

This article provides an overview on the conveyancing process for purchasing residential property in New South Wales. Conveyancing refers to the steps taken to transfer ownership in a property from one party to another.



## **A. WHAT IS RESIDENTIAL PROPERTY?**

According to the *Conveyancing Act 1919* (NSW), residential property is:

1. land on which are situated (or in the course of construction) not more than two places of residence, and no other improvements; or
2. vacant land on which the construction of a single place of residence alone is not prohibited by law; or
3. a lot or lots (including a proposed lot or lots) under the *Strata Schemes Development Act 2015* (NSW), comprising not more than one place of residence alone, whether constructed or in the course of construction, and including any place used for a purpose ancillary to the place of residence. 1

In New South Wales, the most common types of residential property purchased are houses and apartments (including off-the-plan apartments). Although the nature of these properties is vastly different, the process by which they are purchased is similar.

## **B. THE STEPS OF CONVEYANCING**

### **B.1. PRE-EXCHANGE**

#### *B.1.1. The Contract*

After you have found a property that you wish to purchase, a copy of the Contract should be forwarded to your lawyer who will advise on the reasonableness of its condition. Your lawyer

1. s 66Q (definition of 'residential property').

may, on your behalf, request certain amendments to be made. If you are purchasing a property via auction, again a marketing copy of the Contract should be obtained and forwarded to your lawyer for review prior to the auction taking place.

Whilst reviewing the Contract, your lawyer may need to order inspection reports on the property to identify any structural (or other) issues. For houses, a building and pest inspection report is ordered whereas a strata inspection report is sufficient for apartments. No such report is ordered for off-the-plan apartments as the property is still under construction.

### **B.2. EXCHANGE**

If you wish to proceed to purchase the property after receiving your lawyer's comments on the Contract, and your offer of purchase has been accepted by the Vendor, you should so inform your lawyer who will arrange for the next step which is exchange of Contract. In the meantime, the Vendor's selling agent may ask you for a holding deposit to keep the property for you which would usually be 0.25% of the purchase price. This is commonly referred to as the "holding deposit" that would then form part of the 10% deposit which is payable upon exchange of Contract.

In preparation for exchange, one Contract is signed by you whilst another identical Contract, the counterpart, is signed by the Vendor. Exchange entails physically swapping of these Contracts so that the Vendor's lawyer is in possession of the Contract signed by the Purchaser and the Purchaser's lawyer is in possession of the Contract signed by the Vendor. The deposit (usually 10% of the purchase price) is paid by you to the Vendor's selling agent or the Vendor's lawyer at this time of the exchange of Contract. Your deposit may be invested by

the selling agent or lawyer in which case half of the interest on the deposit would be paid to you after completion of the purchase, and the other half of the interest paid to the Vendor. The deposit is held by the selling agent or lawyer until settlement when your lawyer authorises its release to the Vendor (thereby making up the full purchase price). At this stage, after the counterpart Contracts have been exchanged and the deposit paid, the Contract is legally binding on both parties meaning the Vendor and Purchaser must comply with its conditions and complete the sale and purchase transaction.

By law, you as the Purchaser are entitled to a cooling-off period of five (5) business days from the date of the Contract (the date of exchange).<sup>2</sup> During this time, you are able to rescind the Contract although doing so will mean you pay the Vendor 0.25% of the purchase price. Note, however, that a cooling-off period does not apply if the property is purchased at auction.

Alternatively, you can waive the cooling-off period by having your lawyer sign a Section 66W certificate meaning you forfeit the right to change your mind.

### **B.3. POST-EXCHANGE**

Following exchange, the usual period until settlement of the purchase transaction is six (6) weeks (the completion or settlement date is specified on the front page of the Contract); you may be able to negotiate a shorter or longer period depending on the Vendor. This is not the case for off-the-plan purchases as settlement is generally dependent on the following requirements:

1. Issue of an Occupation Certificate: An Occupation Certificate verifies that the building is safe to inhabit and must be obtained prior to settlement.
2. Registration of Strata Plan: A separate Title should be registered for the newly built apartment (Lot) before settlement can occur.

Unless otherwise stated, for off-the-plan purchases, settlement would usually take place 14 days after the above requirements are fulfilled.

#### ***B.3.1. Financing the Purchase***

If you are purchasing the property by way of a loan, your lawyer will need to liaise closely with your Lender to prepare the necessary Mortgage documents.

2. Conveyancing Act 1919 (NSW) s 66S.
3. Strata Schemes Management Act 2015 (NSW) s 22.

#### ***B.3.2. Requisitions on Title***

Requisitions on Title are set questions that the Purchaser asks the Vendor to identify any undisclosed problems with the Title to the land. Problems may include any rights or restrictions known to the Vendor that have not been mentioned in the Contract.

#### ***B.3.3. Section 22 Notices***

Section 22 Notices apply only to apartments (including those off-the-plan). Pursuant to Section 22 of the *Strata Schemes Management Act 2015 (NSW)*<sup>3</sup>, any person who has the right to cast a vote at a meeting of an Owners Corporation must give written notice of that interest to the relevant Owners Corporation. Your lawyer will liaise with the Vendor's lawyer and Owners Corporation to notify them of your interest as the Purchaser and new Owner.

#### ***B.3.4. Stamp Duty***

Stamp Duty is a tax imposed by the New South Wales government on people purchasing property. For houses and apartments, the Duty must be paid three (3) months after the Contract date. However, off-the-plan purchasers are allowed up to 15 months after the date of Contract (or three months after completion of the agreement, whichever occurs first). In recognition of Stamp Duty being paid, the Transfer document and Front Page of the Contract are physically stamped.

The New South Wales Office of State Revenue (OSR) also collects Client Identification (CI) information from all parties liable to pay stamp duty meaning the Purchaser's Australian Driver Licence or Passport is required. As well, the Purchaser must complete and sign a Purchaser Declaration form in front of a lawyer or a justice of the peace.

#### ***B.3.5. Transfer***

When transferring an interest in land, such as during the purchase of a property, a Transfer document is prepared by your Lawyer to have your legal interest recorded on the Title to the land. This will be signed by both the transferor (the Vendor) and the transferee (the Purchaser) following which the documents will be lodged at Land & Property Information NSW (LPI) at settlement.

#### ***B.3.6. Foreign Purchasers***

Foreign purchasers of residential property must pay an additional Surcharge Duty equating to four (4) percent of the purchase price. As well, those buying off-the-plan apartments are not entitled to the 15-month period after the Contract date to pay Stamp Duty and must pay within three (3) months of exchange.



For more information on Foreign purchasers in New South Wales, read our firm's article: [Foreign Purchasers in New South Wales](#).

### ***B.3.7. Adjustments***

At the time of settlement, responsibility over the property is transferred from the Vendor to the Purchaser. Accordingly, all rates and taxes paid (or to be paid) on the property with regard to land tax, water, council and strata (for apartments) should be adjusted between the Vendor and the Purchaser. For instance, if the Vendor had paid the council rates up to the end of March and settlement was to take place in January, the Purchaser must reimburse the Vendor for the rates paid from the day after settlement to the end of March.

To calculate these adjustments, your lawyer may need to order certain council, water or strata certificates on the property. The adjustments must be agreed to by both the Vendor's lawyer and the Purchaser's lawyer and bank cheques reflecting the agreed amounts of adjustment will be drawn and prepared for settlement.

### ***B.3.8. Final Inspection***

An inspection of the property should be conducted within three days of the settlement to ensure that all the inclusions listed on the Contract are in good, working condition and in the same state as when the Contract was exchanged. In the event the property is not in the expected condition, you should contact your lawyer to arrange a solution. In some extreme cases, settlement is delayed to resolve the issue. Sometimes, some monies are put aside from the 10% deposit to cater for upcoming expenses.

## **B.4. SETTLEMENT**

Around two weeks before settlement, you as the Purchaser should connect the supply of electricity, gas, telephone and internet, by contacting the relevant

service providers. Leave the services of Water, Council and Strata to your lawyer. These three services will be adjusted between the Vendor and the Purchaser.

At settlement, the balance of the purchase price (plus the adjustments between the Purchaser and Vendor for payments for strata, land tax, water or council) is paid to the Vendor. As well, important documents such as the Certificate of Title or CT (which provides documentary evidence of the Owner's legal interest over the property), the Transfer, Section 22 Notices (if the property in question is an apartment) and Discharge of Mortgage (if the property was under mortgage) will be handed over to your lawyer. If you are purchasing this property by way of Loan, these documents (except for the Section 22 Notices) will be handed over to your Lender. After the 10% deposit has been released to the Vendor, you are able to collect the keys and move in.

## **B.5. POST-SETTLEMENT**

Following settlement, your lawyer will contact Water, Council and Strata on your behalf, to notify them of your new ownership. As well, if you do not have a Lender, your lawyer will lodge the Transfer, the CT, the Discharge of Mortgage (if applicable) and an electronic Notice of Sale (eNOS), which provides further information on the change of ownership, with Land & Property Information NSW (LPI). Shortly after settlement, the original Contract and new CT (showing you as the Owner of the purchased property) will be forwarded to you.

Comasters is able to assist clients in purchasing residential properties in NSW.

© Comasters August 2017 **Important:** This is not advice. Clients should not act solely on the basis of the material contained in this paper. Our formal advice should be sought before acting on any aspect of the above information.

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