

1. PHYSICAL STATE AND CONDITION OF THE PROPERTY

- 1.1 The vendor has no obligation to disclose to you whether there are any physical defects or the state and condition of any of the improvements.
- 1.2 The vendor also does not have the obligation to disclose to you any defects to the inclusions to the sale. For example, the dishwasher which is included in the sale leaks or does not function properly.
- 1.3 The brief statement on the general condition of the law on buying of real estate in paragraph 1.1 and 1.2 above also applies equally to purchase of residential properties (a house, a strata unit, a town house or villa) or commercial properties.
- 1.4 IT IS VERY IMPORTANT AND IN YOUR INTEREST to have appropriate inspections done on the property to ensure that you are satisfied as to the state and condition of the property and inclusions before you decide to enter into the contract to purchase the property. If you find out defects on the quality of the property (example: structural defects, termites) after exchange of contracts, it is not in itself a reason in law that enables the purchaser to withdraw or terminate the contract.
- 1.5 Licensed and accredited inspectors can inspect and provide to you a report on structural or other building defects; pest report; and strata inspection reports. Where the property is located on a slope a purchase should consider consulting appropriate professionals, such as a structural engineer before deciding to buy.
- 1.6 BE CAREFUL OF RELYING ON THE REPORTS prepared on the property for some other persons. Generally, in law the Purchaser cannot rely on report or reports prepared for persons other than the purchaser.

2. HOUSE, APARTMENTS, VILLAS OR TOWN HOUSES

- 2.1 The more common form of title property in the State of New South Wales is Torrens Title. Torrens title includes strata title and community title. There are other titles, such as old system title and company title.
- 2.2 Torrens titles have many advantages, not the least being protection through registration of the ownership with the Department of Lands.
- 2.3 Inspections prior to exchange of contracts:

The house or commercial building

- 2.3.1 The land upon which the house or commercial building and any other improvements constructed (such as carport, garage, swimming pool, pergola) belong to the owner.

- 2.32 The purchaser is purchasing the property in its present state and condition (see paragraph 1.1 and 1.2 above). It is important to know whether there are any structural or other defects to the house and other improvements, as well as any termites or other pest infestation.
- 2.3.3 And if the property is in a potentially dangerous location, such as located on a slope or near the edge of a cliff, then reports from specialised professionals such as structural engineer or soil or gradient specialists should be considered.

Strata title apartment, villa or townhouse

- 2.3.4 Under the strata title, the owner of the apartment, villa or townhouse has legal ownership to a lot in the strata plan.
- 2.3.5 “Lot” is defined in section 5 in the Strata Schemes (Freehold Development) Act 1973. It can be understood to mean the cubic air space formed by the upper surface of the floor, to the lower surface of the ceiling and the inner surface of the wall.
- 2.3.6 In layman’s term, the land upon which the building (the structure) is erected, belongs to the owners corporation. Ownership of a lot gives the owner exclusive use rights to the cubic air space within the lot, and rights to use the common property subject to the Strata Scheme Management Act 1996 and the by-laws adopted for the strata title development.
- 2.3.7 Each lot owner is indirectly responsible for funding repairs and maintenance to the structure and the common property, through quarterly levies and special levies, calculated and levied with reference to the unit entitlement of each lot.
- 2.3.8 The owners corporation is required by law to maintain records for seven years. Maintenance and repairs and any other problem should be recorded in the records of the owners corporation.
- 2.39 When purchasing a strata title property, a strata inspection report is recommended to determine if there are any issues such as special levies, building defects, litigation and so on.

3. THE CONTRACT DOCUMENTS

- 3.1 Generally the vendor’s solicitors prepare the contract. The contract must contain the documents prescribed by s 52A of the Conveyancing Act 1919 and the Conveyancing (Sale of Land) Regulations 2005 (**the Regulation**).
- 3.2 Under Regulation 19(1)(a) and Regulation 20(1)(a) of the Regulation, the purchaser may rescind (withdraw from the contract) the contract within fourteen (14) days from the date of exchange of the contracts, if the documents required to be included in the contract are not in fact included before exchange of contracts, even if the purchaser has waived his/her cooling off rights

3.3 The prescribed documents include:

- (a) The computer folio search of the property
- (b) The affectations on the subject property as noted in schedule two in the computer folio search such as any easements or covenants (eg: rights of way, drainage across a neighbour's land)
- (c) The deposited plan or strata plan, strata management statement, and or the community plan as the case may be;
- (d) Certificate issued by the Local Council under s 149(2) of the Environmental Planning & Assessment Act 1979; and
- (e) A diagram from a recognised sewerage authority for the subject land

4. **VENDOR WARRANTIES IMPLIED BY THE CONVEYANCING (SALE OF LAND) REGULATION 2005 – HOW IT AFFECTS THE VENDOR**

The implied vendor warranties:

4.1 Regulation 8 and Part 1 of Schedule 3 of the Conveyancing (Sale of Land) Regulation 2005 (**the Regulation**) deem that the contract conditions include warranties by the Vendor that, except as disclosed in the contract:

- (a) The land is not subject to any adverse affection, and
- (b) The land does not contain any part of a sewer belonging to a recognised sewerage authority, and
- (c) The section 149 certificate attached to the contract specifies the true status of the land the subject of the contract in relation to the matters set out in Schedule 4 to the Environmental Planning and Assessment Regulation 2000, and
- (d) There is no matter in relation to any building or structure on the land (being a building or structure that is included in the sale of the land) that would justify the making of any upgrading or demolition order or, if there is such a matter, a building certificate has issued in relation to the building or structure since the matter arose; and
- (e) If the land is burdened or purports to be burdened by a positive covenant imposed under Division 4 of Part 6 to the Conveyancing Act 1919, no amount is payable under section 88F of that Act in respect of the land (*it is thus important where there is a positive covenant affecting the subject property to apply to the Local Council for a certificate under s 88G of the Conveyancing Act 1919*)

- 4.2 Before completion of contracts our lawyers will do appropriate searches to ensure that all affectations are disclosed.
- 4.3 If there are any undisclosed breaches of the implied warranty the only right in law is to rescind (withdraw from) the contract before completion of the contract, Regulation 19(1)(b) and Regulation 20(1)(b).
- 4.4 The Purchaser's right to rescind under this provision cannot be exercised unless:
- (a) The breach constitute a failure to disclose to the purchase the existence of a matter affecting the land; and
 - (b) The purchaser was unaware of the existence of the matter when the contract was entered into, and
 - (c) The matter is such that the purchase would not have entered into the contract or option had he or she been aware of its existence

5. WHEN LEGAL RELATIONS BETWEEN YOU AS PURCHASER AND THE VENDOR ARISES – EXCHANGE OF CONTRACTS

- 5.1 An "interest in land" including the buying and selling of real estate must be evidenced in writing.
- 5.2 Normally, the legal relationship arises on exchange of one counter - part copy of the contract signed by the vendor and one counter- part copy of the contract signed by the purchaser. That is, the legal relationship arises from the moment of exchange of signed counterpart copy of the contracts between the vendor and the purchaser
- 5.3 Further to paragraph 5.2, unless there is agreement in writing recognised by the law of the obligation of the vendor to seel and the purchaser to purchase the property concerned, there is no legal binding relationship between the vendor and the purchaser from the fact of the agreement of the purchase price with the vendor's agent or from the receipt of copy of the contract.

6. COOLING OFF RIGHTS – FIVE WORKING DAYS [ONLY FOR RESIDENTIAL PROPERTIES]

- 6.1 In the purchase of residential property only, if a cooling off period applies the purchaser has the right to rescind the contract provided that the purchaser gives written notice by the purchaser himself/herself or by his/her solicitor communicated to the vendor's solicitor before 5 pm on the fifth working day after exchange of contracts.
- 6.2 If the Purchaser exercises the cooling off rights, the Purchaser must pay 0.25% of the purchase price to the Vendor.
- 6.3 The Vendor normally requires the Purchaser to provide a certificate signed by a solicitor under section 66W of the Conveyancing Act 1919 to waive the cooling off right on exchange of contracts, where the Purchaser is legally represented.

6.4 There is no cooling off rights where the residential property is sold by public auction; the contract is exchanged on the same day as the property was offered for sale by public auction but passed in; the contract was exchanged in consequence of the exercise of an option to purchase the property

7. FUNDS TO ACQUIRE THE PROPERTY

7.1 IT IS IMPORTANT TO ENSURE THAT YOU ARE SATISFIED THAT YOU HAVE SUFFICIENT FUNDS TO COMPLETE THE CONTRACT BEFORE YOU INSTRUCT US TO PROCEED TO EXCHANGE OF CONTRACT.

7.2 IF YOU REQUIRE FINANCE TO ASSIST WITH THE PURCHASE OF THE PROPERTY YOU MUST APPLY TO YOUR LENDER AND YOU MUST SATISFY YOURSELF THAT YOUR LENDER WILL LEND YOU THE NECESSARY FUNDS BEFORE YOU INSTRUCT US TO PROCEED TO EXCHANGE OF CONTRACTS.

7.3 See interest payment liability and consequences of default in paragraph 8.

8. COMPLETION OF CONTRACTS AND CONSEQUENCES OF DEFAULT

8.1 The contract contains an agreed date for completion of contracts after the exchange. At completion of contracts, the balance of the purchase price, plus adjustments under the contract (examples: council rates, water rates, land tax and strata levies) have to be paid.

8.2 If through no fault of the vendor and you the Purchaser delays in completion of contracts, you will have to pay interest (usually on the balance of the purchase price) from the due date of completion until and including the actual date for completion of contracts at the rate prescribed in the contract.

8.3 The Vendor may also issue a notice to complete after the due date for completion requiring you the Purchaser to complete within a reasonable period of time (usually at least 14 days) after the service of the notice to complete. If you do not do so then the Vendor will be entitled to terminate the contract because of your breach and you will forfeit the deposit.

8.4 The Vendor may also claim against you the loss that the Vendor suffers from any re-sale of the property within 12 months of the termination.

9. STAMP DUTY AND FIRST HOME PURCHASE EXEMPTION

9.1 Stamp Duty

- 9.1.1 Under section 13 of the Duties Act 1997 the Purchaser has to pay stamp duty on the purchase. For information, the current stamp duty rates are set out in the following table:

Dutiable value of the dutiable property subject to the dutiable transaction	Rate of duty
\$0 - \$14,000	\$1.25 for every \$100 or part of the dutiable value
\$14,001 - \$30,000	\$175 plus \$1.50 for every \$100 or part, by which the dutiable value exceeds \$14,000
\$30,001 - \$80,000	\$415 plus \$1.75 for every \$100 or part, by which the dutiable value exceeds \$30,000
\$80,001 - \$300,000	\$1,290 plus \$3.50 for every \$100 or part, by which the dutiable value exceeds \$80,000
\$300,001 - \$1m	\$8,990 plus \$4.50 for every \$100 or part, by which the dutiable value exceeds \$300,000
over \$1m	\$40,490 plus \$5.50 for every \$100 or part, by which the dutiable value exceeds \$1,000,000
over \$3m	in residential purchases over \$3,000,000, \$7.00 per \$100 or part, by which the dutiable value exceeds \$3,000,000.

Time For Payment of Stamp Duty

- 9.1.2 Stamp duty must be paid within 3 months after the liabilities arises – section 17 of the Duties Act 1997. A liability to pay stamp duty arises from the date of exchange of contracts, unless it is a purchase off the plan.

Time For Payment of Stamp Duty – Purchases “off the plan” (s 49A Duties Act)

- 9.1.3 Where the residence of land is to be constructed or developed before completion of contracts, the time for payment is the earlier of:

- (a) On completion of the contract, or
- (b) On the assignment of the whole or any part of the Purchaser’s interest under the contract, or
- (c) On the expiration of 12 months after the date of the agreement

- 9.1.4 Under s 49A of the Duties Act 1997 and s 17 of the Duties Act 1997 the longest possible time to pay stamp duty on an off the plan purchase is 15 months from the date of the contract.

- 9.2 The Department of Lands NSW will not accept for registration a Transfer from the vendor to the purchaser unless stamp duty has been paid (or exempted where applicable) and duly marked on the Transfer.

First Home Owner Grant:

- 9.3 The \$7,000 First Home Owner Grant and the exemption from duty of up to \$17,990 under the First Home Plus Scheme continues to be available.

First Home Owner Grant cap

- 9.5.3 From 1 January 2011, a \$835,000 cap applies to all applications where the commencement date of the eligible transaction is on or after 1 January 2011. Applicants who purchase or build a home which has a total value of more than \$835,000 will not be eligible for the grant.

USEFUL LINK: http://www.osr.nsw.gov.au/benefits/first_home/

http://www.osr.nsw.gov.au/benefits/first_home/general/fhplus

10. Land Tax

- 10.1 Land tax is charged on the ownership of land, and includes vacant land, houses, flats, apartments, home units, or commercial and industrial land.
- 10.2 Land tax for the current year is assessed based on land holdings as at 31 December of the previous year, and valued as at 01 July. For example, land tax for 2005 is based on land holdings held as at 31 December 2004, valued as at 01 July 2004; and land tax for 2006 is based on land holdings held as at 31 December 2005, valued as at 01 July 2005
- 10.3 Generally, principal place of residence (your home) or land used for primary production (a farm) is exempt from land tax
- 10.4 The land tax 2011 threshold is \$387,000
- 10.5 The land tax rate for 2011 is 2% on the total taxable tax value in excess of the threshold of \$387,000.
- 10.6 For the 2011 tax year, the taxable value of each parcel of taxable land you own will generally be determined by adding the land value for the current tax year and the land values that applied for the two preceding tax years then calculating the average.
- 10.7 A family trust, discretionary or unit trust is not entitled to the threshold. The land tax is calculated by multiplying the unimproved land value by 2%.

DISCLAIMER

- (a) The above is an outline of general information that our firm believes to be informative and helpful to purchasers of property in the State of New South Wales**
- (b) Our firm is not qualified to give investment advice and our reference to land tax and stamp duty is solely to highlight the fact that such duty is payable**
- (c) And where our firm acts for the purchaser, our firm will act responsibly to ensure our client obtains a proper title to the property on completion of the contract.**