

Lawyer's certifications

Property Agents and Motor Dealers Act 2000

This form is effective from 1 July 2009

This form must be completed by:

- any lawyer approached by a buyer for advice or assistance regarding the purchase of residential property (not by auction).
- a lawyer, before the five day cooling-off period can be waived or cancelled (applying to residential property sales not by auction).

Lawyer's certifications—*independence of lawyer, waiving and shortening cooling-off period*

Buyer please note

The certifications in this form are designed to ensure that you are aware of certain information which may influence your decision to enter into a contract for the purchase of property or your decision to forgo or shorten the statutory cooling-off period. They are important certifications which your lawyer must attend to.

Please read the *PAMD Form 30c Warning Statement* (required by law to be attached to the front of a contract to buy residential property in Queensland) as it explains your right to a cooling-off period. You may waive or shorten the cooling-off period only by obtaining a certificate under Sections 2 or 3 in this form.

Lawyer please note

The certifications in this form relate to the requirements of Sections 365B, 369 and 370 of the *Property Agents and Motor Dealers Act 2000*.

Any lawyer engaged by a buyer or prospective buyer of residential property (other than by auction) in relation to the purchase of that property, must complete the certification in Section 1 below and must explain to the buyer the purpose and nature of the certificate.

The five day cooling-off period applicable to the purchase of all residential property in Queensland (other than by auction) can only be:

- a) waived, if a lawyer completes the certification in Section 2; or
- b) shortened, if a lawyer completes the certification in Section 3.

If you are approached solely in relation to the waiving or shortening of the cooling-off period and your declaration in Section 1 indicates that you are not independent from the seller, the seller's agents and anyone else involved in the sale, promotion of the sale, or provision of a service in connection with the sale of the property, you will not be able to make the certifications in Sections 2 or 3 below. The buyer must approach an independent lawyer to obtain such a certification.

Please refer to the notes on page 4 before completing this form.

Lawyer's details

Name

Firm

Address

.....

Property details

Address

.....

Lot

Plan

Title reference

Buyer's details

Name

Address

.....

Seller's details

Name

Address

.....

Seller's agent's details

Name

Address

.....

Part 1—Independence of lawyer

Lawyer to tick whichever is applicable.

- I have no business, family or other relationship with the seller, the seller's agent or another person associated with the sale, promotion of the sale or provision of a service in connection with the sale of the property.
- I act for the seller, the seller's agent or another person associated with the sale, promotion of the sale or provision of a service in connection with the sale of the property. If so, specify for whom you act and in what capacity:

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- I have a business, family or other relationship with the seller, the seller's agent or another person associated with the sale, promotion of the sale or provision of a service in connection with the sale of the property. If so, specify the nature of the relationship and with whom you have that relationship:

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If insufficient space, please attach a separate sheet detailing the relationships.

Lawyer to tick whichever is applicable:

- I have not received/am not receiving and do not expect to receive:
- I have received/am receiving or expect to receive:
a benefit (see note on what constitutes a 'benefit' over the page) in connection with the sale, or for promoting the sale or for providing a service in connection with the sale of the property other than the professional costs and disbursements payable by the buyer from the following people. If you have indicated a positive response to the above, please name the person, including a corporation, to whom the benefit relates and the amount, value or nature of the benefit:

Person providing benefit	Benefit
.....
.....
.....
.....
.....

If insufficient space, please attach a separate sheet detailing the benefits.

I have read and completed this certificate and have explained to the buyer the purpose and nature of this certificate.

Lawyer to sign.....

Name

Signature.....

Date / /
D D M M Y Y Y Y

Part 2—Waiving cooling-off period

This certification must be given to the seller or the seller's agent before the buyer is bound under the contract.

I have been instructed by my client the buyer under a contract for the purchase of residential property in Queensland, that the buyer wishes to waive the cooling-off period.

The buyer under the contract is not yet bound by the contract.

I am independent of the seller, the seller's agent and anyone else involved in the sale, promotion of the sale or provision of a service in connection with the sale of the property.

I have no business, family or other relationship with the seller or seller's agent.

I have not received, am not receiving and do not expect to receive any benefit in connection with the sale of the property from anyone else involved in the sale, promotion of the sale or provision of a service in connection with the sale of the property.

I have explained to the buyer the effect of the contract, the purpose and nature of this lawyer's certificate and the legal effect of the buyer giving this certificate to the seller or seller's agent.

Lawyer to sign.....

Name

Signature.....

Date / /
D D / M M / Y Y Y Y

Part 3—Shortening cooling-off period

This certification must be given to the seller or the seller's agent before the cooling-off period ends. The effect of this certificate is to shorten the cooling-off period to 5 pm or another stated time on the date stated on this certificate.

I have been instructed by my client the buyer under a contract for the purchase of residential property in Queensland, that the buyer wishes to waive the cooling-off period.

The cooling-off period commenced on / / (date) and was to have ended at 5 pm

on / / (date).

The cooling-off period will **now** end at pm on / / (date).

I am independent of the seller, seller's agent and anyone else involved in the sale, promotion of the sale or provision of a service in connection with the sale of the property.

I have no business, family or other relationship with the seller, seller's agent and anyone else involved in the sale, promotion of the sale or provision of a service in connection with the sale of the property.

I have explained to the buyer the effect of the contract, the purpose and nature of this lawyer's certificate and the legal effect of the buyer giving this certificate to the seller or seller's agent.

Lawyer to sign.....

Name

Signature.....

Date / /
D D / M M / Y Y Y Y

If you need more information about this form, you can visit the Office of Fair Trading website at www.fairtrading.qld.gov.au or contact your local Office of Fair Trading on 13 13 04.

Independence of lawyer, waiving and shortening cooling-off period

Independence of lawyer

The intention of the Act is for lawyers to disclose relationships and benefits they receive from the sale which may affect their ability to be objective when rendering advice to a buyer.

Examples of **relationships** that should be disclosed include:

- trustee/beneficiary;
- fiduciary;
- solicitor and client (where currently active for both parties);
- donee of power of attorney;
- carer relationship;
- guardianship; and
- emotionally dependent relationships (e.g. de facto).

Relationships that do not need to be disclosed include:

- casual acquaintance; and
- membership of the same club or association

You should declare all direct or indirect **benefits** to you or your firm or to a person on your behalf or on behalf of your firm that will come from or will be charged against the proceeds of the sale, other than your professional costs and ordinary disbursements payable by the Buyer relating to the purchase of the property. If you do not know the exact amount of the benefit or if the benefit cannot be expressed in money terms, please estimate the value of the benefit in money terms or in relevant percentage terms (and note that it is an estimate), or describe the nature of the benefit.

Steps to take before contract is binding

The following steps must be completed before the seller and the buyer will be bound by the contract.

- The buyer signs the contract.
- The seller also signs the contract.
- The buyer or the buyer's agent receives a copy of the contract signed by the buyer and the seller.

The five day cooling-off period commences.

(Note: If the buyer is bound by the contract on a day other than a business day, the cooling-off period commences on the first business day after the day the buyer is bound by the contract, and ending at 5 pm on the fifth business day.)