

Purchasing Property

Property transactions without the stress



**CLINCH LONG
WOODBRIDGE**
LAWYERS



Glossary

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| Contract | Means a Contract for the sale and purchase of land |
| Conveyancing | The process of transferring ownership or a legal interest in the property to another party |
| Purchaser | The buyer of the property |
| Vendor | The seller of the property |
| Exchange | The exchanging and dating of signed identical copies of the Contract, creating a legally binding agreement |
| Deposit | A proportion of the purchase price, normally 10%, payable on exchange |
| Cooling off | Legal right of the Purchaser to withdraw from the contract after exchange, normally 5 business days |
| Settlement | Completion of the contract, payment of the purchase price and release of the keys to the Purchaser |
| Mortgagee | The lender, your financial institution |
| Vacant possession | The property must be vacated prior to settlement |
| Subject to Existing Tenancies | The property is being sold and you are buying with the tenants to remain in the property after completion. |



Overview

Steps involved when purchasing a residential property

1. Pre-purchase Preparations: review the Contract, confirm finance approval and obtain inspection reports
2. Exchange of Contracts
3. Pre-settlement Preparations
4. Settlement

Costs involved in purchasing a property

1. Deposit on exchange
2. Stamp duty payable within three months of the Contract or prior, if finance is required
3. Balance of purchase price on settlement
4. Adjustment of rates and levies on settlement
5. Our costs and disbursements payable on completion or as otherwise agreed

Pre-purchase Preparations

Reviewing the Contract

When you have found a property that you are interested in purchasing, you can obtain the Contract for sale of land from the agent. We will review the Contract and provide you with a letter of advice, which can be read in conjunction with the Contract.

You can discuss with us any queries you may have regarding the purchase by telephone, by email or if you prefer, by booking an appointment. If some conditions in the Contract do not represent your needs, we will try to negotiate with the Vendor's solicitor/conveyancer to amend the Contract conditions.

Confirming your finance

You should ascertain the amount you would like to spend on the purchase allowing for not only the purchase price, but also stamp duty and other purchase costs. If you are obtaining finance to assist you with the purchase, you should discuss your budget with your financier and obtain a written loan pre-approval. We highly recommend that you obtain an unconditional loan approval prior to exchanging contracts unconditionally.

Obtaining inspection reports

Once exchange has taken place, if it is discovered that the property is affected by pest infestation, defects or any other problems there are no protections under the law nor the Contract. We highly recommend you to obtain pre-purchase inspection reports before exchange.

The common reports are detailed on the following page.

Building inspection

This will give you an overview of the condition of the property and indicate any repairs that need to be done i.e. plumbing, guttering etc. Please note that this is not a structural report and you would need to get an Engineer's Report should you be concerned about any structural defects.

Pest inspection

This will indicate whether there are any problems with termite activity, borers and recommend what to do in order to avoid issues in the future.

Strata report

If the property is strata titled, such as units, apartments, townhouses - a strata report will provide you with important information about the running of the strata, such as:

- ▶ Levies;
- ▶ Special Levies;
- ▶ Insurance;
- ▶ Administration & Sinking Fund Amounts;
- ▶ Money held in the bank by the strata fund;
- ▶ Building Disputes;
- ▶ Minutes of Meetings;
- ▶ And much more.

If there are any problems with the property, you may be able to negotiate with the Vendor about repairs and/or rectifications. Prior to exchange of contracts, additional special conditions can be included in the contract to cover repairs and/or rectifications prior to exchange.

Pre-purchase inspection reports can also be obtained during the cooling-off period. However, the contract may not be able to be amended after exchange.



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Exchange of Contracts

Signing the Contract

Once you and the Vendor have reached an agreement for the purchase, all parties involved in the transaction are required to sign the contract.

There are two identical copies of the contract, one for the Purchaser and one for the Vendor. The contracts are signed and dated by each party and then swapped, so each party will hold the copy signed by the other party. After this is completed, this is known as the contract date.

Before this exchange of contracts, either party can withdraw without penalty. After the contracts are exchanged, both you and the Vendor are bound by the terms and conditions contained in the contract, subject to any cooling off period.

Cooling off period

In NSW the cooling off period is 5 business days which starts from the date of exchange and ends at 5pm on the 5th business day. During the cooling off period, you have the right to change your mind and withdraw from the contract. If you do exercise your cooling off rights, 0.25% of the 10% deposit price that was paid at the time of exchange is retained by the vendor.

However, the cooling off period may be waived or shortened by putting in the contract a Section 66W Certificate. This is a certificate that can only be provided by your solicitor or conveyancer upon your instructions.

The Vendor will be bound by the contract at the date of exchange and you will be bound by the contract after the cooling off period ends.

If you purchase a property at auction, there is no cooling-off period and the contract binds both parties immediately from exchange of contracts.

Paying the deposit

The deposit, which is usually 10% of the purchase price is payable on exchange. It can be paid by cheque, deposit bond, or transferring the monies into the Agent's account. A deposit bond is a guarantee to the Vendor for the deposit. If you do not have sufficient funds available at the time of exchange, you may need to apply for a deposit bond.

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Pre-settlement Preparations

Preparing relevant documents

We will conduct a series of searches and enquiries with Government Departments. The searches and enquiries will show if the property is affected in any way, such as road widening, land tax, outstanding notices etc and will also indicate if there is any money owing on the property.

If you are obtaining finance to assist you with the purchase, we will assist you with preparation of loan documentation. We recommend that you sign and forward all documents related to your loan to your bank or broker as soon as possible, to avoid a delay in your settlement.

We will order the relevant cheques for settlement and book settlement with your bank and the Vendor's solicitor/conveyancer.

Paying stamp duty

Stamp duty is a State Government duty that must be paid on purchase of a property.

If you are obtaining a loan on the property, the stamp duty must be paid on or before settlement. We can also arrange for payment of stamp duty at settlement. You should let us know as soon as possible if you want us to arrange for a cheque to be drawn from the loan monies to pay stamp duty at settlement, as we will then need to make arrangements to settle at a venue where stamping can take place.

There is penalty interest if stamp duty is not paid within three months from exchange of contracts, if you do not have a bank involved. For some purchases (e.g. off the plan purchases) a longer period for the payment of duty is available.

You will need to provide us with a completed, signed and witnessed Purchaser Declaration for each Purchaser. We will provide you with copies of these after exchange.

You will also need to provide us with an original certified copy of ID (ie. driver's licence, passport) for each Purchaser if the Purchaser/s is/are an individual/s.

Also, you will need to provide us with a bank cheque for your stamp duty, unless the stamp duty is being drawn from the loan monies.

Arranging final inspection

As a Purchaser, you are entitled to a pre-settlement or final inspection of the property.

We highly recommend that you do a final inspection of the property just prior to settlement. This is for you to ensure that the property is in the same condition as when you first agreed to purchase the property, and that all inclusions marked on the contract remain at the property.

The Vendor is responsible for taking care of the property before settlement and ensuring that the property is in the same condition as at the date of exchange.

If the property is substantially damaged or vacant possession cannot be given, you have a right to rescind the contract and get back your deposit. If the damage is not substantial, you may proceed with the contract with an adjustment of the purchase price.





4 Settlement

On settlement you become the legal owner of the property. It is the finalisation of the purchase process.

You do not need to attend the settlement. We have experienced agents who receive the documentation from us and settle the purchase on your behalf. They then contact us to advise settlement has been effected.

The keys to the property are usually available with the agent, although occasionally the Vendor's solicitor/conveyancer will hold the keys. We will ensure that the keys are made available to you immediately following settlement.

Notifying relevant authorities

Once settlement has taken place, all documents required to transfer the property into your name are lodged for registration at the NSW Land Registry Services (LSR). This is generally lodged by your bank as they hold the Certificate of Title. The Local Council, the Water Authority, the Valuer General and Revenue NSW are all automatically notified of the purchase.

At settlement we hand over a Notice of Sale which is lodged at LSR with the title documents. This informs the Valuer General, Water Authority, and Local Council that there is a transfer of ownership and all future Valuer General's notices and rate notices should be addressed to you as the new owners. If you are purchasing strata title property, we will also hand over Section 22 Notices which will then be sent to the Strata Managers so you can be noted on the Strata Roll as the new owner. All strata levies should then be issued in your name. If for any reason you do not receive notices in your name please let us know immediately.

However, it is your responsibility to notify other providers, such as the phone, gas and electricity suppliers.

Frequently Asked Questions

Do I need a solicitor/conveyancer to look at the contract prior to bidding at auction?

Yes, bidding at an auction is legally binding and there is no cooling off period. If you are the highest bidder at an auction, your offer will form the binding term of a contract and will be unconditional. You should have your solicitor/conveyancer look at the contract, give you a detailed advice and enter into any necessary contract negotiations on your behalf beforehand.

What does the Contract for Sale of Land contain?

The Contract contains:

- ▶ A description of all inclusions that are to be sold with the property;
- ▶ A title search confirming ownership of the property;
- ▶ Any dealings affecting the land, ie. restrictions, easements, covenants;
- ▶ A Deposited Plan or Strata Plan, as applicable;
- ▶ If the property is in a strata – a copy of the relevant Strata By-Laws;
- ▶ A Section 10(7) Zoning Certificate provided by the local council;
- ▶ A sewer diagram, showing if, and or where the sewer main crosses the property;
- ▶ A service location print showing the location of the main sewer line;
- ▶ If the property has a swimming pool – a Certificate of Registration and a Certificate of Compliance or Non-Compliance;
- ▶ Any other document that affects the property

What are Special Conditions?

Special conditions are a set of additional clauses in a contract of sale that must be satisfied or waived before the person for whose benefit the condition was inserted can be forced to settle on the contract.

What is an easement?

An easement is a legal right to use a designated part of someone's land for a particular purpose. Types of easements include a right of way (to pass and repass to access adjoining land) and a right to use and maintain sewerage pipes.

What is NSW Land Registry Services (LRS)?

LRS is the office of the Registrar-General which holds the records of all non-government land. All transfers of land must be registered there. More information can be found on their website: www.lrs.nsw.gov.au.

What is the Transfer?

It is a document signed by the Vendor and the Purchaser that, when registered at the LRS, legally changes the ownership of the land. Our office prepares and attends to this document for you.

What is a Certificate of Title?

It is a certificate issued by the LRS which records details in relation to specific land including ownership, boundaries, limitations of title and mortgage. If there is a registered mortgage on the Title, the original of the Certificate of Title is held by the Mortgagee and will be issued to the registered proprietor once the mortgage has been discharged.

If there is to be no mortgage we will attend to the registration of the transfer and all other relevant documents and once registered, the original Certificate of Title will be returned to us. We can arrange to keep the Certificate of Title in safe custody on your behalf or make arrangements for it to be returned to you.

What is Title?

The title is the right to occupy and use specified land but subject to any limitations of Title set out on the Certificate of Title.

How do I pay my deposit at an auction?

It is best to discuss your options with the agent. There are several methods you may want to use:

- ▶ A personal cheque; or
- ▶ A bank cheque for 10% or 5% (depending on what has been agreed to) of the maximum amount you wish to bid. This will also help to ensure that you do not go too far over the amount you want to pay; or
- ▶ A deposit bond for 10% or 5% (depending on what has been agreed to) of the maximum amount you wish to bid. Please note that there will be fees involved in respect to obtaining a deposit bond; or
- ▶ An electronic transfer into the agent's trust account at the time of purchase.

What costs are involved in buying a property, other than the purchase price?

There are several costs involved in buying any real estate. It is vital that you know what they are before you commence the transaction in order to budget for them. Please make yourself aware of costs involved in a conveyancing transaction, including but not limited to:

- ▶ Stamp duty on the contract;
- ▶ Title search fees;
- ▶ Governmental enquiries;
- ▶ Agency fees for settlement;
- ▶ Fee for attending to loan and mortgage documents, when necessary;
- ▶ Solicitor/conveyancer's fees;
- ▶ Registration fees paid to the Land Title Office;
- ▶ Fees and charges of obtaining a loan;
- ▶ Mortgage insurance, where applicable;
- ▶ Adjustment of rates and taxes for the period you own the property;
- ▶ Insurance; and
- ▶ Removalists and other costs.

When should finance be arranged?

This must be organised before you commit yourself to the purchase contract. The contract is not normally conditional on finance approval and once you are committed to buy you must complete the contract regardless of whether you have finance to do so or not. If you are unable to complete the purchase you stand to lose the deposit stated in the Contract and also to be sued for any loss that the seller may incur.

Should I hold the property as a “Joint Tenant” or “Tenant in Common” with my partner?

Title to property is held in one of two ways:

- ▶ Joint tenants:

Where joint owners are considered a single entity and on the death of one of them the property automatically passes into the name(s) of the remaining joint tenant or tenants; or

- ▶ Tenants in common:

Where each owner can own a specific share in the property and on the death of an owner that share passes to whoever is nominated to inherit it in that persons will, as opposed to automatically passing to the other joint tenant.

When and how do I pay the balance of the purchase price?

We send settlement figures to the Vendor’s solicitor/conveyancer about a week prior to settlement adjusting all rates/levies and any other fees. Then the Vendor’s solicitor/conveyancer advises us how to draw the funds for settlement. These funds can be a number of cheques i.e. paying out their Mortgagee, paying any outstanding rates/levies, other interested parties.

There are generally about four cheques or directions for payment. We will email you all the figures and request a bank cheque for the balance plus our fees and stamp duty if it is payable on settlement. Usually this is finalised a few days prior to settlement as the Vendor is usually awaiting a payout figure from their discharging mortgagee.

When do I arrange insurance and when does risk pass to me?

Insurance risk does not pass to the Purchaser until settlement has taken place. However, the Purchaser’s building insurance should be arranged prior to the purchase being settled. The Purchaser’s lender will want a copy of the policy before they agree to settle so this will need to be arranged a couple of weeks prior to settlement. The policy can be arranged to commence on the settlement date.

Unless taking occupation prior to settlement, insurance needs to start from the date of settlement and you should make sure that your Mortgagee is noted on the policy. There are some circumstances where we recommend insurance be taken out upon exchange. In relation to strata we obtain a Certificate of Currency to make sure the insurance is current.

What matters or costs are adjusted to the remainder of my purchase price for settlement?

The settlement process almost always spans an accounting period, during which authorities

and organisations charge fees to the owners of the property – such as local government rates, state government levies or taxes (for example, land tax), and body corporate or strata fees for strata properties.

A summary of the fees/adjustments that may be adjusted to the remainder of your purchase price on settlement are as follows:

- ▶ Water rates;
- ▶ Council rates;
- ▶ Strata levies (if any);
- ▶ Land tax (if any);
- ▶ Default Interest (if any);
- ▶ Rent (if the property is tenanted);
- ▶ Discharge of existing mortgage; and
- ▶ Legal fees.

The Vendor is responsible for the costs related to the property until the date of settlement. At settlement you will pay the adjusted costs from the date of settlement to the last day of the billing cycle.

Council rates are adjusted from 1 July to 30 June.

Water rates are adjusted quarterly, e.g. 1 April to 30 June.

Strata levies are usually adjusted quarterly, which may not be the quarters of the calendar year.

Do settlement cheques have to be bank cheques for settlement?

Settlement cheques must be bank cheques and we cannot electronically transfer funds to the Vendor.

What happens if either party cannot settle on the due date?

If we are made aware that there may be a delay prior to settlement, we can request an extension of time. Whilst extensions of time are not uncommon, they are not granted “as of right” and are considered not to be part of the basic conveyance requirements.

Depending upon the situation, an extension of time may find you being liable for interest on the unpaid purchase price or at least the cost of your own and/or the other side’s additional legal fees incurred as a result of the extension.

Generally, most contracts have a special condition noting that if a party does not adhere to the settlement date, the party that is ready, willing and able to settle is entitled to serve on the defaulting party, what is known as a Notice to Complete. A Notice to Complete requires the defaulting party to settle within 14 days of the notice and making time of the essence of the Contract, otherwise the ready, willing and able party is entitled to terminate the contract and sue the defaulting party for breach of contract.

What happens if a party breaches the contract before settlement?

If a party finds themselves in breach of the contract, they will face a number of consequences (including but not by way of limitation) forfeiture of the deposit and being sued for damages or specific performance.

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