



Settle Easy Buyer's Guide

New South Wales



Buying property isn't something many of us do very often—it's a big deal. That's why we recommend you do your research before you make one of the biggest decisions of your life.

We hope this guide answers many of the questions you might have about the process. We want to make things as simple and easy as possible.

Cooling off

It's important to know your rights when purchasing property. The cooling-off period of five clear business days gives you time to consider your offer and begins from the date the contract is exchanged (i.e. after all parties have signed the contract).

If you decide you no longer want to buy the property, you can cool-off by giving written notice to the seller or the seller's real estate agent. You will be entitled to a full refund of any money paid, less 0.25 per cent of the purchase price.

The cooling-off period does not apply to:

- property purchases at auction
- property purchases where parties exchange contracts on the same day the property is auctioned for sale
- vacant or developed land used exclusively for non-residential purposes
- properties larger than 2.5 hectares in area.

Contract of Sale

This is the most important document in the conveyancing process.

It's a legally binding agreement that sets out the terms of agreement between you and the seller.

We recommend you read this document carefully and ask your Settle Easy conveyancer if you need anything clarified. We are here to help and are happy to answer any questions you may have.

Prescribed information for the Contract of Sale

A seller must have the Contract of Sale ready before offering a property for sale. The seller must also provide with the Contract of Sale:

- a Section 149 certificate from the local council, detailing zoning and other information
- a sewerage diagram
- a copy of the title folio from the Land and Property Information NSW
- copies of all documents creating easements or restrictive covenants
- a cooling-off statement
- a notice directing parties to the Conveyancing Act 1919 (Section 52A) and the Conveyancing (Sale of Land) Regulation 2000
- if it is a strata unit, copies of the folio of the Register for the lot and common property and a copy of the strata plan
- any other disclosures or information prescribed by regulations.

If the information is not attached, you may be entitled to cancel the contract within 14 days of exchanging the contract. You may also reserve the right to cancel if the seller breaches certain warranties required by the regulations.

Deposits

Most contracts will specify that you are required to pay a deposit amount (generally 10% of the purchase price) at the time you sign the contract or by a specified due date. The deposit must be paid to the seller's real estate agent or lawyer and not the seller directly. In most cases, the deposit is paid to the agent.

You should make sure that you attend to this payment by the due date as if you don't, you will be in breach of the contract which could mean that you lose the property and be subject to legal proceedings.

About the property

Building inspection

You should arrange a building inspection before buying the property.

A building inspection checks structural soundness, including:

- foundations
- the condition of all structural timber (ie. floor joists, rafters)
- all load bearing walls and members
- the outer skin of the building (may be brick, stone, timber, fibro)
- plumbing and electrical wiring

- kitchen and bathrooms (to update can be expensive).

Before engaging a consultant, confirm exactly what the inspection entails and what further inspections, if any, may be required. A consultant should have sufficient knowledge to enable her/him to identify any areas of concern.

Pest inspection

You should have the property inspected for pests before buying it. Check that the company carrying out the inspection carries professional indemnity insurance. This will cover the company and therefore your costs, should the company make a mistake.

Planning

If you intend to build, renovate or develop the property, you should contact the relevant planning authorities and council to find out if there are any restrictions in the area.

All land is subject to a planning scheme, run by the local council. How the property is zoned and any overlays that may apply, will determine how the land can be used. This may restrict such things as whether you can build on vacant land or how you can alter or develop the land and its buildings over time.

The local council (or a town planner) can give you advice about the planning scheme, as well as details of any other restrictions that may apply, such as design guidelines or bushfire safety design. There may also be restrictions - known as encumbrances - on the property's title, which prevent you from developing the property. You can find out about encumbrances by looking at the disclosures and certificates provided with the Contract of Sale.

Property measurements

We encourage you to check the measurements and boundaries of your property to confirm that the distances, locations, dimensions and fencing are in accordance with the title plan.

If you have concerns about this, you can speak to your Settle Easy conveyancer, or commission a site survey to establish property boundaries.

Easements

An easement is an interest in land that allows one person to make use of land owned by another person for a specific reason. It is a positive benefit to the person who enjoys the easement and a limitation on the ownership of the person whose land is subject to the easement.

A typical example is an easement created in favour of a person to use the driveway of an adjoining property. The property that enjoys the right has the benefit of the easement, the property over which the right is enjoyed has the burden.

Examples of easements include but are not limited to:

- drainage and sewerage pipes;
- electricity infrastructure;
- right of way or road access.

You should consider the rights and limitations contained in the easement, particularly if you are considering building work or re-development.

Local council enquiries

You should check with the council that the property is not in a special area designated for things such as flooding, bush fire prone, significant snowfalls, etc.

The local council will be able to provide you with maps designating these areas.

You should also check with the council that there are no matters which will otherwise impact on the property such as:

- permits for planning or building works
- proposed changes to zoning
- proposed freeways or roads
- anything that may not appear in the building and planning certificates that your Settle Easy conveyancer will obtain on your behalf.

Joint ownership

If two or more parties own land together, they must choose to be registered on the title as joint tenants or as tenants in common.

Joint tenancy means that if one owner dies, the surviving owner is entitled to immediately receive the deceased's share. This rule applies irrespective of any wills in place. This is the method usually chosen when spouses buy property together.



Tenancy in common means that the share of a deceased owner is usually distributed to the beneficiaries in the deceased's will. In the absence of a will, a court will assess the distribution of the share of the property.

Tenancy in common can be allocated in equal shares (50/50) or unequal shares (any distribution from 1% to 99%) and this is best discussed with an accountant.

Tenants in common can individually sell shares in the property or give them away in a will. This is more common for people with children entering second marriages, people who contribute very different amounts towards the purchase of a property or investors buying property together.

Body Corporate or Strata

If the property forms part of a community development or strata corporation, you will be provided with your own certificate of title. However, you are not just purchasing the individual property but also the shared ownership of, and the right to use, common property as set out by the plan of subdivision.



Where a plan of subdivision creates common property, there must be a body corporate. The owners are referred to as lot owners or members.

As a member of a body corporate, you have the right to vote on decisions about its operation. You will be required to contribute to costs for repairs, maintenance and insurance for the common property shared with the other lot owners.

Before buying, make sure you carefully check:

- the cost of being a member
- how the body corporate operates, including whether it uses a body corporate or strata manager
- the disclosure certificate provided with the contract
- the plan of subdivision, to determine lot boundaries and common property
- the contents and conditions of the contract of sale
- the body corporate rules or by-laws
- any leases or licences of common property
- minutes of previous annual general meetings.

Insurance

Usually, the contract will say that the property remains at the risk of the seller until settlement. However, we still recommend that buyers insure the property as soon as the contract is signed.

This is because a seller may not have any or enough insurance in place to protect the property in the event of damage before settlement.

A bank will usually insist that the property be insured with their interest noted prior to settlement.

You may also wish to consider obtaining title insurance prior to settlement. This insurance can protect you against any legal defects in title which are not disclosed to you by the seller before you sign the contract.

Please speak to your Settle Easy conveyancer if you have any questions in relation to title insurance.

Foreign buyers

It is important to note the following issues if you are a foreign buyer:

- a foreign person (i.e. a person not ordinarily resident in Australia) must obtain approval to purchase residential real estate in Australia regardless of the value of the property.
- non-resident foreign persons are generally prohibited from purchasing established dwellings in Australia while temporary residents will normally be allowed to purchase only one established dwelling to live in as their principal place of residence in Australia.
- approvals for foreign purchases will generally be given for purchases of vacant land, for residential development and for purchases of newly constructed dwellings.

You should inform us immediately if you believe these restrictions may apply to you.

Purchasing property without a relevant approval may lead to significant monetary penalties as well as a forced sale of the property.

Financing your purchase

Buying a property is a significant and ongoing financial commitment. As a buyer, you should spend time working out exactly what you need and can afford.

Settle Easy recommends that you always ensure that finance is approved before signing a contract.

If you have not received formal financial approval, the offer to purchase should be made subject to financial approval. Of course, it's up to the seller to accept or reject this type of offer.

It is critical that mortgage documents are signed and approved well in advance of settlement. Banks require time to prepare for settlement and if you are the cause of any settlement delays you may be charged penalty interest amongst other fees.

Although your Settle Easy conveyancer will follow up with your lender to make sure everything is on track, we encourage you to do the same to ensure your settlement happens on time.

e-Conveyancing

e-Conveyancing allows settlement to take place online, with electronic fund transfers and registration of documents to occur in real time using an online exchange platform (currently either PEXA or Sympli).

Multiple State Revenue Offices have also gone paperless, requiring duties forms used for the assessment of transfer duty on conveyancing transactions to be completed and signed electronically and submitted through the e-conveyancing platform.

Transactions completed using e-conveyancing have the transfer and mortgage documentation checked in advance by the relevant Land Registry and duty on the transfer assessed by the State Revenue Office in advance, meaning there is no potential for nasty surprises and transparency for all parties involved.

Wherever possible, we will endeavour to settle your matter electronically.

We require your authority to use e-conveyancing for settlement of the transaction. That authority must be provided in the form of the Client Authorisation which your Settle Easy conveyancer will provide to you at the start of the transaction.

A Client Authorisation allows us to undertake the settlement of the transaction on your behalf (and to sign documents for you), we are required to undertake a prescribed process to verify your identity.

Verification of identity (VOI)

Verification of Identity (VOI) is an important safeguard in property transactions, providing certainty about the identity of parties and aiming to prevent fraudulent dealings.

All parties involved in a conveyancing transaction must complete a VOI.

We ask our customers to have their identities verified in the early stages of their conveyancing transaction and we cannot complete the transaction until this has been completed.

Vacant possession or Subject to Lease

The contract of sale will indicate if the property is tenanted and whether or not the property will be purchased subject to the lease.

The details of the lease will be included in the Contract of Sale.

If the property you have purchased is being leased, you will be required to honour the terms of the existing lease agreement(s).

After settlement, rent money will be paid to you and any adjustment of rent will be calculated at settlement by your Settle Easy conveyancer.

If the property is sold as vacant possession, it means that anyone living in the property must vacate the premises by the settlement date and time.

Transfer duty

Anyone buying real estate in Australia must pay a State Government tax called transfer duty (formerly known as stamp duty)—this is calculated on the value of the property. It's important that this duty is taken into account when borrowing money to buy a property, as this can significantly impact your borrowing capacity.

Various exemptions and concessions are available for transfer duty, such as the first home buyer duty exemption, principal place of residence concession, pensioner exemption and off the plan concession. We are able to assist you in applying for these concessions and full details are available at www.revenue.nsw.gov.au

Eligibility for grants and other schemes

To find out if you are eligible for any grants or to participate in any home buyer assistance schemes you should contact your financier or broker (if applicable) or visit the relevant grant or state government websites.

An entitlement to a grant or other assistance will generally depend on strict compliance with eligibility criteria including as to your personal circumstances, the type of property that you are purchasing and the characteristics of the property. You should not assume an entitlement to a grant or assistance without carefully examining the relevant eligibility criteria.

Final inspection

You are entitled to one final inspection in the week before settlement. This is to check that the property is in the same condition as it was at the date of the contract. Whilst some minor deterioration to the property (such as an unweeded garden bed) might be expected, serious damage to the property is another matter altogether.

You can arrange this final inspection through the seller's real estate agent.

If you believe the property is not in the same condition as the date of contract, you cannot delay or stop settlement, but you may have a right to sue the seller for compensation after settlement.

Please let your Settle Easy conveyancer know as soon as possible if you have any concerns about the property.

Adjustments

Adjustments refers to the 'splitting' of the costs of certain land charges on a property, such as rates, land tax, water charges and owner corporation or body corporate levies. The process ensures that neither the buyer or seller are paying for these charges when they do not own the property.

The seller is obliged to pay for the property charges until settlement. After this, the new owner takes over this responsibility. This is why we adjust rates and other statutory charges at settlement.

It's pretty simple — the seller may have already paid for council rates and other charges until the end of the year, but settlement might happen in October.

Therefore, an adjustment is made so that the buyer would pay a greater amount at settlement to compensate the seller for the rates paid until the end of the year (when the buyer will be the owner).

After settlement government authorities are notified of the change in property ownership and future rates and other property notices will be issued to you as the new owner.

Settlement

If buying or selling property was a marathon, think of the settlement as the finish line. Settlement is the part where legal possession of land or property is transferred from one owner to another.

Settlements used to take place in a physical location, but they now happen electronically on a predetermined day and at a set time.

This is when the balance of monies owed to the seller is paid.

We arrange and attend to settlement on your behalf.

Keys

Keys are usually collected from the seller's real estate agent after settlement. The agent will only provide keys to you once they have received authorisation from your Settle Easy conveyancer.

Any extra sets of keys, not given to you by the real estate agent, may have been left in the property, along with instruction manuals, remote controls, warranties and other relevant information.

What you need to do after settlement

It is your responsibility to arrange for connection of electricity, gas and telephone services and steps should be taken in advance of settlement as there are sometimes waiting periods.

Completion

After settlement, we will provide you with an itemised account including all the details relating to your purchase. If you have borrowed money to buy the property, your lender should also report to you after settlement.

This publication is provided as general information only and should not be considered or relied upon as legal advice. The law is complex and you should always obtain specific legal advice about your circumstances from a qualified conveyancer or lawyer.





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conveyancing
experts**

