

THE FIRST HOME BUYER'S GUIDE TO BUYING A HOUSE AND RESIDENTIAL PROPERTY

Purchasing your first home is a big decision, therefore it is important that as a first home buyer you understand your rights, responsibilities and the legal process involved. While this is not legal advice, this guide aims to provide a basic indication of the steps involved and the services a client can expect at Bywaters Timms and why this process is best to be handled by our Brisbane conveyancing lawyers.

What is Conveyancing?

Conveyancing is the legal term used for the transaction of buying or selling a property. A lawyer plays an important part in this process because we understand the contract and all the forms and processes involved. Buying a property is an important step and often the biggest investment a person can make.

When a buyer signs a contract this does not mean that they then legally own the property:

- There will be a process of the buyer's lawyer dealing with the seller's lawyer, real estate agents and banks. A conveyance usually takes between four to six weeks.
- A contract will usually contain conditions to be fulfilled by certain dates. If the buyer organises a building and pest inspection that reveals a bad result, or cannot obtain finance from their bank by a certain date then they may be entitled to terminate the contract. This means they are released from further obligations under the contract and they will have their deposit returned.
- A property must have a 'clear title' in order to be sold – meaning no restrictions that prevent a sale. Our Brisbane conveyancing lawyers carry out searches to determine whether the seller has the right to sell the property, and aim to uncover any issues which could be a nasty surprise for a new home owner.
- The conveyancing process leads up to 'settlement' – this is the day when the banks, buyer's and seller's lawyers exchange the money and other documents, and the keys are released.



A purchaser should remember that time is of the essence of the contract. This means that things must be done by their due dates because a seller has no obligation to grant extensions. Time limits are strict and failure to comply by a due date can have drastic consequences. Our solicitors help the transaction move smooth and swiftly.

What a Buyer must do in the Early Stages of a Conveyance

Sign the Contract

We are often approached by buyers either just before or after signing a contract for their first home. Our solicitors prefer to speak to clients before they sign. That way we can explain the terms and make sure the



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conditions are appropriate. If a purchaser would like us to explain the terms of a contract to them so that they understand the process involved in the transaction, we are more than happy to provide this assistance at our Brisbane office.



The buyer is usually required to pay an initial deposit to the real estate agent on the day of signing the contract. Buyers are also entitled to a 5 day 'cooling off' period. This means that if a buyer changes their mind about the purchase then they can terminate the contract. However the seller can charge a termination penalty of 0.25% of the purchase price. So while the percentage is small it can still amount to a significant sum.

Apply for Finance

Unless a purchaser has enough money of their own to cover the purchase price then they will need to make a loan application. Obtaining finance by a set date is often a condition of the contract. So after signing a contract, a buyer must make a finance application to their bank or chosen financier as soon as possible.

Arrange a Building and Pest Inspection

When buying a house you want to make sure it is structurally sound and free of termites or other pests. It is often a condition that a contract is subject to the purchaser obtaining a satisfactory building and pest inspection report by a due date. A home buyer should organise these inspections as soon as possible. We recommend both are carried out.

Arrange Insurance for the Property

After signing the contract a property will be at the 'risk' of the buyer from 5pm the next business day onwards. This means that a purchaser is responsible for and must organise insurance on the property from that point.

What we will do for a Buyer in the Early Stages of a Conveyance

Calculate the Important Dates

After the buyer and seller have signed the contract, the agent will send us the contract. We then calculate and diarise all the critical dates in the contract and let our client and the other solicitors know.

We will carry out a property title and plan search. This gives us a description of the property and its correct area, shows if there are any easements or restrictions, tells us who is the registered owner and if they have a mortgage on the property, as well as a range of other important information.

We will send the buyer:

- A detailed letter telling them what we will be doing for them throughout the transaction;
- A conveyancing to-do list outlining the tasks that they are responsible for; and
- A questionnaire asking for details that we need to complete the transaction. For example, we need the buyer's date of birth for completing transfer documents and forms for the Office of State Revenue. We ask that this be completed and returned as soon as possible.



Carry out Searches

We will carry out a series of further searches on the property to determine whether the seller has the right to sell it and has disclosed all the information that they are required to under the contract. There may be further issues uncovered that could affect the purchaser's decision to buy the property. We will tell the

purchaser the searches we believe should be carried out, and depending on the circumstances, we may also suggest some optional searches that could be relevant.

We like to discuss the searches with our clients. Each property needs to be considered before any decision on searches can be made. Age, existence of a pool, alterations and many other matters need to be considered.

Our searches will show some of the following information about the property:

- when rates and water bills are paid up to;
- if land tax is owing;
- if a person other than the seller has a registered interest in the property;
- if there have been any building notices issued by the council;
- if there are any major road or railway works nearby which could affect the property;
- if any owner-builder work has occurred and if it is properly insured;
- If the property is affected by flooding;
- if the seller is or has been bankrupt and how this could affect their ability to sell;
- if the property is a unit - the body corporate records, by-laws and levies.



For further details on the searches we carry out, read our article Searches in a Residential Property Purchase.

We will tell the buyer about any search results and point out any matter that looks like a problem. Some results may entitle a purchaser to terminate the contract such as the property being affected by future road works.

Calculate Transfer Duty / Stamp Duty

Transfer Duty, also known as Stamp Duty, is a tax a buyer must pay on the purchase of a property to the Office of State Revenue. We will calculate then advise the buyer the amount (if any) that they are required to pay.

A first home buyer is eligible to claim a First Home Concession. This means that no Duty is payable for a purchase \$500,000 and under. A discounted rate of Duty is payable for purchases over this amount up to a certain point.

In order to claim the Concession, a first home buyer must live in the property and use it as their principle place of residence for the first 12 months. We will send the buyer the appropriate application form to sign and return to us.



For more information about Concession eligibility requirements you can talk to us or visit: <http://www.osr.qld.gov.au>.

Prepare Transfer Documents

The buyer's solicitor will prepare the transfer documents. These are the legal documents that transfer ownership of the property from the seller to the buyer.

We will draft these and send them to the seller's solicitor. The seller will sign these and return them to us. We can then sign the documents on behalf of the purchaser. At settlement, these documents are given to and kept by the buyer's financier who arranges registration with the Titles Office.

The Steps in a Conveyance

Payment of the Balance Deposit

A condition of a contract is often the buyer paying a balance deposit to be held by the agent. This must be paid by the due date, and then we need to be notified.

Building and Pest Inspection Results

If the contract is subject to a buyer being satisfied of building and pest inspection results, they need to notify us as soon as they receive their results. This should ideally be at least a few days before the due date.

If the buyer is happy with the results, we will notify the seller's solicitors. If there are problems with the results, then we will contact the seller's solicitors to try and reach a solution. Some results may entitle the purchaser to terminate the contract.

Finance Approval

If a contract is subject to the buyer obtaining finance approval, they should keep us updated about how this is going. A buyer must ensure that they do everything required by their financier as quickly as possible and notify us when they receive confirmation of their approval.



Purchasers will usually first receive a letter from their financier giving them conditional approval. Then a few days later they will receive the loan contract to sign. We first need to see the loan contract before we tell the seller's solicitor that finance is approved. It is important that we receive the loan contract before the finance date, so we encourage buyers to work closely with their financier to ensure deadlines are met.

When a purchaser receives finance approval it is very important that they sign and return to their financier an authority that gives the bank permission to deal with us as their lawyers.

Pre-Settlement Inspection

A buyer has the right to conduct a pre-settlement inspection of the property close to the settlement date to ensure everything is still in order.

What we'll do for a Buyer in the Final Stages of a Conveyance

Stamp the Contract

Before settlement, a contract must be stamped for the payment of Transfer Duty. This means it is assessed according to the Office of State Revenue's requirements. We lodge the applicable forms, and if there is any Transfer Duty payable this is the time to pay it.

Prepare Funds for Settlement

The seller will normally choose the time and place for settlement. We then make a booking with the buyer's financier.

The price shown on the contract is not the final sum that is paid to the seller. We will prepare a 'settlement statement' that adjusts the sale price to show a breakdown of the total amount payable. This calculation will usually be the sale price, minus the deposit, minus the cost of releasing a seller's mortgage (if any) and an addition or subtraction for rates, water and Body Corporate levies if buying a unit. This is the reason we conduct rates and water searches, so that we know when everything is paid up to.



Because rates and water/sewerage access is usually paid in advance past the settlement date by the seller, the seller needs to be compensated. Because water usage is not paid in advance, the purchaser needs to be compensated for bills they will receive in the future that cover the time the seller still owned the property.

We then make arrangements for cheques to be ready on the settlement date.

Attend Settlement

We will attend settlement, where the seller's release of mortgage, cheques and transfer documents are exchanged.

Immediately after settlement we will advise the agent to release the deposit to the seller, and the keys to the buyer. Then it is time for the buyer to get that removalist van rolling!

What a Buyer should do after Settlement in a Conveyance

We will send the purchaser the original sale contract and copies of the searches we have carried out. Our role in the conveyancing process will then be over.



However, because buying a home is a very big change to someone's financial position, we always recommend that a buyer updates their Will and Enduring Powers of Attorney in order to protect their new asset. Our wills and estates lawyers can assist a buyer with this.

At Bywaters Timms a first home buyer can rest assured knowing that their property purchase will be in the hands of an experienced Brisbane lawyer from the start to finish of the transaction.

WARNING – This article is only meant to give you general information and should not be relied on as legal advice. If you want more information about the conveyancing services we offer then talk to one of our solicitors.