

Purchasing Properties in New South Wales

This paper is an overview of purchasing properties in New South Wales. Its focus is to provide purchasers with some knowledge of what to expect when purchasing a property.

PURCHASING A HOUSE

If you are borrowing money to buy a house, it is prudent to ensure that you already have a *loan approval* prior to entering into a contract to purchase a property.

The old adage “let the buyer beware” is especially relevant in purchasing a house. It is advisable to obtain a *Building Inspection Report* and a *Pest Inspection Report* prior to purchasing a house. It is not always obvious on inspection by the naked eye whether the building has structural defects or has termites or borers.

It may be advisable to obtain a *survey* prior to entering into a contract. The main purposes of obtaining a survey are:

- To ascertain the position and size of the land.
- To ascertain the location of the building, including distances of walls, eaves and gutters from the correct title boundaries and whether they comply with Council Ordinances.
- To ascertain whether there are any encroachments onto the adjoining owners land or from the adjoining land.

Sometimes a survey is provided by the Vendor.

If there are improvements made to the original house, you may wish to obtain a *Building Compliance Certificate* from the Local Council. The procedure would be for the Council to first send a Building Inspector to inspect the property, and if the inspector has no objections then they will issue a certificate. The certificate does not state that the building is approved by Council or complies with Council Ordinances but would state that the Council will not issue any notices to demolish or alter the building for a period of seven years.

PURCHASING AN APARTMENT

If you want to purchase an apartment, it should be noted that under the Strata Titles legislation, the Owners’ Corporation (Body Corporate) is responsible for the general upkeep of the building and the common property. In this respect the Owners’ Corporation will hold records of any structural defects, repairs, expenses, major works, strata levies and other relevant information of the building. A search of those records known as a *Strata Inspection Report* should be carried out by an independent inspector prior to entering into a Contract to purchase an apartment.

When you live in a strata apartment, there are many rules and regulations which occupants and owners must abide by, these rules and regulations are known as *By-Laws*. It is advisable to make yourself aware of the By-Laws, as some buildings even regulate things such as the type of curtains and blinds you may have.

If you wish to do renovations within your apartment, it may be necessary to obtain the Owners’ Corporation’s approval first, otherwise the Owners’ Corporation’s insurances may not cover you if damage is later caused as a result of the renovations. The Owners’ Corporation can create by-laws which can confer rights of exclusive use or special privilege to particular apartment owners over certain common property.

PURCHASING A COMMERCIAL PROPERTY

When considering purchasing a commercial property, unless you are purchasing for your own occupation, the important consideration other than capital appreciation of the property, is the *lease* on the premises. Briefly, some of the leasing details you need to check before committing to the purchase are as follows:

- The remaining period of the *lease term* and whether there is an option to renew the lease and for how long.
- The current rent and remaining *rent review dates*.
- Whether *outgoings* are payable by the tenant.
- Whether there is a Cash Bond paid or a Bank Guarantee. Some Bank Guarantees cannot be transferred or assigned and accordingly a new Bank Guarantee may need to be drawn up in the name of the Purchaser prior to completion.
- Whether there are any clauses in the lease that allows the tenant to end the lease prior to the termination date.

AFTER CONTRACT (EXCHANGE) ENQUIRIES

The Vendor is required by legislation to give certain information to the Purchaser of the property prior to the Purchaser entering into the contract. This is known as Vendor Disclosure. There are many situations to which a Purchaser or Vendor may be able to rescind a contract; *an example is a breach of the Vendor warranty*, the Purchaser can by notice in writing rescind the contract. It is advisable to seek legal help when deciding whether to rescind a contract.

Following exchange of contract, the following steps should be taken in readiness for settlement:

1. Your lawyer would make enquiries from a number of government authorities including the Office of State Revenue, the Council, Sydney Water and Energy Australia to determine whether they have any interest in the property you are wishing to purchase.
2. Arrange for your own connection of electricity, telephone services, and gas (if any). You should contact each service provider on how this is to be done. The connection should be done about two weeks before settlement.
3. Obtain adequate insurance. If it is a house, then you would need Building and Fire Insurance and if necessary Home Contents Insurance. If it is a strata apartment, it is advisable to obtain Contents Insurance prior to settlement.
4. Arrange a final inspection of the property to make sure that the property is left in a state as originally agreed including all the furnishings and chattels as stated in the contract.
5. Around two days prior to settlement, your lawyer will advise you of the "top up bank cheque" in instances where you have a mortgage and the borrowed funds are not enough to cover the purchase price.
6. At the time of notifying you of the "top up bank cheque amount" your lawyer should also ask you to approve the "directions to pay", which is a letter to your mortgagee informing them of how the borrowed funds are to be distributed. Your mortgagee will then prepare the cheques and bring them to settlement. Commonly, four parties will attend settlement: your lawyer, your mortgagee, the Vendor's lawyer and the Vendor's mortgagee.

An "order on agent" letter will be forwarded to the Vendor's selling agent by your lawyer upon returning to the office from settlement. This serves to advise the selling agent that settlement has completed and to release the keys of the property to the Purchaser.

Following settlement, arrangements would be made by

your lawyer to have the Land and Property Management Authority notify various government authorities including the Council and Sydney Water of your ownership. If you are purchasing a strata apartment, your lawyer will formally notify the Owners' Corporation of your new ownership.

COSTS OF PURCHASING

The main cost of purchasing properties, apart from the price, is the stamp duty payable to the Office of State Revenue.

Charges payable to your lawyer would include disbursements for searches and enquiries (before and after exchange of contract).

If you are a first home buyer, you may be eligible for stamp duty concession or exemption under the First Home Plus Scheme. The First Home Owner Grant of \$7,000 can also be applied for.

FOREIGN ACQUISITION

Generally only Australian citizens and Australian permanent residents can purchase residential properties in Australia. Foreign persons who want to buy urban property in Australia must first obtain the Federal Treasurer's permission to do so. This is done by applying to the *Foreign Investment Review Board*, who advises the Treasurer.

For more information relating to Foreign Acquisition, please refer to Comasters' article titled "Foreign Investments in Australia".

© Comasters 2001.
Revised March 2011.

Important: This is not advice. Clients should not act solely on the basis of the material contained in this paper. Our formal advice should be sought before acting on any aspect of the above information.

Comasters Law Firm and Notary Public

Suite 101, Level 1, Capitol Terrace
743-755 George Street
Sydney NSW 2000, Australia
Phone: (612) 9288 0300 Fax: (612) 9288 0399
Email: comasters@comasters.com.au
Website: www.comasters.com.au