



BUYING OR SELLING RESIDENTIAL PROPERTY IN NSW

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Every effort has been made to ensure the information is correct and up to date at the time of publication. Readers should refer to their licensed conveyancer to make sure nothing has changed since the date of publication.

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INTRODUCTION

This publication is intended to be for information purposes only and does not set out the complete details of a conveyancing transaction. Readers should use the information detailed to make them more informed of what is happening and what is required of them in a typical residential sale and or purchase of property.

Conveyancing is the transfer of ownership of property from one person to another.

There are many legal requirements in a conveyancing transaction and there are many pitfalls for the unwary. This is why it is recommended that you take advantage of the expertise and knowledge of a qualified Licensed Conveyancer to handle your sale and or purchase.

For most people the sale or purchase of real estate is the most expensive transaction they will make in their lives. Some people may buy and sell property many times and for others it may be a once in a lifetime transaction.

The laws relating to conveyancing are changing all the time and this is one of the reasons a qualified professional Licensed Conveyancer should be chosen to handle your transaction.

Licensed Conveyancers (referred to in this publication as “conveyancers”) are licensed by the Office of Fair Trading and must have completed a course specifically written for conveyancers and approved by the Office of Fair Trading. Apart from this academic qualification they must have had, at a minimum, two years of practical training working in a conveyancing business before they can be issued with an unrestricted licence. This requirement is so that a conveyancer can specialise in just one area of law, conveyancing.

To obtain a licence, conveyancers must have in place a current policy of Professional Indemnity insurance. This is to protect you, the consumer, against any mistake, error or omission the conveyancer may make in your transaction. You will be completely compensated if anything goes wrong with your transaction when you use a conveyancer. This, in itself, is a reassurance that you are dealing with a professional in their field of law.

To be assured that a qualified Licensed Conveyancer is assisting you, you should always insist that you deal only with a member of the Australian Institute of Conveyancers New South Wales Division. You will then know that they are licensed and qualified to handle your transaction.

I. TITLE TO LAND

The ownership details or title to land is recorded at the office of New South Wales Land and Property Information. There are several different types of title to land in New South Wales and the main types are described below;

Torrens Title is the most common type of title to land and is administered by the Real Property Act. Once registered as the proprietor, or owner, of the property you have a title guaranteed by the NSW Government. Ownership is evidenced by a certificate of title, however, it must be realised that the certificate of title issued to you following your purchase of the land is only a record of what is registered on the folio kept by Land and Property Information. The record at Land and Property Information is the true record of ownership. It is possible for dealings with the land to be registered on the folio that are not shown on the certificate of title issued to you.

If you have a mortgage your lender or mortgagee holds the certificate of title as security for the loan.

Strata Title is a form of Torrens Title and relates to properties that form part of a strata plan. These properties are usually units, villas and townhouses. When you own a strata property you actually own the airspace within the building. The building and common areas are owned by the owners' corporation of which all lot owners are part. It is the owners' corporation that manages the plan and each owner contributes levies to cover the cost of maintaining the property and surrounds.

Community Title is the name given to land contained in a community plan. This type of subdivision of land enables the owners within the plan to share or have the use of community land set aside for parks, playgrounds, swimming pools, or whatever community facilities are available within the plan. This type of development may incorporate a block of units, freestanding houses, shops and other development such as a golf course etc. It is a very flexible way of developing land and small communities. Each owner contributes levies for the cost of maintaining the communal property.

Old System Title is the name given to the ownership of land before the introduction of Torrens Title in approximately 1860. There are still some Old System Title properties in New South Wales although as they are dealt with they are generally converted to Torrens Title. As Old System Title is a complicated system of recording ownership the conveyancing costs can be much higher than other forms of title. Title consists of a chain of documents that evidence each transaction that has taken place with that property. Each document has to be retained as evidence of that transaction so that a search of those documents can evidence an unbroken chain of title for a period of 30 years. This could mean that there are many documents to check and each document must be correct and convey the proper title each time. Any error in any document can mean a break in the title. This is a cumbersome and expensive way to transfer title of property and thankfully as time goes by there are less and less properties under this title.

Qualified title is the name given to the title to property that has been converted from Old System Title to Torrens Title. This is a form of Torrens Title but is issued with a caution noted on it that the title to the property prior to the conversion to Torrens Title is not guaranteed by the Government. Land and Property Information will have checked survey and boundary matters but not the Old System Title.

When dealing with qualified title the conveyancer must check the title prior to the conversion as with Old Systems Title.

The qualification can be lifted after one of two events occurs:

- Twelve years has passed since the conversion; or
- Six years has passed since a transaction has taken place for a consideration, (the transaction was for a sale or mortgage, not a gift or inheritance).





Limited Title is the name given to the title of property that has not had survey or boundary matters checked by Land & Property Information. When Old System Title is converted to Torrens Title there may not be a plan registered showing the boundaries having been surveyed. The description of the boundaries is by a metes and bounds description only. This limitation can remain forever and does not affect any dealing with the property or if the owner prefers he can have a plan of survey lodged with Land & Property Information and have the limitation removed.

Title search is a search of the records of the Land & Property Information registry and can be completed by a number of search agents. The search will consist of:

- A copy of the computer folio which details the names of the owners, any mortgages, any covenants, caveats etc.
- A copy of the plan, whether it be a deposited plan, strata plan or community plan which will show if any restrictions on user have been registered, any easements that affect the property and general survey details such as measurements of the property.
- A copy of all dealings, covenants, restrictions, easements etc.

2. THE CONTRACT

Anyone selling a residential property must seek legal advice before they place the property on the market either with an estate agent or privately. Laws governing the sale and purchase of residential property require the seller to have a complete contract prepared and available at the office of the estate agent or the seller; if no agent is involved, for inspection by a prospective purchaser. There are penalties for not having the contract available when the property is advertised, in any way, for sale.

The contract must be available so that the purchaser can see what is in the contract and obtain legal advice before proceeding any further. It must also be available so that the purchaser can sign the contract, if they so wish, and exchange the contract to avoid being gazumped. If the contract is signed and exchanged in this manner, then the purchaser has a cooling off period of 5 working days (explained in detail later).

When the contract is prepared for sale it must be complete in every way except that it leaves blank the details for the purchaser and the sale price, and purchaser's conveyancer or legal representative.

The contract consists of:

- A printed form of "Contract for the sale and purchase of land" – this form contains all the terms of the sale and has terms that protect both the seller and the buyer and should need no alteration to the printed terms.
- A complete title search issued from Land & Property Information must be attached to the printed form of contract.
- A diagram showing the position of any sewer main issued by the sewer authority must be attached to the printed form of contract.
- A certificate issued by the local council showing the zoning of the property and other details must be attached to the printed form of contract (a Section 149 certificate)
- A Certificate of Compliance or Certificate of Non Compliance issued by the Local Council or a licensed private certifier in relation to a swimming pool or spa located on the property.
- If available a survey, occupation certificate or council's building certificate may also be attached. These two documents are not compulsory documents.

Documents that must be included are:

- A Title Search
- A sewer diagram
- Swimming pool certification (Compliance or Non Compliance)
- Section 149 Certificate



The **Vendor Disclosure Regulations** require the seller to disclose certain matters in the contract and to make certain warranties about the property. The disclosure documents are those compulsory documents listed above that must be attached to the contract. If those documents are not attached the purchaser can rescind (cancel) the contract, provided he does so within 14 days of the date of the contract.

The **warranties** that the seller must make are that:

- The property is not adversely affected by any proposal from certain government departments and or corporations. Those departments are listed in the regulations and your conveyancer will normally ask you to advise if you have received any notices or proposals from any department that affect the property.
- The land does not contain any part of a sewer main
- The Section 149 certificate attached to the contract is a true and accurate record of the status of the property.
- There is no matter about the buildings that would have council issue a demolition order or work order.

If the purchaser finds that the seller is in breach of any of the warranties, then the purchaser may be able to rescind (cancel) the contract at any time up until completion.

In order to rescind the contract, the purchaser must show that they were:

1. Not aware of the existence of the matter; and
2. The breach by the seller is a failure to disclose the existence of the matter; and
3. The purchaser would not have bought the property if they had known of the matter's existence.

If the purchaser rescinds the contract because of a breach of the vendor's warranties, any monies paid by the purchaser are refunded and the parties then have no further liability to the other.

If the vendor is aware of any matter that affects the property it must be disclosed in the contract. If the matter is fully disclosed the purchaser may then not have a right to rescind the contract. You should discuss this with your conveyancer.

If the property being sold has a market value exceeding \$2 million, the vendor will be required to obtain a Foreign Resident Capital Gains Withholding Clearance Certificate from the Australian Taxation office. This certificate is required to ensure the purchaser does not withhold 10% of the purchase price as a Foreign Resident Capital Gains Tax withholding.

3. EXCHANGE OF CONTRACTS

Contracts are exchanged when the seller and purchaser have both agreed on a price and have signed a copy of the contract (each party to the transaction signs a separate but identical copy of the contract) the contracts are dated and the deposit has been paid by the purchaser. The signed contracts are handed to the other party or their conveyancer so that the seller's signed contract is held by the purchaser's conveyancer and vice versa. The contract can be exchanged in one of two ways;

1. **By the estate agent.** In this case the contracts would be signed and exchanged shortly after the sale price has been agreed to. The agent would send the appropriate contract to the party's conveyancers and the purchaser would have a 5 day cooling off period in which to get any reports, have the contract explained and have finance approved.
2. **By the conveyancers.** In this case it would be normal for the purchaser to have all reports done, contract explained and finance approved before the exchange of contracts. It is normal practice in these instances to have the purchaser waive their cooling off rights so that the contract is binding on both parties as and from the date of exchange of contracts. (You will find that most conveyancers prefer this method of exchange of contracts)

4. COOLING OFF PERIOD

Every contract for the sale of residential property (2.5 hectares or less and used for residential purposes) 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.

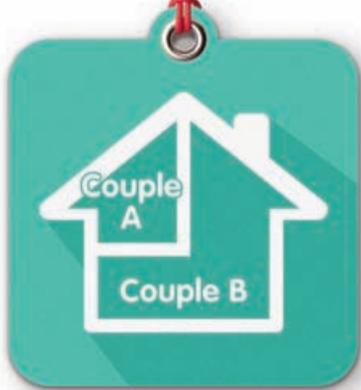
The purchaser can waive the cooling off period by having the contract explained by a conveyancer or solicitor and a certificate signed by that conveyancer or solicitor and the certificate handed to the seller's conveyancer. The certificate is drawn under Section 66W of the Conveyancing Act and is commonly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

The cooling off period may be extended by agreement with the vendor if the purchaser finds that they need more time but this can only be done with the vendor's consent. It is quite common to request for an extension of time because the five day period is very often not long enough to organise an unconditional loan approval.

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.





5. THE DEPOSIT

It is an essential term of a contract that the deposit is paid on or before the date of the contract (exchange of contracts). The deposit paid 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 honored by the bank the seller can rescind the contract at any time up until the purchaser makes good the deposit.

If you do not have a cash deposit you may be able to use a Deposit Bond or Guarantee.

6. OWNERSHIP

Property can be held in one of two ways, either as **joint tenants** or **tenants in common**.

It is common practice for couples to own property as joint tenants as each person owns the whole of the property jointly and if one dies the other automatically inherits the whole of the property

Tenants in common is usually used by people buying investment property or if for some reason they want to own the property in equal or unequal shares. If any of the owners should die their share goes to whoever inherits their estate.

Joint tenants and tenants in common can be combined. If there are two couples wanting to buy an investment property and in unequal shares, then the following could apply:

- Couple A can buy as joint tenants as to one quarter share and couple B as joint tenants as to three quarters share.

The ownership structure of property can have important implications so you should discuss how you wish to own the property with your conveyancer.

7. FIXTURES

Fixtures are something that are included in the sale because they are attached to the land or buildings and cannot be removed without damage to the property. Some common fixtures are; stove, sinks and bath. These things do not need to be detailed in the contract. However, it is a good idea to include in the contract those things that may be fixtures but that could create argument e.g. TV antenna, clothesline etc. These things are in fact noted on the front page of the contract as inclusions. You should check that all those things you expect to be included in the sale are noted on the contract. If not then discuss it with your conveyancer.

8. 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 within 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.

9. PEST AND BUILDING REPORTS

These will be done before the contracts are exchanged or before the cooling off period expires.

The inspectors should carry Professional Indemnity Insurance and be experienced in property inspections. The contract and the vendor's warranties do not go to the structures on the property only title. It is therefore important that the purchaser be assured that the property is not infested with termites or that the property is structurally sound. It is no good finding out after the contracts are binding that there is a structural problem with the property. The cost of these two reports is a very small proportion compared to the cost of what the repairs may be if problems are not discovered up front.

10. SURVEY

It is wise to obtain an identification survey so that when buying property, you know that the building next door does not encroach onto your property and vice versa. You will want to know that the fences are on or close to the boundaries and the buildings are set back the correct distance from the front boundary etc.

11. SWIMMING POOL OR SPA CERTIFICATION

If the property has a Swimming or Spa Pool or both each Swimming Pool and/ or Spa will require a Certificate of Compliance. This Certificate confirms that the Swimming and or Spa Pool complies with the current approved Standard.

Alternatively, if the Swimming Pool and/or Spa fails to meet the current Standard, then a Certificate of Non-Compliance together with a Written Notice of Non-Compliance is issued to the Vendor and the Vendors Conveyancer. This Notice will outline in detail the areas of Non-Compliance together with suggested recommendations on how to rectify to become compliant.

For the Vendor, a Swimming Pool Compliance inspection is required to be completed prior to the Contract of Sale being drafted, issued and the house being listed for sale. The Certificate of Compliance and the Certificate of Non-Compliance are both prescribed documents which must be included within the Contract of Sale.

If the Vendor chooses not to rectify the areas of Non-Compliance, then the Purchaser acquires the property with the full knowledge that the Swimming Pool and/or Spa is Non-Compliant. The Purchaser has only 90 Days from the date of settlement to have these areas of Non-Compliance rectified. A re-inspection by the original Inspector is required to determine that the works are now up to Standard and he can issue the Certificate of Compliance.



If the Purchaser fails to remedy the Non-Compliant areas, then the matter is handed over to the Local Government Authority.

Vendor's that require a Swimming Pool Compliance inspection have the choice of either using their Local Government Authority or a Private Certifier to conduct the inspection and issue the Certificate of Compliance. Local Government Authorities will not issue Certificates of Non-Compliance and/or Written Notice of Non-Compliance only Certificate of Compliance. If the Local Government Authority deems the Swimming Pool Barrier to be unsafe, they can issue an Emergency Work Order (requires rectification within 7 days) and fines of \$5,500 per defect.

12. FINANCE

Most people will find the house then organise finance. It is a good idea to organise the finance in principal before you find the house, this way it will only be a short time between finding the house and obtaining a formal unconditional loan approval. If the contract has been exchanged by the agent and you only have the five day cooling off period in which to organise the finance you will be glad you had a provisional approval before you went house hunting.

If the five days is not sufficient then you will need to ask for an extension of the cooling off period, if the vendor does not agree then you probably have no option but to rescind the contract under your cooling off rights.

If you have not entered into a contract then you will need an unconditional loan approval, in writing, before you enter into the contract.

Mortgage documents will need to be signed and explained to you if you are borrowing money to purchase the property. These documents will either be sent to you, your conveyancer or your bank will contact you to go to their branch to sign them.

This will happen after the contracts have been exchanged and or the cooling off period has expired.

The lender may want certain documents and inquiry certificates supplied to them prior to completion and your conveyancer will attend to these requirements.



13. STAMP DUTY

Stamp duty is payable on the contract.

The duty payable 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 before completion if you are borrowing money and in any event within three months of the date of the contract or a fine is payable for late payment.

The scale of duty payable on the contract is;

Value of property	Rate of duty*
Not exceeding \$14,000	\$1.25 per \$100 with a minimum of \$10.00
\$14,000 – \$30,000	\$175.00 plus \$1.50 per \$100 in excess of \$14,000
\$30,000 – \$80,000	\$415.00 plus \$1.75 per \$100 in excess of \$30,000
\$80,000 – \$300,000	\$1,290.00 plus \$3.50 per \$100 in excess of \$80,000
\$300,000 – \$1,000,000	\$8,990.00 plus \$4.50 per \$100 in excess of \$300,000
Over \$1,000,000	\$40,490.00 plus \$5.50 per \$100 in excess of \$1,000,000
Plus the following	
Duplicate Contract	\$10.00
Transfer	\$10.00

* Rate of duty above effective at date of publication

N.B. "Foreign Persons" acquiring residential property on or after 21st June 2016 are liable to pay a 4% surcharge duty in addition to the usual duty payable on a purchase.

14. FIRST HOME BUYERS – GOVERNMENT GRANT

There may be a grant available if you are a first home buyer. You should check with your conveyancer to see if there is a grant available to you. There is normally a qualifying criterion that you need to meet and your conveyancer will be able to advise you in this regard.

Stamp Duty Concessions

Concessions may be available for first home buyers on the stamp duty payable on the contract. The eligibility is limited to the value or sale price, whichever is higher, there is no means test. You should check with your conveyancer to confirm your eligibility.





15. HOME BUILDING INSURANCE

Licensed builders have to provide insurance to cover their work for faulty materials or workmanship when work involves a residential property dependent on the value of the work.

Nearly all building work, whether done under a contract or not, must be insured by the builder or developer. The insurance must be for a period of six years. Builders are required to rectify building work that is faulty or damage caused by faulty materials for a period of seven years. The insurance policy covers owners when the builder cannot be found or goes into liquidation.

All developers or builders selling residential property must attach to the contract for sale of land a copy of a certificate of insurance that complies with the requirements. If these requirements are not complied with there is a fine and if the insurance certificate is not attached to the contract the purchaser may be able to withdraw from the contract.

If in doubt you should check with your conveyancer.

16. COUNCIL BUILDING CERTIFICATE

A purchaser under a contract for sale of land can apply to council for a building certificate. This certificate, if issued, prevents the council from taking any action, within a seven-year period, to have the buildings or any part of them demolished or altered, provided there are no alterations or additions made.

If the council refuses to issue the certificate but instead issues a demolition order or work order the purchaser may have a right to withdraw from the contract.

When applying for the building certificate it is necessary to supply council with a survey certificate. This may mean obtaining a new one, or if there is a survey in existence and no alterations or additions have been done to the property since the date of the survey, council will accept that survey.

17. INQUIRIES MADE BY A PURCHASER'S CONVEYANCER

The purchaser's conveyancer will make inquiries of several government and semi-government authorities to see if they have any proposals that may affect the property and also of council and water authority to see if there are any rates or fees outstanding.

There are several departments that inquiries can be made of that have the right to either run pipes, wires etc. through a property or resume part or all of the property. While the seller warrants that there are no proposals that affect the property the only way of testing these warranties is to obtain these certificates. Your conveyancer will know from which authorities and departments to make the appropriate inquiries.

If there is a proposal that affects the property and the seller is aware of it, he should disclose that in the contract. If it is disclosed in the contract the purchaser may not be able to withdraw from the sale.

If there is no disclosure and the inquiry shows a proposal that affects the property, then the purchaser may have a right to withdraw from the contract.



18. 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 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.

19. 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, or,
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 estimated usage charge so that when the actual bill for water usage is received the whole bill becomes the purchaser's responsibility.



20. SETTLEMENT (ALSO KNOWN AS 'COMPLETION')

The contract normally has a period of time after the date of the contract for settlement to take place, usually 42 days or it may have a specific date.

Settlement should take place on or before the date or time specified in the contract.

When the settlement date has been confirmed between the parties to the contract the purchaser's conveyancer will calculate the amount payable at settlement taking into account the adjustments for council, water rates and any other adjustments that are to be made.

The seller's conveyancer will, when provided with these figures, check them and then advise how the settlement cheques are to be paid. Normally only bank cheques are acceptable at settlement and it is a term of the contract that bank cheques are to be provided at settlement.

Normally the following cheques will need to be provided, the total of which will equal the settlement proceeds;

- Cheque favour of any discharging mortgagee (to pay out any mortgage)
- Cheque favour of council (to pay any outstanding rates)
- Water authority (to pay any outstanding rates)
- Cheque favour of the seller (being the net proceeds of the sale)
- Cheque favour of the seller's conveyancer (to pay the seller's legal fees)

The place of settlement is determined by whoever holds the deeds to the property, normally the discharging mortgagee and may be held at their head office.

Your conveyancer or their settlement agent will attend the settlement on your behalf and there is no need for you to attend.

The keys to the property should be left at the estate agent's office by the seller for collection by the purchaser immediately after settlement.

Electronic Settlement may be conducted by your conveyancer. PEXA is an online property exchange that allows conveyancers to electronically lodge Land Registry documents, and complete Financial Settlement. Financial Settlement is completed through a secure process involving the transfer of funds from source accounts via the Reserve Bank of Australia to destination accounts.

PEXA is an opportunity to perform property transactions in a faster, safer and more efficient way. PEXA provides fast access to cleared funds, greater certainty of successful settlement and removes the need to physically attend settlement.





21. AFTER SETTLEMENT

The conveyancer will prepare and send to the client a statement setting out the calculation of the amount paid at settlement and where all the proceeds went to or came from.

Registration of the change of owners will take place at the office of Land & Property Information and any discharge of mortgage and new mortgage registered at the same time. Any incoming mortgagee will retain the title deed until the loan is repaid.

The Estate Agent was paid the deposit on exchange of contracts to be held in trust pending settlement and following settlement he will be authorised by both the seller's and the purchaser's conveyancers to release the deposit to the seller.

The agent will then account to the seller for the deposit held less his commission.

22. NOTIFICATION OF CHANGE OF OWNERSHIP

When the transfer is lodged for registration at Land & Property Information a "Notice of Sale" is lodged at the same time. This notice advises of the change of ownership and address details and is forwarded to the local council, water authority and the valuer general so that they can amend their records. You need do nothing in this regard.

You will need to notify Electricity, Telephone, Gas and any other services of the change of ownership and address.



23. STRATA TITLE

So far this booklet has dealt with the sale and purchase of a home. There are other things that need to be attended to if you are buying a strata property (unit, townhouse or villa). However, the conveyancing procedure is mostly the same and most things applying to the sale and purchase of a home will apply to a strata property.

When buying a strata property, you will want, before being committed to the contract, an inspection of the Owners Corporation books and records, commonly called a Strata Inspection. This will tell you things such as: What the levies are, are they paid? What insurances are held, are they current? Are there any outstanding works to be done? Are there any special levies struck for maintenance work etc. and other matters.

Some of the things you should know about a strata property are:

- You do not own the building, this is owned by the Owners Corporation of which all the owners in the strata plan are members. You actually own the airspace within the lot you have purchased.
- The Owners Corporation take out insurance on the building so you are not liable personally for taking out any building insurance. You do need to insure all contents of your strata property.
- The maintenance of the building and surrounds is the liability of the Owners Corporation. In order to pay for the insurance and maintenance of the buildings each owner contributes by paying a quarterly levy to the Owners Corporation.
- There will be a set of by-laws that you need to be aware of, however, these by-laws relate to the use of common property and the general rules of conduct within the buildings and surrounds are for the convenience of the owners.
- It is usual for the Owner's Corporation to appoint a managing agent to manage the books and records and generally run the strata plan. Meetings will be held for all owners to attend at which the business of the running of the plan is discussed and the managing agent instructed to carry out that business.

For more detailed information on Strata Title refer to:
Strata Community Australia (NSW), nsw.stratacommunity.org.au
Owners Corporation Network, www.ocn.org.au



24. COMMUNITY TITLE

This is becoming quite a popular form of title and allows for a small community to be developed within a subdivision.

Within a community plan you can have mixed property uses. Some areas may be for houses and some may be for a block of units. You can have playgrounds, walking tracks, swimming pool, golf course and many other things that are community property and for the use of the owners within the plan, the mix is endless.

The upkeep of the community property is paid for in a similar fashion to a strata property. Quarterly levies are struck to which all owners must contribute.

Insurance will depend on whether you have purchased a house or a unit. If it is a house, then the insurance is your own responsibility.

The owners within the plan will most likely appoint a managing agent to manage the plan and meetings will be held to discuss the business of the plan.

Some Community title plans are large subdivisions and some are small, the smaller ones may have nothing more than a community playground for children. Larger ones may have a golf course of which all owners are members of the golf club.



It is normal practice for there to be restrictions on what you can and can't build in a community plan. These restrictions will concern such things as the minimum size of the house, the type of building materials and colour schemes, types of fences and driveways. These restrictions are put in place so that when buying into a plan you will know what standard of houses will be built in the plan and to maintain a certain standard of living.

25. VACANT LAND

The conveyancing procedure for vacant land is basically the same as for a house except that there are no buildings to inspect or insure.

It is sometimes thought that as it is only vacant land being purchased that it should be a very simple process. This is not the case. You will want to know what you can do with it, and what you can build on, the land. Much more care and skill is required to convey land than is required with a house. When buying a house, you can see what has been built on it and what you are buying.

When buying land you will need to know what you want to build on it and whether you can in fact build that house on that block of land. Where are any easements situated? What building restrictions are registered on the title? Where is the sewer main? Is the block big enough for the house? Your conveyancer can help.

26. LAND TAX

This is a NSW State tax on land. Generally you do not pay land tax on your permanent place of residence. You pay land tax on the sum of all investment properties registered in NSW. Land tax is a charge on the land and if there is a charge payable by a vendor it will need to be adjusted on settlement so that the new owner does not inherit any land tax debt.

A land tax certificate must be provided to the purchaser at least 14 days before settlement.

A land tax surcharge of 0.75% will apply to foreign persons owning residential property in NSW from 31st December 2016 for the 2017 and subsequent tax years. Foreign persons will not be provided with a tax free threshold (usually \$482,000) for the land tax surcharge nor an exemption for the principal place of residence.

27. TITLE INSURANCE

You may insure your title to property which will cover you for events that may detrimentally affect your title to property. Title insurance may also cover against council issuing demolition or upgrading orders on illegal buildings etc. that predecessors may have erected without notice to you. There can also be matters that are not discoverable by the normal conveyancing searches and processes that may be covered by title insurance.

You should speak to your conveyancer to discuss title insurance in detail.

For more detailed information and assistance consult your licensed conveyancer.

Businesses conducted by members of the Australian Institute of Conveyancers are listed at:

www.findaconveyancer.com.au