

## Buying residential property

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Buying property is an exciting and important step in many people's lives. There are many things that you need to be aware of, if you plan to buy a property. Before you commit to buying, you should find out about the property and its sale contract. If you are a foreign buyer, additional rules may apply to you. In this article, we provide an overview of some of the important issues to consider before you buy property.

### Contract of sale

The contract of sale tells you the terms of sale of the property and your rights and obligations. After you have signed the contract, you and the seller will usually be legally bound to the sale. The seller's lawyer usually prepares the contract of sale. If you are interested in buying a property then you should obtain a copy of the proposed contract from the seller or their real estate agent.

Before signing a contract, you should ask a lawyer to review it. The lawyer will let you know about any contract terms which are not in your favour and request any necessary changes. The lawyer should also explain to you your rights and obligations as the buyer. These rights and obligations may include:

- whether you will need to pay part of the seller's land tax on the property, for the year in which the property settles;
- whether GST applies to the sale of the property;
- when your property purchase will settle; and/or
- whether you need to allow the seller to use your deposit before settlement.

## Inspection

You should inspect the property carefully before you decide to buy it. An inspection of the property may reveal any problems with the property, whether someone is living in the property when they should not be and the state and condition of the property. You may also wish to obtain independent pre-purchase property reports, such as a:

- strata inspection report, if it is an apartment or a townhouse;
- building inspection report; and/or
- pest inspection report.

These reports may reveal problems in the property that you cannot find yourself. You should also inspect the property again, at least 1 day before you settle. The inspection should be organised directly with the real estate agent. If you discover any problems with the property just before settlement, then you should report them to your lawyer before you settle. These problems should be resolved before you settle. Once you have settled, it is difficult to get the seller to do anything about the property.

## Loan

When you buy a property, you may have to pay the following:

- the agreed sale price;
- part of the council rates, land tax, strata and water levies for the property for the year in which settlement happens;
- stamp duty;
- inspection report costs, if you order reports;
- legal fees; and
- bank fees.

If you need a loan to buy the property, you should obtain written pre-approval from your bank, before you exchange contracts or bid at an auction. The amount a bank will lend you will be lower than what they initially tell you. This is because banks usually charge fees and take these fees out of the amount they tell you they will be lending you. The total that you should borrow for settlement should be about **95% to 96%** of the sale price. In most cases, this

should cover stamp duty, bank fees, adjustments and the balance of the sale price that needs to be paid to the seller. If the bank is not lending you 95% to 96% of the sale price, you will probably need to pay extra, at settlement. You should also be aware that bank cheques are usually needed for settlement.

### **Deposit & cooling-off period**

When you and the seller exchange contracts, you will usually need to give the seller's real estate agent a deposit of 10% of the sale price. The real estate agent or your lawyer will tell you how you should pay the deposit (eg personal cheque, bank cheque or EFT).

In some cases, the seller may also agree to a lower deposit, such as 5%. The agent or the seller's lawyer will usually hold the deposit in a trust account until the date of settlement. If the seller tells the agent or their lawyer to invest the deposit, the deposit will be invested and you will receive part of the interest from the investment of the deposit, after settlement. The seller may also let you provide a deposit bond instead of paying a cash deposit.

If, under the contract, you have a cooling off period and you decide to end the contract after contracts have been exchanged, but during the cooling off period, then you are likely to lose any holding deposit you may have paid. This is usually 0.25% of the sale price.

If there is no cooling-off period, then you could lose the full deposit if you decide not to buy the property after you exchange. There will be no cooling-off period if:

- the seller's lawyer asks your lawyer to sign a s 66W certificate;
- the property is bought at auction; or
- you are buying a commercial property

### **Stamp duty & land tax**

You will need to pay stamp duty on the sale price of the property. The amount of stamp duty you will need to pay depends on the sale price of the property. Usually, rates of up to 5.5% apply in NSW. You need to pay the stamp duty to the Office of State Revenue by bank cheque before settlement.

If land tax applies to the property you are buying, the seller may ask you to pay part of the land tax for the year in which you are buying the property. Your lawyer should also tell you if you need to pay land tax in relation to the property in future years.

## **Foreigners**

Foreign buyers are usually those individuals who are **not**:

- Australian citizens; or
- permanent residents.

If you are a foreign buyer and you are not married to an Australian citizen, you may need approval from the Foreign Investment Review Board (**FIRB**) before you can buy property. If you are buying a brand new property, the seller may have obtained approval from FIRB to sell to a foreign buyer. If not, you will need to apply for approval yourself. It is important to obtain FIRB approval, before you exchange contracts. You should give yourself at least 5 business days for FIRB approval to be provided. For complicated purchases, FIRB approval could take longer.

## **Settlement**

Settlement usually takes place between 4 and 6 weeks from the date of exchange of contracts. At settlement, you will have to pay the seller the balance of the sale price, taking into account adjustments for council rates, water and strata (if applicable). If you provide a deposit bond instead of a cash deposit at exchange, you will have to pay the full sale price plus adjustments. The seller will return the bond to you, at settlement.

## **Conclusion**

Buying a property can be an important and sometimes stressful part of a person's life. The purchase process involves various legal issues that you need to be mindful of. We, at [batallion legal](#), can help you with your purchase, and make it a stress-free experience.