

# National Conveyancing Guide

*Everything you need to know about conveyancing.*



STEPS IN THE  
CONVEYANCING PROCESS

Steps 1 - 14

KEY DIFFERENCES BETWEEN  
THE STATES  
AND TERRITORIES

DOCUMENT WITNESSING  
REQUIREMENTS

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# Is this guide right for you?

*This guide has been prepared to provide a general guide to the conveyancing process (i.e. the process for selling and buying real estate). The process differs significantly from State to State.*

The information included is not definitive and should be treated as a guide only. You should always seek expert advice from a qualified practitioner regarding any conveyancing matter.

This guide relates primarily to residential sales.

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## Jargon Explained

The information contained in this booklet refers only to loans provided by our panel of lenders with whom Mortgage Choice Limited has an arrangement under which it receives commissions and other payments. Not all brokers sell the products of all lenders.

The information provided in this Guide is for general education purposes only and does not constitute specialist advice. This Guide has been prepared without taking into account your objectives, financial situation or needs. Because of this, you should consider the appropriateness of the advice to your situation before taking any action. It should not be relied upon for the purposes of entering into any legal or financial commitments. Specific investment advice should be obtained from a suitably qualified professional before adopting any investment strategy. If any financial product has been mentioned, you should obtain and read a copy of the relevant Product Disclosure Statement and consider the information contained within that Statement with regard to your personal circumstances before making any decision about whether to acquire the product.

# General Information

## Overview

Conveyancing refers to the sale of real estate from a vendor (seller) to a purchaser (buyer).

Conveyancing can also refer to the process under which a mortgagor (usually a property purchaser) gives a mortgage to a mortgagee (usually a bank or other lender).

## Understanding “solicitor talk”

**Exchange** - when a binding legal contract to buy and sell land comes into existence. A deposit of 5% or 10% of the purchase price is usually paid at the time of exchange and usually held by a stakeholder (the vendor’s real estate agent, solicitor, or conveyancer) until completion of the contract.

**Completion or Settlement** - when the balance of the purchase money is paid over, the title is transferred to the purchaser and (usually) the purchaser takes possession of the land.

**Property** - can refer to any kind of asset at all including land (also called real estate), goods (also called chattels), fixtures (goods which are attached to land), choses in action (rights to sue people) and non-physical rights such as intellectual property and confidential information.

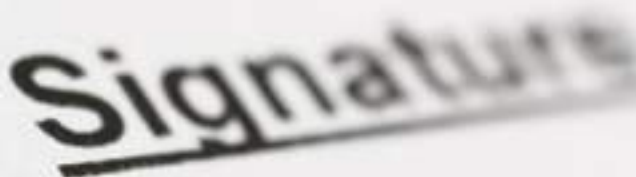
Accordingly, when referring to real estate it is better to use the term real estate or land rather than the general term property.

**Person** - means any legal entity. This includes individuals (i.e. human beings), companies, strata bodies corporate and statutory corporations (e.g. local councils).

## The need for writing

Generally a binding contract to buy, sell, or mortgage real estate can only be created by written agreement. Contrast this with many other transactions that do not require writing (e.g. buying goods at a shop, agreeing to get married).

A contract to buy or sell real estate is probably the largest and most important transaction into which most individuals will ever enter, other than marriage vows. It is also a contract about which there is often much dispute (“you didn’t tell me that the views would be blocked”). Accordingly, it is important to be very precise about when the obligation to buy and sell arises. If there is any correspondence about a proposed sale that is not intended to create a binding contract, it is important to say “subject to formal contract”..



Signature

## The General Process

In all States and Territories, conveyancing follows the same general process.

### Contracts come into existence

*This is when the sale agreement becomes binding.*

*A 10% deposit is usually paid.*

### Settlement/Completion

*The balance of purchase money is paid and title transfers to the purchaser.*

### Title documents registered

*The land registration details are changed to show the purchaser as the owner*

In some ways the process of applying for a construction loan is much the same as for a standard mortgage. Your lender will want to see proof of your income such as pay slips or a contract of employment as well as bank or investment statements showing evidence of savings. These all show the lender that you have the financial capacity and personal discipline to repay the loan.

The way contracts come into existence There are subtle but important differences between the manner in which contracts come into existence in each State and Territory.

In most jurisdictions, the real estate agent usually conducts the exchange and the negotiations leading to the exchange. However, in NSW and the ACT solicitors/conveyancers are often significantly involved Accordingly, in NSW and the ACT there can be much more haggling about the deal after the real estate agent declares a property "sold" and before a binding legal agreement is created.

## Types of title

**Torrens Title** – a system of registering land introduced in South Australia in 1858, formulated by then colonial Premier of South Australia, Sir Robert Torrens. Since then, it has become common around the Commonwealth of Nations and the whole world. Under the system, the Titles Office maintains a registry that is nearly final proof of who owns a parcel of land.

**Freehold** – a right to own the land forever. Also referred to as fee simple. This is different to leasehold, which refers to a right to occupy the land for the term of the lease.

**Freehold Torrens Title** – the most common ownership system except in the ACT. Usually, this is just called Torrens Title because it is assumed the ownership is freehold unless specified to be leasehold.

**Strata Torrens Title** – relates primarily to home units, although some other properties can be strata (e.g. villas, townhouses etc).

**Community Title** – individuals own lots or strata lots within a community scheme. Under a community scheme, a number of owners share some community property (e.g. a tennis court, a community centre, roads and access ways).

**Leasehold title** – under this title, ownership ends at the end of the lease. Most leasehold titles are for 99 years. This is very common in ACT and also for rural properties in Queensland, but comparatively rare elsewhere.

**Company Title** – similar to strata title. The owner owns shares in a company and in turn the company owns the land. Each class of share entitles the owner to occupy a particular unit.

**Old Title (also known as Common Law Title)** – this consists of a series of title documents called a "chain of title". Following a sale, Old Title will usually be converted to a full Torrens Title. A limited or qualified Torrens Title will issue first, showing that the title cannot be guaranteed. Action may later be taken to convert the title to a full Torrens Title.

# Steps to the conveyancing process

## 1 Step 1 Contract of sale

The contract of sale is a very important legal document. Many disputes arise between vendors and purchasers. Consequently, trained experts should prepare the document. Under various laws, the contract must contain specified documents, certificates and disclosures.

## 2 Step 2 Make an offer

When a potential purchaser decides they are interested in a property, they may make an offer to purchase it. The vendor may accept this offer, or alternatively, the purchaser and vendor may enter into negotiations over the price and conditions of the sale.

## 3 Step 3 Paying a deposit

Purchasers may decide to pay an initial deposit as a sign of good faith of their interest in the property. The amount of such deposit can vary and will generally be stipulated by the vendor or agent. This will not mean that a binding contract exists or that the property is removed from the market. The payment is simply to show the vendor that the purchaser is serious about their offer.

**Note:** that 'holding deposits' will generally be non refundable.

However, in Queensland, it is unusual for holding deposits to be used except for off the plan sales and it is illegal for such deposits to be non-refundable. If the vendor later accepts an offer, the vendor and purchaser agree to exchange contracts. At that point, the purchaser pays an agreed deposit amount. The deposit is usually 10% of the purchase price and is held by the real estate agent or the solicitor/conveyancer.

The purchaser should not exchange a contract for sale until they have reviewed the contract with their solicitor/conveyancer.

**Note:** gazumping is a common practice that can take two forms:

- a) the intending purchaser believes the property has been secured by payment of an initial deposit but when they are ready to exchange contracts, discover that another purchaser has already exchanged contracts on the property; or
- b) the vendor's solicitor/conveyancer accepts two or more initial deposits and then tells the intending purchasers that the price has increased. The intending purchasers are then left to outbid each other as if it were an auction.



## 4 Step 4 Buying at Auction

When a property is sold by auction, a purchaser is bound to purchase the property after having made the highest bid at the end of the auction. It is important for the vendor to have a solicitor/conveyancer examine the sale contract before the auction to make sure that everything is in order. It is also important that a potential purchaser has finance arranged and that all necessary property inspections have been done.

Before auctioning a property, the vendor will nominate a 'reserve' price that is not usually disclosed to potential purchasers. The reserve price is the lowest price the vendor is willing to accept. If the highest bid is below this price, the property will be 'passed in'. The vendor will then either try and negotiate a price with interested purchasers or put the property back on the market.

If bidding continues beyond the reserve price, the property is sold at the fall of the hammer. The successful purchaser must then sign the contract for sale and pay the deposit (usually 10%) immediately.

## 5 Step 5 Risk

Responsibility for damage to the property remains with the vendor up until settlement or completion of the sale, but it is prudent for the purchaser to insure the property from exchange of contracts. From settlement, when the property title is transferred to the purchaser, the purchaser is responsible for damage.

Purchasers may choose to insure the property before settlement if they are unsure whether the vendor has a current insurance policy. If purchasing a unit under strata title, the purchaser should obtain a Certificate of Currency from the owners' corporation's insurer to make sure the property is adequately insured.

Many lenders require evidence of comprehensive building insurance being in place, with the lender noted on the policy as an interested party, as a condition of settlement of the loan for the property purchase.

In Queensland and ACT, the risk passes to the purchaser when the contract is formed.

## 6 Step 6 Exchange of contracts/ paying a deposit

See Annexure 1 for the different ways contracts are exchanged.

After exchange, the purchaser of residential real estate may have a time to "cool off". If a cooling off period applies, the purchaser can rescind the contract before the end of the cooling off period. Details of cooling off provisions are set out in Annexure 2.

## 7 Step 7 Cooling off period

Cooling off does not apply to sales at auction.



# Steps to the conveyancing process

## 8 Step 8 Transfer of property

The purchaser's solicitor/conveyancer must prepare a transfer document, have the purchaser sign it, and pay any stamp duty for the document's registration. The purchaser's solicitor/conveyancer must then send the transfer to the vendor's solicitor/conveyancer for the vendor to sign. In Queensland, the vendor must sign the transfer form before it is stamped.

The purchaser's solicitor/conveyancer must arrange for the transfer document to be stamped prior to settlement so the purchaser can lodge it for registration immediately after settlement. This is often a requirement of the purchaser's financier, so that it can register the transfer and its mortgage promptly. This means that the purchaser must arrange to provide their solicitor/conveyancer with the stamp duty amount prior to settlement, or arrange for stamp duty to be paid at settlement (e.g. from loan proceeds). It is not possible to defer the payment of stamp duty on the transfer.

## 9 Step 9 Time for completion

The time for completion can be set by agreement between the parties. The time span for completion of "off the plan" purchases can be quite lengthy. This is because the contract can be completed only after the development/building construction has completed and new titles are issued. The standard times for completion are set out in the table below, but these periods can be changed by agreement between the vendor and the purchaser.

### Standard times for completion

State/ Territory	Usual period for settlement (all subject to contract)
Queensland	30 days time of essence
New South Wales	6 weeks
ACT	30 days
Victoria	30 - 90 days
Tasmania	30 days
South Australia	4 to 6 weeks
Western Australia	4 to 6 weeks
Northern Territory	30 days

### What is "time of the essence"?

Time is said to be of the essence of a contract if the contract specifically says so. This means failure by either party to complete on a nominated date is a "breach of a fundamental term". If there is a breach of a fundamental term, the other party can terminate the contract, forfeit and keep the deposit (in the case of a breach by the purchaser), and sue for damages.

**Example:** *A real estate contract provides for completion "within 42 days of exchange, time of the essence". If the purchaser does not complete on or before that date, the vendor can terminate the contract, forfeit the deposit, and sue for damages.*

Only in Queensland is time normally of the essence, although time can be expressed to be of the essence in any State or Territory.

Contracts that are not time of the essence frequently contain a provision entitling the vendor to give the purchaser a notice (usually 14 days) making time of the essence for completion at the end of the 14 day period.

**Example:** *A real estate contract provides for completion within 42 days of exchange, not time of the essence. If the purchaser does not complete on or before that date, the vendor can issue a notice to complete to the purchaser making time of the essence for the end of the notice period.*



## 10 Step 10 Requisitions

After exchange, the purchaser's solicitor/conveyancer will usually send a list of formal questions about the property known as requisitions on title. Requisitions obtain from the vendor information that may not have been previously disclosed or discovered during inspection of the property (for example, disputes with neighbours relating to fences). The standard contracts used in Queensland prohibit the delivery of requisitions on title but instead contain some basic warranties about the vendor's title.

In Victoria, requisitions on title have been replaced by warranties in the contract, in particular General Condition 2 of the approved form of contract. The vendor's solicitor/conveyancer will reply to these requisitions.

The purchaser's solicitor/conveyancer will often make some additional searches and enquiries not made before exchange. These searches are to determine a variety of factors, including whether there are general defects in the title, the land is contaminated, or there has been construction on the property. If any of these result unsatisfactorily in a way not disclosed in the sale contract, the purchaser may be able to rescind the contract, sue for damages, or seek a reduction of the sale price.

## 11 Step 11 Outgoing mortgagee

If the vendor has a mortgage over the property, the mortgagee must be contacted to provide a pay out figure and attend at settlement to hand over a discharge of mortgage and, often, the certificate of title/title deed.

## 12 Step 12 Adjustments

At settlement, "adjustments" will be made. Example: the council rates have been paid for the whole year. The purchaser must pay an additional amount to the vendor for the proportion of the year the purchaser will own the property. Usual adjustments are council rates, water rates, strata body corporate contributions, land tax and rent if the property is tenanted.



# Steps to the conveyancing process

## 13 Step 13 Settlement

The sale is said to settle or complete on the day the purchaser pays the balance of purchase money, plus or minus adjustments, to the vendor. On the day of settlement, it is important that a final search of the title is obtained to ensure that the property is clear from any interest or restrictions that may have been recorded between the date of exchange and settlement. Usually the solicitors/conveyancers/mortgagees meet and hand over the title documents in exchange for payment.

**Note:** that under the Personal Property Securities Act 2009 (Cth.), if chattels (i.e. goods) are included in the sale of a property, it is important that the PPSA register is checked to make sure that the purchaser receives a clear title to the chattels on settlement.

## 14 Step 14 After settlement

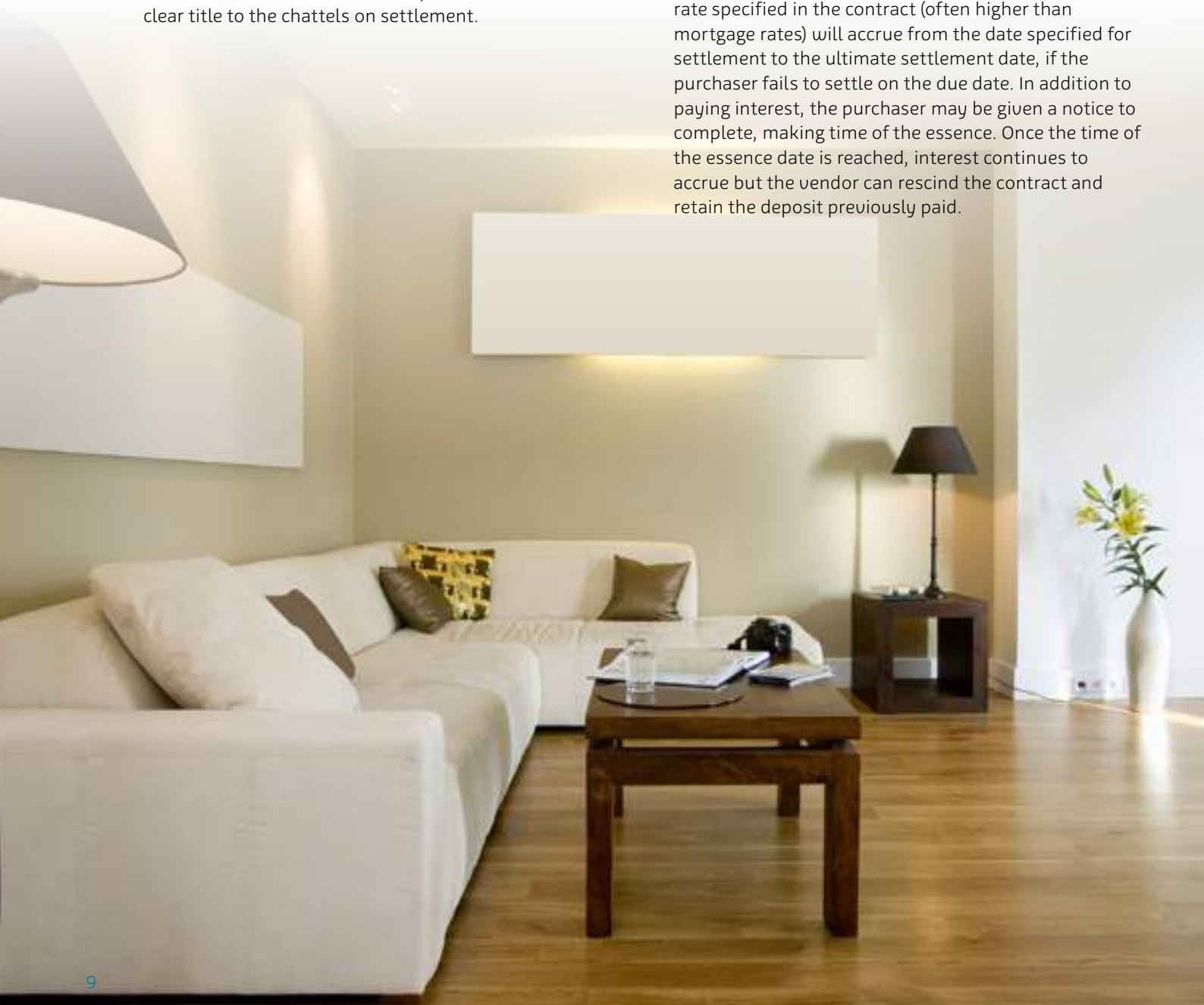
The purchaser or the purchaser's mortgagee will register the transfer documents with the Land Titles Office.

Usually there will be a:

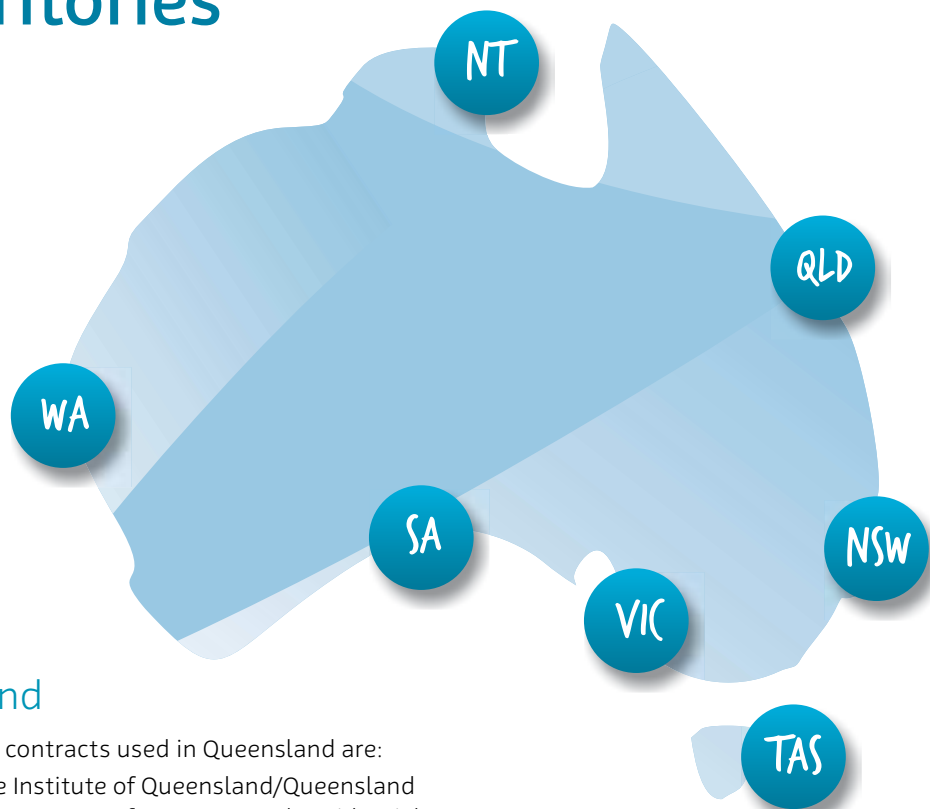
- discharge of any existing mortgage/s;
- withdrawal of any existing caveat/s;
- transfer of title from the vendor to the purchaser;
- mortgage from the purchaser to the new mortgagee.

The Land Titles Offices advise the relevant authorities (such as the local council, water authority and Valuer General's office) that the property has a new owner.

**Note:** If settlement does not occur on the scheduled date, depending on the contract terms, interest at a rate specified in the contract (often higher than mortgage rates) will accrue from the date specified for settlement to the ultimate settlement date, if the purchaser fails to settle on the due date. In addition to paying interest, the purchaser may be given a notice to complete, making time of the essence. Once the time of the essence date is reached, interest continues to accrue but the vendor can rescind the contract and retain the deposit previously paid.



# Key differences between the States and Territories



## Queensland

a) The standard contracts used in Queensland are:

- Real Estate Institute of Queensland/Queensland Law Society Contract for Houses and Residential Land; and
- Real Estate Institute of Queensland/Queensland Law Society Contract for Residential Lots in a Community

### Title Scheme.

b) Nearly all residential contracts must have a Warning Statement attached in accordance with the provisions of the Property Agents and Motor Dealers Act 2000 (PAMDA) and the purchaser's attention must be drawn to the warning statement when the contract is presented to them for signing. Under the Body Corporate and Community Management Act 1997 (BCCMA), a community title contract must also have an information sheet attached and include a disclosure statement.

Failure to comply with the PAMDA or BCCMA requirements may give the purchaser the ability to terminate the contract, sometimes right up until settlement.

c) The purchaser does not have a right to make requisitions on title.

## New South Wales

a) The Contract for Sale of Land – 2005 Edition is the standard contract used in New South Wales.

b) In NSW, the contract must be prepared and available for inspection by a purchaser before the property can be marketed for sale. The contracts are quite long and complex and a lot of specified information must be annexed to the contract, including a title search, sewerage diagram and zoning certificate, to name a few.

c) A prospective purchaser cannot bid at an auction of residential property in NSW unless they have given the selling agent their name, address and proof of identity. These details are recorded in the Bidders Record and each registered bidder will be given a bidder's number.

# Key differences between the States and Territories

## Victoria

**a)** In Victoria, the standard form of contract is Form 2 Contract for Sale of Real Estate, a detailed and complex legal document.

**b)** In the pre-negotiation stage, the vendor must give a signed and dated vendor's statement (commonly termed a Section 32 Notice) to the agent to show to potential purchasers. The vendor's statement is usually prepared by the vendor or their solicitor/ conveyancer and contains some extensive information as required by law, including:

- rates, taxes and other charges;
- services available;
- building approvals from the past seven years;
- any order or notice that affects the land;
- body corporate notices, liabilities and maintenance;
- fund payments;
- insurance details;
- statutory charges on the land;
- covenants, easements and other restrictions on the land;
- title and plan of subdivision information;
- a copy of the Certificate of Title (or for land not under the Transfer of Land Act, the last conveyance in the chain of title to the land or any other document which gives evidence of the vendor's title to the land).

**c)** The purchaser may rescind if this information is not disclosed or is incorrect.

**d)** The purchaser has a right to inspect the property during the seven days before settlement to ensure the vendor has moved out or is in the process of doing so, that all fixtures and chattels included in the contract of sale have not been damaged or removed and that there is no substantial rubbish on the property.

**e)** At settlement, the vendor's solicitor/conveyancer also hands over a Statement for Goods Transferred with Residential Land or Land Use Entitlement, which is later lodged for stamping.

**f)** Stamp duty on the transfer of land is usually deducted at settlement and paid after settlement to enable registration of the transfer and mortgage documents.

**g)** The purchaser does not have a right to make requisitions on title.



## Tasmania

- a)** The Contract for Sale of Real Estate is the standard contract used in Tasmania.
- b)** After contracts have been exchanged, the purchaser lodges a Priority Notice, which reserves the purchaser's priority to have the property transferred to them after settlement, for a maximum of sixty days. This prevents other parties lodging a caveat or other dealing on the title before the purchaser becomes the registered proprietor.
- c)** The purchaser's solicitor/conveyancer must perform all searches, including those related to title, easements and covenants, municipal rates, local government, land tax and bankruptcy. After performing its investigations, the purchaser's solicitor/conveyancer should give written notice of the satisfaction of any of the conditional clauses. After the vendor's solicitor/conveyancer receives this notice, the contract becomes unconditional. The purchaser should then obtain a cover note from an insurance company immediately.
- d)** The purchaser's solicitor/conveyancer usually gives the vendor a trust cheque for stamp duty on the transfer of land at settlement. The party who is lodging the registration documents then attends to the transfer being stamped, and forwards the registration documents to the titles office for registration.

## South Australia

- a)** Two standard forms of contract may be used. These have been developed by the:
- Real Estate Institute of South Australia
  - Law Society of South Australia.
- b)** Many purchasers do not engage a solicitor or conveyancer until after the contract is negotiated. As a result, there are no requisitions in South Australia.
- c)** Vendors must provide a Form 1 Vendor's Statement ("Vendor's Statement") to the purchaser at least ten days before settlement. Where the property is to be sold at auction, the Vendor's Statement needs to be available two business days before the auction date.
- d)** The vendor's statement is designed to protect the purchaser and must include details of all mortgages, charges and prescribed encumbrances affecting the land subject to sale, along with any prescribed matters.

## Western Australia

- a)** The real estate agent prepares the:
- Contract for Sale of Land by Offer and Acceptance; and
  - Joint Form of General Conditions for the Sale of Land.
- b)** After the offer has been presented, the vendor can accept, reject or make a counter offer. Many counter offers are often made and the contract is passed between the vendor and purchaser many times.
- c)** Requisitions are not used in Western Australia if the land is Torrens Title and the standard contract is used. This is common for most sales of land.
- d)** If settlement does not occur within three business days of the scheduled date at the fault of the purchaser, the purchaser is liable to pay interest to the vendor. If the delay is due to the vendor, the vendor must pay compensation, calculated at an interest rate against the balance of the purchase price.
- e)** The vendor or purchaser cannot terminate the contract until a Default Notice has been issued to the other party, who is given a minimum of ten business days to remedy the default.
- f)** Conveyancers, who are associated with real estate agents, do most conveyancing.



# Key differences between the States and Territories

## Australian Capital Territory

- a)** The Contract for Sale of Land – 2005 Edition is the standard contract used in the Australian Capital Territory.
- b)** The contract must be prepared and available for inspection by a purchaser before the property can be marketed for sale. The contracts are quite long and complex and a lot of specified information must be annexed to the contract, including a title search, sewerage diagram and zoning certificate, to name a few.
- c)** As the ACT operates under a Crown Lease system, a contract for the sale of land is actually a contract for the sale of a lease. As a result, the contract must also provide details of compliance with the crown lease (including purpose and any restrictions on transfer).
- d)** Requisitions are used in very rare circumstances.
- e)** The standard contract used in the ACT provides for a period of seven days grace for settlement to occur after the scheduled date. If settlement does not occur in this period, the purchaser may be liable to pay penalty interest on the balance of the purchase money at a rate specified in the contract.

## Northern Territory

The REINT Contract for Sale of Land (Real Estate Institute of the Northern Territory) is the standard contract used in the Northern Territory.



# Document Witnessing Requirements

*The States and Territories have different requirements in respect of the witnessing of documents that are lodged with Land Titles Offices. The different requirements are summarised below:*

State/ Territory	Witness Requirements
Queensland	An authorised person such as a solicitor or Justice of the Peace, who is not a party to the dealing. The witness must make sure the signatory is entitled to sign the form (such as by checking a current title search or a recent rates notice) and be satisfied as to the identity of the signatory, sighting proof of identity if required.
New South Wales	An adult person who is not a party to the dealing (note that a broker is not a party to the dealing). The witness must have known the signatory for more than twelve months or have sighted identifying documentation.
ACT	An adult person who is not a party to the dealing. Note that many ACT land titles documents include a statutory declaration as part of the form. Statutory declarations can be witnessed only by a qualified witness such as a solicitor or Justice of the Peace.
Victoria	An adult person who is not a party to the dealing.
Tasmania	An adult person who is not a party to the dealing.
South Australia	An adult person who is not a party to the dealing. The witness must know the signatory personally or have sighted identification documentation.
Western Australia	Generally, a witness must be a solicitor, conveyancer or mortgagee. The witness must have taken all reasonable steps to identify the signatory, including sighting complying identification documentation.
Northern Territory	An authorised person (such as a solicitor, conveyancer or real estate agent) who is not a party to the dealing. The witness must take all reasonable steps to make sure the signatory is entitled to sign the document.



# Annexure 1

## Who handles conveyancing?

## How do contracts come into existence?

State/ Territory	Who prepares the contract?	How is the contract formed?
Queensland	Vendor's real estate agent	Usually the purchaser signs the contract first and it is submitted to the vendor. If the offer is acceptable, the vendor signs the contract and a copy is delivered to the purchaser. A binding contract comes into effect when the purchaser receives this notification of acceptance. Often the vendor makes a "counter offer" by crossing out the price and inserting a price it would accept. This process continues until one party advises that it accepts the price proposed by the other. At this point, a binding contract is formed. The real estate agent usually arranges this and delivers copies to the vendor's and purchaser's solicitor once the contract is formed. Only lawyers can legally act on a conveyance in Queensland i.e. no conveyancers.
New South Wales	Vendor's solicitor/conveyancer	The vendor and purchaser each sign one copy of the contract. These copies are exchanged (swapped), usually by the parties' solicitor/conveyancer except for auction sales when the agent exchanges the contracts. Exchange can occur by mail or face to face.
ACT	Vendor's solicitor	The vendor and purchaser each sign one copy of the contract. These copies are exchanged (swapped), usually by the parties' solicitor/conveyancer face to face.
Victoria	Vendor's solicitor or real estate agent.	The vendor and purchaser each sign one copy of the contract. These copies are exchanged (swapped), usually by the real estate agent.
Tasmania	Vendor's solicitor/conveyance or real estate agent	The vendor and purchaser each sign one copy of the contract. These copies are exchanged (swapped), usually by the real estate agent.
South Australia	Vendor's solicitor/conveyancer	As soon as both parties sign the contract of sale and the purchaser receives their copy, both the purchaser and the vendor are bound to the terms of the contract. The real estate agent usually arranges this and delivers copies to the vendor's and purchaser's solicitor/conveyancer.
Western Australia	Vendor's solicitor/conveyancer	The vendor and purchaser each sign one copy of the contract. These copies are exchanged (swapped), usually by the real estate agent.
Northern Territory	Vendor's real estate agent/solicitor/conveyancer	The vendor and purchaser each sign one copy of the contract. These copies are exchanged (swapped), usually by the real estate agent.



# Annexure 2

## Cooling off provisions

After exchange, the purchaser may have a time to “cool off”. If a cooling off period applies, the purchaser can rescind before the end of the cooling off period. Cooling off does not apply to sales at auction.

State/ Territory	Cooling off provision – when can the purchaser rescind?
Queensland	Five business days from exchange, unless waived by the purchaser, who has received “PAMDA Form 32a” signed by a solicitor. If the purchaser properly exercises its cooling-off right, the purchaser forfeits 0.25% of the purchase price.
New South Wales	Five business days from exchange, unless it has been waived by the purchaser, who has received a “Section 66W Certificate” from a solicitor or conveyancer. If the purchaser properly exercises its cooling off right, the purchaser forfeits 0.25% of the purchase price. Some vendors may refuse to exchange contracts unless a signed Section 66W Certificate is provided.
ACT	Five business days from exchange, unless it has been waived by the purchaser who has received a “Section 17 Certificate” from a solicitor or conveyancer. The cooling-off period does not apply if the purchaser is a company. If the purchaser properly exercises its cooling-off right, the purchaser forfeits 0.25% of the purchase price. Some vendors may refuse to exchange contracts unless a signed Section 17 Certificate is provided.
Victoria	The purchaser may end the contract within three business days of the day that the purchaser signs the contract, if none of the exceptions listed below applies to the purchaser. The purchaser is entitled to a refund of all the money it paid except for \$100 or 0.2% of the purchase price (whichever is greater). The three day cooling-off period does not apply if: <ul style="list-style-type: none"> <li>• The purchaser bought the property at or within three business days before or after a publicly listed auction, or</li> <li>• The purchaser and the vendor previously signed a contract for the sale of the same land, in substantially the same terms, or</li> <li>• The purchaser is an estate agent or a corporate body.</li> </ul>
Tasmania	No cooling off period applies.
South Australia	Two business days. If the property is offered for sale by auction and the purchaser makes a successful offer prior to the auction date, a cooling-off period applies, unless the purchaser waives the right after receiving independent legal advice. The cooling-off period does not apply if the purchaser is a company. The cooling-off period commences on either the date of exchange or the date the purchaser receives the Form 1 Vendor’s Statement, whichever is the latter. If the purchaser properly exercises its cooling-off right, the purchaser forfeits its holding deposit, which is usually \$100.
Western Australia	No cooling off period applies.
Northern Territory	Four business days from exchange, unless it has been waived by the purchaser who has received a Section 21 Certificate. The cooling-off period does not apply if the exchange occurs within four working days prior to the auction date. If the purchaser properly exercises its cooling-off right, the purchaser is not liable to pay an amount of damages, costs or expenses and is entitled to return of any deposit paid under the contract.

# Jargon explained

## ***Application fee / Establishment fee***

Fee charged to cover or partially cover the lender's internal costs of considering and processing a loan application. The fees are sometimes required to be paid upfront and are not usually refundable unless the loan is refused.

## ***Assets***

A list of what an individual currently owns, such as real estate, savings accounts, cars, home contents, superannuation, shares etc.

## ***Basic variable rate loan***

A loan which has an interest rate that varies according to market forces. The interest rate charged is lower than a standard variable rate loan but the loan may have fewer features.

## ***Break costs***

Costs incurred when a fixed rate loan is paid off before the end of the fixed rate period, or when additional payments are made in advance.

## ***Bridging finance***

A short term loan that covers a financial gap between the purchase of a new property and the sale of a currently owned property.

## ***Capital gain***

The monetary gain obtained when you sell an asset for more than you paid for it. Such gains may be taxable.

## ***Community title (specific to NSW)***

A property title where several dwellings are erected on an estate and the owners own their property and land on freehold title, but have shared access to community facilities e.g. swimming pool, barbecue area, tennis court etc. All property owners pay levies for upkeep of the community facilities.

## ***Company title***

A type of ownership for a unit/flat/apartment in a building that is owned by a company. A purchaser buys particular shares in the company which gives the purchaser the right to occupy a specific unit/flat/apartment. Lenders are generally not enthusiastic about lending on company title properties.

## ***Comparison rate***

This is a rate that includes both the actual interest rate and the upfront and on-going loan fees, expressed as a single percentage.

## ***Construction loan***

A loan specifically for the purpose of funding the building of a new dwelling. Can also apply to major renovations of an existing property.

## ***Daily interest***

Interest calculated on a daily basis, on the outstanding balance of the loan or investment account.

## ***Deposit***

An initial cash contribution towards the purchase of the property, usually payable on exchange of contracts.

## ***Deposit bond***

A substitute for cash deposit that guarantees the purchaser will pay the full deposit amount by the settlement date. Institutions providing deposit bonds act as a guarantor that payment will be made.

## ***Equity***

The value of an asset not subject to any lender's interest, e.g. a property worth \$500,000 with an outstanding mortgage debt of \$150,000 - equity is \$350,000.

## ***Equity loan***

A loan that uses the equity in your property to borrow for any personal purpose, including personal investment. It usually operates like an overdraft, where the borrower has a set credit limit to which they can draw funds. The term Equity loan can also refer to a Line of Credit loan.

## ***First Home Owner Grant (FHOG)***

Various State Governments provide financial grants to purchasers of their first home, to assist in meeting the purchase costs.

## ***Fixed interest rate***

An interest rate set for a fixed period. At the end of the fixed rate period, most lenders will allow you to fix again at the prevailing rates or revert to their standard variable rate.

## ***Freehold title***

The form of property ownership where a parcel of land fully belongs to the owner.

## ***Genuine savings***

Funds that have been accumulated or held for a certain period of time prior to applying for a loan.

## ***Guarantor***

A guarantor is a third party to a loan who is helping the borrower obtain finance by offering additional security support. Guarantors are generally limited to spouses or immediate family members. A guarantor may be liable for the loan debt if the borrower defaults.

## ***Interest Only (IO)***

A loan in which only the interest on the principal is repaid with each repayment for a specified period.

## ***Introductory (honeymoon) rate***

A reduced interest rate offered for a specified period of a loan, usually the first twelve months.

## ***Joint tenants***

Equal holding of property between two or more persons. If one party dies, their share passes to the survivor/s. This is a common arrangement for married couples.

## ***Lenders Mortgage Insurance (LMI)***

A form of insurance taken out by the lender to safeguard against a financial loss in the event of a security being sold due to the loan going into default. The borrower pays a once-only premium. The insurance covers the lender, not the borrower.

## ***Liabilities***

A person's debts or financial obligations, including existing credit card debts and personal loans.

## ***Line of Credit***

A flexible loan arrangement with a specified credit limit to be used at a borrower's discretion. Also referred to by some lenders as an Equity loan or All in One loan.

### **Loan to Valuation Ratio (LVR)**

The ratio of the home loan amount compared to the valuation of the security. Commonly called LVR, e.g. for a loan of \$270,000 on a home valued at \$300,000, the LVR is \$270,000 divided by \$300,000 expressed as a percentage i.e. 90%.

### **Low documentation (Low Doc) loan**

Loans available to applicants who may not have up to date or complete financial information available at the time of application.

### **Mortgage**

A form of security for a loan, usually taken over real estate. The lender (mortgagee) has the right to take the property if the mortgagor fails to repay the loan.

### **Mortgagee**

The lender of the funds and holder of the mortgage.

### **Mortgagor**

A person who borrows money and grants a mortgage over their property as security for the loan.

### **Non-conforming loan**

Specialist lenders provide these types of loans to borrowers who fall outside the normal eligibility requirements of mainstream lenders.

### **Offset account**

A transactional account linked to the home loan. The balance held in this account offsets the balance in the home loan, helping to reduce the interest paid and the overall term of the loan.

### **Ombudsman**

An arbitrator that provides an avenue through which customers can make complaints about their loan consultant or lender and have it dealt with independently.

### **Principal**

The outstanding loan amount on which interest is calculated.

### **Principal and Interest (P&I)**

A loan in which both principal and interest are paid with each repayment during the term of the loan.

### **Redraw facility**

A loan facility whereby you can make additional repayments and then access those extra funds if necessary.

### **Refinancing**

To replace or extend an existing loan with funds from the same lender or a different lender.

### **Security**

Usually the property offered as security for a loan.

### **Settlement date**

Date on which the new owner finalises payment and assumes possession of land. Sometimes called the "draw down" date, as this is the date the loan is usually fully drawn.

### **Stamp duty**

There are two main types of stamp duty that may be payable when borrowing to purchase a home:

### **Mortgage stamp duty (loan stamp duty)**

Mortgage stamp duty will only be payable in NSW if purchasing in a company name or for loans for non housing related purposes.

### **Transfer stamp duty (contract stamp duty)**

Calculated on a sliding scale based on the purchase price of the property. Significant concessions on transfer stamp duty may be available for First Home Buyers. The amount varies from State to State.

### **Standard variable loan**

A loan which has an interest rate that varies according to market forces. The loan usually has comprehensive features, such as offset and redraw facilities.

### **Strata title**

The form of property ownership most commonly associated with units, apartments and townhouses, where the owner holds title to a particular unit, which is called a lot, in a strata plan.

### **Survey**

A plan that shows the boundaries and the building position on a block of land.

### **Tenants in common**

Where more than one person owns separate, defined portions of a property. If one person dies, the relevant portion passes through the deceased's estate rather than to the other property owner/s as with joint tenancy. Each owner can hold a specific share of ownership and has the right to dispose of their interest.

### **Term**

The length of a loan or a specific portion within the loan.

### **Title search**

A request to the Land Titles Office to ascertain the ownership of a specified property and any encumbrances, covenants and easements that may be recorded on the title.

### **Torrens title**

Torrens title is the most common form of property title in Australia. The Real Property Act (RPA) is the legislation that governs the operation of Torrens title. Ownership of the property is registered with the Land Titles Office and evidenced by the Certificate of Title, which shows the current owner's name and any other interests in the property e.g. mortgages.

### **Unencumbered**

A property free of encumbrances (mortgages) or restrictions.

### **Valuation**

A report required by the lender, detailing a professional opinion of property value.

### **Variable interest rate**

An interest rate that varies during the term of the loan, in accordance with market forces.

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