

Buying or selling a residential property

Buying or selling a residential property will be one of your most important financial transactions.

To be confident in your decision, and to ensure that no avoidable costs or issues arise, seek the advice of your solicitor before you sign any contract.

Conveyancing

Conveyancing is the term for transferring ownership of property from a seller to a buyer.

Solicitors and real estate agents can assist you with your conveyance.

You have the choice of doing the conveyance yourself, but you do so at your own risk.

Solicitors and real estate agents

It is important to understand the different roles solicitors and real estate agents play in conveyancing.

Solicitors are conveyancing experts who have been trained in this area of law and have the competence to guide you through a transaction to ensure your interests are protected.

As each property is different, so is each conveyance. Your solicitor can advise you on the need for special conditions and other legal matters which touch on conveyancing law. Examples include updating your will or making an Enduring Power of Attorney and Advance Health Directive.

Real estate agents or property agents are the sellers' representatives who receive a commission from the seller when the property is sold. The real estate agent is responsible for obtaining the best price and contract terms for the seller. A real estate agent is not qualified to give legal advice on the contract, draft clauses or modify the pre-printed contract in any way.

Disclosure obligations

If you are selling a residential property, you are required by law to disclose certain information to the buyers before they enter into a contract. There may be penalties for failure to comply with these requirements and the buyer may be able to terminate the contract and recover compensation from you.

For example, you must:

- give a disclosure notice to a prospective buyer if the property has a pool and there is no pool safety certificate. There is also an obligation to provide a pool safety certificate or notice of no pool safety certificate to a buyer before settlement.
- disclose all encumbrances affecting the property.
- notify the buyer if the property is recorded on the contaminated land or environmental management register, or if there is an application or an order about a tree on the property.

If you are selling a unit or townhouse, you must also provide the buyer with information about the body corporate.

Additionally, before settlement you must:

- advise the buyer whether the property has compliant smoke alarms and an approved electricity safety switch
- obtain and give the buyer a clearance certificate from the Australian Taxation Office.

A solicitor will be able to assist you to ensure you satisfy the disclosure requirements.

The contract

A standard contract for the conveyancing of residential property has been developed by the Real Estate Institute of Queensland (REIQ) and Queensland Law Society.

When you have expressed your interest in purchasing a property, the real estate agent will prepare a standard contract for you to sign.

Seek advice before you sign – send a draft contract and disclosure material to your solicitor to make sure they are correct and that they meet your needs. A standard contract cannot deal with the individual circumstances of every transaction.

If necessary, your solicitor can add special clauses to the contract, for example:

- the purchase may depend on the sale of your existing property
- the property is not subject to flooding and the sellers have obtained all necessary statutory approvals and complied with those approvals. It is also recommended that you obtain an independent valuation of the property before you sign the contract.

Cooling-off period

Most residential property sales in Queensland are subject to a buyer's cooling-off period of five business days commencing on the date the buyer or their lawyer receives a copy of the contract signed by both the buyer and the seller.

If you, the buyer, decide not to proceed with the sale within that period, you must give notice to the seller in the specified way to cancel the contract; you must pay the seller 0.25 per cent of the purchase price of the property. If your deposit exceeds the 0.25 per cent, the balance must be refunded to you.

Auctions

No cooling-off period applies to buyers who purchase at auction or to contracts that a registered bidder enters into by 5pm on the second clear business day after the property was passed in at auction.

Buying a house

Your solicitor will:

- check the title and plan of the land for easements, caveats, and other encumbrances
- conduct all the other usual searches recommended by your solicitor for your transaction
- inform you if these searches disclose any issues that affect the property
- check for any disputes or other charges that affect the unit or townhouse (community title land)
- calculate adjustments to the purchase price required under the contract
- arrange for your contract to be stamped and assist you in complying with Australian Taxation Office and State Government notice requirements
- prepare all documents and attend settlement to ensure you gain good title to the property.

Selling a house

Before listing your property for sale with a real estate agent, speak to your solicitor about:

- the form of appointment with the real estate agent
- any Warning and Disclosure Statements that must be satisfactorily completed
- the inclusion of fixtures and fittings
- your obligations to any existing tenants
- any alterations you have made to the property
- the date of settlement and, if relevant, the timing of any new home purchase
- any special terms that you want in the sale.

You also need to ensure you have installed a compliant fire alarm and safety switch.

When a buyer has signed a contract to purchase your property and paid a deposit, your agent will deliver the contract to you, either by hand, post or electronically. Before signing, speak with your solicitor about this contract to ensure full compliance with all formalities.

Up to the date of settlement, your solicitor will:

- check that all of the documents you are required to sign are in order
- ensure all outstanding government charges such as water rates have been paid
- calculate adjustments to the purchase price, as required under the contract
- arrange for the repayment and legal discharge of any mortgage on your property
- ensure you are paid in full for the property.

Buying a townhouse or unit

Townhouses or units are usually part of a community title scheme. When becoming an owner, you take on a relationship with the other owners in the scheme and the body corporate such as:

- sharing the ownership of common areas (eg lifts, stairwells and front entrances)
- becoming subject to the by-laws of the body corporate
- becoming a member of a body corporate — you are jointly and severally liable for your portion of the bodies' corporate debts

The body corporate is made up of all of the owners. It decides issues about the common property, concerns of owners and maintenance of the complex.

Owners regularly contribute money to the body corporate for day-to-day ongoing expenses and anticipated long term costs.

You should ask your solicitor to explain the ramifications of buying property in a community title scheme.

Selling your townhouse or unit

Before listing your townhouse, unit or other community title property for sale with a real estate agent, speak to your solicitor about:

- the form of appointment with the real estate agent
- any Warning and Disclosure Statements that must be satisfactorily completed
- the need to disclose outstanding liabilities and the implied warranties which you must give as a seller
- the inclusion of fixtures and fittings

- any alterations you have made to the property
- your obligations to any existing tenant
- the date of settlement, and if relevant, the timing of any new home purchase
- any special terms that you want in the sale.

You also need to make sure you have installed a compliant fire alarm and safety switch.

Once a buyer has signed a contract to purchase your property and paid a deposit, your agent will deliver the contract to you, either by hand, post, fax or email. Before signing, speak with your solicitor about this contract to make sure that all formalities have been complied with.

During the conveyance, your solicitor will:

- ensure all outstanding government charges and body corporate contributions have been paid
- arrange repayment and legal discharge of any mortgages on your property
- check that all of the documents you are required to sign are in order
- attend to any other pre-settlement requirements such as obtaining a CGT withholding tax clearance certificate when applicable
- ensure that you are paid in full.

The costs involved

Legal costs

Ask your solicitor to provide an estimate of legal and other costs and to outline the processes involved in handling your conveyance.

When buying

Your solicitor will advise you on standard charges such as transfer duty (formerly known as stamp duty), additional foreign acquirer's duty, council and government search costs and document registration fees.

When selling

You are obliged to give clear title to the buyer. Unless special arrangements have been made, you must also give vacant possession on settlement. Your real estate agent will charge a commission on the sale and there may also be bank or financial institution charges to consider.

Queensland Law Society

Contact us

1300 367 757

info@qls.com.au

Law Society House

179 Ann Street, Brisbane Qld 4000

GPO Box 1785, Brisbane Qld 4001

The information in this brochure is merely a guide. It is not meant to be a detailed explanation of the law and it does not constitute legal advice. Queensland Law Society recommends you see your solicitor about particular legal concerns.