

Legalities concerning sale of property



The process of selling your home privately can be daunting when it comes to legal requirements. In order to make it easier and more comprehensible we have put it all together in key points. Knowing that nothing has been missed will enable you to feel more at ease throughout the sale process.

Conveyancing is the term used to describe the transfer of ownership of property from seller to buyer.

A conveyancing firm will not only draft a contract designed to meet your needs they will also advise you on standard charges: stamp duty, government search costs and document registration fees.

If you don't have a solicitor working for you at this stage, we highly recommend Ozpropertylaw.com. Ozpropertylaw.com has streamlined the property law process and passed on the benefits to you, and most importantly, it's never been easier!

As we pride ourselves in working with a leading specialised law firm, their contact details have been made readily available for you on our website.

Contract of sale

For a contract to be valid, there are six elements that needs to be fulfilled.



- **Intent.** All parties entering into the contract must do so willingly
 - **Agreement.** Offer by a prospective purchaser and acceptance by the vendor.
 - **Consideration.** A promise that matters will be conducted by both parties. Money will be transferred from purchaser to vendor and title of property will be transferred from the vendor to the purchaser.
 - **Legal capacity.** The vendor must be the legal owner of the property and legally permitted to enter into a contract of sale. For example, a contract would be invalid if signed by a person who is bankrupt, or by a person of unsound mind.
 - **Understanding and consent.** It is essential to ensure that all parties fully understand the terms and conditions in the contract.
 - **Legality.** The contract must comply with all applicable, current legislation.
- The contract of sale must include warning statement PAMD Form 30c (attached to the front page).
 - Once the buyer has signed the contract and paid the deposit, you will be handed the contract to sign.
 - 5 day cooling of period, In QLD this is required to be provided with the contract. It however does not apply to an auction. The 5 day cooling of period commences on the date the buyer is notified that the contract is signed by the seller. If the buyer decides not to go ahead with the purchase during the 5 days of cooling of, he will be refunded the deposit less 0.25% of the purchase price of the property.

Acceptance of title.

Acceptance of title means that the purchaser accepts the vendor's statement as a true definition of the land.

- Title may be deemed to have been accepted 21 days after the contract of sale is signed if no requisitions are raised by the purchaser.
- No notification by the purchaser is required for the title to be considered accepted.
- If the title is good and the vendor discloses all the necessary information, then it is doubtful that a purchaser would have the right to rescind the contract of sale after this period.
- Requisitions on title. The contract of sale gives the purchaser the right to ask questions about the title to a property. These requests are called requisitions on title and must be made within 21 days of signing the contract of sale.

Defects in title.

A vendor must disclose any defects in the title that the purchaser could not discover through a regular search, non disclosure of any of the following would constitute a defect in title

- **Easements.** An easement is a grant of rights over land by the property owner in favor of another person to enter onto land in order to install or maintain facilities.
- **Restrictive covenants.** Restrictions in building on or over certain heights or clearing the land .
- **Tenancies.** A tenancy could be a defect if vacant possession is required and not available at settlement.
- **Misdescriptions of the land.** Measurements of the land must correspond to the dimensions of the land presented for sale. It is the responsibility of the purchaser to check the dimensions of the land as shown on the title.
- **Caveats.** The land may be listed as security for a personal loan taken out by the vendor. The responsibility for the removal of the caveat lies with the vendor.
- **Unregistered matters.** Matters that cannot be registered and which may affect the title of the land. If the vendor is aware of unregistered matters it must be disclosed to the purchaser.

Defects on property.

Defects on property refers to problems associated with the condition of the land or any buildings or other structures on the land. The vendor is not liable for any defects in property, unless these are dishonestly represented to the purchaser. If the contract of the sale does not specify the quality of the buildings or condition of the land, then the vendor is not liable for any defect in the property.

- **Transfer of land and title.** The transfer of title document should be signed before settlement. The vendor has no physical responsibilities on the day except to supply an unencumbered title
- **State Revenue Office for goods transferred with residential land.** This replaces the stamp duty declaration. It is either completed by the vendor's solicitor or the purchaser's solicitor. Common practice is for the form to be filled out by the vendors solicitor who will ensure it is lodged at the State Revenue Office. The purpose of this requirement is to prevent vendors and purchasers from entering into an agreement to avoid stamp duty.
- **Discharge of mortgage.** The vendor must discharge any existing encumbrances out of the purchase money payable under the contract by the purchaser.
- **Withdrawal of caveats.** By lodging a caveat a purchaser can prevent others from registering an interest in a property ahead of theirs.
- **Change of name declaration.** This is to certify on the Land Title that your name and information is currently on that property.
- **Australian Tax Office.** The vendor is also responsible for notifying the rating and taxing authorities of the sale.
- **Utility disconnections,** the vendor must ensure that the accounts for all utilities are closed and fully paid. Unless other arrangements have been made with the purchaser.

- **Key release.** When the property is settled you must wait until you can confirm successful settlement (balance of funds received) before handing over the keys.
- **Notice of disposition.** Notice of disposition is an official notice to the Registrar of Titles advising the sale of the property.
- **Purchasers responsibilities.** The purchaser must ensure that finance is available on the settlement day. You need to keep in contact with the buyer to ensure that approval of finance will occur in the time frame available. If an extension is required, the purchasers solicitor must make an extension request to the vendors solicitor. For example the lending institution may require an independent valuation of the property.
- **Disbursement order.** Disbursements are rates, taxes and other liabilities that need to be apportioned between the purchaser and vendor. This is usually calculated by the vendors solicitor and presented to the purchasers solicitor. If there are discrepancies in the amount calculated, the parties must negotiate agreement. If needed a mediator can be appointed.