# GENERAL ADVICE TO PURCHASERS

ALL HOURS
Conveyancing

# INTRODUCTION

Firstly, thank you for engaging our firm to assist you in your conveyancing transaction. Our firm prides itself on the level of service provided and we look forward to assisting you throughout this transaction. We encourage you to contact our office with any queries you may have in relation to your purchase.

Purchasing a property is more often than not the most expensive and intimidating process most of our clients undertake. Recognising this we try to make the process as simple and clear as possible for all our clients so the transaction can be completed with minimum stress. At the same time we encourage our clients to take an active role in the process as this ensures that they stay informed about what is happening.

The purpose of this information is to provide you with an outline of what is involved in the conveyancing process, as well as to make some recommendations for what you can do to ensure the process is a smooth one.

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# *The* CONTRACT

The contract of sale is the most important document in the conveyancing process. The contract records the terms of your agreement with the vendor regarding the purchase of the property.

The contract is a legally binding document and breaches of contracts of sale can have potentially serious legal consequences.

As the contract is designed to record your whole agreement with the vendor anything which was agreed orally does not form part of the contract and you should not rely on any such agreements. If you are concerned that aspects of your agreement with the vendor are not in the contract of sale you should advise our office as soon as possible.

A statutory right to 'cool off' period may exist for a limited time after signing the contract. It begins from the date you sign the contract, not from the date the vendor signs it. This allows you to change your mind in relation to the purchase during this period. Please contact us immediately if this is relevant to you.

Joint purchasers are equally liable for performance of the contract.

# *Release of* DEPOSIT

Purchasers usually pay a 10% deposit at the time the contract is signed. This amount must be held by a stakeholder, an estate agent or solicitor, until settlement. It is possible for the deposit to be released prior to settlement but the purchaser is entitled to have full details of any amounts owed in relation to the property. If that information is provided it is usual for the purchaser to consent to release of the deposit.

If there is no mortgage over the property the vendor is entitled to release of the deposit 28 days after the date of the contract.

The estate agent is entitled to take the commission from the deposit once it is released.

# PRIORITY NOTICE

*or*

# CAVEAT

It is good practice to lodge a priority notice to record the purchaser's interest in the property once contracts have been exchanged.

A priority notice is notification of an intended dealing with land which is lodged with the Registrar of Titles at Land Use Victoria. Once a priority notice has been recorded it will prevent the registration of any other dealing over the property. The priority notice will also list the order in which the instruments are to be lodged. If the vendor was to subsequently enter into a contract to sell the same property to another buyer, the second buyer would not be able to register the Transfer as it would not be identified in the priority notice.

We encourage you to instruct us to prepare and lodge a priority notice.

As an alternative to a priority notice you also have the right to lodge a caveat against the title to protect your interest in the property as purchaser. This gives notice to any intending mortgagee or caveat or of your interest in the property. It also means that notification will be sent by the registrar if anyone else tries to lodge a document in respect to the title.

Please contact our office should you wish to discuss these options in more detail.

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## Services

Details of electricity, gas, water, sewerage and telephone services are set out in the vendor statement. You will have to arrange for connection of services in your name from the date of settlement and you will have to pay any relevant connection fees. If you discover that services are not available for connection you need to advise us as this may constitute a false representation by the vendor. We suggest that you contact the utility providers regarding connection in your name a reasonable time before settlement.

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## Building works

If it appears that any works at all have been carried out at the property during the past 7 years you need to tell us. If unauthorised works were carried out you may have the option of withdrawing from the purchase or compelling the vendor to obtain the necessary permits, inspections and warranty insurance, if applicable.

If you have not already done so we recommend that you consider obtaining a building inspection report from an authorised building inspector. Of course, this will largely depend on the vendors agreeing to grant access to the property. However, even if you cannot obtain an inspection before settlement a report will enable you to plan the future maintenance or repair of the property or identify if any action may be taken against the vendors later for any deliberate concealment or misrepresentation.

If you intend to carry out any works at the property once you settle and you do not intend using a registered builder please ask us about your owner-builder obligations, particularly in regard to any future sale.

If there is a swimming pool at the property relevant fencing standards must be complied with. There are also requirements regarding smoke alarms. This means that you will be liable from the date of settlement and must contact the council to ascertain the exact requirements. Failure to comply may result in fines and could affect your insurance protection.

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## 3 Planning

Check the zoning of the property. We recommend you make enquiries with the local council to ascertain permitted and prohibited uses under the zoning restrictions, particularly if you intend redeveloping the property in the future.

## 4 Rates and outgoings

We will check the information provided in the vendor statement and make any necessary monetary adjustments. You need to arrange a week or so before settlement for a special meter reading to be undertaken by the water provider on the day of settlement and for transfer of the account into your name.

<u>Land tax may be applicable if the land value exceeds $250,000.00 or a change of use occurs.Land tax will be adjusted on ‘single holding basis’ unless there is a special condition in the Contract of Sale requiring the land tax to be adjusted at the higher, proportional rate.  Land tax is adjusted for the calendar year which means you may have to pay land tax at settlement even if the property will be your principal place of residence.</u>

## 5 Sewerage and drainage

Registered easements are shown on the plan attached to the title. Further information in relation to sewerage and drainageis available from the responsible authorities.

# About the
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## 6 Notices and orders

The vendor statement provides that the vendor is not aware of any notices or orders affecting the property other than current rates notices. If a notice or order is issued in respect to the property after the date of the contract you will be responsible to comply with such a notice.

We will undertake normal checks in relation to these matters and the property generally. If there are any unusual matters or you have any particular concerns please contact our office to discuss further possible enquiries.

## 7 Measurements

We enclose a plan of the land obtained from the title. We recommend that you immediately check the measurements of the property against title measurements for any discrepancy, including the connecting distance to the next street, as you need to ensure that the property is of the right dimensions and that the location is correct. You must check that any fences on the property are situated exactly on the boundaries. If doubts arise a survey should be obtained.

You also need to check that nothing has been built over any easement shown on the plan.
Please tell us immediately if the measurements are incorrect or something has been built over an easement.

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## 8 Easements

If you wished to build something of a permanent nature over an easement at some later time you must first seek the written consent of the relevant authority.

You also need to be aware that easements may also be 'implied' for the purposes of sewerage, gas, electricity and telephone lines. Please inform us if there appear to be any such easements evident from your inspection of the property.

## 9 Recommended council enquiries

You should check with the council that the property is not in a special area designated for things such as flooding, bush fire or significant snowfalls. The local council will be able to provide you with maps designating these areas. You should also check with the council that there are no matters which will otherwise impact on the property such as landfill.

# JOINT TENANCY

*or*

# TENANCY IN COMMON

When two or more parties buy a property they must elect to buy as joint tenants or tenants in common. On the death of a joint tenant, the survivor automatically receives the deceased's share regardless of the provisions in a will. This is the way spouses usually buy their home, although not necessarily in a second marriage environment where a tenancy in common may be more appropriate.

Tenancy in common is usually the way that parties who want their families to inherit their share hold property. The share in the property can be any size from 1% to 99%. Separate titles can be issued for each share.

# INSURANCE

Contracts generally provide that the property remains at the risk of the vendor until settlement. However, we recommend that purchasers insure the property against loss and damage, as well as occupier's liability, as you have an insurable interest from the date of the contract. Also, if the property were substantially damaged you may want to have the option of proceeding with the purchase and relying on your insurance to reinstate the improvements.

A lender will require a certificate of currency of insurance or policy document showing the names of the purchasers and the incoming lender for a minimum insurance value the lender will specify.

# *Financing your* PURCHASE

Given the large sums of money required to purchase properties most purchasers obtain finance from a bank or financial institution to help fund the purchase. Ensuring that your finance is approved and the relevant loan documents signed well in advance of the settlement date is critical.

In our experience many purchasers assume that engaging the services of a mortgage broker means they do not need to do anything to obtain their loan and believe that the mortgage broker will sort it out. This is a dangerous mistake to make as unfortunately sometimes we find that brokers, mobile lenders and home finance managers fail to ensure that mortgage documents are prepared and executed by clients correctly.

Without correctly signed mortgage documents your lender will not advance the money you need to settle your purchase. This can lead to delays in settlement and unnecessary cost to you in the form of penalty interest and additional legal fees. While it may be convenient to use a broker to assist you to obtain a loan ultimately it is your responsibility to make sure your loan is in order in time for settlement.

We recommend that mortgage documents are signed at least two weeks prior to the due date for settlement. This takes into account that inadvertent mistakes can be made and ensures there is time to attend to these errors without the danger of going past the settlement date. We urge our clients to routinely follow up with their lender throughout the transaction to make sure that everything proceeds in a realistic timeframe.

# *Vacant* POSSESSION

If the contract provides for it the property must be vacant at the time of settlement. In reality it may be that the vendors could still be loading their removal truck at the time. We suggest that if you plan to move in immediately you contact the estate agent to discuss timing. The actual time of settlement will not be arranged until shortly prior to settlement.

Please confirm that you will be occupying the property as your principal place of residence as we must include this information in a notice we send to the land tax, council and water authorities.

# *Subject to* TENANCY

Many properties are bought as investments and are subject to the existing tenancies. Full details of the tenancies will be attached to the contract. By law on completion of the purchase you automatically step into the shoes of the vendor and the lease becomes enforceable by you. A prudent discussion with tenants before exchange will reveal any issues that might exist that would otherwise remain undisclosed. The fact that a tenant is a poor performer will not entitle you to terminate the contract after exchange.

# TAXES

If the property is not to be your principal place of residence then on resale there will be a taxable profit or deductible loss, either under normal income tax rules or under the capital gains tax rules. If you are a developer then the sale will probably produce a tax result under the usual rules relating to income.

If you are not a developer the only decision at the time of purchase concerns the entity through which to buy. The main provision to bear in mind is that the 50% discount on capital gains does not apply to companies. Nevertheless, there may be losses in a company to offset or other good reasons to use a company.

GST does not apply to residential property unless it is new or vacant land. It does apply to commercial and industrial property. There are a number of possibilities that might apply to the purchase. We will advise you whether you are paying GST and if so whether it is in the price or additional to the price and whether you are entitled to get it back as an input tax credit.

Further advice on your tax position may be necessary.

# Capital gains tax withholding PAYMENTS

Where the sale price is $750,000 or more the foreign resident capital gains withholding payments provisions of the Taxation Administration Act 1953 apply.

If the foreign resident capital gains withholding payments provisions apply to this transaction we will need to discuss this with you further.

The vendor must establish that they are not a foreign resident failing which the purchaser must remit up to 12.5% of the sale price to the Australian Taxation Office.

# GST withholding PAYMENTS

Where the property is taxable new residential premises or land the GST withholding provisions of the Taxation Administration Act 1953 apply.

If the provisions apply to this transaction we will need to discuss this with you further.

If GST is payable on the purchase and withholding is required the purchaser must remit up to 1/11th of the sale price to the Australian Taxation Office.

# *Land transfer duty* AND RELATED FEES

All property purchases in Victoria attract land transfer duty. This is a state government tax levied against a purchaser when they purchase a property. The amount of duty payable depends on the value of the property.

The state government, through the Land Titles Office, also charges a fee to have a title registered in the name of a new purchaser. This fee is calculated on the value of the property.

Where you borrow money from a financial institution to fund your purchase that financial institution will be responsible for paying the land transfer duty and titles office fees on your behalf. These fees, together with any fees charged by the financial institution for their services, will generally be deducted from the amount the bank lends you. For example, if you borrow $300,000 and your land transfer duty, titles office fees and other fees total $15,000, the bank will only provide $285,000 at settlement. If more money is required for the settlement we will then need to obtain it from you.

Often we find that brokers fail to factor these fees into their calculations for purchasers and when we advise the purchasers of the additional funds required for settlement they are not in a position to provide them. Regardless of who may be to blame for such an oversight it will be the purchaser who ends up suffering. It is therefore in your interest to ensure that all expenses are taken into account when ascertaining how much you need to borrow.

# *Land transfer duty* AND RELATED FEES

Various exemptions and concessions are available, such as the principal place of residence concession, pensioner exemption and off the plan concession. We can assist you in applying for these concessions. Full details are available at www.sro.vic.gov.au.

Unfortunately many estate agents and brokers do not understand the off the plan concession and often over estimate the savings. The earlier in the construction process that you buy the greater the duty saving. However, duty is calculated on the full price less the value of building work after contract. It is not calculated on the value of the land on the contract date and any information in the contract relating to that value is often misleading.

Duty can only be calculated when the builder provides a statutory declaration relating to the cost of works after contract. This is governed by a strict formula and the declaration required to calculate the concession will not be available until all works have been completed.

Accordingly, the builder cannot provide this declaration until very late in the conveyancing process and this often leads to uncertainty because the financier will want to be sure that sufficient funds are available to pay duty at the full rate if the builder's declaration does not support a reduction. Unfortunately the process is flawed and we will do the best we can to achieve the best possible outcome for you.

# *Foreign purchaser* ADDITIONAL DUTY

Foreign purchaser additional duty is payable on the purchase of residential property by foreign purchasers. The additional duty is, as the name suggests, paid in addition to the duty payable on the purchase.

Foreign purchaser's may be entitled to an exemption from additional duty if purchasing a principal place of residence jointly with a spouse or domestic partner who is an Australian citizen, permanent resident or New Zealand citizen who holds a special category visa. The property must be occupied as the principal place of residence for a continuous period of 12 months, starting within 12 months of becoming entitled to possession of the property.

The rate of additional duty is 8%.

# *Final* INSPECTION

It is the vendor's responsibility to hand over the property at settlement in the same condition as at the date of the contract, fair wear and tear excepted. You are entitled to conduct a final inspection of the property in the week before settlement and you should contact the estate agent to arrange this.

During the final inspection you should check that all chattels specified in the contract remain and that no fixtures have been removed. If you are in any doubt about whether an item is a fixture which should remain, or an unspecified chattel which may be removed by the vendor, please discuss it with us.

Briefly, a chattel is generally removable and may be removed by the vendors if not listed in the contract, while a fixture must remain. A dishwasher which is only connected by a power point and may be removed without damage to the property will generally be regarded as a chattel. A fixture tends to be something so built in that it forms part of the property and the property would be damaged if the fixture were removed. A dishwasher permanently affixed under a bench is generally regarded as a fixture.

If the property is not in the same condition as at the contract date, fair wear and tear excepted, or if chattels sold with the property have been removed, you have no legal right to delay settlement but only have a right to sue for compensation later. If you let us know there is a problem we may be able to resolve it prior to settlement.

If the property had marks on the walls or spots on the carpet or appliances that did not work when you first inspected, then the vendors do not have an obligation to clean the property or fix the appliances. They only have to hand it over in the same condition as at the contract date, fair wear and tear excepted.

# SETTLEMENT

Settlement is the time when purchasers and their lenders pay the balance of the purchase price to the vendor. Purchasers must provide us with funds required for settlement by direct deposit. These funds need to be to our office two clear days before settlement is due.

Settlement takes place electronically and you do not need to attend.

During settlement the money due to the vendor is transferred into a holding account while the relevant documents to enable the purchaser to become registered as the owner of the property are lodged with the titles office. Once lodgement is completed the settlement money is disbursed. This process normally takes between5 and 20 minutes depending on the complexity of the transaction.

If you do not settle on the time and date set down for settlement the vendor has the right to demand payment of penalty interest and perhaps additional losses. The vendor would also have the option to issue a rescission notice and then to retain the deposit and re-sell the property, suing you for any deficiency in price.

# *Rate* ADJUSTMENT

The vendor is obliged to pay the rates on the property until settlement and then it becomes the responsibility of the purchaser. Rates are adjusted at settlement to ensure that this happens. Any amount outstanding is deducted from the money paid to the vendor and an adjustment made so that the purchaser pays back to the vendor an amount for the period after settlement. Payment is then forwarded to the rating authority and rates are therefore paid until the end of the rating year.

We also notify the rating authorities of the change in ownership.

# KEYS

The purchaser usually collects the keys from the estate agent after settlement. The estate agent will only hand over keys on receipt of written authorisation from the vendor which will be provided to them after settlement has taken place. Other keys will normally be left in the property, along with instruction books and household information.

# REGISTRATION

The documents necessary to transfer the property are lodged and registered at the time of settlement.

# KEYS

We will provide you with full financial details relating to the settlement. We will also advise the local council, water authority and the State Revenue Office of your purchase. It is your responsibility to arrange for connection of electricity, gas and telephone services. These steps should be taken a reasonable time before settlement as there are sometimes waiting periods.

If you have borrowed money to assist you with the purchase your financier will also report to you after settlement.

# CLIENT CHECKLIST PURCHASE

Once you have a signed contract of sale there are a number of dates and tasks you will need to keep on top of. We recommend that you tick off the below items once completed

## DATES

| IMPORTANT THINGS | DATE |
|---|---|
| Deposit Date | |
| Loan Approval Due | |
| Building Inspection | |
| Pest Inspection | |
| Any Additional Special Conditions | |
| Final Inspection | |
| Settlement | |

DOCUMENTS

When your contract of sale becomes unconditional, you will be provided with various documents for you to complete as your matter progresses towards settlement:

## Loan documents (if applicable)

Ensure this is filled out and returned to your lender promptly.

## Verification of Identity

Via IDSecure - you will be provided with a secure link to have your identity verified.

## Client Authorisation, Authority to Act, Client Confirmation & Acknowledgement Form, MyConnect Order Form

Via DocuSign - Please complete all fields, including checking the relevant checkbox to provide instructions, sign and date.

## State Revenue Office Duties Form

You will receive an email invitation from the State Revenue Office to electronically sign the Duties Online Form. This step takes place closer to settlement so it is vital that you read and sign the form as soon as you receive it.

## Section 27 Statement

If the vendor seeks to have the deposit released prior to settlement you will also be provided with a Section 27 Statement detailing the particulars of any mortgage, charge or caveat over the property. If you are provided with this document by the agent do not sign without firstly speaking to our office.

# SETTLEMENT

Finally, if your lender does not have authority to access your nominated account at settlement, or if you are paying cash, you will need to place funds into our Trust Account no later than 48 hours prior to settlement. If placing funds in trust, you will also need to provide your account details to us and confirm these details over the phone no later than 48 hours prior to the settlement date for unused funds to be refunded to you.