

## Buying & Selling A Home

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**PRESENTED BY:**  
VICTOR TSE BARRISTER & SOLICITOR,  
MEMBER OF LAW INSTITUTE OF VICTORIA

### What is Conveyancing?

Conveyancing is the transfer of property ownership from one party to another. The exercise is not just a matter of filling out forms. The law associated with conveyancing is complex. If you are buying or selling a house, flat or unit you need to know your rights and obligations in regard to:

- estate agents;
- mortgage finance;
- planning and zoning restrictions;
- certificate of title;
- vendor's statement;
- contract of sale;
- cooling-off i.e. canceling the contract
- builder's warranties;
- requisitions on title;
- insurance;
- settlement.

Buying or selling a property may affect your taxation position, may require you to make a new will and it may have implications for you in relation to family law.

If you are buying an investment property you need to know your rights and obligations as a landlord and how negative gearing can assist you.

If you are not sure about any of the matters listed above you should engage a solicitor to act on your behalf.

### Estate Agents

Most properties are sold by estate agents. Before you authorise an agent to sell a property on your behalf you should examine carefully the agreement appointing the agent. Agents are required to inform clients that commissions and ongoings are negotiable and to provide a client with details of these in writing

at the time of obtaining an authority to act. Sale agency time limits are now abolished. Where no time limit is stated the agreement ends, for an auction 30 days after the auction date and 60 days for other cases.

If you are selling a property give the agent precise instructions about the condition of the property and a comprehensive list of all chattels to be sold with the property.

Providing the agent is acting within his/her authority, his/her statements are legally binding on you.

If you are a potential buyer, contact agents in the area where you wish to buy a property. The agents will arrange inspections of properties and will refer any offer you wish to make to the vendor.

If you are buying a property at auction, obtain all relevant documentation from the selling agent and have your solicitor look over the documents for you before the day of the auction.

Remember that if you buy at the auction itself or within three days of the auction, you will lose the right to a "cooling-off" period (a period of time during which a buyer may cancel a contract).

### Mortgage Finance

If you are buying a property calculate the total cost of the transaction including not only the purchase price but valuation fees, stamp duty, transfer of registration fees, bank charges, mortgage insurance and other professional fees. Make sure that adequate finance is available for the total amount required and at the time required and understand the terms of repayment (check whether there is a penalty for early repayment). Check whether you are entitled to government assistance under the First Home Owners Scheme or whether you are entitled to a total or pro rata stamp duty exemption. Shop around for finance.

Many charges associated with a loan are negotiable and vary enormously between lending institutions.

### **The Certificate of Title**

Most land in Victoria is held under the Torrens Title System. Each property has its own certificate of title. An original certificate of title is held at the Titles Office and a duplicate title is held by the owner (or the owner's bank if the property is mortgaged). It is important to search the relevant certificate of title at the Titles Office because it records all caveats, easements, covenants, mortgages and mortgage discharges which affect the property. Resolving a dispute over a discrepancy in land size can be costly. Therefore, it is important to check the accuracy of the boundary measurements of the land and its location from the nearest street.

### **The Vendor's Statement**

A person selling a property must provide the buyer with a vendor's statement (also called a section 32 statement) before the buyer signs a contract. The statement gives information about the property being purchased such as its zoning, the rates, whether there are any restrictions on the use of the property, information about services such as electricity, gas, building permits, water, sewerage and telephone connected to the property and details of any builder's guarantees and insurance relevant to building permits issued in the past seven years. If incorrect or insufficient information is given in the statement the buyer may be able to avoid the contract or sue the seller. Sometimes faults or omissions are discovered too late, so consult a solicitor quickly.

### **The Contract of Sale**

To buy property you need a contract in writing. A handshake will not buy you a house no matter what you think the moral obligations of the other party may be. There are three sorts of purchase contracts: a contract note, a contract of sale, and an auction contract.

If you put an offer in writing by signing a contract note, a binding contract will be formed when the contract note is signed by the seller. All purchase contracts set out the terms of the purchase, how the purchase price is payable and when possession is to be given. The contract identifies which fixtures and chattels are included in the sale. It also specifies whether the purchase is conditional on the buyer obtaining finance, on the seller selling an existing home, or on an architect's or surveyor's inspection. The contract is usually prepared by the seller's solicitor. All terms and conditions are negotiable until the contract is signed by both parties.

If the contract is a terms contract, it must specify the terms of payment and the interest which is to be paid by the buyer

### **The Cooling-Off Period**

If you are buying a residential property or a rural property of less than 20 hectares, you may be able to take advantage of the "cooling-off" period. This means that if you decide against going ahead with your purchase within three working days of the day on which you sign a contract, you can withdraw from the purchase.

You cannot take advantage of "cooling-off" if you buy at auction, or within three days before or after an auction, or if you seek legal advice before you sign a contract. This does not stop you from seeking general legal advice about purchasing a property.

### **Insurance**

Although a buyer may be able to take the benefit of any insurance contract that the seller has, it is essential that the buyer quickly make arrangements to insure both the property and any chattels as soon as a contract has been signed. The mortgage lender will require a formal insurance policy to be produced by settlement day.

### **Builders' Guarantees**

All domestic builders must be registered with the Building Practitioners Board and carry insurance of an amount of not less than \$200,000. If the building work is incomplete or defective, owners and successive owners can have access to these insurance funds. Building work is covered for a period of six years from the date of completion of the building works. An owner/builder who wishes to sell a property within six years of its construction must obtain the insurance, a condition report and subject to any defects listed in that report the property will be guaranteed for defects in workmanship for the remainder of the six year period.

### **Settlement**

The settlement date is set out in the contract of sale. Subject to fair wear and tear, the property must be handed over in the same condition it was in on the day of sale. An inspection should be carried out prior to settlement. At settlement the balance of the purchase money is paid in exchange for the transfer documents and the certificate of title. After settlement the buyer's bank or solicitor pays stamp duty on the transfer and registers the transfer with the Titles Office. The local council, the water authority and State Revenue Office must be notified of the change of ownership in the property.

## **Strata Titles**

A strata title is a title to a unit or lot on a plan of subdivision under the Subdivision Act. It is the most common title associated with townhouses, home units and blocks of flats. The plan divides a building or a group of buildings and the land associated with them into units and common property.

As strata titles are part of the Torrens Title system, the conveyancing procedure is much the same. However, because of the communal aspects of ownership, buyers of strata titles automatically become members of a body corporate. They need to establish the service charge payable to the body corporate and investigate the body corporate schedule, by-laws and regulations to establish their rights and obligations.

Bodies corporate must meet every year and members usually elect a committee of at least three people to manage the common property.

Where disputes arise between members of the body corporate, the body corporate or a member may apply to the Magistrates' Court for a determination.

## **Off-Plan Sales**

The contract of sale for buildings purchased off the plan i.e. before the plan has been certified by council or registered at the Land Title Office, are usually lengthy. It is important to read the contract carefully and to understand it, to check the measurements of the property against the plan of subdivision, to have an independent architect or builder appraise the plans and specifications, to check the rules of the body corporate and if appropriate, have an independent appraisal of the property as a rental proposition.

Stamp duty is payable on the value of the land and buildings as at the date of the contract of sale. Therefore if construction or refurbishment is yet to be

commenced a reduced amount of stamp duty is payable when compared with buying an existing or refurbished building.

*This pamphlet gives a broad outline of the law as at 1 March 2005. It is not intended to and does not encompass all aspects of the law on the subject matter. Further professional advice should be sought before action is taken based upon the matters described in this brochure.*

## **Acknowledgements**

This pamphlet is extracted from the Law Institute of Victoria's information brochure *Buying & Selling a Home*.

## **For Further Information**

- Dial-a-law (Law Institute of Victoria)  
website: <http://www.liv.asn.au/public/legalinfo/>
- See a solicitor

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