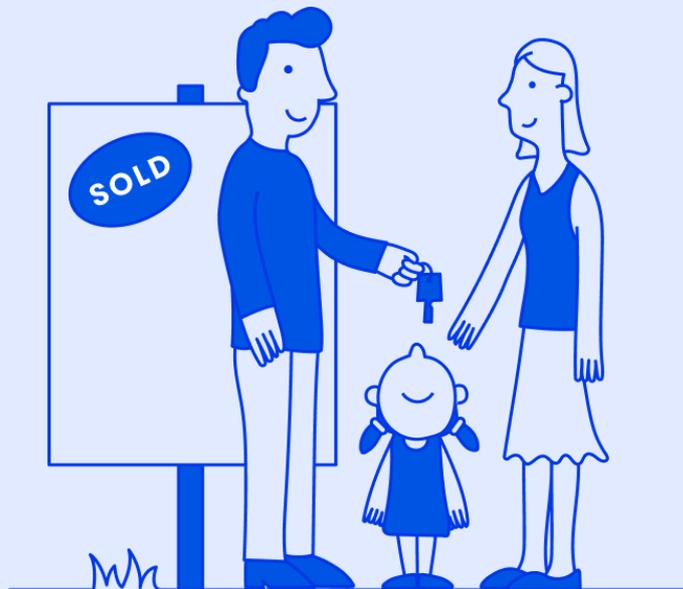
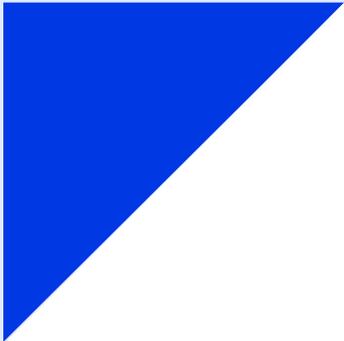


THE DEFINITIVE LEGAL GUIDE TO BUYING A HOME



NSW EDITION



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01.

THREE WAYS TO BUY PROPERTY.

There are three ways to buy property:

- 1. At the auction**
- 2. By private treaty without a cooling-off period**
- 3. By private treaty with a cooling-off period**



Buying property at auction

If you are successful at auction, you will be required to sign the contract on the spot. Whatever you sign on the day are the terms to which you have agreed.

There is no cooling-off period for properties bought at auction. Any requests you may have after the auction (such as extending the settlement period or visiting the property before settlement to take measurements) are within the vendor's full discretion.

Accordingly, you must get a legal adviser (preferably Contrax!) to review the contract and negotiate any clauses on your behalf before going to auction.

If you are the successful winner at auction, you will sign the contract



version that you have negotiated before going to auction.

The real estate agent will bring to auction a copy of the negotiated contract for you to sign, or more commonly, the agreed amendments are made by hand to the version of the contract that you originally received from the real estate agent.

As there are no cooling-off periods for auctions, you will also need to:

- conduct your pest and building inspection (if buying a house) or strata inspection (if purchasing a unit) before auction; and
- obtain pre-approval for your mortgage if you will be getting a mortgage.



Buying property by private treaty without a cooling-off period

When a property is not going to auction, prospective purchasers will make offers to the real estate agent, and the vendor will decide whether to accept or not. There is no set way to make an offer, and most are just done verbally in an informal manner.

By law, any contract of sale signed by a purchaser will have a 5-business day cooling-off period unless a s.66w certificate is provided.



TIP



A s.66w certificate is a certificate prepared and signed by a purchaser's lawyer or conveyancer, which says that they have explained to their client (the purchaser) that there is no cooling-off period for their purchase.

The certificate is handed over to the real estate agent or vendor's lawyer when contracts are signed and deposits paid. The original certificate is not required, just a copy.



Often when a property is sold via private treaty, the vendor does not want the purchaser to have a cooling-off period. In this case, the real estate agent will let buyers know that only offers with s.66w certificates will be accepted.

When a property is purchased with a s.66w certificate, buyers should review and negotiate the contract before signing (as if you were buying at auction). Also, you need to conduct your inspections and have your finance pre-approved before signing contracts.



Buying property by private treaty with a cooling-off period

Sometimes vendors will allow purchasers to have a cooling-off period. The standard cooling-off period is 5 business days but can be extended if both vendor and purchaser agree and their legal advisers document this in writing.

If the vendor allows you to have a cooling-off period, you will be required to pay a 0.25% deposit when you sign contracts, and this money is not refundable if you decide to cool-off.



You will need to get the contract reviewed and negotiated during the cooling-off period and arrange your inspections. You would also usually try to obtain formal approval for your finance.

If you decide to proceed with the purchase at the end of the cooling-off period, you will need to pay the deposit balance (either 5% or 10%, whichever has been agreed).

If you decide to cool-off, your legal adviser will notify the vendor's legal adviser in writing that you are cooling-off, and you will forfeit the 0.25% deposit to the vendor.



TIP



There is a crucial distinction between business days and general days.

If, for example, you need an extension to your cooling-off period, you must specify whether the days will be business days or standard days when making this request.

There have been situations where buyers thought they had a certain number of days to cool-off, but when they went to cool-off, they realised that the cooling-off period had expired!



02.

THE CONTRACT OF SALE.

How do you get a copy of the contract of sale?

Before a vendor can advertise their property or show any prospective buyers through, by law, they need to have a contract of sale drafted to be available for any prospective buyer.



The contract of sale

The vendor will engage a lawyer to draft up the contract, and the lawyer will send it on to the real estate agent to have it available in time for the first inspection.

You should ask the real estate agent to email a copy to you.

What's in a contract of sale?

The contract used for all residential properties, regardless of the property's size or asking price, is the **Contract For Sale of Land – 2019 Edition**.

It may look like an intimidating document filled with legal jargon, but it is actually a simple document following a standard form.



A contract of sale usually consists of 4 parts:

Part 1: Contract Schedule (pages 1 – 3)

Contains details about the property and the vendor. Items to look out for in this section are:

- Whether the vendor is a person, company or executor of an estate.
- Does the property have a tenant, or will it be vacant when you settle?
- Settlement period – Is this set for the standard 42 day period, or is it shorter or longer?
- Inclusions and exclusions: What items are included in the sale, and what things are excluded?
- Do you have to pay land tax on the property in addition to the purchase price?
- Is GST payable?



TIP



Be very careful when checking inclusions.

Conflicts can arise about items such as light fittings, pot plants, and outdoor heaters. Please don't assume that they come with the property. To avoid disputes - make sure that it is marked.

Also, check the condition of inclusions. If you discover that an inclusion is defective when you come to settle, you will need to prove to the vendor that it was in good working order when you signed the contracts.



Part 2: Standard Terms and Conditions (pages 4 – 19)

This section contains the standard terms and conditions of the sale in a pre-printed form prepared by the Law Society of NSW.

Part 3: Special Conditions (page 20 onwards)

This is a section drafted by the vendor's lawyer which:

- includes any additional conditions or terms that are not covered in Part 2;
- deletes any clauses in section 2 that the vendor does not want to apply; and
- makes any amendments to the clauses in section 2.



Items to look out for in this section:

1. Does the vendor have the right to move the settlement date?
2. Are there any disclosures about the property, such as unauthorised renovations?
3. What is the interest rate payable to the vendor if you are late to settle?
4. In what state of repair do inclusions have to be delivered at settlement?

Part 4: Standard searches and additional documents

This section contains the documents that the vendor is required by law to attach to the contract for sale (these include title documents, drainage diagrams and zoning certificates) and any other documents relating to the property.



Items to look out for:

- **Is there a caveat on the title?**

A caveat essentially freezes the legal title so that certain acts concerning the property are prevented (such as transferring it to another person or registering a lease).

Caveats are generally lodged to protect a non-owners interest, such as a spouse or lender who is not a registered owner of the property.

Your legal adviser must closely check any caveats and ensure that the caveat will be removed by completion as this could delay or prevent you from purchasing the property.



- **Is there a covenant on the title?**

A covenant is usually a restriction on the use of land or an obligation to do something to the land.

Examples include a restriction on building a structure over a certain height or a duty to preserve the neighbourhood's character when developing (for example, a requirement to use particular fencing).

- **Is there an easement affecting the land?**

This is where a right has been granted to a third party (most commonly the neighbouring property or a utility provider) to use the land for a specific purpose.

Common examples include a right of drainage, which gives a neighbour or other person the right to drain water across your land.



TIP



You will often be prevented from building solid structures over easements.

If there is an easement on the land in a location that you may want to build or renovate at a later stage, make sure to get a builder to take a look to ensure you can carry out your proposed plans.



- **Where are the sewerage pipes located?**

By law, a diagram from a recognised sewerage authority showing where the sewerage pipes and access points are located in relation to the property must be attached to the sale contract.

It is essential to check where the sewer lines run on the property. If the sewer lines are located in a position where you propose to rebuild, renovate or build a swimming pool, you may be restricted from doing so or facing associated problems down the track.

- **What is the zoning for the land?**

By law, the vendor is required to attach a Section 10.7 certificate to the contract.



A Section 10.7 certificate will usually disclose items such as:

- The zoning for the property (that is, what it can be used for, e.g. residential, units, commercial)
- Any development control plans or council plans that affect the property
- Any road widening proposals
- Whether there is a policy on flooding for the area
- Whether the land is bushfire prone
- If the property has heritage restrictions or falls within a conservation area.



How does the contract get negotiated?

After your legal adviser has reviewed the contract and given you their advice, it is now time to negotiate any terms with the vendor's legal adviser.

This is usually done via email between the purchaser and the vendor's legal advisers. The real estate agent will usually be copied in to be aware of what has been agreed upon.



03.

OTHER IMPORTANT STUFF.

Inspections

Once you have signed contracts for a property, there are minimal circumstances in which you will have rights against the vendor concerning physical problems with the property.



Therefore, you must know as much as possible about the quality and physical state of the property before bidding at an auction or signing contracts with as.66w.

What type of inspections you should arrange will depend on the property you are bidding on, but could include a building inspection, pest inspection and strata inspection.

The deposit

The default amount of deposit is 10% of the purchase price. This is held by the real estate agent in their trust account until settlement. At which point, it is released to the vendor.

It is common to pay a 5% deposit, but this needs to be requested with the real estate agent selling the property or the vendor's lawyer before exchange or attending the auction.



Different ways of holding property

Suppose you are proposing to buy the property with another person. In that case, you will need to decide whether you will be purchasing the property with the other person as joint tenants, tenants in common or in unequal shares.

Joint tenants

This means that you will own the property in equal shares with the other purchaser(s) and that the other purchaser(s) will automatically get your share of the property should you die regardless of what your will says.

Tenants in common

This means that you will own the property in equal shares with the other purchaser(s), but the property will not automatically go to the other owner(s) if you die.



Unequal shares

If you hold the property as tenants in common, you can also hold the property in unequal shares.

How you want to hold the property doesn't need to be decided before you sign contracts, but it does need to be agreed upon before you settle.

What happens if the property is tenanted?

The contract of sale's front page will specify if the property will be delivered at the settlement with vacant possession or subject to existing tenancies.

If it is vacant possession, the vendor will be required to have vacated the property entirely, ready for you or your tenant to move in.



If, on the other hand, it is subject to existing tenancies, there is currently a tenant living in the property.

If there is a lease on foot, a copy will be included in the sale contract, usually towards the end.

The lease will give you essential information such as rental, rights of termination, and duration of the lease, which may affect your decision to purchase the property.



TIP



Even if a property is sold, a tenant under a valid lease agreement has the right to keep renting the property until the lease comes to an end or is terminated per its terms.



04.

SETTLEMENT.

You've won at auction or signed contracts. Now, what?

Once you've signed the contracts and paid the deposit, the original contract will be sent to your legal adviser. Your legal adviser will start the various steps required to get ready for settlement.

Many of these steps will be carried out between the purchaser and vendor's legal advisers in the background, which you will not even be aware of. These include items like:



Settlement

1. Sending requisitions on title (these are a series of legal and technical questions about the property).
2. Checking the vendor has provided necessary documents (like land tax and capital gains clearance certificates).
3. Setting up the PEXA workspace, the electronic system where legal title gets transferred to you on the settlement.

What do you, as a purchaser, need to do?

The biggest and most important thing you need to do before the settlement is to get your finance ready. As soon as you receive a copy of your signed contract, you need to send this to your bank or mortgage broker so they can start getting your loan ready for settlement.

Once your bank has received everything they need, they will let you and your legal adviser know that they are prepared to settle.



What happens at settlement?

The settlement is where the balance of the purchase price (less deposit) is transferred to the vendor, and the legal title in return is transferred to you.

Nearly all settlements take place on PEXA, which is the online system for property transfers. The vendor's lawyer will set up a PEXA workspace and invite the purchaser's lawyer. Each party will invite their bank. Only lawyers and conveyancers can participate on PEXA, not the purchaser or vendor.

Most banks allow purchasers to place funds in a nominated account which the bank then draws upon to pay for the property, combining your funds with the loan funds. If your bank doesn't allow this, your legal adviser will instruct you on where your savings need to go to get ready for settlement.



Settlement

They will either need to go into your legal adviser's trust account (which PEXA then pulls from), or otherwise, they can go directly into the PEXA source account, and PEXA will remove those funds from their account.

Once the funds are ready to go and all parties have signed off on the workspace, PEXA will fund the sale, and the title will be transferred to you. Your name will be registered at NSW Land Registry as the owner of the property.

If you have a mortgage, your bank will register a mortgage against the property and take control of the title deed. The bank will hold the title deed until you have paid off your loan.

If you don't have a mortgage, NSW Land Registry will register your name on a new title deed and send it to your legal adviser.



Inspecting the property before settlement

By law, you are allowed a minimum of one occasion to inspect the property in the 3 days before settlement.

The purpose of this inspection is to ensure that the vendor has moved out entirely and the property has not been damaged since you signed the contracts.

This inspection is arranged with the real estate agent and is ideally done on the morning of settlement to minimise your risk between inspection and settlement time.

When do I pay transfer duty?

Transfer duty (often known as stamp duty) needs to be paid the earlier of settlement or 90 days from the contract.

If you pay stamp duty later than 90 days, NSW Revenue will charge you interest for every day you are late.



Settlement

If you are paying transfer duty at settlement, this will be paid through PEXA in the same way you pay for the property.

If you are paying transfer duty direct to NSW Revenue, this is typically done by BPAY or EFT, and your legal adviser will give you instructions on how to do this.

How can we help you?

The Contrax team are here to help and would be delighted to answer any questions you have.

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