

Conveyancing (Sale of Land) Regulation 2017

[2017-372]



New South Wales

Status Information

Currency of version

Historical version for 1 September 2020 to 21 January 2021 (accessed 10 January 2025 at 8:03)

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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**
[Statute Law \(Miscellaneous Provisions\) Act 2020 No 30](#), Sch 4.8 (not commenced — to commence on 22.1.2021)
- **See also**
[Community Land Development Bill 2020](#)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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Conveyancing (Sale of Land) Regulation 2017



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Conveyancing (Sale of Land) Regulation 2017*.

2 Commencement

This Regulation commences on 1 September 2017 and is required to be published on the NSW legislation website.

Note—

This Regulation replaces the *Conveyancing (Sale of Land) Regulation 2010*, which is repealed on 1 September 2017 by section 10(2) of the *Subordinate Legislation Act 1989*.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 Division 6.7 of the *Environmental Planning and Assessment Act 1979*.

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

disclosure statement has the same meaning as in Division 10 of Part 4 of the Act.

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

off the plan contract has the same meaning as in Division 10 of Part 4 of the Act.

planning certificate means a certificate issued under section 10.7(2) of the *Environmental Planning and Assessment Act 1979*, but does not include a certificate referred to in clause 279(2) of the *Environmental Planning and Assessment Regulation 2000*.

property certificate, in relation to land, means any of the following but does not include a certificate of title—

- (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*.

recognised sewerage authority means a public authority or local authority that provides a sewage disposal service and includes—

- (a) Hunter Water Corporation, and
- (b) Sydney Water Corporation, and
- (c) a licensed network operator under the *Water Industry Competition Act 2006*.

section 603 certificate means a certificate issued under section 603(3) of the *Local Government Act 1993*.

sewer main and **sewerage infrastructure** have the same meanings as in the *Water Industry Competition Act 2006*.

the Act means the *Conveyancing Act 1919*.

Note—

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

- (2) In this Regulation, a reference to a document of any kind includes a reference to a copy of the document.
- (3) In this Regulation, a reference to a folio for land or a computer folio certificate in relation to the land means, in the case of a lease folio, the head title and each lease folio.

Note—

In such a case, the head title and each lease folio would need to be attached to the contract for the sale of land.

- (4) Notes included in this Regulation do not form part of this Regulation.

Part 2 Contracts for sale of land

4 Documents to be attached to contract

- (1) For the purposes of section 52A(2)(a) of the Act, the prescribed documents that the

vendor under a contract for the sale of land must attach to the contract are such of the documents specified in Schedule 1 (or such parts of those documents) as are relevant to—

- (a) 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, the land from which those lots are 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 planning 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 the planning certificate also relates to other land.

4A Documents to be attached to off the plan contract and disclosure statement

- (1) For the purposes of section 66ZM(2)(a) of the Act, the following information must be included in a draft plan included in a disclosure statement attached to an off the plan contract—
 - (a) the proposed lot number of the subject lot,
 - (b) sufficient information to identify the location of the subject lot,
 - (c) the area of the subject lot,
 - (d) if the contract relates to land that comprises or includes a lot in a proposed strata scheme—the draft floor plan and draft location plan,
 - (e) if the contract relates to land that comprises or includes a lot in a proposed community, precinct or neighbourhood scheme—the draft location diagram, draft detail plan and draft community, precinct or neighbourhood property plan,
 - (f) the site of any proposed easement or profit à prendre affecting the subject lot,
 - (g) the site of any proposed restriction on the use of land or positive covenant affecting only part of the subject lot.
- (2) If the contract relates to land that comprises or includes a lot in a proposed strata scheme, it is not necessary for the draft plan to include the location or area of any parking or storage area.
- (3) For the purposes of section 66ZM(2)(b) of the Act, the following documents must be included in a disclosure statement attached to an off the plan contract—
 - (a) any proposed schedule of finishes,
 - (b) any instrument under section 88B of the Act that is proposed to be lodged with the draft plan,

- (c) if the contract relates to land that comprises or includes a lot in a proposed strata scheme—the draft by-laws,
 - (d) if the contract relates to land that comprises or includes a lot in a proposed community, precinct or neighbourhood scheme—the draft management statement and the draft of any proposed development contract,
 - (e) if the contract relates to land that comprises or includes a lot in a proposed development scheme—the draft strata development contract,
 - (f) if the contract relates to land that comprises or includes a lot in a proposed strata scheme that relates to a part strata parcel and a strata management statement will be required under section 99 of the *Strata Schemes Development Act 2015* for the registration of the strata plan—the draft strata management statement,
 - (g) if the contract relates to land that will be subject to a building management statement under Division 3B of Part 23 of the *Conveyancing Act 1919*—the draft building management statement.
- (4) A document specified in subclause (3) is taken to be included in a disclosure statement if it is attached to the contract.
- (5) A draft strata management statement or draft building management statement required to be included in a disclosure statement under this clause is not required to include a provision for the allocation of the costs of shared expenses (as required under clause 2(1)(e) of Schedule 4 to the *Strata Schemes Development Act 2015* or clause 2(1)(e1) of Schedule 8A to the *Conveyancing Act 1919*).
- (6) It is not necessary for the draft plan, or any document included in a disclosure statement, to strictly comply with any applicable lodgment rules or regulations under the *Real Property Act 1900* or any other Act, but substantial compliance is sufficient.
- (7) In this clause—

community property plan, community scheme, detail plan, development contract, location diagram, management statement, neighbourhood property plan, neighbourhood scheme, precinct property plan and **precinct scheme** have the same meaning as in the *Community Land Development Act 1989*.

development scheme, floor plan, location plan, part strata parcel, strata development contract and **strata management statement** have the same meaning as in the *Strata Schemes Development Act 2015*.

parking or storage area, in relation to a contract that relates to land that comprises or includes a lot in a proposed strata scheme, means the part of the subject lot that is to be used primarily for storage or parking (and not for residential purposes) and that is not contiguous to the main part of the subject lot.

strata scheme has the same meaning as in the [Strata Schemes Management Act 2015](#).

5 Implied term of 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 of all contracts that relates to land tax

- (1) For the purposes of section 52A(2)(b) of the Act, the following terms are prescribed for all contracts for the sale of land—
 - (a) in a case where the date for completion is specified in the contract—
 - (i) if that date is 14 days or less after the day on which the contract is made—the term set out in clause 2 of Schedule 2, or
 - (ii) if that date is more than 14 days after the day on which the contract is made—the term set out in clause 3 of Schedule 2,
 - (b) in a case where the date for completion is not specified in the contract—
 - (i) if the parties to the contract have agreed on a date for completion that is 14 days or less after the day on which the contract is made—the term set out in clause 2 of Schedule 2, or
 - (ii) if the parties to the contract have agreed on a date for completion that is more than 14 days after the day on which the contract is made—the term set out in clause 3 of Schedule 2, or
 - (iii) if the parties to the contract have not agreed on a date for completion—the term set out in clause 3 of Schedule 2.
- (2) In any term prescribed by this clause, **current land tax certificate**, in relation to a contract for sale of land, means a certificate applied for by, or on behalf of, the vendor that—
 - (a) is issued under section 47 of the [Land Tax Management Act 1956](#) in the year in which the contract is to be completed, or no more than 3 months before the date on which service is required by the term, and
 - (b) relates to the land the subject of the contract for sale (or, in the case of a contract for the sale of land comprising one or more lots in a proposed plan of subdivision, the land from which those lots are to be created).

6A Implied terms for all off the plan contracts

For the purposes of section 52A(2)(b) of the Act, the terms set out in clauses 6B–6D are

prescribed for all off the plan contracts for the sale of land.

6B Purchaser may claim compensation instead of rescission

- (1) A purchaser under an off the plan contract for the sale of land who has a right to rescind the contract under section 66ZO or 66ZP of the Act, may, instead of rescinding the contract, make a claim for compensation from the vendor of up to 2% of the purchase price of the property.
- (2) A claim for compensation must be made before completion of the contract and no later than—
 - (a) in the case of a right to rescind under section 66ZO of the Act—14 days after the purchaser receives the notice of changes in accordance with section 66ZN, or
 - (b) in the case of a right to rescind under section 66ZP of the Act—14 days after the purchaser receives the registered plan in accordance with that section.
- (3) A claim for compensation must be made by serving on the vendor a written notice (a **claim notice**) that specifies the following—
 - (a) the amount of compensation claimed by the purchaser,
 - (b) the change or inaccuracy that gives rise to the right to rescind,
 - (c) why the purchaser would not have entered into the contract had the purchaser been aware of the change or inaccuracy,
 - (d) how the purchaser would be materially prejudiced by the change or inaccuracy.
- (4) A claim notice must be signed by—
 - (a) the purchaser or the purchaser's solicitor, or
 - (b) if there is more than one purchaser, each of the purchasers or their respective solicitors.
- (5) A claim notice must be served on—
 - (a) the vendor or the vendor's solicitor, or
 - (b) if there is more than one vendor, any one of the vendors or the solicitor of any of the vendors.
- (6) Service of a claim notice may be effected in accordance with section 170 of the Act or at the address of the vendor shown in the contract or in accordance with the service provisions in the contract.
- (7) Service of a claim notice under this clause does not prevent completion of the contract.

6C Determination of compensation claims

- (1) A claim for compensation is finalised if—
 - (a) the vendor rectifies (to the satisfaction of the purchaser) the change or inaccuracy that gave rise to the right to rescind, or
 - (b) the vendor agrees to pay to the purchaser the amount of compensation claimed by the purchaser in the claim notice (the **claim amount**) or a lesser amount agreed by the purchaser, or
 - (c) an arbitrator determines the claim under this clause.
- (2) The parties are to appoint an arbitrator to determine a claim for compensation if the claim has not been finalised by agreement between the parties within 1 month of service of a claim notice or by completion of the contract, whichever occurs first.
- (3) If the parties do not appoint an arbitrator in accordance with subclause (2) within 2 months of the service of a claim notice or 1 month of completion (whichever occurs first), an arbitrator is to be appointed by, or in a manner approved by, the Secretary of the Department of Customer Service at the request of a party.
- (4) The amount that an arbitrator may determine the purchaser is entitled to in respect of a claim for compensation is not to exceed the claim amount.
- (5) If an arbitrator determines the claim, that decision is final and the purchaser is no longer able to rescind the contract under section 66ZO or 66ZP of the Act.
- (6) An arbitrator may also make an award of costs and the amount of compensation determined by the arbitrator is to be adjusted accordingly.
- (7) A claim for compensation is taken to be withdrawn if an arbitrator has not been appointed to determine a claim for compensation within 4 months of the service of the claim notice or 3 months of completion, whichever occurs first.

6D Settlement of compensation claim

- (1) If a claim for compensation is finalised before completion, the **compensation amount** (being the amount of compensation agreed between the vendor and purchaser or determined by an arbitrator) is to be paid to the purchaser as an adjustment on completion.
- (2) If a claim for compensation is not finalised before completion, the following applies—
 - (a) the claim amount is not to be paid to the vendor on completion,
 - (b) the holder of any deposit payable under the contract is to hold the claim amount until the claim is finalised or taken to be withdrawn, whichever occurs first,

- (c) if the contract provides for the investment of any deposit payable under the contract—
 - (i) the holder of the claim amount may invest the amount in accordance with the relevant provisions of the contract, and
 - (ii) any interest earned on the claim amount is to be paid to the purchaser and vendor in the manner specified in the contract, or as otherwise determined by the arbitrator,
- (d) when the claim for compensation is finalised—the holder of the claim amount is to pay—
 - (i) the compensation amount to the purchaser, and
 - (ii) any amount remaining from the claim amount to the vendor,
- (e) if the claim is taken to be withdrawn after completion—the claim amount is to be paid to the vendor.

(3) In this clause—

claim amount has the same meaning as in clause 6C.

7 Implied term of contract if strata units bought off the plan

For the purposes of section 52A(2)(b) of the Act, the term set out in clause 4 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 Development Act 2015*, 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 6.9 of the *Environmental Planning and Assessment Act 1979*, an occupation certificate within the meaning of that Act will be required to be issued before the commencement of occupation or use of the building (or part of the building) of which the lot and access to the lot form part, and
- (d) the contract does not expressly provide that the vendor and the purchaser agree that—
 - (i) an occupation certificate will not be issued before completion in relation to the building (or part of the building) of which the lot, and any part of the building reasonably necessary for access to the lot, form part, and
 - (ii) occupation or use of the lot will not commence before the occupation certificate is issued.

8 Implied term of contract for land and house packages

For the purposes of section 52A(2)(b) of the Act, the term set out in clause 5 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 6.9 of the *Environmental Planning and Assessment Act 1979*, an occupation certificate within the meaning of that Act will be required to be issued before occupation or use of the dwelling-house may commence.

9 Implied warranty

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

10 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 Pty Limited (ACN 064 629 009),
- (d) Jemena Gas Networks (NSW) Ltd (ACN 003 004 322).

11 Exemptions

- (1) For the purposes of section 52A(5)(b) of the Act, section 52A(2) of the Act does not apply to the following—
 - (a) the contracts listed in Parts 1 and 2 of Schedule 4,
 - (b) the land described in Part 5 of Schedule 4.
- (2) Despite subclause (1)(b), section 52A(2) of the Act does apply to the following contracts in relation to land comprising an estate or interest referred to in item 15 of Schedule 4—

- (a) a contract for the sale of land by a mortgagee exercising a power of sale,
- (b) a contract for the sale of the equity of redemption in land.

Part 3 Cooling off period for sale of residential property

Note—

Division 8 of Part 4 of the *Conveyancing Act 1919* allows, with certain exceptions, a cooling off period in respect of contracts for the sale of residential property.

12 Form of statement relating to cooling off period

- (1) For the purposes of section 66X(1) of the Act, Form 1 in Schedule 5 is the prescribed form of statement relating to the cooling off period.
- (2) The statement must be clearly legible and prominently located.

13 Exemptions

- (1) For the purposes of section 66Y(3) of the Act, Division 8 of Part 4 of the Act does not apply to the following—
 - (a) the contracts referred to in Parts 1 and 3 of Schedule 4,
 - (b) the land described in Part 5 of Schedule 4.
- (2) Despite subclause (1)(b), Division 8 of Part 4 of the Act does apply to the following contracts in relation to land comprising an estate or interest referred to in item 15 of Schedule 4—
 - (a) a contract for the sale of residential property by a mortgagee exercising a power of sale,
 - (b) a contract for the sale of the equity of redemption in residential property.

Part 4 Options for purchase of residential property

14 Implied warranty

For the purposes of section 66ZA(1) of the Act, the warranty set out in Part 2 of Schedule 3 is deemed to be included in an option to purchase residential property to which are attached—

- (a) a proposed contract for the sale of the land, and
- (b) the documents prescribed under section 52A(2)(a) of the Act.

Note—

Those documents are specified in clause 4 and Schedule 1.

15 Form of statement relating to cooling off period

- (1) For the purposes of section 66ZH(1) of the Act, Form 2 in Schedule 5 is the prescribed form of statement relating to the cooling off period.
- (2) The statement must be clearly legible and prominently located.

16 Exemptions

- (1) For the purposes of section 66ZK(3) of the Act, Division 9 of Part 4 of the Act does not apply to the following—
 - (a) the options referred to in Part 4 of Schedule 4,
 - (b) the land described in Part 5 of Schedule 4.
- (2) Despite subclause (1)(b), Division 9 of Part 4 of the Act does apply to the following options in relation to land comprising an estate or interest referred to in item 15 of Schedule 4—
 - (a) an option to purchase residential property granted by a mortgagee exercising a power of sale,
 - (b) an option to purchase the equity of redemption in residential property.

Part 5 Purchasers' remedies

17 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 prescribed under section 52A(2)(a) of the Act, or

Note—

Those documents are specified in clause 4 and Schedule 1.

- (a1) for the vendor's failure to attach a disclosure statement to an off the plan contract in accordance with section 66ZM of the Act and clause 4A, or

Note—

The documents required to be included in the disclosure statement and the information required to be included in the draft plan (which is to be included in the disclosure statement) are specified in clause 4A.

- (b) for breach of the warranty prescribed under section 52A(2)(b) of the Act.

Note—

The warranty is specified in clause 9 and Part 1 of Schedule 3.

- (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 prescribed under section 66ZA(1) of the Act.

Note—

The warranty is specified in clause 14 and Part 2 of Schedule 3.

- (3) A purchaser may not rescind a contract or option under 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) A purchaser may not rescind a contract or option under subclause (1)(b) or (2) for breach of that part of the warranty set out in item 1(d) or 3(d) of Schedule 3 if a building certificate in respect of the building (or part of the building) to which the warranty relates has been issued since the date of the contract or option concerned.

18 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 or a disclosure statement—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.

19 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 are 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 9 or 14), 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 5A Miscellaneous

19A Material particulars for off the plan contracts

- (1) For the purposes of the definition of **material particular** in section 66ZL(1) of the Act, a provision of any of the following documents that will, or is likely to, adversely affect the use or enjoyment of the subject lot is a material particular—
 - (a) a strata management statement,
 - (b) a building management statement under Division 3B of Part 23 of the Act,
 - (c) a management statement for a community, precinct or neighbourhood scheme,
 - (d) a strata development contract,
 - (e) a development contract.
- (2) For the purposes of the definition of **material particular** in section 66ZL(1) of the Act, the following are not material particulars—
 - (a) a change in the proposed lot number of the subject lot,
 - (b) a change in the proposed street name in which the subject lot is located,

- (c) a change to, or the inclusion of, a provision for the allocation of the costs of shared expenses in a building management statement or strata management statement, but only if the allocation of costs complies with—
 - (i) for a building management statement—clause 2(1)(e1) of Schedule 8A to the Act, or
 - (ii) for a strata management statement—clause 2(1)(e) of Schedule 4 to the *Strata Schemes Development Act 2015*,
- (d) if the contract relates to land that comprises or includes a lot in a proposed strata scheme—a change to, or the inclusion of the specific location or area of the parking or storage area, but only if the change or inclusion is made in accordance with the terms of the contract.

(3) Expressions used in this clause have the same meaning as in clause 4A.

Part 6 Savings and transitional provisions

20 Savings relating to 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.

21 Conveyancing (Sale of Land) Amendment Regulation 2019

(1) A contract for the sale of residential property entered into during the transitional period for that contract may include Form 1 in Schedule 5 as amended by the *Conveyancing (Sale of Land) Amendment Regulation 2019*, or as it was in force immediately before that amendment.

(2) In this clause—

transitional period means—

- (a) for an off the plan contract, from the commencement of this clause until 30 November 2019, and
- (b) for any other contract for the sale of residential property, from the commencement of this clause until 1 June 2020.

22 Conveyancing Legislation Amendment Act 2018

Division 10 (other than section 66ZS) of Part 4 of the Act does not apply to an off the plan contract that is signed after the commencement of that Division if the contract arose from an option deed entered into before that commencement.

Schedule 1 Prescribed documents

(Clause 4)

- 1** A planning certificate for the land unless the land is not within a local government area.

Note—

If the sale relates to more than one lot in a strata plan, a single planning certificate may be attached.

- 2** Diagrams from a recognised sewerage authority (if available from the authority in the ordinary course of administration) that purport to show the following—
- (a) the location of any sewer lines on the land upstream of the point of connection to the authority's sewer main (including the point of connection),
 - (b) the location of the authority's sewerage infrastructure for the property downstream of the point of connection to the authority's sewer main (including the point of connection).
- 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 items 6-13)—
- (a) a property certificate, and
 - (b) a copy of a plan for the land issued by the Registrar-General (except in the case of land that is the subject of a limited folio).
- 4** Copies of all deeds, dealings and other instruments that are lodged with the Registrar-General or registered that are shown on the property certificate for the lot and that create (or purport to create) any of the following interests that burden or benefit (or purport to burden or benefit) the land or any part of the land, together with copies of all memoranda referred to in any such instruments—
- (a) easements,
 - (b) profits à prendre,
 - (c) restrictions on the use of land,
 - (d) positive covenants imposed under Division 4 of Part 6 of the *Conveyancing Act 1919*.
- 5** If the contract relates to land that comprises or includes a lot in a strata scheme (within the meaning of the *Strata Schemes Management Act 2015*) or a lot under a community plan, precinct plan or neighbourhood plan (within the meaning of the *Community Land Development Act 1989*), copies of—
- (a) all deeds, dealings and other instruments lodged with the Registrar-General or registered that are shown on the property certificate for the relevant common property or association property and that create (or purport to create) any of the following interests that burden or benefit (or purport to burden or benefit) the common property or association property or any part of that property—
 - (i) easements,

- (ii) profits à prendre,
 - (iii) restrictions on the use of land,
 - (iv) positive covenants imposed under Division 4 of Part 6 of the *Conveyancing Act 1919*, and
- (b) all memoranda referred to in any such instruments.
- 6** If the contract relates to land that comprises or includes a lot in a freehold strata scheme within the meaning of the *Strata Schemes Development Act 2015*—
- (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-laws in force for the strata scheme.
- 7** If the contract relates to land that comprises or includes a lease of a lot in a leasehold strata scheme within the meaning of the *Strata Schemes Development Act 2015*—
- (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-laws in force for the strata scheme.
- 8** If the contract relates to land that comprises or includes a lot in a development scheme within the meaning of the *Strata Schemes Development Act 2015*, a copy of the following documents that are registered under that Act—
- (a) the strata development contract,
 - (b) any amendment of the strata development contract.
- 9** If the contract relates to land that is subject to a strata management statement registered under the *Strata Schemes Development Act 2015*, a copy of the strata management statement and of any amendment of the strata management statement that is registered under that Act.
- 10** If the contract relates to land that comprises or includes a lot (within the meaning of the *Strata Schemes Development Act 2015*) that is within a community scheme (within the meaning of the *Community Land Development Act 1989*)—
- (a) the documents prescribed by item 6, 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 development contract registered with the community plan, and
 - (d) if applicable, a copy of the precinct plan, including a copy of the precinct management

statement and any development contract registered with the precinct plan.

- 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 development contract registered with the community plan.
- 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 development contract registered with the precinct plan, 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 development contract registered with the community plan.
- 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 development contract registered with the community plan, and
 - (iii) if applicable, a copy of the precinct plan, including a copy of the precinct management statement and any development contract registered with the precinct plan.
- 14** 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.
- 15**
- (1) If the contract relates to land on which there is situated a swimming pool within the meaning of the *Swimming Pools Act 1992* to which that Act applies, a copy of one of the following in respect of the swimming pool—
 - (a) a valid certificate of compliance issued under section 22D of that Act,
 - (b) a relevant occupation certificate within the meaning of that Act and evidence that

the swimming pool is registered under Part 3A of that Act,

(c) a valid certificate of non-compliance issued under clause 18BA of the *Swimming Pools Regulation 2008*.

(2) This item does not apply if—

(a) the contract relates to a lot in a strata scheme (within the meaning of the *Strata Schemes Management Act 2015*) or in a community scheme (within the meaning of the *Community Land Development Act 1989*) and that strata or community scheme comprises more than 2 lots, or

(b) the contract is an off the plan contract within the meaning of Division 10 of Part 4 of the *Conveyancing Act 1919*.

16 A notice that is in or to the effect of each of the following notices (unless the notice is printed in the contract) and that is clearly legible and prominently located—

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.

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.

WARNING—LOOSE-FILL ASBESTOS INSULATION

Before purchasing land that includes any residential premises (within the meaning of Division 1A of Part 8 of the *Home Building Act 1989*) built before 1985, a purchaser is strongly advised to consider the possibility that the premises may contain loose-fill asbestos insulation (within the meaning of Division 1A of Part 8 of the *Home Building Act 1989*). In particular, a purchaser should—

(a) search the Register required to be maintained under Division 1A of Part 8 of the *Home Building Act 1989*, and

(b) ask the relevant local council whether it holds any records showing that the residential premises contain loose-fill asbestos insulation.

For further information about loose-fill asbestos insulation (including areas in which residential premises have been identified as containing loose-fill asbestos insulation), contact NSW Fair Trading.

Schedule 2 Prescribed terms

(Clauses 5-8)

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 within the meaning of 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 within the meaning of 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 Land tax certificate—contracts completing in 14 days or less

- (1) The vendor must serve, on the day that the contract is made, a current land tax certificate.
- (2) The purchaser does not have to complete before the date on which the certificate is served.

3 Land tax certificate—contracts completing in more than 14 days and contracts where no completion date agreed

- (1) The vendor must serve, at least 14 days before completion, a current land tax certificate.
- (2) The purchaser does not have to complete earlier than 14 days after service of the certificate.

4 Strata units bought off the plan

- (1) The vendor must serve, at least 14 days before completion, 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 any part of the building reasonably necessary for access to the lot, form part.
- (2) The purchaser does not have to complete earlier than 14 days after service of the certificate.

5 Land and house packages

- (1) The vendor must serve, at least 14 days before completion, 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 certificate.

Schedule 3 Prescribed warranties

(Clauses 9 and 14)

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 an adverse affectation, and
 - (b) the land does not contain any part of a sewer belonging to a recognised sewerage authority, and
 - (c) the planning 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 been 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 of the *Conveyancing Act 1919*, no amount is payable under section 88F of that Act in respect of the land, and
 - (f) the land is not subject to an annual charge for the provision of coastal protection services under the *Local Government Act 1993*.
- 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 2017* applies in respect of the land, and
 - (b) an authority or other entity has a proposal in respect of land if, and only if, the authority or entity has issued a written statement and the substance of the statement is inconsistent with there being no proposal of the authority or entity 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 an authority or other entity, to the effect that the authority or entity, or another authority or entity, 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) a Demolish Works Order as referred to in item 3 of Part 1 of Schedule 5 to the *Environmental Planning and Assessment Act 1979*, in circumstances in which the building was erected without a required planning approval (within the meaning of that Schedule) or a required approval under the *Local Government Act 1993* or the building was erected in contravention of the *Environmental Planning and Assessment Act 1979*,
 - (ii) a Restore Works Order, Compliance Order or Repair or Remove Works Order as referred to in items 10–12 of Part 1 of Schedule 5 to the *Environmental Planning and Assessment Act 1979*,
 - (iii) order No 1 in the Table to section 124 of the *Local Government Act 1993*,
 - (iv) order No 3 in the Table to section 124 of the *Local Government Act 1993*, and
- (e) without limiting any other manner in which disclosure may occur, the vendor may disclose that land is subject to an annual charge for the provision of coastal protection services under the *Local Government Act 1993* by attaching to the contract a section 603 certificate relating to the land.

Part 2 Warranty in option

- 3 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 an adverse affectation, and
 - (b) the land does not contain any part of a sewer belonging to a recognised sewerage authority, and
 - (c) the planning 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 been 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, and

(f) the land is not subject to an annual charge for the provision of coastal protection services under the *Local Government Act 1993*.

4 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 2017* applies in respect of the land, and

(b) an authority or other entity has a proposal in respect of land if, and only if, the authority or entity has issued a written statement and the substance of the statement is inconsistent with there being no proposal of the authority or entity 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 an authority or other entity, to the effect that the authority or entity, or another authority or entity, 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) a Demolish Works Order as referred to in item 3 of Part 1 of Schedule 5 to the *Environmental Planning and Assessment Act 1979*, in circumstances in which the building was erected without a required planning approval (within the meaning of that Schedule) or a required approval under the *Local Government Act 1993* or the building was erected in contravention of the *Environmental Planning and Assessment Act 1979*,

(ii) a Restore Works Order, Compliance Order or Repair or Remove Works Order as referred to in items 10–12 of Part 1 of Schedule 5 to the *Environmental Planning and Assessment Act 1979*,

(iii) order No 1 in the Table to section 124 of the *Local Government Act 1993*,

(iv) order No 3 in the Table to section 124 of the *Local Government Act 1993*, and

(e) without limiting any other manner in which disclosure may occur, the vendor may disclose that land is subject to an annual charge for the provision of coastal protection services under the *Local Government Act 1993* by attaching to the option a section 603 certificate relating to the land.

Part 3 Adverse affectations

5 A proposal for re-alignment, widening or siting, or alteration of the level, of a road or railway by Roads and Maritime Services, Rail Corporation New South Wales, Sydney Metro, Sydney Trains or

Transport for NSW.

- 6** A proposal by or on behalf of the Minister for Education to acquire the whole or any part of the land.
- 7** A proposal of any of the following to acquire any right or interest in the whole or any part of the land—
 - (a) an energy distributor (within the meaning of the *Energy Services Corporations Act 1995*),
 - (b) an authorised network operator under the *Electricity Network Assets (Authorised Transactions) Act 2015*,
 - (c) the lessor of a transacted distribution system or transacted transmission system under the *Electricity Network Assets (Authorised Transactions) Act 2015*.
- 8** A listing on the State Heritage Register, an interim heritage order or other order or notice under the *Heritage Act 1977*.
- 9** A proposal to acquire any right or interest in the whole or any part of the land by reason of the *Pipelines Act 1967*.
- 10** A proposal of the New South Wales Land and Housing Corporation to acquire the whole or any part of the land.
- 11** 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*.
- 12** An order under Part 1 of Schedule 5 to the *Environmental Planning and Assessment Act 1979* to demolish, remove, repair or make structural alterations to a building that has not been fully complied with.
- 13** An order under section 124 of the *Local Government Act 1993* to demolish, repair or make structural alterations to a building that has not been fully complied with.
- 13A** A building product rectification order (within the meaning of the *Building Products (Safety) Act 2017*) that has not been fully complied with.
- 13B** An affected building notice (within the meaning of Part 4 of the *Building Products (Safety) Act 2017*) that is in force.
- 13C** A building work rectification order (within the meaning of Part 5 of the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*) that is in force.
- 14** 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*.

- 15** If the contract relates to land that comprises or includes a lot in a freehold strata scheme within the meaning of the *Strata Schemes Development Act 2015*—
- (a) the owners corporation has passed a motion for a resolution under Part 10 of that Act that a strata renewal proposal warrants further investigation by a strata renewal committee, and
 - (b) the owners corporation has established (or has not yet established but continues to be required to establish) a strata renewal committee to give effect to the resolution, and
 - (c) minutes of the meeting recording the resolution that are required to be kept under Schedule 1 to the *Strata Schemes Management Act 2015* have not yet been prepared.
- 16** If the contract relates to land that comprises or includes a lease of a lot in a leasehold strata scheme within the meaning of the *Strata Schemes Development Act 2015*—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.
- 17** A right of way under section 164, 211 or 235C of the *Mining Act 1992*.
- 18** A licence under section 13A of the *Water Act 1912*.
- 19** Any of the following instruments under the *Stock Diseases Act 1923* (an Act repealed by the *Biosecurity Act 2015*) that are in force—
- (a) an order under section 7(1)(c) or (d), 8(1)(a), (b), (c1), (d) or (f), 13(2) or 17(1),
 - (b) a notice under section 8(1)(c),
 - (c) a declaration under section 10, 11A or 15(1),
 - (d) an undertaking under section 11,
 - (e) an appointment under section 12(a),
 - (f) an authorisation under section 12(b).
- 20** Any of the following instruments under the *Stock (Chemical Residues) Act 1975* (an Act repealed by the *Biosecurity Act 2015*) that are in force—
- (a) an order under section 5(1)(d) or (e)(ii) or 11(1) or (2),
 - (b) a requirement under section 7(1) or 8(1),
 - (c) an undertaking under section 7A(1),
 - (d) a restriction or prohibition under section 12(1).
- 21** Any of the following under the *Soil Conservation Act 1938*—
- (a) a requirement under section 15A(1) or 22(1),
 - (b) a notification under section 17(1) or (7)(c) or 20(1),

(c) a notice under section 18.

- 22** Any direction under section 38(1) of the *Native Vegetation Act 2003*.
- 23** Any application for an order under the *Trees (Disputes Between Neighbours) Act 2006* or any order under that Act that requires work to be carried out in relation to a tree if that work has not been carried out fully in compliance with that order.
- 24** Any order under Part 4D of the *Coastal Protection Act 1979* in relation to temporary coastal protection works (within the meaning of that Act) on the land (or on public land adjacent to that land), except where the council is satisfied that such an order has been fully complied with.
- 25** An emergency order under the *Biosecurity Act 2015* that has been served on the owner or occupier of the land.
- 26** A control order under the *Biosecurity Act 2015* that has been served on the owner or occupier of the land.
- 27** An individual biosecurity direction (within the meaning of the *Biosecurity Act 2015*) that—
 - (a) prohibits, regulates or controls the doing of anything, or
 - (b) requires something to be done.
- 28** A biosecurity undertaking (within the meaning of the *Biosecurity Act 2015*).
- 29** A mandatory code compliant certificate under Part 5A of the *Local Land Services Act 2013* that requires the establishment of a set aside area.
- 30** A remediation order under Part 11 of the *Biodiversity Conservation Act 2016*.

Schedule 4 Exempt contracts, options and land

(Clauses 11, 13 and 16)

Part 1

(Clauses 11 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 part of the share or interest of any other co-owner.
- 3** A contract for the sale of land to Roads and Maritime Services if the contract is 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 the 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 Planning Ministerial Corporation within the meaning of the *Environmental Planning and Assessment Act 1979* pursuant to clause 31 of Schedule 2 to 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 11)

- 8 A contract arising from the exercise of an option to purchase land where the option is contained in a will or a lease.
- 9 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.
- 10 A contract arising from the exercise of any other option to purchase land (other than residential property) 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)

- 11 A contract arising from the exercise of an option to purchase land where the option is contained in a will or a lease.
- 12 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 16)

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

Part 5

(Clauses 11, 13 and 16)

- 15 An estate or interest created by or subsisting by virtue of a mortgage, easement, permissive

occupancy or profit à prendre.

16 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 in a leasehold strata scheme within the meaning of the *Strata Schemes Development Act 2015*.

Schedule 5 Forms

(Clauses 12 and 15)

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** EXCEPT in the circumstances listed in paragraph 3, the purchaser may rescind the contract at any time before 5 pm on—
 - (a) the tenth business day after the day on which the contract was made—in the case of an off the plan contract, or
 - (b) the fifth business day after the day on which the contract was made—in any other case.
- 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 pm 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.