

BUYING A HOUSE? LEAD UP TO EXCHANGING CONTRACTS

Finding the property:

So, after innumerable weekends hunting, internet trawling and many disappointments along the way, you've finally found the home you want. First things first, get some sort of agreement on price with the Vendor through the Agent - the most fundamental premise, but one occasionally overlooked by anxious purchasers keen to have everything sorted out at once and the property "off the market".

Agreement on price:

In negotiating the purchase the price, remember to take into account;

- comparable recent past sales in the street/suburb (ask the Agent for a printout of these comparable sales - provided by *Residex* and usually readily available to most agents). You may wish to do your own research using the sales sections of domain.com.au and realestate.com.au,
- access/parking problems (is it off street or on street, undercover or open, council parking restrictions, popular spot for commuters or weekenders to park? Will friends be able to park when visiting?),
- traffic/aircraft noise (call 1300 302 240 for advice on flight paths). Consider bus stops in the immediate vicinity. Some roads seem peaceful, but are peak hour expressways or late night RBT avoidance routes - noisy, busy, occasionally dangerous and loud!
- Are the rooms large or small compared to similar properties and do they have "built ins" or will you have to provide storage furniture at additional costs?
- Has the kitchen recently been renovated? Do they have construction receipts? Are there any inclusions such as dishwasher, stove, microwave oven, range hood, fridge - are these items under warranty? Do they still have the warranty documents? Are there exhaust fans for cooking odours to escape outside, or will they permeate the open plan area?
- Have the bathrooms been renovated? Do they have construction receipts? Is the waterproofing still adequate (check for

mould, damp spots and blisters in paint)? Are there exhaust fans for steam?

- When was the house last re-painted? (maintenance and painting costs for exteriors and trims are quite expensive and time-consuming)
- Does the property get the morning/afternoon sun? Be aware in Winter the sun is lower in the sky and will cause greater shadows. A sun-drenched backyard timber deck in Summer may become a cold damp wet area in Winter. North facing properties are generally held to be superior for this reason.
- Units have additional considerations, such as number of units in the block, cost of strata levies, harmony of the block, recent maintenance and repair spending, any structural defects in the building, such as concrete cancer, whether fire safety standards have been complied with or if there are significant debtors.
- Are there gardens bordering the property? Are they easy maintenance? Will leaves be dropped and need continual removal? How easy/costly is the ongoing care and nurturing of the plants/lawn?
- Is a pool included? Does it get afternoon sun? Is it under trees that will cause cleaning and maintenance issues? Is it heated causing additional maintenance costs? Is the pressure suitable for the filter to continue working properly? Is there a Compliance Certificate or Final Occupation Certificate for the Pool?
- Will you have to buy a mower and devote that much sought after weekend time to caring for your new lawn, garden, pool?
- Has the property been renovated (in any way)? If the costs of the renovations are greater than \$20,000, the Vendor can have an obligation to provide evidence of home building compensation cover (previously known as home warranty insurance). This would cover repair costs for structural defects in the renovations for 6 years and non-structural defects for 2 years. Other issues are important and relevant regarding this type of insurance cover and you should check further with your solicitor if applicable.
- Is the property capable of being renovated/developed to your

specifications? Check with the Local Council to determine requirements and costs. Also check with a local architect on your requirements and the possibility of them being approved by Council - not all of your dreams will (or can) be approved by Council.

- Bizarrely, a recent trend has been for un-renovated properties to sell for more than renovated properties. Reasons are many, but on a strict property comparison basis this trend flies against reason. The impact of these inflated prices in a rising property market is less dramatic than in a falling market, where increased construction costs may turn your dream home into a nightmare, or cause you to overcapitalize on your investment.
- Are there any matters registered on title, which may affect lenders, such as the size of the land - some lenders won't lend for strata units under 50sqm, or whether the title is qualified, or limited. Purchasers may also be affected by restrictions on the age of owners, such as having to be over 55 for a SEPP5 development.
- Finally, always consider what a future buyer will be looking for when you go to sell the property - another way of saying this is to consider the above factors on an objective basis, rather than solely subjective considerations.

Don't forget that typically Contracts will allow for 6 weeks to settle the purchase (also referred to as completion or date of settlement) from the date of exchange and nominate 10% of the purchase price as a deposit held by the Vendor's Agent during this time.

You may wish to negotiate a longer period for settlement (say 8, 10 or 12 weeks) or a lesser deposit (say 5% instead of 10%) or exchanging with a deposit bond (a guarantee from a lender/bank that they will payout the 10% deposit at settlement if you cannot).

It is not your lawyer's role to negotiate price terms, and some lawyers will charge you for services supplied outside of their traditional roles. When in doubt, if it relates to price, inclusions, length of contract, or deposit amount you should raise these issues with the Agent when negotiating terms. Once terms have been agreed, the Contract should be prepared by the Vendor's solicitor and forwarded to your lawyer for their perusal.

Reading the Contract

In NSW, Contracts for the sale of land, are standardised and are either the 2018 or 2019 versions. Both were developed in conjunction by the Law Society of NSW and the Real Estate Institute of NSW. These standard Contract terms have annexed to them the following typical documents;

- **Special Conditions** - additional terms typically supplied by the Vendor's solicitor. These additional terms are becoming standardised, but care should be taken in assessing the consequences of these terms.
- **Title Search** - this document details the folio identifier of the property (each address has a unique folio identifier under the Torrens title system, which is registered with the NSW Land Registry Service), it will also list the current registered owner and any mortgagee on title; restrictions on the use of the property, easements benefiting or burdening the property (for such things as water, electricity, sewer, support), or rights of way (for access).
- **Deposited Plan (or Strata Plan)**, which shows the boundaries and area of the property.
- **Council zoning certificate** (also known as a **149 certificate** for the section of the applicable Act) which sets out how the property is zoned for development purposes and any applicable development controls and what the property can be used for and the intended character of the area. For more information call the local Council, or visit their website.
- **Sewer Drainage Diagram** that sets out the property's connections to the sewer.
- **Changes to By-Laws** which are changes to the standard rules for living in the building and can affect hours of noise, parking, use of balconies and so on.

Less typical annexures

- **Sewer Reference Sheet** that details the location of the sewer services in the immediate locality of the property.
- **Letter from Sydney Water** (or other sewer authority) which relates to authorised construction over the sewer main.
- **Survey**, which sets out the boundaries of the property and improvements (typically a house, retaining wall, etc) and any encroachments by the improvements or on the property and the improvement's

compliance with local government regulations.

- **Building Certificate** - provided by the Council which signifies the Council won't issue a work or demolition order for seven years against the property for any non-compliance as detailed in any annexed Survey - a form of protection for minor non-compliance with planning/development controls.
- **Development Applications** - plans, etc for the development of the property as lodged with the Local Council.
- **Proposed Plans** - typically for "off the plan" purchases where the building hasn't yet been constructed and the plans are essentially drafts until finally approved by Council once the construction is completed.
- **Management Plans** - typically for Strata Plan or Community Title developments which set out rules for how the property will be managed in the future.
- **Home Building Compensation Cover** - for properties where construction/renovation has recently (up to 6 years) has been carried out and offers some protection for structural and non-structural defects in that work.

In any event, prior to exchanging Contracts, you should have your solicitor check through the Contract and they may recommend further changes be made to protect your interests and avoid potential future pitfalls in the conveyancing process. Conveyancing simply means "transfer" and that is the role of your lawyer - to ensure that legal title to the property passes to you on settlement, so that you may become the registered owner of the property and all its improvements.

Building & Pest Reports - Finance, Finance, Finance

The solicitor's role is not to advise you on the quality of the property and its improvements, its suitability for your needs, or any financial risk associated with the proposed purchase. For these reasons it is imperative that you satisfy yourselves as to these matters by engaging reputable inspectors to provide you with building and pest reports. Strata Inspection Reports are also available for Units and are recommended particularly for checking cladding issues. Typical costs for building reports range from \$450 to \$1,000 and for pest inspections around \$20-\$150. Remember, the old adage is sometimes still true - you get what you pay for. Keep this in

mind when engaging a contractor for these reports.

The building and pest reports can then be used for you to assess whether you wish to proceed with the purchase, or negotiate a lower price for any defects reported and necessary repairs.

At the time you are arranging for the property to be inspected by experts, you should also be confirming that your proposed lender will in fact lend you the required finance for you to complete the purchase. Don't forget to add the costs of the building/pest reports - legal fees (which can vary from \$1,700 to \$3,500) and NSW Transfer Duty (formerly known as stamp duty - allow approximately 3.5% of the property price - a significant sum). Many lenders have detailed calculators on their websites for this purpose, or your mortgage broker should talk you through the process.

You should obtain written confirmation from your lender as to the exact loan amount they are willing to extend for your purchase prior to the exchange of Contracts. If you exchange Contracts, but subsequently can't settle the purchase because you can't borrow as much as you thought (or you forgot to take into account the significant amount of stamp duty that may be applicable to the property) you may be liable to forfeit your 10% deposit to the Vendor, never a pleasant prospect.

A lot of lenders grant approval subject to a valuation. This usually means a registered valuer will drive by the property and make a comparison valuation on behalf of the lender (it is their valuation not yours). Valuations for this purpose are traditionally lower than the price you have agreed to pay, as they have to take into account downward fluctuations in the market in order to preserve the lenders "equity" (or security value) in the property.

Some lenders have set loan to valuation ratios (LVR's) and won't lend more than 80% of the property value. Some lenders will lend more than 80%, but will require you to pay mortgagee insurance, which is a one off payment for the lender to insure against default if the future property value drops below the LVR lent against (this insurance requirement can cost you anything from \$3,500 to \$9,000).

Because the valuation is so critical to how much the lender will allow you to borrow, and how much it will cost you to borrow, you should always wait until a final approval from

your lender has been granted before exchanging contracts.

Cooling Off Periods

In NSW, all contracts for the sale of land are subject to a 5 business day cooling-off period, except at Auction (when there is no cooling-off period).

The effect of the cooling-off period is to allow you to rescind or terminate the Contract within 5 days (not including the weekend) after it has exchanged. However, the price you pay for this rescission is that 0.25% of the purchase price is forfeited to the Vendor from the deposit paid at exchange.

Apart from Auctions when the cooling off period does not apply, a Vendor may also request the purchaser exchange with a Cooling Off Certificate (also known as a section 66W certificate after the section of the Act to which it refers). These certificates must be provided and signed by either your solicitor, barrister or licensed conveyancer and are otherwise of no effect.

The effect of a signed Cooling Off Certificate is to waive your rights to the Cooling-Off period (that is, there is no cooling-off period), which has the effect of immediately binding you to complete the Contract (that is you must complete the purchase when due or be liable to forfeit your 10% deposit).

It is the norm in the current market for Vendor's Solicitors to request a signed section 66W certificate at the time of exchange so that no cooling off period applies to the conveyance (impliedly that legal advice has been obtained by the Purchaser). Conversely, Agents act for the Vendor and have a certain self-interest (their commission - typically 2% to 4% of the purchase price!) in attempting to affect an exchange as soon as possible with a cooling off period (impliedly that legal advice has not been obtained by the purchaser). It is with this in mind that again it is strongly recommended that you obtain your building and pest reports and final loan approval and have the Contract reviewed by your lawyer prior to exchanging Contracts.

Gazumping

In NSW, no legal obligations exist between Vendor and Purchaser until Contracts for the sale of land are exchanged. This means that up until the time of exchange a Vendor can negotiate with any party for the sale of their

property. So say for example you agreed with the Agent on a price, but before you exchange (while doing your building inspections and awaiting finance approval) another party exchanges Contracts on the property for the same or a greater price. You would have no recourse to sue the Vendor and the property would go to the other party - this is known as gazumping and is a risk you should consider when contemplating an exchange of Contracts. In these circumstances, when another interested purchaser is also bidding for the property, exchanging sooner with a cooling off period may be to your advantage.

For further information please don't hesitate to contact;

Grahame Jackson (BEC.LLB)

Tel: 02 9908 1700

Fax: 02 9908 1755

Email: admin@gjalaw.com