



Just Conveyancing
Property Conveyancers

BUYERS GUIDE

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BUYING PROPERTY

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1) Ready to buy – what do I do first?

The first thing you should do is consult your conveyancer.

If you have not already got a conveyancer in mind then you can find a member of the Australian Institute of Conveyancers on the web site.

Why use a member of the Australian Institute of Conveyancers?

Because all members are licensed by the Office of Fair Trading and all licensed conveyancers who are members carry Professional Indemnity Insurance to protect you against any errors or omissions. All members are professionals and deal only in property law.

Why consult a conveyancer first?

Because your conveyancer can guide you through the mine field involved in buying real estate. You will need to know what you can and cannot do when dealing with an Estate Agent and you should be aware of your cooling off rights before you enter into a contract to purchase property. You should also be aware of all the costs involved before you commit yourself to anything so that you have worked out a budget and know exactly what you can afford before you start to negotiate a price with your agent.

You will be able to clarify any matters that you are not completely aware of and your conveyancer can help you with any and all matters relating to the purchase of property.

2) Contract for Sale of Land

The Law provides that the Real Estate Agent must have available at all times a complete contract for the sale of any residential property. A copy of the contract is to be made available for any prospective purchaser to look at and to get legal advice on.

The contract will contain all the details of the property and will have attached to it a zoning certificate showing whether the property is zoned, by council, as residential or for some other zoning purpose. Also attached will be a full title search showing any easements or restrictions that effect the use of the property and any mortgages or other matters effecting the title of the property. A sewer diagram must also be attached so that you can see if, and or where, the sewer main crosses the property.

Not all things that effect the sale will be written into the contract. There are several matters enshrined in legislation that effect the contract for sale of land that are not spelt out in the written contract and it is best that you have your conveyancer explain the effect of the contract before you sign and commit yourself to it.

The contract date will determine the date of settlement or completion. The contract will normally have a specified time for settlement to take place after the date of the contract, this time period is normally 42 days (or 6 weeks). The time for settlement can be negotiated and depending on other matters, for example the settlement date in any contract to sell property that must settle simultaneously with the purchase, this date should be discussed with your conveyancer before it is signed.

The contract also contains a description of all inclusions that are to be sold with the property. These things should be confirmed with or negotiated through your conveyancer before the contract is signed.

3) Building and Pest Inspections

Before you commit yourself to the purchase of a property you need to decide whether you want to get any inspections done on the property. The contract does not cover the quality of the buildings on the property, it goes mainly to title matters.

If you are buying a house then you will want to know that the building is structurally sound and that it is not infected by white ants or any other structural pests.

You should expect that any building that is not brand new will have some defects but most will be minor maintenance or cosmetic work that is probably visible on your own inspection. A building inspection will show these matters but what is most important is that an experienced inspector will advise on any structural problems that may not be obvious to the untrained eye. It will also report on any obvious drainage problems.

A Pest inspection will report on any structural pests that may be present or advise on any pest activity affecting the property. This report is for the activity of structural pests it will not normally advise on the presence of cockroaches, mice etc.

It is recommended that you obtain both a Pest and Building Inspection, they will give you peace of mind and compared to the price of your purchase the cost of these reports is minimal.

You should choose inspectors that carry Professional Indemnity Insurance so that if they miss something that is detrimental you have some chance of being compensated for this error or oversight. Try and use someone who has been recommended to you so that you know of their work and competence.

4) Strata Inspections

When buying a unit, townhouse or villa you are buying into a strata scheme. Whether you obtain a pest and building inspection is your choice, it is nice to know that the lot you are buying is clear of any structural or pest problems but these reports will not normally advise on the other lots in the scheme so that you do not know of any problems with any other lot in the scheme.

You should obtain an inspection of the books and records of the owners corporation, commonly called a strata inspection. There are firms who specialise in these

inspections and are experts in their field. They do not inspect the building only the written records kept by the owners corporation. Usually a managing agent is appointed by the owners corporation to keep these records so that the inspection is done at the office of the managing agent.

The inspection will tell you of things such as:

- What insurances are in place
- What the quarterly levies are
- What the financial position of the scheme is
- If there are any ongoing maintenance problems
- If there are any special levies struck for the cost of any works to be done
- And any other matters that may be reported in the records or minutes of meetings.

If a lot owner has any structural or maintenance problems with their lot they are usually reported to the managing agent and they should record those reports, however this cannot be relied on.

5) Finance

Before you apply for a loan you should do a budget to assist you to know how much you can afford to pay each week on loan repayments.

There are many places you can apply for a loan, the banks, credit unions, mortgage lenders or a finance broker. It is wise to shop around and do your homework before you apply so that you have an idea of what is being explained to you. There are so many different types of loans it is difficult to be in a position to understand all the complexities of the different types of loans.

If you have decided on which type of loan you require you can apply direct to the finance provider you have chosen. If you are unsure then it may be a good idea to consult a finance broker. Finance brokers have access to many banks, credit unions and mortgage lenders and can find the loan that best suites your needs. Normally there is no extra cost for using a broker because the finance provider pays the brokers fee for referring the loan to them.

You do not pay a fee to a finance broker if a loan is not, or cannot be, arranged for you. Be aware that different institutions pay different commissions to brokers so that it is always a possibility that the loan you are referred to may not be the best for you but in fact be the best commission paid to the broker. For this reason you should have done some homework to have an idea of what rates etc are available at the time you apply.

With finance institutions offering generous loans such as 100% loans you should be aware that these types of loans and any loan that is more than 80% of the valuation of the property there will be mortgage insurance to be paid. This insurance insures the lender not you. The premium depends on the loan to valuation ration and increases, as the loan gets closer to the valuation. It is an extra expense that you may not have allowed for and can be several thousand dollars depending on the amount of the loans

6. Exchanging Contracts

Contracts are signed by all parties involved in the transaction and when the seller and buyer have both agreed on a price and the conditions of the sale the contracts are exchanged and dated and the deposit paid by the buyer.

Contracts are drawn up in duplicate and one copy is signed by the seller and one copy is signed by the buyer. The exchange of contracts is the exchanging of copies so that each party ends up holding the copy signed by the other party.

The contract can be exchanged in one of two ways:

1. **By the estate agent.** In this case the contracts are signed and exchanged shortly after the sale price has been agreed to. The agent will send the appropriate copy of the contract to the parties conveyancer and the buyer will have a 5 working day cooling off period in which to get any reports, finance approval and have the contract explained by their conveyancer. The seller does not have the benefit of the cooling off period.
2. **By the Conveyancer.** In this case it would be normal for the buyer to have all reports done, financial approval and the contract explained by their conveyancer before the contracts are exchanged. It is usual practice for the buyer to waive their cooling off rights so that the contract is binding on both parties as and from the date of the exchange taking place.

Until such time as the contracts are exchanged either party can withdraw from the transaction, it is only once contracts are exchanged that the parties are bound to proceed, and in the case of the buyer having a cooling off period the buyer is not bound until the cooling off period expires

7) Cooling off Period

Every contract for the sale of residential property (less than 2.5 hectares) has a cooling off period of five working days the cooling off period ends at 5.00pm on the fifth working day). This means that after entering into the contract the purchaser has five working days in which to "cool off". The seller is locked into the contract and cannot withdraw from the sale. If the purchaser finds that for any reason he or she does not want to proceed with the purchase they can rescind the contract within the five day period. If they do rescind the contract they forfeit to the vendor 0.25% of the sale price. The contract is then at an end and neither party has any further claim against the other.

The purchaser can waive the cooling off period by having the contract explained by a conveyancer or solicitor and a certificate signed by that conveyancer or solicitor and the certificate handed to the seller's conveyancer. The certificate is drawn under Section 66W of the Conveyancing Act and is commonly called a "Section 66W certificate"

The cooling off period can be shortened by the use of the S66W certificate whereby it will be stated that the purchaser has agreed to shorten the period to whatever number of days has been agreed.

There is no cooling off period if the property is sold at public auction or on the same day as the property was listed for auction sale.

8) Payment of Deposit

It is an essential term of a contract that the deposit be paid on or before the date of the contract (exchange of contract) or in strict accordance with any other payment terms detailed in the contract. The deposit paid can vary but it is usually 10% of the sale price. It is normally paid to the estate agent who holds it in trust pending completion as stakeholder.

If a holding deposit has been paid before the contracts are exchanged then it becomes part of the 10% deposit and it is the 10% less the holding deposit that is paid at exchange of contracts.

The agent holds the deposit in trust for both the seller and purchaser and cannot release it without consent from both parties. It is normal practice for that consent to be handed over at completion so that the agent can account to the seller. The agent will deduct his commission from the deposit.

If the purchaser does not pay the deposit on exchange or if the deposit cheque is not honoured by the bank the seller can rescind the contract at any time up until the purchaser makes good the deposit.

A Deposit Bond is a guarantee that while the deposit is not paid at the exchange of contracts it will be paid on completion and if the buyer is in default the underwriter guarantees payment. A deposit bond is usually used when the buyer is selling and all proceeds are coming from their sale or the buyer is borrowing 100% of the purchase price or for some other reason the buyer does not have a cash deposit. Your conveyancer may be able to issue the deposit bond for you.

9) Insurance

The risk of damage to the property is the seller's up until completion or until the purchaser takes possession of the property if that happens prior to completion.

The seller is liable to take care of the property up until completion and the property should be handed over at completion in the same condition, subject to fair wear and tear, as it was at the date of exchange.

If the property is substantially damaged before completion the purchaser has a right to rescind and have the deposit refunded provided they do so with 28 days of becoming aware of the damage. If the damage is not substantial then the purchaser may choose to proceed with the purchase subject to an adjustment of the sale price to account for the cost of repairing the damage done.

10) Stamp Duty and Torrens Levy Tax

Stamp Duty

Stamp duty is payable on the contract with purchases of property and since 1st July 2010, the government has introduced a Torrens Levy Tax payable on top of stamp duty.

The duty payable on the contract is calculated on the sale price, the higher the price the higher the duty. It is the purchaser's responsibility to pay the stamp duty and this must be done within three months or exchange, or at settlement, whichever comes first. Fines apply for late payment.

The scale of duty payable on the contract is found on the New South Wales Office of State Revenue website –

http://www.osr.nsw.gov.au/taxes/transfer_land/rates/

with the on-line website calculator –

<http://www.apps05.osr.nsw.gov.au/erevenue/calculators/landsalesimple.php>

Torrens Levy Tax

This is a new tax on top of stamp duty that the government has introduced on property transactions exchanged from 1st July 2010 for the following sale prices –

Up to \$500,000.00	Nil
Over \$500,000.00 - \$1,000,000.00	\$4 plus 0.2% for every dollar over \$500,000.00.
Over \$1,000,000.00	\$4 plus 0.25% for every dollar over \$1,000,000.00.

11) Council Rates, Water Rates & Strata Levies

Council Rates

The Contract provides that council rates be adjusted between the vendor and purchaser as at the settlement date.

Council rates are levied for the financial year. They will be adjusted so that the vendor pays the rates up until the day of settlement and the purchaser will be liable from then until the end of the rating period, in this case the 30 June. They are adjusted as if the rates are paid in full regardless of whether they are in fact paid or not. Any outstanding rates are paid from the sale proceeds (being the vendor's money).

Council rates may be paid by instalments but are an annual levy and hence it is normal practice to adjust the rates for the next full year not according to what instalment may be due next.

The rates are a charge on the land and any outstanding rates become the liability of the purchaser, so it is essential that they are paid up to date at settlement. One of the inquiry certificates the purchaser's conveyancer will obtain is from council and sets out the amount of the annual rates, what payments have been made and what is outstanding.

Water Rates

In some country areas the water rates are paid to council and may be incorporated within the council rates. In other areas where a separate water authority supplies the water and or sewer an adjustment of these rates must be made at settlement.

Water rates are usually quarterly rates and the adjustment made will only be for the current quarter. The same principals apply to water rates as they do for council rates.

A water usage charge may have to be paid by the vendor. To assess whether a charge is payable or not can be done in one of two ways.

1.) A meter reading can be organised, this will cost whoever organises it whatever the authority charges for a meter reading.

2.) An estimate can be done, by using the last quarter's water usage charge.

It is usual to use the estimate system to calculate the usage charge because quite often the cost of having the meter read is more than the charge itself. The seller will make an allowance to the purchaser for the usage charge so that when the actual bill for water usage is received the whole bill becomes the purchaser's responsibility.

Strata Levies - Unit, Townhouse, Villa.

If you are purchasing a lot in a strata scheme the quarterly strata levy will need to be adjusted. This levy is adjusted in the same manner as council rates except that they are adjusted on the quarterly not annual rate. The quarter for strata levies may begin at any time, they are not necessarily the quarters of the calendar year. Because the levies commenced on a date determined at the first annual general meeting held by the Owners Corporation the quarterly levies can commence at any date but for convenience it is usually but not necessarily from the beginning of a month.

There may also be special levies to take into consideration. A special levy is struck when and if there are not enough funds held by the owners corporation to cover either the normal running expenses or a special job has to be carried out and there are not enough funds held to cover the cost of that job.

Normally a special levy struck before the date of the contract has to be paid in full by the seller. Sometimes the special levy may be paid by instalments, if this is the case

all instalments must be paid by the seller. Hopefully any strata inspection would show if it is intended to raise a special levy that may be struck after the date of the

12) Pre-Settlement Inspection

As a purchaser you are entitled to, and should take advantage of, a pre-settlement or final inspection of the property before you make the final payment and take occupation of the property.

Once settlement takes place it is too late to be finding that some of the inclusions are missing or that something has been damaged. It is extremely difficult to be able to have repairs done or inclusions returned after the seller has left and settlement completed.

The ideal time to do the pre-settlement inspection is immediately before the settlement, however this is usually not very practical. It is usually done the day before the settlement. This way if there is a problem there is some time to sort out the problem before settlement. If there is some concern that something may go missing or damage be done between the inspection and settlement then you have no alternative than to re-inspect just before settlement takes place.

13) Pre-Settlement

Prior to the settlement date you should make a list of all those places you need to advise your change of address and see that this is done immediately settlement takes place. Do not do it before settlement just in case there is a delay in the settlement.

As settlement will normally take place at a venue not necessarily close to your conveyancers office, any final moneys that need to be paid by you will need to be drawn and given to your conveyancer the day before settlement. You should be advised by your conveyancer who to make this payment in favour of a couple of days before it is due. However, you should be aware that because of the procedures followed by some financial institutions the final cheque details may not be known until the day before settlement. You should be prepared to receive the details and be able to provide your conveyancer with the final cheques on short notice. While this is not very convenient it is in most cases unavoidable

14) Settlement

(The day of settlement is determined firstly by the date of exchange of contracts and is normally 42 days after that date. It is possible for settlement to take place on an earlier or a later date if both parties agree.

Contracts normally have a condition that if settlement is delayed through no fault of the vendor then the purchaser will pay interest to the vendor in compensation for the delay in settlement.

If when signing the contract, you consider the settlement date is not convenient to you it should be discussed with your conveyancer at that time. It is too late to realise

the settlement date is not convenient after the contract is exchanged, unless by chance the vendor agrees.

The settlement time, on the day of settlement, is determined by the availability of all parties to the transaction.

Your conveyancer or your conveyancer's agent will attend the settlement on your behalf. There is no need nor is it normal practice for you to attend the settlement. As there will normally be four parties attending a simple purchase settlement and more if one or more of the parties are simultaneously selling and buying the time of settlement is made according to when all parties are able to attend a certain venue at the same time. This means that while you may prefer a morning settlement it may not be possible.

The settlement venue is determined by the person or institution that holds the deeds to the property, normally a discharging mortgagee.

The parties normally attending a settlement will be the conveyancer for the buyer, the buyer's lender, the conveyancer for the seller and the seller's discharging lender.

It is at settlement that the deeds to the property are handed over for payment of the sale price.

The title deeds and any related documents will be held by your lender until such time as the loan is repaid.

It is your lender who attends to registration of your ownership of the property and the Land Titles Office and they should do this shortly after the settlement date.

15) Moving-in

It is normal practice that occupation of the property is not granted until after the settlement has been completed, unless some other arrangement is made. You should not assume that the seller will allow you to move in before settlement even if the property is vacant.

Because you may not have a firm time and date for settlement when you want to book the removalist it is difficult to organise the time for the removalist to arrive and load and then to arrive at your new property coinciding with the settlement time. Unfortunately this is a fact you just have to deal with and it may be best to arrange for the removalist to do an afternoon move in preference for paying the removalist to sit and wait for confirmation to unload.

16) Buying with an Existing Tenant

If a tenant occupies the property and they have a current lease than you take over the vendors role as landlord immediately settlement has been effected.

There is no need to enter into a new lease as the current lease remains in force and as the new landlord you are bound by the terms of that lease.

If you want to have the tenant vacate the property then you will need to serve on the tenant a notice of termination which must allow the required period of time depending on when it is issued.

- a. When the fixed term period is due to run out either party can give 14 days notice to end the tenancy and it can be served at any time up to the last day of the fixed term.
- b. When the fixed term has expired, if the tenant wants to give notice to terminate then at least 21 days notice must be given. The landlord on the other hand must give at least 60 days notice.
- c. If the property is sold and the fixed term has expired then the landlord must give at least 30 days notice of termination, after the date of the contract.

When the tenant remains in the property the rents need to be adjusted. If the rent is paid in advance then the seller will give you a credit in the settlement figures for that portion of the rent already paid to the seller that applies from the day after settlement.

If the rent is in arrears then no adjustment is made as the purchaser is not expected to take over a debt that is owed to the prior owner.

Quite often the adjustment of rent will be made by the managing agent as they often collect rents weekly but account monthly to the landlord so they could be holding rents in their trust account. Your conveyancer will determine what and how adjustments are made.

17) After Settlement

Immediately following settlement the estate agent will be advised so that he has authority to release any keys being held so that the buyer can have access to the premises. It is normal practice for the buyers conveyancer to give to the sellers conveyancer at settlement, a written direction to the agent authorising release of deposit and keys. This direction or "order on agent" is usually faxed to the agent so they have written authority to release the keys to the buyer. When confirmation of the settlement is given to you by your conveyancer you can then collect the keys from the agent and move in.

Your conveyancer will send to you, usually during the week after settlement final letters of confirmation of your purchase together with final statements and any other documents they hold.

You will not receive a Certificate of Title (Title Deed) if you have borrowed any money to assist with the purchase because all title documents are retained by your lender. It is the lender who will register the transfer into your name at the Land Titles Office.

When your lender attends the Land titles Office they will also lodge with the title documents a "Notice of Sale". It is this document that is used by the Land Titles Office to notify Council, Water authority and Valuer General of the change in ownership so that all future rate notices issue in your name. Sometimes there may

be a delay in your lender lodging these documents for registration and consequently there is a delay in advising the rating authorities of your details. If the settlement occurs just before Council or Water authority issue their rate notices they may issue in the wrong name. Be aware of this so that if you move into the property and receive correspondence from Council or Water authority in the previous owners name the enclosed assessment is probably for your payment and not the previous owner.

You should now notify all those places that you have determined need to know of your change of address.

18) Land Tax in Investment Properties and holiday Homes

If you are buying an investment property or a holiday home you may be liable for land tax. Land Tax is only payable where the value of the land is above the land tax threshold, which is determined on an annual basis. Where more than one taxable property is owned, the cumulative value of all land must be above the threshold.

Land tax generally does not apply to your principal place of residence or to primary production land.

If you think you may be liable for land tax you need to register with the Office of State Revenue (OSR). This can be done online at the OSR website www.osr.nsw.gov.au or call 1300 139 816 for more information.

All property owners who may be liable for land tax must register by 31 March each year

19) Buying off the Plan

Strata units are often advertised for sale before construction is completed. Buying a strata unit under these circumstances is known as "buying off the plan". See Office of Fair Trading's brochure on 'Buying off the Plan' at the following link.
<http://www.fairtrading.nsw.gov.au/corporate/publications/ftb21buyingofftheplan.html>

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