

A COMPLETE BUYER'S GUIDE TO
PURCHASING PROPERTY
IN
NEW SOUTH WALES



SHERIDAN
LEGAL

What is this eBook about?

Whether you are a first home buyer or looking for your next property, you will no doubt find value in the material featured in this ebook.

The conveyancing process can seem daunting and confusing. We get asked a whole stream of questions, be it about deposits, cooling off periods, searches and fees. All the if's and why's.

This ebook has been developed to help answer as many of your questions as possible, while providing valuable insight into the process of property purchasing.

We believe walking into any situation well educated is incredibly important. When you're looking at spending hundreds of thousands on your next property, spending 20 minutes reading this ebook could save you thousands.

2



Patrick Sheridan

Principal | Sheridan Legal

Finance

If you're thinking about purchasing a property, your very first step should be to get your finances in order!

When do I need to obtain finance approval?

Most purchasers apply for pre-approval of finance before they go looking for a home. This gives you an idea of what you can afford to buy.

The bank will look at all of your financial commitments and give you an indication as to how much they are prepared to loan you, along with the estimated repayments. Based on this information you will be able to set a budget for your new home.

What happens once you've made an offer on a property?

Once you have found a property to purchase and your offer is accepted, the real estate agent can provide you with a draft contract to provide to your bank.

Your bank will then organise their own valuation of the property and provide their opinion of the value. If the valuation is acceptable to the bank, you will receive formal loan approval.

3



Buying by Private Treaty Vs Auction

Buying by Private Treaty

This is the most common method of property purchasing used in NSW.

Private Treaty is where a vendor (seller) advertises the amount they'd like to achieve for their property and then negotiates with a prospective purchaser.

This method of purchasing usually comes with a standard cooling off period, however the seller will often request a certificate from your solicitor to waive the cooling off period.

Buying at Auction

An auction is scheduled for a particular day and time. It involves a gathering of potential purchasers who publicly bid for a property.

To participate at an auction, you must become a registered bidder by registering with the vendor's agent.

If you are the highest bidder when the gavel comes down, you are bound to go through with the purchase. This is why you must have your solicitor look at the contract prior to the auction. Remembering too, there is no cooling off period in the auction conditions.

The most important thing to remember in an auction, is to stick to your budget!



You've Found It!

You've found a property you love, made an offer and it's been ACCEPTED!
Congratulations!

So what now?

One of the first questions the Real Estate Agent will ask you is "who is your solicitor?" When you purchase a property, the vendor's solicitor will need to complete the contract and send the completed contract to your solicitor. So, now is the time to decide on who you will want to act for you.

Solicitor vs Conveyancer

What is the difference between using a solicitor or a conveyancer?

They are both qualified to deal with conveyancing (the process of transferring property from one person to another).

However, a conveyancer's expertise is limited.

A solicitor has a broader knowledge of the law. They are better placed to resolve issues arising beyond simple conveyancing transactions.



Pre Contract Reports Explained

There are a number of enquiries that can be made when you are buying a property before signing a contract. These include a pest report, building report, survey, building certificate, and strata title report.

Pest Reports

A qualified pest inspector will provide a pest report.

The report will identify any current pest activity or damage due to previous pest activity.

Termites, for instance, are common in Australia. There is a high chance of termite damage to a property if it is not treated regularly.

Building Reports

A qualified building inspector can provide a building report.

The inspector checks the building to highlight any defects, wear and tear or other items which need fixing.

This report usually includes photographs of any defects and the inspector may provide estimates of the cost to repair any defects.

Almost every second hand home will have defects and nothing is perfect. The price should reflect the condition the building is in.



Survey Report

A survey is carried out by a qualified surveyor.

It identifies:

- the boundaries of the property;
- whether the buildings are within the boundaries;
- whether the fences are located on the boundaries correctly.

A number of years ago it was mandatory to have surveys done in order to obtain finance. However, these days most banks or financial institutions do not require one.

If you require a building certificate, a survey is mandatory.

Building Certificate

This is a certificate issued by the local council.

To gain this certificate, an inspector will inspect the property and the survey report. They ensure the building erected on the property was constructed:

- in accordance with the original plans approved by council and;
- within the boundaries of the property.

If the dwelling complies with all current building standards, a building certificate is issued.

There is some risk in making an application to council for a building certificate. Council may issue an order for work to be completed if there is a substantial defect discovered.

A building certificate would be strongly recommended if a dwelling is constructed very close to one of the boundaries and there is no clear evidence of the exact location of the boundary.

Strata Report

A strata report is useful for anyone purchasing a strata titled property. It provides precise detail of what is happening within the building or complex.

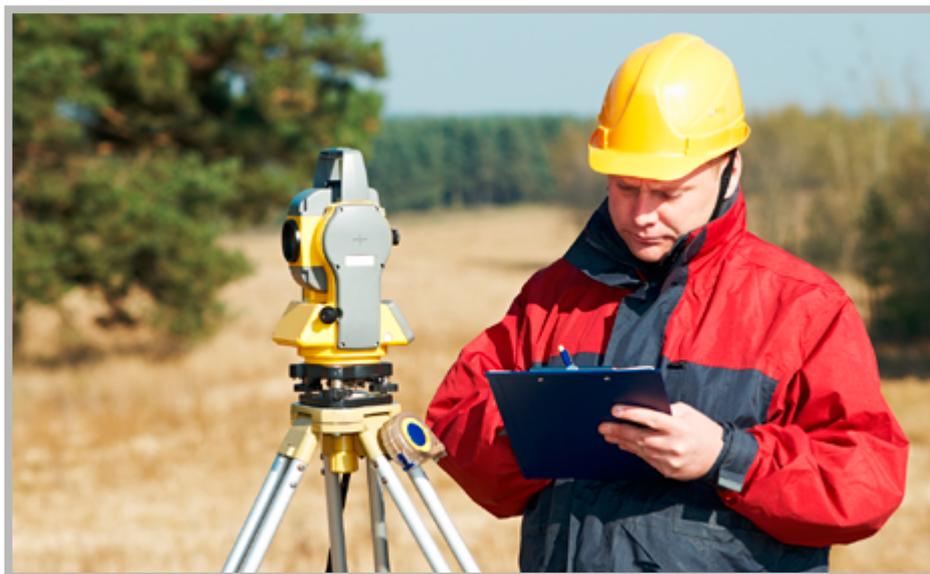
A strata report will show things such as:

- Levies payable, and frequency;
- Voting rights and property entitlements;
- Current or proposed special levies (due to building works or building defects);
- By-Laws (rules and regulations);
- Building value.

Who Pays?

All of these reports are at the purchasers expense. If you obtain all of the above reports there can be a significant cost. However, as a proportion of the purchase price of a house, the cost of all these reports is still minimal.

Ultimately it is up to you to decide what reports you should obtain as the law still says "buyer beware". If you do not carry out full investigations and a defect is discovered after you buy the property, then that will be your problem.



Buyers Beware!

David purchased an investment property in 2012.

While on holidays he found the perfect “renovators delight” beach shack to rent as holiday letting.

By the time he noticed the property and inspected it, he was due back to Sydney for work the very next day.

When he arrived home he called the agent and negotiated a purchase price of \$250,000.

Within 6 weeks the purchase had been settled and David was officially the proud owner of his very own beach shack.

However, David realised he made one very simple mistake only 3 months later. After obtaining council approval for some renovations and contracting a builder, his builder called him on day 1 of works.

9

Termites!

David made the costly mistake of NOT getting a Pest Inspection. He once heard a rumour that termites don't like sandy, salty conditions – and he didn't notice any pests when he'd looked at the property. Misled, he thought he could save a few hundred dollars without a pest report.

The end result? David's renovations cost him a further \$15,000 to replace the termite damaged framework and install the relevant termite protection.



Purchasing a Property with a Pool

Owning a pool is part of the great Aussie dream.

Spending those hot summer days having a BBQ by the pool, what could be better?

Purchasing a property with a swimming pool already installed couldn't seem any easier. The hard work has already been done!

But has it been done right?

Did you know there are swimming pool laws and regulations?

In 2013 the NSW Government brought in a number of changes relating to swimming pools on private property.

Local councils needed to develop and implement a swimming pool inspection program which involves:

- An application procedure which applies to swimming pools and spas that are situated or installed on premises where a residential building, usable dwelling or tourist accommodation is located;
- Mandatory pool registration by the owner of the premises;
- A complete application and fee paid to council prior to the compliance inspection.

Once the pool is inspected and found to be compliant, a certificate of compliance is issued. This certificate is valid for 3 years.

What happens if the pool fails the inspection?

A pool certificate of compliance cannot be issued!

You may receive a notice specifying what you need to do to fix the issues.

Failing a further inspection, you may get a formal notice outlining what you need to fix, or you could receive a penalty infringement.

The local council may even begin legal proceedings if your pool continues to fail inspections.

In 2016 new laws were introduced in NSW which apply to the sale or lease of properties with a pool in NSW.

From 29th April 2016, properties sold with a pool must have either:

- A certificate of compliance or,
- A relevant occupation certificate and a certificate of registration or,
- A certificate of non-compliance.

If you buy a property with a non-compliant pool, you will have 90 days from settlement to fix any issues.



Stamp Duty

Stamp duty is a tax paid to the Office of State Revenue before the property can be transferred into your name.

When is stamp duty paid?

Usually stamp duty is collected on or before settlement.

How much will I have to pay?

The amount is usually calculated based on the purchase price of the property. Your solicitor will advise you how much stamp duty is payable for your purchase. In some situations, such as when transferring property between family members, you will need to obtain a valuation to establish the market value of the property.

I'm a First Home Buyer

12

An exemption from stamp duty is available for first home buyers for new or existing homes with a value of up to \$650,000.

Stamp duty will also be reduced for homes valued up to \$800,000.

If you are purchasing vacant land valued up to \$300,000 there will be no duty payable. Concessions are available for land valued up to \$450,000.

What is the first home buyers fine print?

To be eligible, you will need to live in the property for a minimum of six months in the first year after the purchase is complete. Your solicitor will be able to tell you whether or not you are eligible and also lodge the application form on your behalf.

The Contract

When your offer was accepted, the real estate agent would have supplied you with a draft contract.

Since then, your solicitor will receive an updated contract including:

- Your details;
- The purchase price;
- The deposit amount;
- Settlement terms;
- Any special conditions;
- Updated searches.

An appointment will be made for you to sit down with your solicitor to discuss the contract. If all is agreed upon, and finance is confirmed, the contract can be signed.



Deposit

When do I pay the deposit?

An exchange of contracts cannot take place until the deposit is paid.

Once the contract is signed, you will need to pay the deposit to the real estate agent. The agent will let your solicitor know when the deposit is in their account and contracts can be exchanged.

In most contracts for the sale of land in NSW the purchaser is required to pay a deposit to the agent equivalent to 10% of the purchase price.

Can the deposit amount be negotiated?

It is common for a reduced deposit of, say, 5% of the purchase price to be negotiated. You will need to speak to your agent and solicitor very early in the dealings to have this deposit amount negotiated and written into the contract.

14

What if I don't have that sort of cash to spare?

A deposit bond is an alternative. A deposit bond is a guarantee that payment of the deposit amount will be paid to the vendor even if the purchaser defaults.

Some instances where a deposit bond will be used instead of cash may be:

- When the purchaser is also selling and all proceeds are coming from that sale;
- When the purchaser is borrowing all or a significant amount of the purchase price;
- When the purchaser does not have a cash deposit available.



The Contracts can now be Exchanged

When contracts are exchanged, they will be dated.

This date is the start of the cooling off period (if applicable) and marks the first day of the settlement date countdown.

Once contracts are exchanged there is a legally binding contract between the vendor and purchaser.

This is an exciting time for home buyers.



Cooling Off Period

A 5 business day cooling off period is mandatory for the sale of residential property in NSW.

The cooling off period starts on exchange of contracts. The purchaser can change their mind and withdraw from the contract within this time, at a cost of 0.25% of the purchase price.

It's useful for purchasers who require extra time to complete property enquiries or secure finance.

Can the cooling off period be waived?

Yes. The cooling off period can be waived by the purchaser's solicitor by providing a section 66W Certificate. This certificate states that the purchaser has received legal advice and agreed to waive the cooling off period.

In this instance, both the vendor and purchaser are committed to the transaction from the date contracts are exchanged.



What Happens if I Terminate the Contract?

If you are within a cooling off period, you may be entitled to terminate the contract and get the majority of your deposit back.

However, if there is no current cooling off period, you risk losing your full deposit. You could also be sued for damages for any loss incurred by the vendor for your breach of contract.

The deposit holder, usually the real estate agent, can't release the deposit money on termination of a contract without written consent from both parties. If both parties cannot agree, they need a court order. It could take 12 months for the matter to be heard by a judge. Court action can become a lengthy and expensive process, often exceeding the cost of the deposit.

If the contract termination is deemed to be a breach of contract, then under the terms of the standard contract for sale of land in NSW, the vendor will be entitled to keep your deposit.

17

The vendor can then offer the property for sale to another purchaser. If the property sells for less than what you agreed to pay, the vendor may be able to sue you for any additional loss.

Prevention is better than cure. We recommend that before signing any contract for the sale of land, you obtain detailed legal advice to make sure you fully understand your obligations.



Don't risk finding yourself in this Purchaser's Shoes

Sam and Joanne put their house on the market in 2016. They found a purchaser after a month.

Contracts exchanged and they arranged settlement to coincide with the purchase of their new place. They booked in a removalist and had the carpets cleaned ready for the transfer.

The purchasers pulled out of the purchase ONE WEEK prior to settlement. Sam and Joanne were suddenly left in the lurch. They needed the funds for their own purchase.

They refused to give permission for the deposit to be given back to the purchasers. They had their own purchase settlement due in a week, plus they had paid a deposit for the removalists already.

Sam and Joanne sought advice from their solicitor and decided to sue for damages due to the breach of contract. The matter was heard in court 1 month after the scheduled settlement date.

What was the outcome?

The purchaser's lost their full deposit! In addition, they had to pay legal fees.



Before Settlement

Your bank will be in contact with the mortgage documents ready for you to sign. Your solicitor's office will organise searches and enquiries while liaising with your bank. If there are no issues with the reports, a settlement date can be booked.

What is settlement?

It's the official transfer of property from the vendor to the purchaser.

What do you need to do once a you have a date?

You can book removalists and start preparing for the move.

You can also arrange for insurance. Why? It's a good idea to take out home insurance in any event. However, if you are borrowing money for the purchase, your lender will insist on evidence of insurance before providing the money to complete the purchase.

You only need to take out insurance from the date of settlement and not when contracts were exchanged.

Your solicitor will prepare figures for the settlement date. This includes adjustments for council rates, water rates and strata levies (if applicable).



It's Settlement Day!

On the final day most purchasers arrange a final inspection. This is to ensure the property is clean and tidy with no damage after the property has been vacated.

Once you're happy with the condition of the property, you can tell your solicitor to go ahead with settlement.

Your solicitor will do final title searches, attend the settlement and check all the title documents are correct. Only then will any money be handed over to complete the purchase and the transfer of the property to you.

Once you receive confirmation that your purchase has been settled, you can pick the keys up from the real estate agent.



Conveyancing... Moving into the Future

Electronic Conveyancing

With the advancements in modern technology, NSW conveyancing is switching to electronic rather than traditional paper transactions.

Traditionally, the process of conveyancing includes transferring of physical documents and cheques. This produces some delays with cheque clearing, postage and registration. It could take months to register the transfer details.

Electronic conveyancing eliminates all of these documents, therefore, eliminating those delays.

On settlement, no cheques are exchanged. All funds are electronically transferred. The title from vendor to purchaser is also electronically transferred and any incoming mortgagee will have an electronic record of the mortgage over the property registered at the same time.

The benefits of electronic conveyancing include:

- There will be no delays in changing ownership on the Land & Property Information NSW records;
- Government departments, such as the local council, are informed of the change of ownership instantly;
- Funds will be available straight away to the vendor;
- Increased efficiency and reduced delay.

This process takes place through the Property Exchange of Australia (PEXA) secure website.

Contracts are also turning electronic.

Some solicitors are now offering electronic contracts for the sale of a property. The vendor and purchaser can sign a contract on their computer, tablet or smart phone.

The vendor or purchaser can be anywhere in the world, as long as they have access to modern technology, they can sign a contract digitally.

When are the changes taking place?

We are in a transitional period now where some conveyancing matters are electronic and some are still on paper.

From 1st August 2017

All major banks and financial institutions will be required to process mortgage transactions electronically.

July 2018

All stand alone transfers of property where there is no mortgage will be lodged electronically.

October 2018

All Certificates of Title, which is the piece of paper proving who is the owner of the property (like vehicle registration papers) will be converted to e-Titles. Paper certificates of title will be cancelled.

22

July 2019

All transactions will be lodged electronically.



So What's Next?

Owning your own property is something many of us have strived for, from a very young age.

The processes of seeking finance approval, finding the right property, taking every measure to ensure it is a sound investment and going through the legalities may seem daunting. But, that's why we are here.

We understand the law. We understand the conveyancing process. In fact, we excel at it!

At Sheridan Legal we have a team of legal professionals and assistants to ensure your purchase is handled efficiently. Our team are on board with each individual matter, and there will always be someone on the other end of the phone ready to answer your questions.

Remember, the first step to getting those keys will be to tell the real estate agent who is representing you. If you've found the right property, or you're on the hunt, give us a call.

Contact us today:

Kempsey

Level 1, 22 Belgrave Street
T: 02 6562 3300

South West Rocks

6/11 Prince of Wales Avenue
T: 02 6566 6250

mail@sheridanlegal.com.au

www.sheridanlegal.com.au