:  Yes  No

### Do you know of:

- Any outstanding requirements of council?  Yes  No
- Any outstanding requirements of any public authority?  Yes  No
- Any issues not discoverable by normal investigation?  Yes  No
- Any disputes affecting the property, fences or buildings?  Yes  No
- Have you had any notices affecting the property?  Yes  No
- If yes, from:  The council  Any person  Any public authority

## 11. STATUTORY WARRANTY

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- Is there any matter in relation to any structure on the land that would justify the council making any upgrading or demolition order?  Yes  No  Don't know
- Has any building work been done without the consent of council?  Yes  No  Don't know
- Details: \_\_\_\_\_  Yes  No  Don't know
- Do the buildings on the property comply with council's requirements:  Yes  No  Don't know
- How old are the buildings? \_\_\_\_\_ years
- Have you a certificate of compliance or building certificate from the local council?  Yes  No  Don't know
- Where applicable please provide copies of certificates and notices*
- Have you an occupation certificate?  Yes  No  Don't know
- Has the local council or anyone else sent you any notice about the property or the buildings on it other than your rate notice?  Yes  No  Don't know
- Has any work been done on the property or on any adjoining road for which a claim may be made against you, e.g. kerbing, footpaths?  Yes  No  Don't know
- Is there any court action regarding the property?  Yes  No  Don't know
- Any dispute with neighbours about fences or something else on the property?  Yes  No  Don't know

## 12. COSTS

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Discussed costs:  Yes  No Estimate \$ 1799 plus disbursements  
*Reviewed annually on 30 June.*

Initial fees required:  Yes  No If Yes, then payable on Interim Invoice for statutory contract insertions

### The professional work we will carry out (not including disbursements)

- (a) Taking your instructions, and receiving listing details from the agent, applying for those certificates required to be annexed to the contract, then preparing it and submitting it to the listing agent.
- (b) Following receipt of the sales advice, submitting completed contract to the purchaser's solicitor.
- (c) Attending you to sign the contract, and discuss its contents and consider goods and services tax, land tax, council and Home Building Act requirements, statutory warranty and the answers to normal questions asked by the purchaser's solicitor.
- (d) Attending to exchange of contracts, furnishing particulars of title, answering requisitions, arranging any discharge of any mortgage, attending to signing the transfer, arranging and attending settlement and accounting to you.
- (e) All attendances, correspondence and telephone calls.

The scope of work covered by our professional costs is confined to the conveyance of the property and not unusual additional work, e.g. disputes or advice on tax and taxation office related issues. If the work on the matter exceeds the normal reasonable bounds there will be additional charges.

Forward costs agreement:  Yes  No

## 13. OTHER SERVICES

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Wills required:  Yes  No

Powers of attorney and guardianship required:  Yes  No

Other: \_\_\_\_\_  Yes  No

Please open file and make appointment for instructions:  Yes  No

## 14. SOURCE OF WORK

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Existing Client

D'Arcy Sloman Peacock Lawyers website

Property Conveyancing Solicitors website

Word of mouth

Other (please describe)

