



THE LAW SOCIETY
OF NEW SOUTH WALES



‘Do I really need a solicitor to make an offer on a house’?

The answer is that buying a home is often the biggest financial decision we’ll ever make (especially in Sydney, where property prices can be astronomical).

So making an offer and entering into a contract for sale without knowing your legal rights can have profound long-term consequences on your finances and your overall quality of life.

This checklist answers common questions about the process for buying a home in NSW and how your solicitor will guide you through each step, including:

- buying at auction
- buying a strata title property
- how the conveyancing process works.

Disclaimer: This publication provides general information of an introductory nature and is not intended and should not be relied upon as a substitute for legal or other professional advice. While every care has been taken in the production of this publication, no legal responsibility or liability is accepted, warranted or implied by the authors or the Law Society of New South Wales and any liability is hereby expressly disclaimed.

© 2012 The Law Society of New South Wales. Except as permitted under the Copyright Act 1968 (Cth), no part of this publication may be reproduced without the specific written permission of the Law Society of New South Wales.

CONTENTS

▶ BEFORE YOU BUY	3
▶ Buying by private treaty	3
▶ Buying at auction	3
▶ Buying an apartment or townhouse	4
▶ ONCE YOU’VE DECIDED TO BUY	5
▶ The contract for sale	5
▶ Buying on your terms	5
▶ Should you pay for inspections?	6
▶ What’s included in the sale?	6
▶ Your mortgage documents	6
▶ What is exchange?	7
▶ Signing the contract isn’t always final	7
▶ The first home owners grant	8
▶ Stamp Duty and other tax	8
▶ FINALISING THE SALE	9
▶ What exactly are you buying?	9
▶ What happens at settlement?	9
▶ Do you need to be present at settlement?	10
▶ Get in touch with a solicitor	10



THE LAW SOCIETY
OF NEW SOUTH WALES



YOUR GUIDE TO BUYING A HOME.

A checklist for buying a house or apartment in New South Wales

BEFORE YOU BUY

Buying by private treaty

The most common way to buy a house or apartment in NSW is by private treaty. This is where a seller advertises the amount they'd like to achieve for their property and then negotiates with prospective buyers.

The contract for sale becomes activated once you exchange contracts with the seller. At this time you'll also have to pay the full deposit on your place (usually 10% minus any holding deposit you've paid). However, this doesn't always mean you're locked in.

The standard contract for sale includes a 'cooling off' period during which you can change your mind. However, your solicitor can have this waived by signing a certificate and explaining the contract to you.

Buying at auction

Auctions can sometimes seem daunting; not least because there's no cooling off period. If the gavel comes down and you're the highest bidder you're usually bound to go through with the purchase, no matter how unfair the contract might be.

So long as you have your solicitor look over the contract for sale before you bid there's no reason an auction needs to be any riskier than buying by private treaty (so long, of course, as you stick to your budget and don't get too caught up in the moment!).

Before the auction, your solicitor will identify any terms that might not be in your favour and negotiate with the vendor's solicitor to change them. They'll also make sure you're buying exactly what you intended to and that it's in the condition you expect.

That way if your bid is the winning one, you can be sure the contract you sign will be in your interests.



YOUR GUIDE TO BUYING A HOME.

A checklist for buying a house or apartment in New South Wales

BEFORE YOU BUY CONTINUED

Buying an apartment or townhouse

Most apartments and townhouses in NSW are strata title which means when you're not only buying real estate, you're also buying into the rights and obligations of being a member of the owners' corporation (or body corporate).

Being a member of the owners corporation means you'll have a say on issues affecting the building but it also means you'll need to pay strata levies and the way you can use your property will be restricted by [by-laws](#). You may also need to contribute money for communal issues, such as plumbing, roof and window repair and property maintenance, even when you're not directly affected.

Because this can affect the value of what you're buying, it's important you get a full picture of the body corporate's activities before you buy and that you know exactly what work is planned and whether there's enough money to cover it.

While a seller must attach some information about the body corporate to the contract for sale, your solicitor will make sure you have everything you need to reach an informed decision before you buy.

THE PROS AND CONS OF BUYING 'OFF THE PLAN'

Builders often raise capital for their development by selling units or townhouses before they're built. This can be a great way for buyers to get a reduced price and even make a capital gain before settlement. However, it's not risk free. After all, the property market can move down as well as up, so you could end up losing money.

There's also a chance you may not end up with what you intended. For instance, recently a Sydney investor bought an apartment 'off the plan' after the agent promised 180-degree water views. When the complex was finished the buyer found a wall obstructed his view altogether. He argued that the contract for sale was void and asked for his deposit back. The builders refused.

The buyer took his case all the way to the NSW Court of Appeal, which ruled in his favour. It found that he had relied on the agent's misrepresentation when deciding to buy, so the contract was void. It ordered the builders to return the buyer's deposit.



YOUR GUIDE TO BUYING A HOME.

A checklist for buying a house or apartment in New South Wales

ONCE YOU'VE DECIDED TO BUY

The contract for sale

When you buy a property in NSW your rights depend, in large part, on what's in the contract for sale. And because no two properties are the same, no two contracts will be the same either. However, there are some things a contract for sale must do, including properly identifying the property as well as the terms on which it's being sold. It should also attach a number of documents, the most common of which are:

- a zoning certificate
- a drainage diagram showing any sewer lines
- a copy of the property certificate
- a copy of the plan for the land
- copies of any documents showing easements (the right of someone else to cross or use the land), rights of way, restrictions, covenants, etc.

Sellers of strata properties (generally units or townhouses) should also have attached:

- a copy of the property certificate and strata plan, and
- a copy of by-laws concerning the use of common property.

Buying on your terms

Many of the terms in any contract for sale will be 'standard' ones, which means that they've been in use for a long time and are fair to both seller and buyer.

However, a seller doesn't have to include these terms and instead may choose to include something in the contract which favours themselves at a buyer's expense. That's why the first thing your solicitor will do is make sure that the contract for sale isn't just legal, but that it also isn't unfair to you.

Where a clause isn't in your interests, your solicitor will negotiate with the seller's solicitor to get it changed. This includes working out a time to 'settle' the sale, which is when you'll pay the balance owing and take ownership of the property.



YOUR GUIDE TO BUYING A HOME.

A checklist for buying a house or apartment in New South Wales

ONCE YOU'VE DECIDED TO BUY CONTINUED

Should you pay for inspections?

Because you're expected to take the property 'as you find it' that means you'll also sign up to any structural problems, pest infestations or other defects that might not be obvious to the naked eye. That's why it's always best to have someone who knows what they're doing look over the property first. After all, you may be paying a few hundred dollars up front to save yourself thousands, or even tens of thousands of dollars of bother down the track.

Your solicitor should also check whether the contract includes:

- a survey
- a building certificate, or
- a home owner's warranty insurance certificate for any renovations done at the property.

If you're buying at auction it's important that you have any pest or building inspections carried out before the auction. Once the hammer comes down it's unlikely you'll be able to get out of the contract.

What's included in the sale?

Unless the contract specifically says otherwise the property will be sold 'in the state you find it'. That also means any 'fixtures' are automatically included.

A fixture is anything that can't easily be taken away without doing damage to the property. For instance, stoves are usually fixtures because they're wired in, whereas fridges aren't because they only need to be unplugged. Sometimes a seller will attempt to exclude a fixture from the contract for sale. At other times, what constitutes a fixture isn't so clear cut. For instance, removable floor coverings or an above ground pool.

Where anything is in doubt, it should be expressly included in the contract for sale. Your solicitor will help you make sure you know everything that's included in the sale.

Your mortgage documents

To buy a property most people will need to take out a mortgage. A mortgage gives a lender rights over the land for which they're lending money, including the option of selling it if you default.

A solicitor can help you make sense of what your obligations are under the mortgage, including whether you'll be penalised for refinancing or paying out your loan early.



YOUR GUIDE TO BUYING A HOME.

A checklist for buying a house or apartment in New South Wales

ONCE YOU'VE DECIDED TO BUY CONTINUED

TYPES OF OWNERSHIP

When you buy a property with another person, there's usually two ways you can choose to own it.

Most couples choose to buy as **Joint Tenants** which means they own the whole property jointly and if one person dies the other is immediately entitled to the whole property (regardless of what any Will might say).

Business partners or people not closely related usually choose to buy as **Tenants in Common** which means they each own a share in the property. That share can then be passed on or sold to anyone and can be left in a Will.

What is exchange?

A contract to sell a property becomes binding when the buyer and seller each sign a copy of the contract for sale and exchange them. At exchange, the buyer also usually hands over a deposit (often 10%).

At an auction, exchange happens immediately after the winning bid is accepted. For private treaty sales, exchange usually means that you will deliver your signed contract to the seller's agent and pick up the seller's signed copy. Sometimes a seller will be happy to exchange contracts by mail, in which case the seller's signed contract will be delivered to your solicitor.

Signing the contract isn't always final

Sometimes you'll be able to get out of the contract for sale and get your deposit back, even when you've signed the contract for sale (and that includes when you've bought a property at auction).

For instance, sellers must always comply with the 'vendor disclosure requirements and warranties'. These rules force anyone selling a property to let prospective buyers know certain information about the property they're selling in the contract for sale. This includes making promises about the property and attaching certificates that reveal such things as any rights of way, drainage and zoning.

Your solicitor will be able to tell you whether the seller hasn't complied with these and whether you'll be able to recover your money and pull out of the contract.



YOUR GUIDE TO BUYING A HOME.

A checklist for buying a house or apartment in New South Wales

ONCE YOU'VE DECIDED TO BUY CONTINUED

The first home owners grant

If you're buying your first home, you may be entitled to a little help from the government. Find out more at the [Office of State Revenue](#).

Stamp Duty and other tax

In NSW the sale of property is taxed. This tax takes the form of stamp duty, which is calculated based on the price of the property. You will need to pay stamp duty at settlement. However, your obligation to pay is sometimes waived if you're a first home buyer or if you're buying a newly constructed home.

For more information visit the [Office of State Revenue website](#).

If a property isn't purely residential in its nature, the sale may incur GST. Investment properties can also be subject to Land Tax. It's important your solicitor goes through the contract for sale to make sure the cost of these taxes it isn't unfairly passed onto you as the buyer.

WHAT HAPPENS BEHIND THE SCENES?

While you're getting ready to move into your new house your solicitor will be working hard so that everything works in your favour. To make sure the seller hasn't left something out of the contract they'll be carrying out a whole lot of enquiries like a fuller zoning enquiry, land tax and RTA proposal enquiries and enquiries with other government departments.



YOUR GUIDE TO BUYING A HOME.

A checklist for buying a house or apartment in New South Wales

FINALISING THE SALE

What exactly are you buying?

Technically, owning a property means having ‘title’ to it. From a practical point of view this means once you’ve bought your name will appear on the Certificate of Title (sometimes known as the title deed). Because most land in NSW operates under Torrens Title your solicitor will then have to register this certificate at the Lands Title Office so that everyone knows you’re now the owner.

Generally, when you buy a house or apartment in NSW you get one of the following:

- **Freehold** which gives you ownership over the land and the buildings on that land
- **Leasehold** which means you have ownership of the land and the buildings on it for a certain period of time (often 99 years)
- **Strata title** which usually applies to apartments or town houses and gives you the rights to the airspace in your unit
- **Company title** another, less common way of apartment ownership. You buy ‘shares’ in a company and this, in turn, entitles you to the use of an apartment, and
- **Community title** which often works in combination with strata title on large developments gives you rights – along with other owners – to common land.

What happens at settlement?

When you sign the contract you’ll usually agree to a settlement day. Most commonly this will be six weeks after the date of exchange.

At settlement you’ll need to pay the seller everything you owe them to ‘settle’ the purchase of your home. This amount will take into account any utility bill and tax calculations that your solicitor makes.

If you can’t settle by the date stipulated in the contract for sale, you’re likely to be charged interest. In some circumstances, the seller may even be able to cancel the sale and keep your deposit.

You should let your solicitor know as soon as possible if it looks like you can’t make the settlement date so that they can attempt to come to an arrangement with the seller’s solicitor.



YOUR GUIDE TO BUYING A HOME.

A checklist for buying a house or apartment in New South Wales

FINALISING THE SALE CONTINUED

Do you need to be present at settlement?

You don't usually need to attend settlement in person.

Instead, your solicitor and the seller's solicitor will meet to make sure they have everything they need for the sale to go ahead. If you're taking out a mortgage to pay for the property a representative of your bank (as well as the seller's bank) will also attend settlement.

Once that happens, your solicitor will call you to let you know you're the proud owner of a new home.

Get in touch with a solicitor

If you're thinking about buying a home, you should get in touch with your solicitor as soon as possible to let them know you're looking. They'll help talk you through the process and will be able to give you great advice.

If you don't yet have a solicitor, don't worry. We've made it easy to find one near you through our online ['Find a solicitor'](#) service.

BY-LAWS

By-laws are rules which try to make sure the strata scheme runs smoothly and that your building is generally be a harmonious place to live. By-laws often cover issues such as parking restrictions, the keeping of pets and the use of common property.



Also available:

**YOUR GUIDE TO
SELLING A HOME**



THE LAW SOCIETY OF NEW SOUTH WALES
170 Phillip Street, Sydney NSW 2000, DX 362 Sydney
ACN 000 000 699 ABN 98 696 304 966

T +61 2 9926 0333

F +61 2 9231 5809

www.lawsociety.com.au