

# Property Law: **Buying a Residential Property**



## **INTRODUCTION**

Conveyancing is the legal process of transferring ownership of property. There are many parts to this process. We do some things and you must do some. This guide is designed to help you avoid problems that may arise when buying a property. It is concerned with residential property only: houses, units and vacant residential land.

Note: A purchaser may be able to withdraw from a contract within three business days after signing the contract (cooling off period) unless:

- The property is not a residential property; or
- The property was purchased at an auction or within three business days before or after the auction date.

## **THINGS TO DO BEFORE YOU SIGN A CONTRACT (OR IMMEDIATELY AFTERWARDS)**

### **1. Measurements**

You must satisfy yourself that the house and other improvements on the land are within the title boundaries. You should measure the frontage and depth of the land and the connecting distance to the nearest intersecting street or other feature and compare these measurements with those shown on the plan of the land attached to the vendor's statement. You must also identify any easements shown on the plan of the land, as you usually cannot build over them without consent. In the case of vacant land you must be satisfied that the title relates to the block you have decided to buy and that there are no buildings, fences or other structures on your block that should not be there. With a unit purchase the unit will have been surveyed at the time of construction but you still need to check that the one shown on the plan is the unit you have decided to buy. A copy of the plan of the land is usually attached to the vendor's statement. If you need a copy of a plan of the land please let us know.

### **2. Swimming pools and spas**

Regulations require that suitable barriers (e.g. fences) be provided to restrict access to swimming pools by children. If there is an unfenced swimming pool or spa on the property,

it will become your responsibility as the new owner to comply with the regulations. If you are uncertain if the existing barriers comply with the regulations, you should check with the local council and contact us.

### **3. Smoke alarms**

Regulations require that smoke alarms be installed in all dwellings and units. The local Council will guide you in the installation of the smoke alarms. Even if smoke alarms are installed in the property you are purchasing you should check with the local Council that the existing smoke alarms comply with the regulations.

### **4. Flooding**

You should check with the Council if you suspect that the land may be subject to flooding.

### **5. Illegal structures**

Occasionally buildings such as garages, bungalows, pergolas, decks or carports and even extensions are built without a building permit or are built over water and sewerage mains or stormwater drains without consent. If the relevant authority discovers this, it usually requires that the structures be demolished or changed to comply with regulations. This can be expensive. You should check with the Council building department that a building permit and final approval or occupancy certificate has been issued for all structures on the land (including the

dwelling itself and any additions or structural improvements). If you believe the buildings have no permit or final approval you must consult us BEFORE you sign a contract.

## 6. Physical condition

A person selling a house or unit gives no guarantee that the property is in good order. Our enquiries do not normally extend to investigating the quality of the buildings or other structures on the land. It is your responsibility to check that these are in good order. If you have doubts, have the property inspected by a builder or architect and get a written report. You need to check things such as stumps, plumbing and drainage, electrical wiring and roofing and that all fittings and appliances (e.g. hot water service, stove and dishwasher) are in working order. If the house is less than 6 years old, there should be domestic building insurance. You should check that this is in place.

## 7. Services

Check that electricity, gas, telephone, water and sewerage have actually been connected and are working. If they are not connected you must check with the relevant authority as to their availability and cost of connection. This applies to established dwellings where certain services are not connected and to all services where you are buying vacant land.

## 8. Goods (Chattels)

This relates to goods sold with the property that are not attached so as to become part of it. These include floor coverings, internal window furnishings, external awnings, light fittings, television antenna and movable dishwashers. Make sure that any movable items included in the sale are listed in the contract. If they are not included, the vendor may remove them.

## 9. Water and sewer mains and storm water drains

It is important to find out the location of water and sewerage mains and storm water drains on your property, as you usually cannot build over them. Contact the local water authority and the local Council and satisfy yourself that the mains and drains have not been built over or their location is not going to upset your future plans for building on the land.

## 10. Proposed street, drainage and sewerage construction schemes

In some areas these have not been fully constructed by the sub-divider of the land and may be done later by the Council at the expense of the owners. If a plan is only proposed and not yet commenced you will have to pay for it if it goes ahead. You should enquire at your Council office about any such proposals.

## 11. Proposals for the surrounding area

You should ask the local council if there are any proposals for the area surrounding your property such as possible re-zoning, establishment of community facilities, widening of roads etc.

## 12. Zoning

All properties are subject to restrictions on use and development imposed by Municipal and State authorities. You should advise us immediately if you intend to alter the

use of the property, subdivide or develop it.

We can advise if your proposed use or development is permitted by zoning and other regulations. The property will generally be zoned for a specific purpose, such as "General Residential" or "Commercial 1" etc. The zoning will be specified in the vendor's statement attached to the contract. Please contact us if you are unsure of the zoning of the property.

## 13. Easements and restrictions

The title may show that your property has the benefit or the burden of an easement or restriction such as a right of way or a covenant restricting building materials, size and number of buildings on the land or its use. Please contact us for assistance with these matters before signing a contract.

## 14. Filled land

Land is sometimes filled to level it. This can make building more expensive. If you have any reason to suspect that the land has been filled or you are buying vacant land, have an engineer inspect the land and provide you with a report.

## 15. Contaminated land

Occasionally land used for residential purposes has been contaminated by previous use (usually industrial). If you have any reason to suspect that the land may be contaminated please contact us immediately.

## 16. Due diligence checklist

Consumer Affairs Victoria have written a Due Diligence Checklist that vendors are required by law to give to you when you enquire about a property. Some of the items it recommends you consider are mentioned in this brochure. Please ask us if you have any questions about any of the other issues it asks you to consider.

## CAUTIONS IF BUYING APARTMENTS OFF-THE-PLAN

### 1. Time to build

The contract has a statutory reminder that it can be a long time between signing the contract and completion of the new building. It is not uncommon for multi-story residential towers to take 4-5 years to complete. In this time the market value of the apartment could decline.

### 2. The finished building

Regrettably it is not uncommon for the completed apartment to differ from the published specifications of fittings and finishings or "mock-ups" you may have viewed. Whilst you have rights in relation to misrepresentation, it can be difficult to resolve these issues with the vendor when they are demanding settlement.

### 2. Floor areas

Because of differences in methodology to measure floor areas, it is not uncommon for the area disclosed in marketing material to be "overstated" when measured by a land surveyor or lender's valuer when the building is completed. Developers and architects tend to measure to the outside of the external wall. Surveyors and valuers measure from the inside of the internal walls. The difference in measurements can have significance if the area of the apartment is close to

## YOUR CHECKLIST OF THINGS TO DO BEFORE SIGNING THE CONTRACT (OR IMMEDIATELY AFTERWARDS).

- Measurements
- Swimming pool
- Smoke alarms
- Flooding
- Illegal structures
- Physical condition
- Services
- Chattels
- Water and sewerage mains
- Proposed construction schemes
- Proposals for the surrounding area
- Zoning
- Easements and restrictions
- Filled land
- Contamination

You should check all of these items even if you have already signed the contract.



a lender's minimum threshold. Many lenders will not accept as security apartments below 50m<sup>2</sup>.

The vendor should disclose the guidelines used for measuring the apartment.

If you intend to obtain finance, you should check with your lender that the apartment satisfies its lending criteria.

### BUYING AT AN AUCTION

If you intend to purchase at an auction remember:

1. Your finance needs to be approved before the auction and you will have to pay a 10% deposit immediately.
2. You will have to sign the contract at the auction so all of the items mentioned above need to be done before the auction.
3. There is no cooling off period with auction sales.

### OWNERS CORPORATION (PREVIOUSLY CALLED A "BODY CORPORATE")

If you purchase a unit where the development includes "common property" there will be an owners corporation (which is like a company consisting of the owners of each unit) to deal with maintenance of those common areas such as stairways and driveways. The owners' corporation generally will also

insure the buildings and common property, although this is not always done. You should find out when the next meeting is and attend it as a new owner of the unit. The vendor should have provided details about the owners' corporation in the section 32 statement. If you need more information, let us know. You can also find details about owners corporations at [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au).

### STAMP DUTY BENEFITS

Stamp duty exemption or reduction may be available in certain circumstances:

1. First home buyers.
2. Persons holding a health benefits or other government concession card.
3. If the property will be your principal place of residence and the purchase price is less than \$550,000

If you think you may be eligible please ask us.

### WHAT WE DO

We look after the legal requirements involved in transferring the property to you. In general terms this includes:

1. Checking the terms of the contract and vendor's statement.
2. Confirming your finance position and providing various documents to your lender.
3. Checking that the title is clear and transferring it to you.
4. Checking with various authorities as to details of rates, zoning, land tax and orders or requirements affecting the property.
5. Preparing documents and co-ordinating the transaction with your lender and the vendor's solicitors.
6. Calculating the adjustment of rates etc. and the balance of money required for settlement.
7. Arranging and attending to settlement, paying stamp duty on the transfer of land and ensuring that the title is registered in your name. You do not need to attend settlement. We will let you know as soon as you are able to collect the keys from the estate agent and take possession of your property.
8. Notifying the Council and water authority that you are now the owner and providing you with statements and advice about payment of rates.

### THINGS YOU MUST DO AFTER SIGNING THE CONTRACT

#### 1. Insurance

You should arrange building and fixtures insurance immediately. If the house is damaged after you have signed the contract you may end up in a dispute with the vendor - it is better to let your insurance company sort it out. If you are borrowing to finance the purchase the lender will want its name to be noted on the insurance policy and will want a copy of the policy before settlement.

#### 2. Lodge a caveat?

A caveat is a document that is registered on the title and gives notice to anyone dealing with the property that you have an interest in it as a purchaser. We recommend that a

caveat be lodged in every case, however this is not always done. If you want us to lodge a caveat please tell us. There is a small additional fee.

### 3. Finance

If your contract is subject to approval of finance you must make every effort to get that approval by the date specified in the contract. Give your bank or other lender all the information it requires and let us know as soon as your finance is approved. If you have not received written approval of your loan by the date specified in the contract, you must tell us as the contract may become unconditional if you do not act or the vendor may try to end the contract. In order to end the contract because you have not obtained finance, you must not be in breach. Generally this requires you to have paid the deposit. Where necessary we can request an extension or end the contract.

If you are not borrowing make sure that your money will be available before the settlement day and that you have allowed for stamp duty, registration fees and costs (we can calculate these for you at the outset). If you are providing any part of the purchase money yourself you will need to provide us with a bank cheque (not a personal cheque) before settlement.

### 4. Joint tenants or tenants in common?

Where two or more people buy property together they can hold it either as joint tenants or tenants in common. Where they are joint tenants their shares are equal and if one dies their interest in the property passes automatically to the surviving owner(s). With tenants in common the shares may be equal or unequal and if one owner dies their share will form part of their estate to be dealt with according to their will. A husband and wife purchasing will usually do so as joint tenants. Unless you advise us otherwise we will proceed on the basis that you wish to hold the property as joint tenants.

### 5. Removalist

If you need a removalist you should make a tentative booking for the settlement day. The booking can be confirmed when it is clear that everything is in order and that settlement will take place on the due date.

### 6. Services

You should arrange for the electricity, gas and telephone to be read and transferred to your name shortly before settlement. We will notify the rating authorities.

### 7. Final inspection

In the week prior to settlement you should make a final inspection of the property and check that it is in the same condition as it was when you signed the contract, that the appliances are still working, that the chattels have not been removed and that the vendor has moved out or is moving out. Contact the estate agent to arrange this inspection and if anything is wrong advise us immediately - after settlement it may be too late.

## DELAYS TO SETTLEMENT

If your settlement is delayed through no fault of the vendor, you will usually be required to pay penalties under the contract. Delays can be caused for example by the failure of your lender to be ready on time, failure by you to provide to

us funds requested or to return documents promptly. To help avoid any delay you must promptly attend to all requirements specified by us, your lender or otherwise.

## AFTER SETTLEMENT

### 1. Your title

If you borrow money to purchase your property and the borrowing is secured by a mortgage over the property the Titles Office will send the title to the lender. The lender will

## YOUR CHECKLIST OF THINGS TO DO AFTER SIGNING THE CONTRACT

- Insurance
- Caveat?
- Finance
- Joint tenants/tenants in common?
- Removalist
- Services
- Final inspection

keep the title until the mortgage is paid out. If there is no mortgage the title will be sent to us and we will place it in our strongroom for safe custody until you need it.

### 2. Your will

If you own property it is important that you have a will. If you already have a will you should review it in view of your property purchase.

### 3. Rates

Council and water rates are "adjusted" between vendor and purchaser and the net figure is added to or subtracted from the purchase price. This means that each party effectively pays their share of the rates. We will calculate the adjustments and advise you before settlement.

If you have any questions regarding this brochure or require any further information, please contact us:

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