

Public Release – Position Paper 15.2020– April 2020

The Industry Association of Building and Property Inspectors in WA Inc – Inspect WA is pleased to announce the release of its Position Paper on Structural Defect Notices

Background

There were a number of key issues that contributed to the release of this Position Paper and the Development of the Associated Notices:

1. The Real Estate Institute of WA “Australian Standard” Pre Purchase Inspection for Major Structural Defects Annexure is an extraordinarily complex Annexure which in the opinion of the Association is not always understood by the majority of stakeholders associated with the use of the annexure, including many Agents, Buyers and Sellers. This Position Paper only attempts to deal with a small number of the complexities of this Annexure.
2. This Position Paper only relates to The Real Estate Institute of WA Australian Standard Pre Purchase Inspection for Major Structural Defects Annexure Form 167 10/19.
3. The key trigger to invoking the Annexure is a Pre Purchase Building Inspection Report which identifies a Major Structural Defect, many of which will be produced by WA Inspect Members.
4. The challenge when a Major Structural Defect is identified is that it requires a very specific sequence of events to be undertaken within clearly defined time limits, and the use of Notices which are not made readily available to Buyers and Sellers. In many instances, Buyers and Sellers receive minimal or no guidance on the critical stages of invoking the Annexure and the key timeframes required.
5. This position paper is designed to provide assistance to the clients of Inspect WA Members by providing:
 - The Buyer with a template Structural Defect Notice
 - The Buyer with a Key Date Ready Reckoner
 - The Seller with a Notice of Election to Remedy
 - The Seller with a Notice of Practical Completion
 - The Buyer with a Notice of Contract Termination

The objective is to enable those clients to work through the complex process and calculate the critical dates which the parties to the contract must adhere and issues appropriate Notices.

6. These Notices are based specifically on the “The Real Estate Institute of WA Australian Standard Pre Purchase Inspection for Major Structural Defects Annexure Form 167 10/19”. While this is the dominant Annexure in use within WA, it is not the only Annexure. Many Real Estate Agencies and individual Real Estate Agents have developed their own derivatives of this Annexure which often create further complexity and in some cases uncertainty. Where a nonstandard REIWA Annexure has been utilised Inspect WA strongly recommend parties to the contract seek independent Legal Advice.

The Associations position is:

1. The Real Estate Institute of WA “Australian Standard” Pre Purchase Inspection for Major Structural Defects Annexure is an extraordinarily complex Annexure.
2. The challenge when a Major Structural Defect is identified in a Pre Purchase Building Inspection Report is that it requires a very specific sequence of events to be undertaken within clearly defined time limits, and the use of Notices which are not made readily available to Buyers and Sellers. In many instances, Buyers and Sellers receive minimal or no guidance on the critical stages of invoking the Annexure and the key timeframes required.
3. The Position of Inspect WA is to provide some guidance to its Members and their Clients when invoking the Real Estate Institute of WA Australian Standard Pre Purchase Inspection for Major Structural Defects Annexure.
4. This Position Paper provides the clients of Inspect WA Members with template Notices and a Key Date Structural Defect Work Sheet to enable those clients to work through the complex process and calculate the critical dates which the parties to the contract must adhere.
5. As indicated the Real Estate Institute of WA “Australian Standard” Pre Purchase Inspection for Major Structural Defects Annexure is an extraordinarily complex Annexure. Inspect WA recommends Buyers and Sellers obtain independent legal advice as required.
6. Inspect WA does not accept any Liability for the Use of these Notices or worksheets

Committee
Inspect WA
April 2020

Major Structural Defects Notice*

(For Use in conjunction with the REIWA Pre Purchase Building Inspection Annexure - Form 167 10/19. Terms defined in that Annexure have the same meaning in this Notice)

Insert Sellers Name	
Insert Sellers Agent or Sellers Representative Name	
Insert Email Address Or Address where Notice will be Served. Email is only acceptable when Seller consents to Notices being Sent via email Within Offer to Purchase Contract.	
Date When Building Report Served on Seller Insert Date	
Date This Notice Will be Served Insert the date this Notice will be served	
This Structural Defect Notice is served as per clause 4 of the REIWA Pre Purchase Building Inspection Annexure incorporated into the Contract of Sale for the Property located at:	
Insert property address above	
The Buyer hereby gives the Seller five (5) Business Days to agree to remedy the Major Structural Defects set out in the Building Report as follows:	
Details of Major Structural Defects	As set out at clauses / pages _____ of the Report (alternatively, insert description)
Signature of Buyer	Signature of Buyer
Name of Buyer	Name of Buyer

Structural Defect Work Sheet

(For Use in conjunction with the REIWA Pre Purchase Building Inspection Annexure - Form 167 10/19)

This form is designed to provide Buyers and Sellers with guidance on the key dates that must be followed with Structural Defects Notices – as per the REIWA Annexure. It does not form a part of the Structural Defect Notice

Description	Key Date	Important Notes
Date when a copy of the Building Report which identified a Major Structural Defect was Served on the Seller, Sellers Representative of Sellers Agent ("Seller")	Insert date above when report was served on Seller by the Buyer.	Important note. Ensure the actual date when the report was served on the Seller by the Buyer is consistent with the obligations contained with the Annexure.
Date when Major Structural Defect Notice is served. Annexure requires Defects Notice to be served <u>within</u> 3 business days of the Report being served on the Seller – i.e. within 3 business days from date detailed in item 1.	Insert Actual Date - Usually 3 business days post the date detailed in item 1 above	Important Note. Important that the date when this Notice is actually served on the Seller is recorded as it is key to potential subsequent actions.
Date when Seller must elect in writing to the Buyer if they agree to remedy the major structural defects, as defined in the Major Structural Defects Notice, by utilising a WA Registered Builder to remedy those defects. Annexure requires this election to be provided to the Buyer by the Seller within 5 business days of this Notice being served. I.e within 5 business days of the date detailed in item 2.	Insert the date by when the Seller must elect in Writing to remedy the major structural defects. Add 5 business days to date in 2. Above.	Important Note. Critical that the Seller and Buyer is aware of the exact date by when the Seller must issue written election to remediate Structural Defects.
Where the Seller <u>does not</u> elect in writing to remedy the major structural defects as defined, Date by which the Buyer must Lodge a Notice of Termination if they choose not to proceed with the Contract. Annexure requires the Termination Notice to be served within 5 business days of the Date when the Seller should have elected in writing to remediate the Structural Defects. I.e. Within 5 business days of the date specified in item 3 above.	Insert the date when the Buyer must give notice in writing Terminating Contract Add 5 business days to date in 3. Above	Important Note. Critical that the Buyer lodges a Notice of Termination by this date if the Seller does not Elect in writing to remediate the Structural Defects. Unless the Termination Notice is lodged by this date the Buyers rights under the Annexure will cease to apply. The Buyer's rights under the Annexure will effectively be lost.

By inserting the key dates above, Buyers and Sellers will have clarity by which days they must Act. This Worksheet does not form part of the Structural Defect Notice.

Notice of Election to Remedy*

(For Use in conjunction with the REIWA Pre Purchase Building Inspection Annexure - Form 167 10/19. Terms defined in that Annexure have the same meaning in this Notice)

Buyers Name	
Buyers Representative Name	
Insert Email Address Or Address where Notice will be Served. <small>Email is only acceptable when Buyer consents to Notices being Sent via email Within Offer to Purchase Contract</small>	
This election in writing is served as per clause 5 of the REIWA Pre Purchase Building Inspection Annexure incorporated into the Contract of Sale for the Property located at:	
Insert property address above	
The Seller confirms that it will remedy the Major Structural Defects identified in the Major Structural Defects Notice issued by the Buyer dated _____ This Notice is only effective when it contains the signatures of the Sellers below.	
Signature of Seller	Signature of Seller
Name of Seller	Name of Seller

Notice of Practical Completion*

(For Use in conjunction with the REIWA Pre Purchase Building Inspection Annexure - Form 167 10/19. Terms defined in that Annexure have the same meaning in this Notice)

Buyers Name	
Buyers Representative Name	
Insert Email Address Or Address where Notice will be Sent	
This Notice in writing is provided as per clause 6 of the REIWA Pre Purchase Building Inspection Annexure incorporated into the Contract of Sale for the Property located at:	
Insert property address above	
Details of Major Structural Defects	As set out at clauses / pages _____ of the Report (alternatively, insert description)
The Seller's Builder confirms that:	
<ol style="list-style-type: none"> 1. The Structural Defects identified above have been appropriately remediated 2. All work has been undertaken in accordance with the NCC Building Code of Australia, applicable Australian Standards and in a professional manner 	
Builders Name	
WA Builders Registration Number	
Date of Completion:	
Signature of Registered Builder:	
Builders Contact Number:	

Notice of Contract Termination*

(For Use in conjunction with the REIWA Pre Purchase Building Inspection Annexure - Form 167 10/19. Terms defined in that Annexure have the same meaning in this Notice)

Sellers Name	
Sellers Agent or Sellers Representative Name	
Insert Email Address Or Address where Notice will be Served. <small>Email is only acceptable when Seller consents to Notices being Sent via email Within Offer to Purchase Contract</small>	
This Structural Defect Notice is served as per clause 8(a) of the REIWA Pre Purchase Building Inspection Annexure incorporated into the Contract of Sale for the Property located at:	
Insert property address above	
As the Seller has not issued an Election in writing stating that the Structural Defects detailed in the Building Inspection Report and subject to the Structural Defects Notice will be remedied, Notice is now given to Terminate the Contract	
All Deposit and other monies must now be returned to the Buyer.	
This Notice is only effective when it contains the signatures of the Buyers below.	
Signature of Buyer	Signature of Buyer
Name of Buyer	Name of Buyer

***Important Notes**

1. Inspect WA accepts no liability for the use of these template Notices. Inspect WA advises Sellers and or Buyers to seek independent Legal Advice in relation to the operation of the REIWA Annexure and associated required Notices and or Elections.
2. Sellers and or Buyers relying on these Notices must ensure they familiarise themselves with:
 - a. The Contract of Sale
 - b. The Pre Purchase Building Inspection Annexure
 - c. The REIWA General Terms and Conditions of Sale
3. Sellers and or Buyers relying on these Notices must specifically ensure they familiarise themselves with the requirements associated with the issuing of Notices contained in Section 21 of the REIWA General Terms and Conditions of Sale which in part indicate that Notices issued
 - a. In person
 - i. Assumed served on the day
 - b. By Email:
 - i. Sent prior to 5.00 pm assumed served on the day
 - ii. Sent after to 5.00 pm assumed served on the following day
 - c. By Post
 - i. A Notice which is posted is treated as served on the third business day after the date on when the Notice is posted
4. By their use of the forms hereunder, the party utilising the same represents and warrants to Inspect WA that they have complied with clause 2 above, and that they hereby indemnify and hold harmless Inspect WA, and will keep them indemnified from any and all claims, loss or damage arising out of the use of the forms hereunder.