

First Time Property Buyers What do I need to know?

Article by Koreen Partridge and Georgia Flanigan



E: info@clslegal.com.au
T: 02 9279 0919 F: 02 9279 2768

Level 5, 30-32 Carrington Street, Sydney NSW 2000

Buying property for the first time is exciting, but can also be a daunting process. An experienced solicitor or licensed conveyancer can help the transaction seem less intimidating, as they will be able to explain the transaction to you and assist in ensuring your purchase goes through smoothly. We believe that buying property should be as simple and enjoyable as possible, and in this article we attempt to break down some of the mystery surrounding the buying process.

Contained on the final page of this article is a “translation” page that explains some of the frequently used words in this article and in the conveyancing process generally.

What do I need to know?

In New South Wales, a property cannot be advertised for sale without a contract for sale. A contract discloses relevant information about the property, including things such as the registered owner, a description of the land being sold and any items of furniture and equipment that are to be included or excluded in the sale. The real estate agent or solicitor for the vendor will provide you with a copy of the contract on request.

It is **always** our recommendation that you have a solicitor review the contract prior to exchange.

Why?

By having a solicitor review the contract prior to exchange, you will receive advice on whether there are any concerns about the disclosures in relation to the property and whether any of the clauses contained in the contract should be negotiated to protect your interests. It is imperative that you gain as much information about the property as possible prior to your purchase to allow you to make an informed decision on whether to go through with the purchase of the property or not. Your solicitor can act on your behalf during any negotiations, including the price and settlement date.

Your solicitor can also advise you on any other searches you should undertake prior to settlement, such as a building and pest report or a report on the strata corporation.

Purchasing your property

Once you and your solicitor have discussed the contract, and you are comfortable with the terms, you will proceed to exchange. Exchange is a critical legal part of the sales process, and involves you as the purchaser and the current owner as the vendor signing two copies of the contract, and physically exchanging by “swapping” contracts. You will also be required to pay a deposit, which is generally 10% of the purchase price. Your solicitor may be able to help you negotiate a reduced deposit amount.

In New South Wales, you are entitled to a 5 day “cooling off” period after contracts have exchanged for all residential purchases. Essentially, during these 5 days, you can elect not to proceed with the purchase and you will only forfeit 0.25% of the purchase price. Once these 5 days have expired, you generally cannot terminate the contract without a significant financial penalty, that being forfeiture of your 10% deposit. However, in the majority of property purchases, the vendor will request a section 66W certificate. This is a

certificate given by your solicitor which waives your right to the 5 day cooling off period. Also, you are **not** entitled to this 5 day cooling off period if you purchase your property at auction.

Once the cooling off period has expired, or if your solicitor has provided a section 66W certificate then immediately on exchange, the contract becomes binding and if you choose not to proceed with the purchase, you will incur certain penalties.

A standard settlement period is 42 days, although this is not a requirement and the timeframe can be negotiated with the vendor. If your settlement period is “42 days after exchange”, this means that settlement of the property, being the day you pay the balance of the money for settlement and receive the title to the property, will occur on the 42nd calendar day after the exchange date. For example, if you exchanged on 28 April 2020, your settlement date will be 9 June 2020.

After exchange, your solicitor or conveyancer will undertake the following routine steps:

1. liaising with the vendor’s solicitor or conveyancer to establish the PEXA workspace, which is the electronic settlement workspace through which your purchase will transact;
2. preparing the transfer of sale;
3. advising you as to the payment of stamp duty, and attend to stamping your contract and the transfer. If your property purchase is less than \$800,000.00 and you are a first time property buyer, you may be entitled to a stamp duty concession or exemption. Your solicitor will advise you on whether you are eligible for a concession or exemption;
4. undertaking a number of searches and enquiries, including routine property and rating enquiries such as a search of the RMS database to determine whether they have a proposal for acquisition of your property due to the building of a road;
5. making title requisitions which provide further details about the property, such as whether the owner is aware of any noise disputes in a strata building, or disputes with neighbours about trees;
6. liaising with your incoming mortgagee or financier, if any;
7. preparing settlement adjustment figures for any strata, council and water rates payable on the property. You will be required to “reimburse” the vendor for the period of rates for which you are in possession of the property. For example, a standard quarter for water rates is 90 days. If your settlement occurs on the 30th day of that quarter, you will be required to pay 60 out of the 90 days for the water rates. This is paid by way of an adjustment on settlement. Effectively, the purchase price you agreed to pay will not be the exact amount you pay on settlement as it will be adjusted with the reimbursement of the rates noted above. Your solicitor will advise on any shortfall of funds from your loan proceeds to account for these adjustments;
8. attending on settlement of your purchase; and
9. reporting to you on settlement of your purchase.

Types of Ownership

In New South Wales, you have three types of ownership when there is more than one person purchasing the property – joint tenants, tenants in common in equal shares, or tenants in common in unequal shares.

What's the difference?

A **joint tenancy** is the holding of the property by two or more persons in equal shares. If one person dies, his or her share automatically passes to the survivor.

Tenants in common in equal shares is the holding of the property by two or more persons in equal shares. If one person dies, his or her share will pass in accordance with the terms of their will.

Tenants in common in unequal shares is the holding of the property by two or more persons in unequal shares. This is often the ownership chosen if one person is contributing a greater proportion of the purchase price. If one person dies, his or her share will pass in accordance with the terms of their will.

Different ways to buy property

You can buy property in a multitude of different ways – through a private treaty, at auction, by tender, or off the plan. For detailed information on these different ways of buying property, please see the [Housing NSW A-Z Guide to Purchasing Your Home](#).

Translation

Certificate of Title	The document identifying the ownership of the land. It details who owns the land, and whether there are any mortgages or other encumbrances registered over it. It is usually held by a lender as security for repayment.
Completion/Settlement	The date the parties transfer legal ownership of the property.
Covenant	Conditions tied to the ownership or use of the land that are registered on title. For example, a covenant may require that the dwelling have a roof of terracotta tiles, cement tiles or Colorbond sheeting.
Easement	A right to cross or use someone's land (or a portion of the land) for a specified purpose. For example, John owns a block of land that neighbours Jane's. The only access to Jane's property is by driving through a part of John's property. Jane would request an easement to be registered on John's property to allow her to have a driveway from the main road, over John's property, to her house.
Encumbrances	A claim or liability against or a limitation on the title of the land, such as an easement or a mortgage.
Exchange	Exchange of the contracts for sale, which makes the sale legally binding between the parties.
Land Registry Services	The organisation that creates and maintains land title records on behalf of the NSW Government.

Owners' Corporation	All the owners of a block of strata properties. The Owners' Corporation meets regularly to discuss the administration of the building.
PEXA	Australia's online property exchange network where your settlement will be conducted electronically.
Transfer	The legal document which will be registered with Land Registry Services acknowledging the change of ownership of a property. On its registration, a new certificate of title is issued in the name of the new owner or owners.
Vendor	The owner/seller of the property.

You're ready to buy – now what?

Now you're ready to proceed with your property purchase, it's time to involve your solicitor or licensed conveyancer to review your contract. At CLS Legal, our fixed fee for the purchase of a property includes three contract reviews. This means if you are unsuccessful in purchasing the first and second property we review for you, we will not charge you a further fee.

Our solicitors are incredibly experienced in the purchase and sale of residential properties in New South Wales, with over 40 years' combined experience in property and commercial disputes.

Contact us at CLS Legal at info@clslegal.com.au for further information, to discuss your potential property purchase or if you have any questions about the contents of this document.

NOTE: This information memorandum is limited to residential conveyancing transactions in New South Wales.