

This article provides an overview of purchasing properties in New South Wales to provide purchasers with knowledge of what to expect when buying a residential or commercial property.



A. PURCHASING A HOUSE

If you are borrowing money to buy a house, it is prudent to ensure that you already have a loan approval prior to entering into a contract to purchase a property. The old adage “let the buyer beware” is especially relevant in purchasing a house. It is advisable to obtain a Building Inspection Report and a Pest Inspection Report prior to purchasing a house. It is not always obvious on inspection by the naked eye whether the building has structural defects or has termites or borers. Sometimes a survey is provided by the Vendor and is disclosed in the Contract for Sale. A survey is useful:

- To ascertain the position and size of the land.
- To ascertain the location of the building, including distances of walls, eaves and gutters from the correct title boundaries and whether they comply with Council Ordinances.
- To ascertain whether there are any encroachments onto the adjoining owners' land or from the adjoining land.

At times, a Building Compliance Certificate from the Local Council is included in the Contract for Sale. The procedure for obtaining a Building Compliance Certificate is as follows: The Council would first send a Building Inspector to inspect the property and, if the inspector has no objections, then they will issue a certificate. The certificate does not state that the building is approved by Council or complies with Council Ordinances but would state that the Council will not issue any notices to demolish or alter the building for a period of seven (7) years.

B. PURCHASING AN APARTMENT

If you want to purchase an apartment, it should be noted that under the Strata Titles legislation, the Owners' Corporation (Body Corporate) is responsible for the general upkeep of the building and the common property.

This means that you may need to pay a sum of money for communal issues even when you are not affected nor caused such issues. In this respect the Owners' Corporation will hold records of any structural defects, repairs, expenses, major works, strata levies and other relevant information of the building.

A search of those records known as a Strata Inspection Report should be carried out by an independent inspector prior to entering into a Contract to purchase an apartment.

When you live in a strata apartment, there are many rules and regulations which occupants and owners must abide by, these rules and regulations are known as By-Laws. It is advisable to make yourself aware of the By-Laws, as some buildings even regulate things such as the type of curtains and blinds you may have. If you wish to do renovations within your apartment, it may be necessary to obtain the Owners' Corporation's approval first, otherwise the Owners' Corporation's insurances may not cover you if damage is later caused as a result of the renovations. The Owners' Corporation can create by-laws which can confer rights of exclusive use or special privilege to particular apartment owners over certain common property.

C. PURCHASING A COMMERCIAL PROPERTY

When considering purchasing a commercial property, unless you are purchasing for your own occupation, the important consideration other than capital appreciation of the property, is the lease on the premises.

Briefly, some of the leasing details you need to check before committing to the purchase are as follows:

- The remaining period of the lease term and whether there is an option to renew the lease and for how long.
- The current rent and remaining rent review dates.
- Whether outgoings are payable by the tenant.
- Whether there is a Cash Bond paid or a Bank Guarantee. Some Bank Guarantees cannot be transferred or assigned and accordingly a new Bank Guarantee may need to be drawn up in the name of the Purchaser.
- Whether there are any clauses in the lease that allows the tenant to end the lease prior to the termination date.

D. PURCHASING “OFF THE PLAN”

Buying “off the plan” means that you are purchasing even before the building has been constructed. If you plan to purchase “off the plan” you must be aware of all the risks associated with it, as you are purchasing a property without having been able to inspect and assess the finished construction. You must closely check the conditions of the contract of sale. This is better done through a lawyer’s advice.

To provide greater protection to Purchasers, Contracts entered into from 1 December 2019 come with a ten business day cooling off period (as opposed to five business days for constructed homes). Additionally, deposits and any instalments must be held in a trust account (generally by the Vendor’s selling agent) and cannot be released to the Vendor before settlement. The Purchaser’s consent is also required before a developer can end a Contract using a sunset clause, otherwise the developer will need to apply to the NSW Supreme Court to terminate the Contract.

E. AFTER CONTRACT (EXCHANGE) ENQUIRIES

The Vendor is required by legislation to give certain information to the Purchaser of the property prior to the Purchaser entering into the contract. This is known as Vendor Disclosure. There are many situations to which a Purchaser or Vendor may be able to rescind a contract; an example is a breach of the Vendor warranty, where the Purchaser can rescind the contract by notice in writing. It is advisable to seek legal help when deciding whether to rescind a contract. Following exchange of contract, the following steps should be taken in readiness for settlement:

1. Your lawyer would make enquiries from a number of government authorities including Revenue NSW, the Council, Sydney Water and Energy Australia to determine whether they have any interest in the property you are wishing to purchase.

2. Arrange for your own connection of electricity, telephone services, and gas (if any). You should contact each service provider on how this is to be done. The connection should be done about two weeks before settlement.
3. Obtain adequate insurance. If it is a house, then you would need Building and Fire Insurance and if necessary Home Contents Insurance. If it is a strata apartment, it is advisable to obtain Contents Insurance prior to settlement.
4. Arrange a final inspection of the property to make sure that the property is left in a state as originally agreed including all the furnishings and chattels as stated in the contract.
5. Around two days prior to settlement, your lawyer will advise you of the “top up amount” in instances where you have a mortgage and the borrowed funds are not enough to cover the purchase price (ie the additional funds you need to provide to cover the purchase). You may need to transfer funds to your lawyer’s trust account or have sufficient funds in a shortfall account where your mortgagee can draw funds from.
6. At the time of notifying you of the “top up amount”, your lawyer should also ask you to approve the “direction to pay”, which advises your mortgagee how the borrowed funds are to be distributed. Once agreed, the payment directions will be inputted onto PEXA (electronic conveyancing platform). Commonly, four parties will be part of the PEXA Workspace for settlement: your lawyer, your mortgagee, the Vendor’s lawyer and the Vendor’s mortgagee. An “order on agent” letter will be forwarded to the Vendor’s selling agent by your lawyer after settlement. This serves to advise the selling agent that settlement has been completed and to release the keys of the property to the Purchaser. Following settlement, arrangements would be made by your lawyer to have the NSW Land Registry Services (LRS) notify various government authorities including the Council and Sydney Water of your ownership. If you are purchasing a strata apartment, your lawyer will formally notify the Owners’ Corporation of your new ownership.

F. COSTS OF PURCHASING

The main cost of purchasing properties, apart from the price, is the transfer (stamp) duty payable to Revenue NSW. Charges payable to your lawyer would include disbursements for searches and enquiries (before exchange and after exchange of contract stage). If you are a first home buyer, you may be eligible for transfer (stamp) duty concession or exemption under the First Home Buyers Assistance Scheme.

A full exemption with no duty payable can be applied for new homes under \$800,000 or existing homes under \$650,000. A concessional duty rate can be applied for new homes valued between \$800,000 and \$1 million; and existing homes valued between \$650,000 and \$800,000.

The First Home Owner Grant of \$10,000 can be applied for in a purchase of a “new home” valued under \$600,000. A “new home” is defined as:

- A home that has not been previously occupied, including occupation by builder, a tenant or other occupant.
- A home that has not been previously sold as a residence. Where the home is being purchased, it must be the first sale of that home.
- A home that has been substantially renovated and a home built to replace demolished premises.

To be eligible for the above benefits, a Purchaser must be an Australian citizen or permanent resident and must live in the property for at least six months in the first year of purchase.

G. FOREIGN ACQUISITION

Generally only Australian citizens and Australian permanent residents can purchase residential properties in Australia. Foreign persons who want to buy urban property in Australia must first obtain the Federal Treasurer’s permission to do so. This is done by applying to the Foreign Investment Review Board (FIRB), who advises the Treasurer. For more information relating to Foreign Acquisition, please refer to Comasters’ article titled “Foreign Investments in Australia”.

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CONTACT US

Jeffrey T Lee Principal Lawyer
Gina Bae Associate Lawyer
Alice Huang Senior Paralegal
Paula Kahwajy Paralegal
Dawny Chermue Paralegal

Comasters Law Firm and Notary Public
Suite 101, Level 1, Capitol Terrace
743-755 George Street
Sydney NSW 2000, Australia

T +612 9288 0300
F +612 9288 0399
E comasters@comasters.com.au
www.comasters.com.au