

# Pre-Settlement Inspections

Article by Townsville Lawyer, Samuel Stewart

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## REIQ – Real Estate Institute of Queensland Contracts for Residential Property

The standard terms of a residential REIQ Contract allow a buyer to enter the property once before settlement, to inspect it.

This pre-settlement inspection is an opportunity for the buyer to inspect the property to check it is in the same condition it was in at the time the contract was signed and to ensure inclusions are still there.

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### REIQ Contract Terms

The standard REIQ Contract provides that the property is *at the buyer's risk* from 5:00 pm on the first business day after the contract date (the date the contract is signed).

The contract also includes a provision for the seller to use the property reasonably until settlement and not to do anything that will result in later expense to the buyer.

This means that up until settlement, sellers are liable for any damage (excluding fair wear and tear) to the property. The benefit of a pre-settlement inspection is that buyers can inspect the property to ensure that sellers have not deliberately damaged the property where the damage could result in an expense to buyers.

The terms of the standard REIQ Contract only provides for buyers to conduct one pre-settlement inspection of the property.

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### When to do the Pre-Settlement Inspection

It is important that buyers consider the best time to arrange their pre-settlement inspection.

We recommend that buyers conduct their pre-settlement inspection *as close as they can to the settlement date* and no later than the morning of the settlement date.

This allows less time for new defects to arise between the time of inspection and the settlement and to make sure the seller has vacated the property.

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### What to Look for at a Pre-Settlement Inspection

#### Damage to the Property

- Damage to the property can arise when sellers are removing their furniture and occasionally, an unforeseen event may occur while the sellers no longer occupy the property.
- Buyers should look for obvious signs of damage like a burst water pipe and also look for new dents in walls and new scuff marks or scratches on the floor.
- Buyers should check that all electrical appliances like air conditioners, ovens and stovetops are working – and that all lights are working.

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- If damage is found at the pre-settlement inspection, buyers may find it helpful to take pictures of it to forward to the seller's solicitors.

## Repairs Agreed between the Parties

- If the buyers and sellers had agreed that the seller would undertake repairs on the property during the course of the contract, buyers should check the repairs have been made as requested.

## Excluded Fixtures and Included Chattels

- A contract may provide for items in the property that are to be included in the purchase. It may also provide for items that are fixed to the property that are to be removed.
- Buyers should ensure that any items agreed to be included in the purchase of the property are still inside the property and are in functioning order. Included chattels are considered to be part of the purchase price under the contract so it is important they are actually working.
- Buyers should check that items that were to be excluded from the purchase of the property have been removed.

## Waste/Rubbish

- It is possible that buyers notice garbage inside or outside the property. Buyers can request the seller to remove the waste from the property, ideally, before settlement. Alternatively, the buyer and seller can come to an agreement that rubbish is to be removed shortly after settlement (though enforcement can be problematic once settlement has occurred).

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## What if you find Defects at the Pre-Settlement Inspection?

Sometimes, a defect with the property may be noticed at a pre-settlement inspection. This may be something a buyer didn't notice or was not there when they signed the contract to purchase.

As soon as a buyer becomes aware of any defects, they should advise our conveyancing team so we can contact the seller or their solicitor about this.

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## What can a Buyer do?

### A Buyer may require the seller to:

- Return items that were to be included in the contract;
- Reduce the purchase price to compensate for the items included in the contract, that have been removed from the property;
- Rectify any damage to the property before settlement;
- Organise the removal of waste on the property before settlement;

### The Seller could:

- Pay the buyer by way of a settlement adjustment in the buyer's favour, an amount that covers rectification of the damages/removal of waste after settlement; or
- The sellers can withhold some of the settlement monies to account for the rectification of damages / removal of waste until the seller has attended to those matters.

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## Try to Reach an Agreement

Ideally, the buyer and seller should aim to reach an agreement before settlement about these issues.

Buyers should advise of defects before the settlement is due to occur. This will allow the buyer's solicitor time to negotiate with the seller's solicitor to rectify the issues.

If these types of issues are only identified after settlement, there is very little you can do about them.

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## Conveyancing at O'SheaDyer Solicitors

At O'SheaDyer Solicitors, our conveyancing team is dedicated to making sure our clients purchase the property that they set out to buy, in the state that they agreed to purchase it.

If any of the issues mentioned in this article arise during your purchase, please contact our conveyancing team immediately. We offer personalised service and are here to help you.

**This is general advice only. If this article is relevant to your situation, you should obtain specific advice about it quickly.**

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Our conveyancing fees are low and 'fixed'. When you chose OSheaDyer for your conveyancing, you are assisted by our Conveyancing lawyers and experienced Conveyancers.

Call O'SheaDyer Solicitors on 47 725 155.

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Conveyancing team who offer personalised service  
so that your conveyance is as stress-free as  
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