

Public Release



Public Release – Position Paper 2023.2 – August 2023

The Industry Association of Building and Property Inspectors in WA Inc – Inspect WA is pleased to announce the release of its Position Paper on: Residential Property Access for Pre-Purchase Building Inspections.

1 Background

There were several key issues that contributed to the release of this Position Paper:

- 1.1 Inspect WA members undertake thousands of pre purchase building inspections for WA residential property buyers every year.
- 1.2 Inspect WA members and their clients are often adversely impacted by the unrealistic delivery date for Pre-Purchase Building Inspections reports when Agents refuse to facilitate access to the target property until finance has been approved in writing, when Finance is condition of the Offer to Purchase Contract.
- 1.3 The default delivery period for Buyers Under Item 2. of the REIWA Australian Standard Pre-Purchase Inspector for Major Structural Defects Annexure to serve on the Seller a copy of the Building Inspection Report within 5 days of the Contract Date for the Latest Time for Finance Approval.
- 1.4 The challenge with the above is that several Sellers and or their Agents will not facilitate access to the target property until such time as written notification of finance approval has been received.

- 1.5 The challenges with the above are obvious. Once the Contract has been signed or Written Confirmation of finance approval issued the Buyer needs to coordinate access to the property between the Seller, Sellers Agent, Building Inspector and potentially a tenant or property manager, for a specific date and time. Post inspection the building inspector's reports needs to be produced, distributed to the Buyer, considered by the Buyer and the served on the Seller, or when authorised the Sellers Agent. Facilitating all the above can be challenging within 5 business and potentially represents are area of significant risk to the Buyer if the necessary arrangements for the inspection and report distribution cannot be facilitated within the required time frame.
- 1.6 The question has been raised, why does the Buyer have to wait until Finance approval to undertake the Pre purchase (and potentially the Pest Building) inspections?

2 Arguments for deferring the Pre-purchase building inspection

- 2.1 There have been several arguments put forward to support deferring the building inspection to post formal finance approval.
- 2.1.1 Undertaking building, pest and other inspections pre finance approval may be an unnecessary expense to the Buyer if finance is not approved. While this may be a valid issue in the minority of situations, Inspect WA suggest that the risks would be minimal given that:
1. Agents and Sellers are unlikely to accept Offers to purchase where the likelihood of securing finance is questionable.
 2. Buyers are unlikely to invest in building inspections where the prospects of finance approval are unlikely. However, we would contend that this is a decision of the Buyer and not a position imposed on the Buyer by the Seller of the Sellers Agent.
 3. Many Buyers have Pre-Approval for loan amounts stated in Contracts prior to entering Purchase Contracts.
- 2.1.2 Agents do not want to adversely impact the occupant of the property for the building inspections unless finance has been approved. Given the occupants have likely been impacted by home opens, inspections and valuations we think this argument carries limited weight.
- 2.1.3 Some Agents mistakenly believe that once Finance has been approved it cannot be "Unapproved" by the Lender prior to Settlement.

- 2.2 In Contrast to the Above Inspect WA believes Buyers should be afforded the opportunity to have their Building and Pest Inspections conducted on the property at the earliest possible opportunity, as envisaged by the Contract.

3 Can the Seller or their Agents deny access to a Pre-Purchase Building Inspection

1. Inspect WA is aware of several Sellers and or their Agents who refuse to provide reasonable access to properties to Buyers Building Inspectors until such time as the Seller or the Sellers Agents have been provided with written confirmation of Finance Approval. The Contract is often sighted as the ability to refuse access to the property.
2. Inspect WA was unable to find any specific clause in the REIWA Contract, REIWA Pre Purchase Building Inspection Annexure or Joint Form of General Conditions for the Sale of Land which enable the Seller or Sellers Agents to deny reasonable access to a property to enable the Pre-Purchase Building Inspection to be undertaken.
3. Given the above, Inspect WA sought independent Legal Advice on the ability for the Seller or Sellers Agent to deny access to a property to allow a Pre purchase Building inspection to be undertaken once a Contract of Sale had been established. This advice has confirmed that the general provision of the REIWA Contract documents do not provide any specific ability for the Seller or Sellers Agents to deny access to the Buyer (or their Inspector) upon a reasonable request.

4 Further Implications

- 4.1 The Legal advice further suggest that if a reasonable request to access the property is denied the Seller may be in breach of Contract such that the Sellers ability to rely on Cluse 3. of the REIWA Pre Purchase Building Inspection Annexure (I.e., the delivery date and time for the Pre-Purchase) Building Inspection report may be brought into question with flow on impacts.
- 4.2 Pre-Purchase Building Inspection reports will on occasion will identify Major Structural Defects which will enable the Buyer to invoke the REIWA Annexure. The REIWA Annexure then requires multiple steps to be undertaken including potentially the remediation of the identified Major Structural Defect. Given the remediation the Major Structural Defect has the potential to defer Settlement and hence impact multiple other Contracts it would appear sensible to have the Pre-Purchase Building inspection conduct as possible once the contract has been accepted by all parties.

- 4.3 Deferring Settlement has the potential to adversely impact both the Buyer and Seller where multiple settlements are planned for the same day.

5 Recommended Action

- 5.1 It is recommended that Buyers and their Building Inspectors undertake Pre purchase Building inspections as soon as Contract to purchase a property can be confirmed by all parties.
- 5.2 Where a Seller or Sellers Agents denies reasonable access to a property to enable a Buyers Building inspector to conduct a Pre-Purchase Building Inspection as no formal notification of Finance Approval has been provided it is recommended that:
1. The Buyer or Buyers Building Inspectors confirm with the Seller or Sellers Agent in writing that reasonable access has been denied by them for the purpose of conducting a Pre-Purchase Building Inspection pursuant to the Contract between the Seller and the Buyer as a direct result of Finance having not yet been approved.
 2. That the Seller or Sellers Agent advise in writing under what specific contractual term reasonable access is being denied.
 3. The Buyers seek independent legal advice.

Disclaimer

This document was considered accurate at the time of release. REIWA Contracts and Annexes are subject to constant change as is the general commercial environment. Inspect WA recommends readers to this document obtain independent Legal Advice for taking any Action.

Committee
Inspect WA
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