



Find Your Lawyer



I Want to Buy a Home

FAST FACTS

Buying a home can be one of the biggest financial transactions you will ever make. The purchase of a home involves a number of complex decisions so it is important to appoint a professional who understands your needs and situation and who will negotiate the best possible outcome for you.

CONVEYANCING

Conveyancing is the transfer of real estate ownership from one party to another. It is a complex area of law, and unfortunately, small mistakes during conveyancing can lead to larger problems down the track. The best way to avoid any problems is to work with a qualified and experienced property lawyer. Unlike other service providers in this area, property lawyers are up to date on all state, local and federal requirements and are best placed to support you to understand the complexities for the purchase and sale of property. Buying a property can affect other matters, such as taxation, Wills or family matters. If you are buying an investment property you need to know your rights and obligations as a landlord, negative gearing and GST.

ESTATE AGENTS

Most properties are sold by estate agents or vendor advocates on behalf of the vendor (the seller). Estate agents are legally required to communicate any offer you make and must provide you with a copy of the vendor's statement (Section 32) prior to receiving an offer on a

property. The agent has a responsibility to act ethically in their dealings with you; however, the agent's contractual responsibility is to the vendor.

If purchasing a property at auction, obtain all relevant documentation from the selling agent. Have your lawyer check the documentation and answer your queries before the auction day. If you buy at the auction or within three days of the auction, you lose the right to a cooling-off period.

FINANCE

When buying a property, you need to calculate the total cost of the transaction, not just the purchase price. There are various fees and charges you need to pay which can add thousands of dollars including:

- Valuation fees
- Transfer of registration fees
- Other professional fees
- Inspection fees
- Stamp duty
- Bank charges
- Moving costs
- Mortgage insurance

FIRST HOME OWNERS GRANT AND STAMP DUTY CONCESSIONS

You may be entitled to government assistance under the First Home Owners Grant assistance scheme or a stamp duty concession if you purchase a property which will be used as your principal place of residence. Further information is available from the State Revenue Office www.sro.vic.gov.au.

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BUYER BEWARE! VENDOR'S STATEMENT AND PROPERTY INSPECTIONS

The vendor's statement (or Section 32 Statement) contains information about the land for sale. It does not contain any information about the condition of buildings and fittings. The vendor's statement will contain information on:

- the property's title;
- mortgages, covenants and easements;
- zoning permits and planning information;
- services connected to the property and rates information;
- owners corporation notices and liabilities;
- any notice, order or approval which may affect the land; and
- building guarantees and permits obtained in the last seven years.

The vendor's statement is a legal document and you may be able to withdraw from a contract of sale if it is inaccurate, incomplete or misleading. Have your lawyer review the vendor's statement and advise you on its contents.

The contract of sale will contain no guarantees about the condition of the building unless you negotiate them with the vendor. Buyer beware! Do your own property inspection or hire a professional valuer, builder or architect to do one for you.

THE CERTIFICATE OF TITLE

Your lawyer will search the relevant certificate of title at the Land Registry which will show all registered caveats, easements, covenants, mortgages and mortgage discharges which affect the property. Resolving a dispute over any discrepancy can be costly so check the accuracy to ensure the measurements on the title match those of the actual property. Your lawyer can also conduct searches to determine if other matters may affect the property, such as land contamination.

THE CONTRACT OF SALE

There are two types of written contracts: a contract of sale, and an auction contract. It is important to discuss clauses in all written contracts with your lawyer.

Contract of sale: The contract is prepared by the vendor's lawyer. When you sign the contract you make an offer to the vendor. Once the vendor accepts the offer and signs, a contract for the sale has been made and you are bound to the contract.

Auction contract: The agent will expect the successful bidder to sign the contract and pay a deposit immediately. The buyer is legally bound the moment they sign the contract. Cooling-off rights do not apply to auction contracts.

THE COOLING-OFF PERIOD

Cooling-off provisions may apply with a residential property or a rural property of less than 20 hectares excluding property bought at auction.

INSURANCE

Although you may be able to take the benefit of any insurance contract the vendor has, it is essential you make independent arrangements to insure both the property and any fittings as soon as the contract has been signed. A mortgage lender will require a formal insurance policy to be produced by settlement day.

BUILDER'S GUARANTEE

Building work is covered for a period of six and a half years from the date of completion. An owner/ builder who wishes to sell a home within six and a half years of its construction must obtain an inspection report. This report, subject to any defects listed, will guarantee the property for defects in workmanship for the remainder of the period.

SETTLEMENT

The balance of the purchase money is paid in exchange for the transfer documents and the certificate of title. The property must be handed over in the same condition it was in on the day it was sold. You should carry out an inspection in the week prior to settlement to confirm this. When change of ownership takes place your lawyer will notify all authorities on your behalf.

OWNERS CORPORATION

If buying a property under a plan of subdivision you become a member of the owners corporation which is usually run by a committee of management made up of lot owners. A certificate outlining details of the owners corporation and your fee obligations must be provided by the vendor.

OFF THE PLAN SALES

Buildings purchased off the plan, ie. before the plan has been certified by council or registered at the Land Registry, include lengthy contracts. Have your lawyer check the contract of sale, check the measurements of the property against the plan of subdivision, have an independent architect or builder appraise the plans and specifications, check the rules of the owners corporation and get an independent appraisal of the rental value of the property. Unless the contract provides otherwise, you may terminate a contract if after eighteen months from the date of the contract of sale, the plan of subdivision has still not been registered.

Please note the above information is not intended to, and does not encompass all aspects of the law on this subject matter. Further professional advice should be sought before action is taken based on matters outlined on this page. January 2013.

