



**DONOVAN OATES
HANNAFORD**

LEGAL + CONVEYANCING

Your Guide to Conveyancing

Conveyancing

Purchasing or selling a home is one of the biggest transactions that you'll ever make.

Conveyancing is the essential part of the sale or purchase of real estate whereby the 'title' or legal ownership of the property is transferred from the purchaser to the vendor.

This sounds like a simple process however, like all aspects of the law, it can be complicated and costly if mistakes are made.

There are three fundamental steps involved in the conveyancing process once the purchaser's offer has been accepted:

1

What happens when contracts are issued?

The purchaser's lawyer reviews the contract to ensure the prescribed documents are attached in addition to evidence of building approvals and any other relevant compliance certificates.

Building and pest inspections are also arranged for the property.

Each party then signs their respective contract for sale in readiness for exchange of contracts.

The **vendor's** lawyer/
conveyancer issues the
contract of sale to the
purchaser's lawyer/
conveyancer



**Exchange of
contracts**



Settlement



2

What happens when contracts are exchanged?

Once both the vendor and purchaser have signed their respective contracts, the purchaser's loan has been unconditionally approved and the purchaser has paid the deposit to the Real Estate Agent, contracts can then be exchanged.

Both contracts are dated the same date and the purchaser's lawyer retains the contract signed by the vendors while the vendor's lawyer retains the contract signed by the purchaser.

Most property lawyers and conveyancers will agree to exchange contracts via email

copies of the signed contract, with the original to be provided afterwards.

The front page of the contract of sale may provide for a specific settlement date or, more commonly, it will provide for settlement to take place 28, 35 or 42 days after the date that contracts were exchanged.

If you are borrowing funds for the purchase, most banks will need at least a 28 day settlement before they will have the funds available.

3

What happens on the day of settlement?

Your bank will:

- register a mortgage against the title of your new property if you are borrowing funds for the purchase
- provide the funds to purchase the new property

For purchasers, we ensure that:

- any existing mortgage on the title to the vendor is discharged
- any third party or person who has rights over the property (a caveat) is removed
- all conditions on the sale contract have been fulfilled
- the transfer of land and mortgage is registered with the Land Registry Service

in Sydney (formerly known as the Land Titles Office)

- you are notified as quickly as possible after settlement has taken place

For vendors, we ensure that:

- the net funds from the sale of the property are transferred into your bank account
- the balance of the deposit held by the agent is transferred to your bank account (the agents will deduct their commission for the sale from the deposit)
- you are notified as quickly as possible after settlement has taken place



Key Information to Know

Glossary of Key Terms

Torrens Title

The Torrens Title System is based on the registration of the transfer of land in which a register is created and serves as conclusive evidence called 'the indefeasibility of title' (or ownership) of a property. Ownership of a property is evidenced by a Certificate of Title and can only be transferred by way of the registration of a transfer.

Strata Title

Strata Title allows individual ownership of part of a property. This property is called a lot and is more commonly referred to as a unit or townhouse. The property is combined with shared ownership in the remainder (called 'common property' e.g. foyers, driveways, gardens) through a legal entity called the owners corporation. This is also known as body corporate, strata company or community association, depending on the state or territory of your residence and the type of scheme.

The strata title concept only came into being 50 years ago and there are now more than 270,000 such schemes encompassing more than two million individual lots across Australia. In Sydney, strata now accounts for more than half of all residential sales and leases because of its popularity with investors.

Joint Tenants and Tenants in Common

If two or more people buy a property together, it can be purchased as either tenants in common or as joint tenants.

The difference between them lies in how the property is dealt with upon death of one of the tenants.

If one of the tenants in common dies, their interest in the property becomes an asset of their estate. This means it can be transferred only to a beneficiary of the estate or be sold (or otherwise dealt with) by an Executor of the estate in accordance with the person's Will.

When a joint tenant dies, their interest in the property passes to the surviving joint tenant or tenants. It does not become an asset of their estate.

Subject to Finance Overview

The term 'subject to finance' simply means that the purchaser is making an offer on a property that has a condition attached, namely that the transaction will only go ahead if the purchaser's loan is formally approved without conditions.



Gazumping

While this word sounds great, it's not a word you want to hear when you are a purchaser!

Gazumping happens when the vendor accepts your offer to buy their house but before the exchange of contracts takes place, the vendor then accepts a higher offer from another purchaser.

Legally, the Real Estate Agent is obligated to pass on all offers they receive for the property to the vendor until contracts are exchanged.

Exchange of Contracts

This is the process that legally binds the purchaser and the vendor to the terms and conditions of the contract of sale.

Cooling Off Period

The cooling off period refers to a period of five business days from the date of exchange of contracts to change your mind about the purchase. If you pull out of the contract during this five day period, you lose 0.25% of the deposit you paid.

Please note, that in most cases, when you buy a property, the vendor will ask you to waive this cooling off period.

Due Diligence

The Latin term Caveat Emptor loosely translates to let the buyer beware. In NSW the responsibility for conducting the due diligence on a property rests with the vendor. Due diligence consists of the practices and procedures we carryout to ensure the property you are buying is legally 'safe' for you to buy.

Settlement

Settlement is the legal process that is facilitated by your legal and financial representatives and those of the other party. It's when the balance of the purchase price is paid to the vendor and legal ownership passes from the vendor to the purchaser. The vendor sets the settlement date although this can be negotiated between the parties. As of July 1, 2019, the majority of settlements in NSW take place electronically, whereby the title and settlement funds are transferred within 20 minutes of settlement taking place.



Common misconceptions about conveyancing

Misconception #1:

Once the deposit is paid the property is secured

Paying the deposit to the Real Estate Agent does not legally commit the parties to the contract and the vendor

is still free to accept a higher offer on the property up until contracts have been exchanged.

Misconception #2:

If your loan is approved, you are ready to go

When property loans are approved they are either **conditionally** or **unconditionally** approved. We recommend that you pay close attention when the bank approves your loan request as if it is approved conditionally, there is still a chance that you won't get the money.

Case in point

An anxious couple buying their first investment property have been waiting on their bank to approve the loan. They ring us one afternoon very excited to tell us they have just received an email from the bank or mortgage broker, advising that the loan has been approved.

They have already paid the deposit to the agents and now instruct us to proceed with exchange of contracts.

We ask them to email us a copy of the email from the bank/broker for the file.

Upon reading the email we see that what it actually states is that the loan has been approved **conditionally** on the bank receiving a satisfactory valuation of the property.

In other words, if the valuation is not satisfactory, the bank will not approve the loan.

While valuations rarely prove a problem for the banks when the property market is strong and property values are increasing, it may be a different situation when the property market cools off and property values begin to drop.

If you are borrowing funds to buy a property, always make sure you have received **written unconditional loan approval** from the bank before exchanging contracts.



Tips for buying and selling a property

Buying a Property

1. Talk to a Mortgage Broker or your bank **before** you begin to look for a property to buy. There are strict lending regulations that banks are required to follow which can sometimes make it more difficult to borrow funds.
2. Building and pest reports are worth obtaining when you are purchasing a property. The cost of these is often less than **0.1%** of the amount you are paying for the property.

Selling a Property

1. Choose an agent that you are comfortable with as opposed to the one that promises to get you the most money.
2. Talk to your Lawyer as early as you can so that they can start to organise the following documentation; compliance certificates (for things like swimming pools), registration and compliance certificate for new building and a copy of the final occupation certificate. If you are selling an investment property, you will need a copy of the residential lease.

Our biggest tip

When it comes to buying or selling a property, there is no such thing as a 'stupid question'. Never feel embarrassed to ask any questions you may have as it is our legal expertise that you are paying for. Allow yourself time with us to discuss all aspects of the sale or purchase so you feel completely comfortable with the process.



Frequently Asked Questions

- CONVEYANCING

What is the difference between a Conveyancer and a Lawyer?

The difference between a Conveyancer and a Lawyer is that your Lawyer is qualified to provide you with more complex legal advice should the need arise.

When should I talk to a Lawyer or Conveyancer about my proposed sale or purchase?

If you are **selling a property** you need to speak to us as soon as you have made the decision to sell. We will need a little time to prepare the Contract for Sale.

The Real Estate Agent is not legally permitted to market the property without a written Contract for Sale.

When you are **buying a property**, you should speak to us once your offer has been accepted by the purchaser. The Contract will be sent to us and we can review this for you.

Can I do conveyancing myself?

You can, however, with the introduction of mandatory electronic settlements as from 1 July 2019, acting for yourself in a conveyance will be difficult.

What if the purchase is not settled on the settlement date?

Conveyancing laws vary from state to state. In NSW, if the purchaser is not ready to settle by the assigned date, the vendor can charge penalty rates for each day that settlement



is delayed. The vendor may also issue the purchaser with a Notice to Complete, which gives the purchaser 14 days to complete the purchase. If they are unable to complete the purchase in that time, the vendor may be able to terminate the contract and keep the deposit.

Can I move into the property before settlement?

Yes, this is possible provided the vendor agrees.

In most cases, the vendor will require you to pay a licence fee (or rent) and you will also need to have insurance coverage for the property from the date you take occupation.

How long does it take to prepare a Contract for Sale?

Generally, we can prepare a Contract for Sale within 24 hours from receiving instructions. However, there are a number of documents we need to order from the Council which can take between 5 to 10 days to receive. The earlier you contact us the quicker we can have the contract prepared and forwarded to your agent.





About Donovan Oates Hannaford

Donovan Oates Hannaford is different. We are legal experts as well as people experts.

Our aim is to make sure you remain at the centre of your legal matter or proceeding at all times.

We ensure we have a thorough understanding of your situation before providing advice and you can be confident that we understand your needs and expectations.

We offer our clients superior and professional advice which is easily understood and is provided in a timely manner.

We are a locally based law firm which has been servicing the Port Macquarie region since 1946.

Conveyancing - Services We Offer

Our team deal with property transfers every day and with experience comes insight.

We can assist you with drawing up or reviewing contracts as well as fulfilling the legal requirements for transferring property.

"Thank you for your assistance in the sale of our property. We certainly had some bumps along the way but thankfully we got there in the end. We would like to thank you and Cathie for the professionalism displayed by you both with all the dealings in making the legal side of the sale process a success."

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Looking for further advice?

Contact our Conveyancing Specialists



Scott Williams PARTNER
swilliams@dohlaw.com.au
02 6583 0427



Hadyn Oriti PARTNER
horiti@dohlaw.com.au
02 6583 0449



