

Buying Or Selling A Residential Property

(HOUSE, TOWNHOUSE OR UNIT)

Buying or selling a residential property will be one of the most important financial transactions you make. To be confident in your decision and to ensure that no unexpected costs arise or problems appear, seek the advice of your solicitor before you sign any contract.

Conveyancing

Conveyancing is the term to describe the transfer of ownership of property from seller to buyer.

Solicitors and real estate agents can assist you with your conveyance.

You do have the choice of doing the conveyance yourself, but you do so at your own risk.

Solicitors and real estate agents

It is important to understand the different roles solicitors and agents play in conveyancing.

Solicitors are conveyancing experts who have been trained in this area of law to competently and efficiently guide you through a transaction to ensure your interests are protected.

As each property is different, so is each conveyance. Your solicitor can advise you on the need for special conditions and other legal matters which touch on conveyancing law – such as capital gains tax, general tax or updating your Will.

Agents are the sellers' representatives who receive a commission from the seller. An agent is not qualified to give legal advice on the contract or to draft clauses or modify the contract in any way.

The Contract

A standard contract for the conveyancing of residential property was developed by the Real Estate Institute of Queensland and the Queensland Law Society.

When you have expressed your interest to purchase a property, the agent will prepare a standard contract for you to sign.

Seek advice before you sign – send a draft contract to your solicitor to make sure it is correct and meets your needs. A standard contract cannot deal with the individual circumstances of every transaction.



If necessary your solicitor can add special clauses to the contract, for example:

- The purchase may depend on the sale of your existing property
- Flooding or termite checks may have to be completed

It is also recommended that you obtain an independent valuation of the property before you sign the contract.

There are a number of critical Warning and Disclosure Statements which must be completed and signed to ensure that the contract is properly formed. It is wise to have your solicitor confirm that these are satisfactorily completed before you sign.

Special points for townhouse and unit buyers

Townhouse and unit buyers should ensure they:

- Are informed of certain matters before you sign the contract, eg your annual contribution to the body corporate; and
- Receive certain warranties from the seller, eg that there are no hidden or obvious defects in the common property.

If defects and liabilities are not disclosed in the contract you may cancel the contract and recover any money paid.

Cooling-off period

All residential property sales in Queensland are subject to a cooling-off period of five business days from the date the contract is signed.

If you decide not to proceed with the sale within that period, your deposit will be refunded less 0.25% of the purchase price of the property.

Auctions

No cooling-off period applies to buyers who purchase at auction under the fall of the hammer. The cooling-off period applies if a property is passed in at auction and a bidder subsequently buys the property.

Buying a house

Your solicitor will discuss with you:

- Details of the building inspection report
- The need, if any, for special conditions
- Any tax implications arising from the purchase of the property.

Your solicitor will:

- Check the title and plan of the land for easements, caveats, and other encumbrances
- Make sure all necessary searches have been made advise on any zoning and planning regulations or other restrictions affecting the land
- Prepare all documents and make sure you gain good title to the property you are buying.

Selling a house

Once a buyer has signed a contract to purchase your property and paid a deposit, you will be handed the standard contract to sign.

Before signing, speak with your solicitor about:

- The inclusion of fixtures and fittings
- Any alterations you have made to the property
- The date of settlement and, if relevant, the timing of any new house purchase
- Capital gains tax, goods and services tax, general tax implications, and estate planning
- Ensuring that all Warning and Disclosure Statements have been satisfactorily completed.

Up to the date of settlement, your solicitor will:

- Check that all documents you are required to sign are in order
- Ensure all outstanding government charges such as water rates have been paid
- Arrange for the repayment and legal discharge of any mortgage on your property
- Ensure you are paid in full for the property

Buying a townhouse or unit

When you buy a townhouse or unit you take on a relationship with the other owners and the body corporate committee such as:

- Sharing the ownership of common areas – lifts, stairwells, front entrances etc.
- Becoming a member of a body corporate which is regulated by fairly complex rules.

The body corporate is made up of all the owners. It decides issues about the common property, concerns of owners and maintenance of the complex.

Owners regularly contribute money to the body corporate for day-to-day ongoing expenses and anticipated long term costs.

Selling your townhouse or unit

When your real estate agent finds you a buyer, you will be handed the standard contract.

Before you sign the contract, your solicitor will advise you on:

- The need to disclose details on any defect or outstanding liabilities
- The disclosure statement
- Your obligations to any existing tenant
- Capital gains tax, general tax implications, and estate planning
- If necessary, an extension of the date of settlement to suit your needs
- Ensuring that all Warning and Disclosure Statements have been satisfactorily completed.

During the conveyance, your solicitor will:

- Ensure all outstanding government charges have been paid
- Arrange repayment and legal discharge of any mortgages on your property
- Check that all documents you are required to sign are in order
- Ensure that you are paid in full.

The costs involved

Legal costs

Ask your solicitor for an estimate of legal and other costs and details of the processes involved in the handling of your conveyance.

When buying

Your solicitor will advise you on standard charges such as stamp duty, council and government search costs and document registration fees.

If you are going to live in the residence you will be eligible for a stamp duty discount. If you are purchasing for investment your solicitor will advise you about taxation options.

When selling

You are obliged to give clear title to the buyer.

Your real estate agent will charge a commission on the sale and there may also be bank or building society charges to consider.