

# Conveyancing (Sale of Land) Regulation 2005

[2005-523]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
*Trees (Disputes Between Neighbours) Act 2006 No 126* (not commenced — to commence on 2.2.2007)

### Authorisation

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# Conveyancing (Sale of Land) Regulation 2005



New South Wales

## Contents

<b>Part 1 Preliminary</b> .....	5
1 Name of Regulation .....	5
2 Commencement .....	5
3 Definitions .....	5
<b>Part 2 Vendor disclosure for contracts for sale of land</b> .....	6
Note.....	6
<b>Division 1 Vendor disclosure and implied terms and warranties under section 52A of the Act</b> .....	6
4 Prescribed documents .....	6
5 Implied term—all contracts.....	7
6 Implied term—strata units bought “off the plan” .....	7
7 Implied term—“land and house” packages.....	8
8 Implied warranty .....	8
9 Prescribed persons and bodies .....	8
<b>Division 2 Exemptions from section 52A of the Act</b> .....	8
10 Exemption of certain contracts.....	8
11 Exemption of certain land.....	9
<b>Part 3 Cooling off period for contracts for sale of residential property</b> .....	9
Note.....	9

**Division 1 Statement relating to cooling off period under Division 8 of Part 4 of the Act**

..... 9  
12 Form of statement relating to cooling off period ..... 9

**Division 2 Exemptions from Division 8 of Part 4 of the Act ..... 9**

13 Exemption of certain contracts..... 9  
14 Exemption of certain land..... 10

**Part 4 Options for purchase of residential property ..... 10**

Note..... 10

**Division 1 Implied warranty and statement relating to cooling off period under Division 9 of Part 4 of the Act**

..... 10  
15 Implied warranty ..... 10  
16 Form of statement relating to cooling off period ..... 10

**Division 2 Exemptions from Division 9 of Part 4 of the Act ..... 11**

17 Exemption of certain options..... 11  
18 Exemption of certain land..... 11

**Part 5 Purchasers' remedies under contracts for sale of land and options for purchase of residential property**

..... 11  
Note..... 11  
19 Circumstances under which purchaser may rescind contract or option ..... 11  
20 Method of rescinding contract or option..... 12  
21 Effect of notice of rescission of contract or option..... 13

**Part 6 Miscellaneous ..... 13**

22 Application of amendments to this Regulation ..... 13  
22A (Repealed)..... 13  
23 Savings ..... 14

**Schedule 1 Prescribed documents ..... 14**

<b>Schedule 2 Prescribed terms</b> .....	17
<b>Schedule 3 Prescribed warranties</b> .....	18
<b>Schedule 4 Exempt contracts</b> .....	22
<b>Schedule 5 Exempt land</b> .....	23
<b>Schedule 6 Forms</b> .....	23

# Conveyancing (Sale of Land) Regulation 2005



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Conveyancing (Sale of Land) Regulation 2005*.

### 2 Commencement

This Regulation commences on 1 September 2005.

**Note—**

This Regulation replaces the *Conveyancing (Sale of Land) Regulation 2000* which is repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation:

**building certificate** means a certificate issued in accordance with sections 149A–149E of the *Environmental Planning and Assessment Act 1979*.

**Note—**

Building certificates issued under the *Local Government Act 1919* (“section 317A certificates” and “section 317AE certificates”) that were in force immediately before 1 July 1993, and building certificates issued before 1 July 1998 under the *Local Government Act 1993* (“section 172 certificates”), are taken to be building certificates issued in accordance with sections 149A–149E of the *Environmental Planning and Assessment Act 1979*. (See clause 20 of Schedule 7 to the *Local Government Act 1993* and clause 59 (2) (a) of the *Environmental Planning and Assessment (Savings and Transitional) Regulation 1998*.)

**Crown land** has the same meaning as in the *Crown Lands Act 1989*.

**folio** means a folio of the Register maintained by the Registrar-General under the *Real Property Act 1900*.

**property certificate**, in relation to land, means any of the following:

- (a) a copy of the folio for the land,
- (b) a computer folio certificate (within the meaning of the *Real Property Act 1900*) in relation to the land,

(c) a document that contains the information contained in the folio for the land, being a document that is certified (by or on behalf of the person to whom the information has been provided) as having been provided in accordance with section 96B (2) of the *Real Property Act 1900*,

but does not include a certificate of title.

**Note—**

Section 96B (2) of the *Real Property Act 1900* provides that the Registrar-General may make information in the Register available in accordance with such conditions as the Registrar-General, with the approval of the Minister, determines. Under that subsection, the Registrar-General provides a facility for on-line direct access to the part of the Register that is concerned with titles to land and is stored on computer. A document provided in accordance with that subsection is not an official search for the purposes of the *Real Property Act 1900*.

**recognised sewerage authority** means any public or local authority that provides a sewage disposal service, and includes Sydney Water Corporation and Hunter Water Corporation.

**section 149 certificate** means a certificate issued under section 149 (2) of the *Environmental Planning and Assessment Act 1979*.

**the Act** means the *Conveyancing Act 1919*.

- (2) In this Regulation, a reference to a document of any kind includes a reference to a copy of the document.
- (3) Notes included in this Regulation do not form part of this Regulation.

## Part 2 Vendor disclosure for contracts for sale of land

**Note—**

Section 52A (2) (a) of the *Conveyancing Act 1919* requires the vendor under a contract for the sale of land to attach to the contract such documents as may be prescribed. Section 52A (2) (b) provides that the vendor is taken to have included in the contract such terms, conditions and warranties as may be prescribed. Section 52A (5) (a) provides that the regulations may provide that section 52A (2), or any provision of that subsection, does not apply to or in respect of a prescribed vendor or a vendor of a prescribed class. Section 52A (5) (b) and (c) make the same provision in relation to a prescribed contract (or a contract of a prescribed class) and prescribed land (or land of a prescribed class). Certain contracts and lands are so prescribed: see Division 2 of this Part.

### Division 1 Vendor disclosure and implied terms and warranties under section 52A of the Act

#### 4 Prescribed documents

- (1) For the purposes of section 52A (2) (a) of the Act, the prescribed documents are:
- (a) such of the documents specified in Schedule 1 (or such parts of those documents) as are relevant to the land the subject of the contract for sale, or

(b) in the case of land comprising one or more lots in a proposed plan of subdivision, such of the documents specified in Schedule 1 (or such parts of those documents) as are relevant to the land from which the lot is to be created.

(2) In the case of land comprising one or more lots in a plan of subdivision that was registered before the date of the contract, the section 149 certificate referred to in Schedule 1 may relate either to those lots or to the land from which those lots have been created, whether or not it also relates to other land.

## **5 Implied term—all contracts**

For the purposes of section 52A (2) (b) of the Act, the term set out in clause 1 of Schedule 2 is prescribed for a contract for the sale of land.

## **6 Implied term—strata units bought “off the plan”**

(1) For the purposes of section 52A (2) (b) of the Act, the term set out in clause 2 of Schedule 2 is prescribed for a contract for the sale of land if:

(a) the contract is a contract for the sale of a lot in a strata plan or a proposed strata plan within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*, and

(b) the contract is entered into before the date of registration of the strata plan, or within 12 months after that date, and

(c) pursuant to section 109M of the *Environmental Planning and Assessment Act 1979*, an occupation certificate (within the meaning of that Act) will be required to issue before occupation or use of the building, or part of the building, of which the lot and access to the lot form part, may commence, and

(d) the contract does not expressly provide that the vendor and the purchaser agree that:

(i) an occupation certificate in relation to the building, or part of the building, of which the lot and access to the lot form part, will not be issued before completion, and

(ii) occupation or use of the lot will not commence before the occupation certificate is issued.

### **Note—**

Under section 109M of the *Environmental Planning and Assessment Act 1979*, an occupation certificate is not required for the occupation or use of certain buildings, including a building that has been erected by or on behalf of the Crown.

(2) For the purposes of this clause, the part of a building comprising access to a lot is any part of the building reasonably necessary for access to the lot.

## **7 Implied term—“land and house” packages**

For the purposes of section 52A (2) (b) of the Act, the term set out in clause 3 of Schedule 2 is prescribed for a contract for the sale of land if:

- (a) the contract is a contract for the sale of a lot in a deposited plan, or in a proposed deposited plan, and
- (b) the contract provides for:
  - (i) the erection by the vendor of a dwelling-house on the lot, or
  - (ii) the sale of a dwelling-house already erected on the lot, and
- (c) pursuant to section 109M of the *Environmental Planning and Assessment Act 1979*, an occupation certificate (within the meaning of that Act) will be required to issue before occupation or use of the dwelling-house may commence.

### **Note—**

Under section 109M of the *Environmental Planning and Assessment Act 1979*, an occupation certificate is not required for the occupation or use of certain buildings, including a building that has been erected by or on behalf of the Crown.

## **8 Implied warranty**

For the purposes of section 52A (2) (b) of the Act, the prescribed warranty for a contract for the sale of land is the warranty set out in Part 1 of Schedule 3.

## **9 Prescribed persons and bodies**

For the purposes of section 52A (3) of the Act, the following persons and bodies are prescribed as persons and bodies whose certificates and documents may be relied on by a purchaser under a contract for the sale of land in the same way as they may be relied on by the vendor to whom they were issued:

- (a) Sydney Water Corporation,
- (b) Hunter Water Corporation,
- (c) East Australian Pipeline Limited,
- (d) AGL Gas Networks Limited.

## **Division 2 Exemptions from section 52A of the Act**

### **10 Exemption of certain contracts**

For the purposes of section 52A (5) (b) of the Act:

- (a) the contracts listed in Parts 1 and 2 of Schedule 4 are prescribed contracts, and



(b) section 52A (2) of the Act does not apply to such contracts.

#### **11 Exemption of certain land**

(1) For the purposes of section 52A (5) (c) of the Act, the land described in Schedule 5 is prescribed land.

(2) Section 52A (2) of the Act does not apply to the land prescribed by subclause (1).

(3) However, section 52A (2) of the Act does apply to:

(a) a contract for the sale of land by a mortgagee exercising a power of sale, and

(b) a contract for the sale of the equity of redemption in land,

in relation to land comprising an estate or interest referred to in Item 1 of Schedule 5.

### **Part 3 Cooling off period for contracts for sale of residential property**

#### **Note—**

Division 8 of Part 4 of the *Conveyancing Act 1919* includes sections 66S, 66X and 66Y. Section 66S allows a cooling off period in respect of contracts for the sale of residential property (with certain exceptions). Section 66X requires contracts for the sale of residential property (with certain exceptions) to include a statement, in the form prescribed by the regulations, relating to the cooling off period. Section 66Y provides that Division 8 of Part 4 of the Act, or a prescribed provision of that Division, does not apply to prescribed vendors, purchasers, contracts or land or in prescribed circumstances. Certain contracts and lands are so prescribed: see Division 2 of this Part.

### **Division 1 Statement relating to cooling off period under Division 8 of Part 4 of the Act**

#### **12 Form of statement relating to cooling off period**

(1) For the purposes of section 66X of the Act, Form 1 in Schedule 6 is the prescribed form of statement relating to the cooling off period.

(2) The statement must be legibly printed so that:

(a) the words shown in bold face capital letters in Form 1 are printed in bold face capital letters at least 3 millimetres high, and

(b) the rest of the statement is printed in bold face figures and letters at least 1 millimetre high.

### **Division 2 Exemptions from Division 8 of Part 4 of the Act**

#### **13 Exemption of certain contracts**

(1) For the purposes of section 66Y (3) of the Act, the contracts referred to in Parts 1 and 3 of Schedule 4 are prescribed contracts.

(2) Division 8 of Part 4 of the Act does not apply to the contracts prescribed by subclause

(1).

#### **14 Exemption of certain land**

- (1) For the purposes of section 66Y (3) of the Act, the land described in Schedule 5 is prescribed land.
- (2) Division 8 of Part 4 of the Act does not apply to the land prescribed by subclause (1).
- (3) However, Division 8 of Part 4 of the Act does apply to:
  - (a) a contract for the sale of residential property by a mortgagee exercising a power of sale, and
  - (b) a contract for the sale of the equity of redemption in residential property,in relation to land comprising an estate or interest referred to in Item 1 of Schedule 5.

### **Part 4 Options for purchase of residential property**

#### **Note—**

Division 9 of Part 4 of the *Conveyancing Act 1919* includes sections 66ZA, 66ZB, 66ZH, 66ZI and 66ZK. Section 66ZA provides that a vendor under an option to purchase residential property is taken to have included in the option such terms, conditions and warranties as may be prescribed. Section 66ZB allows a cooling off period in respect of options to purchase residential property (with certain exceptions). Section 66ZH requires options to purchase residential property (with certain exceptions) to include a statement, in the form prescribed by the regulations, relating to the cooling off. Section 66ZI requires options to purchase residential property to have certain documents (including those required by section 52A to be attached to a contract) to be attached to the option document. Section 66ZK provides that Division 9 of Part 4 of the Act, or a prescribed provision of that Division, does not apply to prescribed vendors, purchasers, options or land or in prescribed circumstances. Certain options and lands are so prescribed: see Division 2 of this Part.

### **Division 1 Implied warranty and statement relating to cooling off period under Division 9 of Part 4 of the Act**

#### **15 Implied warranty**

- (1) This clause applies to an option to purchase residential property to which are attached:
  - (a) a proposed contract for the sale of the land, and
  - (b) the documents (referred to in clause 4 and Schedule 1) prescribed under section 52A (2) (a) of the Act.
- (2) For the purposes of section 66ZA (1) of the Act, the prescribed warranty for an option to which this clause applies is the warranty set out in Part 2 of Schedule 3.

#### **16 Form of statement relating to cooling off period**

- (1) For the purposes of section 66ZH (1) of the Act, Form 2 in Schedule 6 is the prescribed form relating to the cooling off period.

- (2) The statement must be legibly printed, so that:
  - (a) the words shown in bold face capital letters in Form 2 are printed in bold face capital letters at least 3 millimetres high, and
  - (b) the rest of the statement is printed in bold face figures and letters at least 1 millimetre high.

## **Division 2 Exemptions from Division 9 of Part 4 of the Act**

### **17 Exemption of certain options**

- (1) For the purposes of section 66ZK (3) of the Act, the options referred to in Part 4 of Schedule 4 are prescribed options.
- (2) Division 9 of Part 4 of the Act does not apply to an option prescribed by subclause (1).

### **18 Exemption of certain land**

- (1) For the purposes of section 66ZK (3) of the Act, the land described in Schedule 5 is prescribed land.
- (2) Division 9 of Part 4 of the Act does not apply to the land prescribed by subclause (1).
- (3) However, Division 9 of Part 4 of the Act does apply to:
  - (a) an option to purchase residential property granted by a mortgagee exercising a power of sale, and
  - (b) an option to purchase the equity of redemption in residential property,in relation to land comprising an estate or interest referred to in Item 1 of Schedule 5.

## **Part 5 Purchasers' remedies under contracts for sale of land and options for purchase of residential property**

### **Note—**

Section 52A (6) of the [Conveyancing Act 1919](#) empowers the regulations to make provision for or with respect to the remedies and relief available to a purchaser under a contract for the sale of land and the penalties that may be incurred by a vendor under such a contract for any failure to comply with the provisions of section 52A or a regulation made for the purposes of that section, or for any breach of a term, condition or warranty taken to be included in the contract. Section 66ZA similarly empowers the regulations with regard to the terms, conditions and warranties taken to be included in an option under that section. Section 66ZI provides that either party may rescind an option to purchase residential property (or, if the option has been exercised, the contract resulting from the exercise of the option) if the required documents are not attached to the option document at the time the option is granted.

### **19 Circumstances under which purchaser may rescind contract or option**

- (1) The purchaser under a contract for the sale of land may rescind the contract:
  - (a) for the vendor's failure to attach to the contract the documents (referred to in

- clause 4 and Schedule 1) prescribed under section 52A (2) (a) of the Act, or
- (b) for breach of the warranty (referred to in clause 8 and Part 1 of Schedule 3) prescribed under section 52A (2) (b) of the Act.
- (2) The purchaser under an option to purchase residential property to which a proposed contract for the sale of the land concerned is attached may rescind the option for breach of the warranty (referred to in clause 15 and Part 2 of Schedule 3) prescribed under section 66ZA (1) of the Act.
- (3) A contract or option may not be rescinded on the grounds referred to in subclause (1) (b) or (2) unless:
- (a) the breach constitutes a failure to disclose to the purchaser the existence of a matter affecting the land, and
- (b) the purchaser was unaware of the existence of the matter when the contract or option was entered into, and
- (c) the matter is such that the purchaser would not have entered into the contract or option had he or she been aware of its existence.
- (4) Further, a purchaser may not rescind:
- (a) a contract for the sale of land for a breach of so much of the warranty prescribed under section 52A (2) (b) of the Act as is set out in item 1 (d) of Part 1 of Schedule 3, or
- (b) an option to purchase residential land for a breach of so much of the warranty prescribed under section 66ZA (1) of the Act as is set out in item 1 (d) of Part 2 of Schedule 3,
- if a building certificate in respect of the building (or part of the building) to which the warranty relates has issued since the date of the contract or option concerned.
- (5) (Repealed)

## **20 Method of rescinding contract or option**

- (1) A purchaser rescinds a contract for the sale of land by notice in writing served on the vendor:
- (a) if the purchaser's right to rescind arises from the vendor's failure to attach the prescribed documents—at any time within 14 days after the making of the contract, unless the contract has been completed, and
- (b) if the purchaser's right to rescind arises from the vendor's breach of the prescribed warranty—at any time before the contract is completed.

- (2) A purchaser rescinds an option to purchase residential property by notice in writing served on the vendor at any time before the option is exercised or ceases to be exercisable, whichever is the earlier.
- (3) A notice under this clause may be served as provided by section 170 of the Act or in such other manner as the contract or option may specify.

## **21 Effect of notice of rescission of contract or option**

- (1) A notice of rescission of a contract for the sale of land rescinds the contract as from the time the contract was made and, in that event, the deposit and any other money paid by the purchaser to the vendor under the contract is to be refunded.
- (2) A notice of rescission of an option to purchase residential property rescinds the option as from the time the option was granted and, in that event, any consideration paid in relation to the option, and any deposit paid in relation to the purchase of the property, are to be refunded.
- (3) The rescission of the contract or option does not render the vendor liable to pay to the purchaser, or the purchaser liable to pay to the vendor, any sum for damages, costs or expenses.
- (4) However, subclause (3) does not affect any liability under the contract or option in relation to:
  - (a) the payment of damages, costs or expenses arising out of a breach of any term or condition of the contract or option, or
  - (b) the payment of damages, costs or expenses arising out of a breach of any warranty contained in the contract or option (other than a warranty prescribed by clause 8 or 15), or
  - (c) an adjustment between the vendor and a purchaser who has received the benefit of possession of the land, or
  - (d) the reimbursement of the purchaser for expenses incurred by the purchaser in complying with the requirements of any order, direction or notice in connection with the land.

## **Part 6 Miscellaneous**

### **22 Application of amendments to this Regulation**

An amendment to this Regulation does not affect a contract for the sale of land, or an option to purchase residential property, made before the commencement of the amendment.

### **22A (Repealed)**

## 23 Savings

The *Conveyancing (Sale of Land) Regulation 2000* continues to apply to a contract for the sale of, and an option to purchase, residential property entered into on or after 1 September 2000, and before the repeal of that Regulation by the operation of section 10 (2) of the *Subordinate Legislation Act 1989*, as if that Regulation were still in force.

## Schedule 1 Prescribed documents

(Clause 4)

- 1 A section 149 certificate (unless the land is not within a local government area).
- 2 A diagram for the land from a recognised sewerage authority (if available from the authority in the ordinary course of administration), indicating the location of the authority's sewer in relation to the land.
- 3 If the contract relates to land under the provisions of the *Real Property Act 1900* (including any land that is the subject of a qualified or limited folio, but not including land the subject of a contract referred to in item 5, 6, 7, 9, 11, 12, 13 or 14):
  - (a) a property certificate, and
  - (b) a copy of a plan for the land issued by the Department of Lands, or any of its predecessors, or the office of Land and Property Information (except in the case of land that is the subject of a limited folio).
- 4 Copies of all deeds, dealings and other instruments lodged or registered in the office of Land and Property Information that are shown on the relevant property certificate and that create or purport to create:
  - (a) easements, or
  - (b) profits à prendre, or
  - (c) restrictions on the use of land, or
  - (d) positive covenants imposed under Division 4 of Part 6 of the *Conveyancing Act 1919*, burdening or benefiting or purporting to burden or benefit the land or any part of the land, together with copies of all Memoranda referred to in any such instrument.
- 5 If the contract relates to land that comprises or includes a lot as defined in the *Strata Schemes (Freehold Development) Act 1973*:
  - (a) a property certificate for the lot and the common property, and
  - (b) a copy of the strata plan that shows the lot, and
  - (c) a copy of any by-law for the strata scheme to which Division 4 of Part 5 of Chapter 2 of the *Strata Schemes Management Act 1996* applies.
- 6 If the contract relates to land that comprises or includes a lease of a lot as defined in the *Strata*

*Schemes (Leasehold Development) Act 1986:*

- (a) a property certificate for the leasehold estate in the lot, and
  - (b) a property certificate for the leasehold estate in the common property, and
  - (c) a copy of the strata plan that shows the lot, and
  - (d) a copy of the registered lease of the lot and the registered lease of the common property, and
  - (e) a copy of any by-law for the strata scheme to which Division 4 of Part 5 of Chapter 2 of the *Strata Schemes Management Act 1996* applies.
- 7** If the contract relates to land that is subject to a strata management statement registered under the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*, a copy of the strata management statement, as in force for the time being.
- 8** If the contract relates to land that is subject to a building management statement registered under the *Conveyancing Act 1919*, a copy of the building management statement, as in force for the time being.
- 9** If the contract relates to land that comprises or includes a lot in a development scheme within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*, a copy of the strata development contract or strata development statement.

- 10** A notice in or to the effect of the following (unless the notice is printed in the contract):

**IMPORTANT NOTICE TO VENDORS AND PURCHASERS**

Before signing this contract you should ensure that you understand your rights and obligations, some of which are not written in this contract but are implied by law.

that is legibly printed, in bold type, with the words "IMPORTANT NOTICE TO VENDORS AND PURCHASERS" in capital letters at least 3 millimetres high, and the rest of the notice printed in letters at least 1 millimetre high.

- 11** If the contract relates to land that comprises or includes a lot that forms part of a community scheme within the meaning of the *Community Land Development Act 1989*:
- (a) a property certificate for the lot and community property, and
  - (b) a copy of the community plan incorporating the lot, including a copy of the community management statement and any community development contract.
- 12** If the contract relates to land that comprises or includes a lot that forms part of a precinct scheme within the meaning of the *Community Land Development Act 1989*:
- (a) a property certificate for the lot, precinct property and community property, and
  - (b) a copy of the precinct plan incorporating the lot, including a copy of the precinct management statement and any precinct development contract, and

- (c) a copy of the community plan incorporating the precinct scheme to which the lot relates, including a copy of the community management statement and any community development contract.

**13** If the contract relates to land that comprises or includes a lot that forms part of a neighbourhood scheme within the meaning of the *Community Land Development Act 1989*:

- (a) a property certificate for the lot and neighbourhood property, and
- (b) a copy of the neighbourhood plan incorporating the lot, including a copy of the neighbourhood management statement and development contract, and
- (c) if the neighbourhood scheme in which the lot is situated is within a community scheme:
  - (i) a property certificate for the community property and any precinct property, and
  - (ii) a copy of the community plan, including a copy of the community management statement and any community development contract, and
  - (iii) if applicable, a copy of the precinct plan, including a copy of the precinct management statement and any precinct development contract.

**14** If the contract relates to land that comprises or includes a lot (within the meaning of the *Strata Schemes (Freehold Development) Act 1973*) that is within a community scheme (within the meaning of the *Community Land Development Act 1989*):

- (a) the documents prescribed by item 5, and
- (b) a property certificate for the community property and any precinct property, and
- (c) a copy of the community plan, including a copy of the community management statement and any community development contract, and
- (d) if applicable, a copy of the precinct plan, including a copy of the precinct management statement and any precinct development contract.

**15** On or after 1 December 2006, a notice in or to the effect of the following (unless the notice is printed in the contract), being a notice that is legibly printed, in bold type, with the words "WARNING" and "SMOKE ALARMS" in capital letters at least 3 millimetres high, and the rest of the notice printed in letters at least 1 millimetre high:

**WARNING**

**SMOKE ALARMS**

The owners of certain types of buildings and strata lots must have smoke alarms (or in certain cases heat alarms) installed in the building or lot in accordance with regulations under the *Environmental Planning and Assessment Act 1979*. It is an offence not to comply. It is also an offence to remove or interfere with a smoke alarm or heat alarm. Penalties apply.



## Schedule 2 Prescribed terms

(Clauses 5-7)

### 1 Objections and requisitions

Nothing in this contract or any other agreement prevents the purchaser, expressly or by implication, from making any objection, requisition or claim that the purchaser would otherwise be entitled to make in respect of:

- (a) any encroachment onto any adjoining land by any building or structure on the land, other than a dividing fence as defined in the *Dividing Fences Act 1991*, or
- (b) any encroachment onto the land by any building or structure on any adjoining land, other than a dividing fence as defined in the *Dividing Fences Act 1991*,

unless the encroachment is disclosed and clearly described in this contract and the contract contains an express term precluding the purchaser from making such an objection, requisition or claim.

### 2 Strata units bought “off the plan”

- (1) The vendor must serve at least 14 days before completion the original or a copy of an occupation certificate within the meaning of the *Environmental Planning and Assessment Act 1979* (being an interim occupation certificate or a final occupation certificate) in relation to the building, or part of the building, of which the lot and access to the lot form part.
- (2) For the purposes of this clause, the part of a building comprising access to a lot is any part of the building reasonably necessary for access to the lot.
- (3) The purchaser does not have to complete earlier than 14 days after service of the original or copy certificate.

### 3 “Land and house” packages

- (1) The vendor must serve at least 14 days before completion the original or a copy of an occupation certificate within the meaning of the *Environmental Planning and Assessment Act 1979* (being an interim occupation certificate or a final occupation certificate) in relation to the dwelling-house.
- (2) The purchaser does not have to complete earlier than 14 days after service of the original or copy certificate.

## Schedule 3 Prescribed warranties

(Clauses 8 and 15)

### Part 1 Warranty in contract

- 1 The vendor warrants that, as at the date of the contract and except as disclosed in the contract:
  - (a) the land is not subject to any adverse affectation, and
  - (b) the land does not contain any part of a sewer belonging to a recognised sewerage authority, and
  - (c) the section 149 certificate attached to the contract specifies the true status of the land the subject of the contract in relation to the matters set out in Schedule 4 to the *Environmental Planning and Assessment Regulation 2000*, and
  - (d) there is no matter in relation to any building or structure on the land (being a building or structure that is included in the sale of the land) that would justify the making of any upgrading or demolition order or, if there is such a matter, a building certificate has issued in relation to the building or structure since the matter arose, and
  - (e) if the land is burdened or purports to be burdened by a positive covenant imposed under Division 4 of Part 6 to the *Conveyancing Act 1919*, no amount is payable under section 88F of that Act in respect of the land.
- 2 For the purposes of this warranty:
  - (a) land is **subject to an adverse affectation** if anything listed in Part 3 of Schedule 3 to the *Conveyancing (Sale of Land) Regulation 2005* applies in respect of the land, and
  - (b) a public or local authority has a proposal in respect of land if, and only if, the authority has issued a written statement the substance of which is inconsistent with there being no proposal of the authority in respect of the land, and
  - (c) without limiting the way in which it may otherwise be disclosed, an adverse affectation is taken to be disclosed in a contract if any of the following is attached to the contract:
    - (i) a document stating or illustrating the effect of the adverse affectation,
    - (ii) a document, issued by a public or local authority, to the effect that the authority, or another such authority, has a proposal referred to in Part 3 of that Schedule,
    - (iii) a copy of the order, notice, declaration or other instrument giving rise to the adverse affectation,
    - (iv) a copy of the page of the Gazette in which the order, notice, declaration or other instrument giving rise to the adverse affectation was published, and
  - (d) **upgrading or demolition order** means any of the following:
    - (i) order No 2 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979*, being an order made in the circumstances referred to in paragraph (a) or (d) relating

to that order,

- (ii) order No 12, 13 or 14 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979*,
- (iii) order No 1 in the Table to section 124 of the *Local Government Act 1993*, being an order made in the circumstances referred to in paragraph (d) relating to that order,
- (iv) order No 3 in the Table to section 124 of the *Local Government Act 1993*, being an order made in the circumstances referred to in paragraph (c) relating to that order.

## Part 2 Warranty in option

- 1 The vendor warrants that, as at the date of the option and except as disclosed in the option:
  - (a) the land is not subject to any adverse affectation, and
  - (b) the land does not contain any part of a sewer belonging to a recognised sewerage authority, and
  - (c) the section 149 certificate attached to the option specifies the true status of the land the subject of the option in relation to the matters set out in Schedule 4 to the *Environmental Planning and Assessment Regulation 2000*, and
  - (d) there is no matter in relation to any building or structure on the land (being a building or structure that is included in the sale of the land) that would justify the making of any upgrading or demolition order or, if there is such a matter, a building certificate has issued in relation to the building or structure since the matter arose, and
  - (e) if the land is burdened or purports to be burdened by a positive covenant imposed under Division 4 of Part 6 to the *Conveyancing Act 1919*, no amount is payable under section 88F of that Act in respect of the land.
- 2 For the purposes of this warranty:
  - (a) land is **subject to an adverse affectation** if anything listed in Part 3 of Schedule 3 to the *Conveyancing (Sale of Land) Regulation 2005* applies in respect of the land, and
  - (b) a public or local authority has a proposal in respect of land if, and only if, the authority has issued a written statement the substance of which is inconsistent with there being no proposal of the authority in respect of the land, and
  - (c) without limiting the way in which it may otherwise be disclosed, an adverse affectation is taken to be disclosed in an option if any of the following is attached to the option:
    - (i) a document stating or illustrating the effect of the adverse affectation,
    - (ii) a document, issued by a public or local authority, to the effect that the authority, or another such authority, has a proposal referred to in Part 3 of that Schedule,
    - (iii) a copy of the order, notice, declaration or other instrument giving rise to the adverse affectation,

(iv) a copy of the page of the Gazette in which the order, notice, declaration or other instrument giving rise to the adverse affectation was published, and

(d) **upgrading or demolition order** means any of the following:

(i) order No 2 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979*, being an order made in the circumstances referred to in paragraph (a) or (d) relating to that order,

(ii) order No 12, 13 or 14 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979*,

(iii) order No 1 in the Table to section 124 of the *Local Government Act 1993*, being an order made in the circumstances referred to in paragraph (d) relating to that order,

(iv) order No 3 in the Table to section 124 of the *Local Government Act 1993*, being an order made in the circumstances referred to in paragraph (c) relating to that order.

### Part 3 Adverse affectations

- 1 A proposal for re-alignment, widening or siting, or alteration of the level, of a road or railway by the Roads and Traffic Authority, Rail Corporation New South Wales, Transport Infrastructure Development Corporation or Rail Infrastructure Corporation.
- 2 A proposal by or on behalf of the Minister for Education and Training to acquire the whole or any part of the land.
- 3 A proposal of TransGrid or an energy distributor (within the meaning of the *Energy Services Corporations Act 1995*) to acquire any right or interest in the whole or any part of the land.
- 4 An interim heritage order, listing on the State Heritage Register or other order or notice under the *Heritage Act 1977*.
- 5 A proposal to acquire any right or interest in the whole or any part of the land by reason of the *Pipelines Act 1967*.
- 6 A proposal of the New South Wales Land and Housing Corporation to acquire the whole or any part of the land.
- 7 A notice to or claim on the vendor by any person, evidenced in writing, in relation to:
  - (a) any common boundary or any boundary fence between the land and adjoining land, or
  - (b) any encroachment onto any adjoining land by any building or structure on the land, or
  - (c) any encroachment onto the land by any building or structure on any adjoining land, or
  - (d) any access order, or any application for an access order, under the *Access to Neighbouring Land Act 2000*.
- 8 A order under section 124 of the *Local Government Act 1993* to demolish, repair or make structural

alterations to a building which has not been fully complied with.

- 9** A notice to or claim on the vendor by any person, evidenced in writing, in relation to a failure or alleged failure to comply with a positive covenant imposed on the land under Division 4 of Part 6 of the *Conveyancing Act 1919*.
- 10** If the contract relates to land that comprises or includes a lease of a lot as defined in the *Strata Schemes (Leasehold Development) Act 1986*—a notice to or claim on the vendor by the lessor, evidenced in writing, in relation to a breach or alleged breach of a term or condition of the lease of the lot concerned.
- 11** A right of way under section 164 or 211 of the *Mining Act 1992*.
- 12** A licence under section 13A of the *Water Act 1912*.
- 13** Any:
- (a) order under section 7 (1) (c) or (d), 8 (1) (a), (b), (c1), (d) or (f), 13 (2) or 17 (1), or
  - (b) notice under section 8 (1) (c), or
  - (c) declaration under section 10, 11A or 15 (1), or
  - (d) undertaking under section 11, or
  - (e) appointment under section 12 (a), or
  - (f) authorisation under section 12 (b),
- of the *Stock Diseases Act 1923*.
- 14** Any:
- (a) order under section 5 (1) (d) or (e) (ii) or 11 (1) or (2), or
  - (b) requirement under section 7 (1) or 8 (1), or
  - (c) undertaking under section 7A (1), or
  - (d) restriction or prohibition under section 12 (1),
- of the *Stock (Chemical Residues) Act 1975*.
- 15** Any:
- (a) requirement under section 15A (1) or 22 (1), or
  - (b) notification under section 17 (1) or (7) (c) or 20 (1), or
  - (c) notice under section 18,
- of the *Soil Conservation Act 1938*.
- 16** Any direction under section 47 (1) of the *Native Vegetation Conservation Act 1997* or section 38

(1) of the *Native Vegetation Act 2003*.

## Schedule 4 Exempt contracts

(Clauses 10, 13 and 17)

### Part 1

(Clauses 10 and 13)

- 1 A contract between the owners of adjoining land that will result solely in an adjustment of a common boundary.
- 2 A contract between co-owners providing for the acquisition by one or more co-owners of the whole or any part of the share or interest of any other co-owner.
- 3 A contract for the sale of land to the Roads and Traffic Authority, if the contracts are expressed to be for the acquisition of land for the purposes of the *Roads Act 1993*.
- 4 A contract for the sale of the fee simple in the whole or part of any land the subject of a lease, holding or tenure under the *Crown Lands (Continued Tenures) Act 1989* or the *Western Lands Act 1901* to the holder of the lease, holding or tenure.
- 5 A contract for the sale of whole or part of a former public road pursuant to section 42 or 43 of the *Roads Act 1993*.
- 6 A contract for the sale of land entered into by the Minister administering the *Environmental Planning and Assessment Act 1979* pursuant to section 9 of that Act.
- 7 A contract for the sale of land entered into by the Minister administering the *Heritage Act 1977* pursuant to section 112 of that Act.

### Part 2

(Clause 10)

- 1 A contract arising from the exercise of an option to purchase land where the option is contained in a will or a lease.
- 2 A contract arising from the exercise of any other option to purchase land (not being an option that is void under section 66ZG of the Act) so long as the proposed contract, and the documents (referred to in clause 4 and Schedule 1) prescribed under section 52A (2) (a) of the Act, are attached to the option.
- 3 A contract arising from the exercise of any other option to purchase land other than residential land where the terms of the option prevent its exercise earlier than 3 months after the date on which it is granted.

### Part 3

(Clause 13)

- 1 A contract arising from the exercise of an option to purchase land where the option is contained in

a will or a lease.

- 2 A contract arising from the exercise of any other option to purchase land (not being an option that is void under section 66ZG of the Act) so long as the proposed contract, and the documents (referred to in clause 4 and Schedule 1) prescribed under section 52A (2) (a) of the Act, are attached to the option.

## Part 4

(Clause 17)

- 1 An option to purchase, the exercise of which would result in a contract listed in Part 1 of this Schedule.
- 2 An option to purchase land where the option is contained in a will or a lease.

## Schedule 5 Exempt land

(Clauses 11, 14 and 18)

- 1 An estate or interest created by or subsisting by virtue of a mortgage, easement, permissive occupancy or profit à prendre.
- 2 An interest under a lease, other than:
  - (a) a lease having an unexpired term (including any term for which the lease may be renewed at the option of the lessee) of more than 25 years, or
  - (b) a lease of Crown land having an unexpired term of more than 5 years, or
  - (c) a perpetual lease or other lease from the Crown having an unexpired term of more than 5 years, or
  - (d) a lease of a lot within the meaning of the *Strata Schemes (Leasehold Development) Act 1986*.

## Schedule 6 Forms

(Clauses 12 and 16)

### Form 1 Cooling off period (purchaser's rights)

- 1 This is the statement required by section 66X of the *Conveyancing Act 1919* and applies to a contract for the sale of residential property.
- 2 The purchaser may rescind the contract at any time before 5 p.m. on the fifth business day after the day on which the contract was made, **EXCEPT** in the circumstances listed in paragraph 3.
- 3 There is **NO COOLING OFF PERIOD**:
  - (a) if, at or before the time the contract is made, the purchaser gives to the vendor (or the vendor's solicitor or agent) a certificate that complies with section 66W of the Act, or
  - (b) if the property is sold by public auction, or
  - (c) if the contract is made on the same day as the property was offered for sale by public auction but passed in, or

(d) if the contract is made in consequence of the exercise of an option to purchase the property, other than an option that is void under section 66ZG of the Act.

- 4 A purchaser exercising the right to cool off by rescinding the contract will forfeit to the vendor 0.25% of the purchase price of the property. The vendor is entitled to recover the amount forfeited from any amount paid by the purchaser as a deposit under the contract and the purchaser is entitled to a refund of any balance.

### **Form 2 Cooling off period (purchaser's rights)**

- 1 This is the statement required by section 66ZH of the *Conveyancing Act 1919* and applies to an option to purchase residential property.
- 2 The purchaser may rescind the option at any time before 5 p.m. on the fifth business day after the day on which the option was granted, **EXCEPT** in the circumstances listed in paragraph 3.
- 3 There is **NO COOLING OFF PERIOD**:
  - (a) if, at or before the time the option is granted, the purchaser gives to the vendor (or the vendor's solicitor or agent) a certificate that complies with section 66ZF of the Act, or
  - (b) if the option is granted on the same day as the property was offered for sale by public auction but passed in.
- 4 A purchaser exercising the right to cool off by rescinding the option will forfeit to the vendor 0.25% of the purchase price of the property. The vendor is entitled to recover the amount forfeited from any amount paid by the purchaser in relation to the option or from any deposit paid in relation to the purchase of the property and the purchaser is entitled to a refund of any balance.