



BUYING GUIDE



[JV Legal]

INTRO

Buying a home can be daunting, particularly for a first-timer. This brochure is intended to give you some important tips and information about some aspects of buying your first home in NSW.

This brochure is not intended to cover everything and it is a good idea to seek advice before you proceed with your purchase.



WHAT ARE YOU BUYING?





There are various legal forms of ownership for residential properties. What you are buying is important as the form of title will effect your rights, entitlements and use of your new home. Common forms of title include:

Torrens Title

Most commonly, the title to your new home will be Torrens Title. This is a system whereby ownership and any other interests in the property are recorded on the Certificate of Title. A recording on the Certificate of Title confirms your rights and interests in the property.

A mortgage by your lender will be recorded on the Certificate of Title as a charge or encumbrance until such time as the mortgage is discharged.

Strata Title

Strata title gives you ownership of a unit, villa or townhouse of a larger building, which you may sell, lease or transfer at your discretion. Of the entire building, individuals each own a small portion (such as a unit or townhouse) but where there is common property (external walls, windows, driveways, foyers, lawns and gardens) all owners share and are responsible for the common property.

Strata levies are payable for the maintenance of common property and administration of the owners corporation. Your rights and entitlements in respect of the property may be limited or restricted by the by-laws or governing rules of the strata complex.

Community Title

Not unlike strata title, community title is a form of subdivision, where owners receive a Torrens Title for the lot they own however, are members of a body corporate and share and are responsible for common facilities.

Community title levies are payable for the maintenance of common facilities and administration of the body corporate. Your rights and entitlements in respect of the property may be limited or restricted by the by-laws or governing rules of the community.



Company Title

Company title is more common in older more established suburbs such as in inner-city Sydney. This title applies when unit owners are actually shareholders in a private company that owns the property. A purchase is conveyed by the transfer of shares in the company and as a shareholder, you are entitled to the exclusive occupation of a particular unit equivalent to your shareholding.

In some instances, company title may limit your use of the property where for example, any leasing or rent for leasing is determined by the company or future sale where the transfer of your shareholding must be pre-approved by the company.

Company levies are also payable in respect of common property and the functioning of the company.



OWNERSHIP



Ownership of the property you buy should also be considered before committing to your purchase. You might be purchasing in an individual capacity, a corporate one or through an entity such as a unit trust, discretionary trust or through super.

Your ownership will have implications with respect to your finance for the purchase, tax and implications at a time when the property is later transferred.

If you are an individual and are purchasing with another party(s) you might consider whether you intend to purchase as joint tenants or tenants in common.

JOINT TENANTS

Means the registered proprietors own the property jointly. Should either of the registered proprietors die, then the property is automatically transferred to the surviving registered proprietor(s).

TENANTS IN COMMON

Means that each registered proprietor owns a share in the property. Their share could be in equal or in unequal shares, provided that the shares add up to 100%. On the death of a registered proprietor, the will of the deceased determines the outcome of the deceased's share in the property. The nomination of tenants in common may be for taxation reasons rather than for personal ones.



FINANCING YOUR PURCHASE





Typically, most of us and particularly first home buyers, require the assistance of a lender to fund the purchase of your new home.

Shop around for a lender and mortgage that best suits your appetite for commitment and financial circumstances. You can do this on your own or engage the services of a mortgage broker.

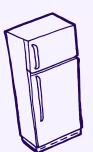
Before entering the market for your new home, consider obtaining pre-approval. Pre-approval is where a lender gives a commitment to make you a loan. The benefit of pre-approval is that it gives you an idea of your borrowing capacity and starts the process of obtaining a loan which can take some time depending on your financial history and circumstances.





You don't have to get a loan from a lender that offers you pre-approval. However, be aware, pre-approval is NOT final approval! A lender will confirm the security value of the property before preparing their loan documentation and agreement to loan.

Be mindful that fees and charges and possibly lenders mortgage insurance apply on the establishment of a loan. Whilst such fees don't reduce the size of your mortgage they do effect the total monies available for purchase. Legislation requires fee disclosure however, be sure you understand the nature of the fees, charges and any insurance that may apply, upfront.



HOUSE HUNTING



House hunting may be fun, exciting, stressful, daunting or a combination of mixed feelings. Most of us take the opportunity to inspect the house we intend to purchase. This may be by appointment or attendance at an open for inspection.

On inspection, think about the property that is for sale – what are the inclusions and what is excluded, what neighbours the property and consider its immediate environment – is there a bus stop in your front yard? Is the house on bush fire prone land? Have there been recent renovations to the property?





Consider how the house is intended to be sold that is, by private treaty or public auction. Often there are different preparations that need to be made when you attempt to buy at auction. At JV Legal we can talk to you about the auction process from a buyer's point of view including any preliminary negotiations prior to auction and assist you with arranging your deposit monies for auction day.

In NSW, before a house goes on the market, a Contract for the Sale of Land is prepared in respect of the property. This is a standard form contract however is often accompanied by qualifying special or further provisions and required disclosure documents particular to the property.

A copy of the Contract will often be available at inspection or arrangements can be made with the relevant agent to make a copy available to you. If you have a genuine interest in the property and are prepared to make an offer, consider obtaining a copy of the Contract for Sale so that you can obtain advice.



CONTRACT





PRICE NEGOTIATIONS

The manner in which price negotiations take place vary and can be subject to the seller's instructions, the nature of the property for sale or the agent's own practices. If you are uncomfortable about approaching the price negotiation process you may consider appointing a buyer's agent to act on your behalf.

Once you have selected a property that you are interested in buying, the seller may ask you to pay an initial deposit. This does not mean that the property will be held for you or that it gets taken off the market. It is more like a goodwill gesture, indicating to the seller that you are serious about the prospective purchase and may mean that the seller or agent will be less likely to show the property to anyone else. The seller is able to take initial deposits from other prospective purchasers as well but must refund your deposit if they choose not to sell the property to you.

Until you exchange contracts, there is no legal obligation on the seller to sell to you.



EXCHANGE

Exchange refers to the time at which the parties to the Contract each sign the Contract and hand their signed copy to the other party.

Up until the exchange of contracts, both you and the seller are entitled to change your mind without any legal consequences.

The Contract sets out the terms and conditions of sale.

On the date the Contracts are exchanged, you will have to pay a 10% deposit (subject to a negotiated deposit amount – for instance, 5%) which is usually handed over to the seller's agent or acting solicitor to be held in trust or invested on behalf of the parties, pending settlement, unless contracts are exchanged conditionally, subject to a cooling off period, in which case a 0.25% holding deposit is payable and the balance of the deposit is paid at the time of confirmation of the Contract.



COOLING OFF PERIOD

Because the purchase of a residential home is such a significant investment, there is a period of time after exchange of contracts where you can still change your mind and exercise your right to rescind the Contract.

In NSW, the cooling off period runs for 5 business days after the day on which the Contract was made. If you do exercise your cooling-off rights 0.25% of the purchase price is forfeited to the seller and the balance of any deposit paid is refundable.

There are some circumstances in which the cooling off period does not apply and you should discuss this further when you seek advice on the Contract.

Where it does apply, the cooling off period is an appropriate time to stop and reflect on your choice.



DUE DILIGENCE

In anticipation of confirming an exchange certain due diligence enquiries might include a pest or building report or strata inspection report. Subject to the nature of the property you are buying other searches or enquiries may be warranted.

Understanding the nature of these reports and searches (including their limitations), is important and JV Legal can assist you in wading through this information and what this will mean to your purchase.

TRANSFER DUTY

ALSO KNOWN AS STAMP DUTY

Stamp duty is payable when you buy land or property and is calculated on the property's market value that is, the more expensive the property, the higher the stamp duty rate you'll have to pay to Revenue NSW. At a certain value, premium duty on the purchase may also be payable.

In NSW, there are concessions and exemptions on stamp duty for first home buyers subject to certain eligibility criteria being met. Certain exemptions also apply if the property is being transferred due to the dissolution of a marriage or other relationship, if ownership is being transferred between married or de-facto couples or in circumstances of an inheritance.

When you buy a property in NSW, you may also be eligible for homebuyer grants or concessions.

If you are buying land in NSW and you are not an Australian or New Zealand citizen, you may be classed as a foreign person and have to pay a surcharge purchase duty, currently 8%.

Your stamp duty liability should form part of your considerations in assessing your finance position and borrowing requirements.



SETTLEMENT



The settlement period or completion period is the period, usually 42 days, between exchange and settlement. During the settlement period various matters are attended to by your solicitor and lender acting on your behalf.

Prior to exchange, the settlement period can by agreement, be extended or shortened. Ensure to confirm that your lender is in a position to finance in relation to any shorter settlement period BEFORE agreeing to a shorter period.

During the settlement period you should attend to confirmation and execution of relevant loan documentation including any First Home / New Home Buyer incentives, finance any stamp duty payable and arrange appropriate insurance on the property in anticipation of settlement.

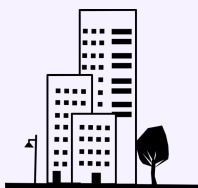
FINDING YOUR PROPERTY



So you've found the perfect property after battling the process of open homes and agent calls, getting proper advice and being able to see your purchase smoothly through to settlement is just as critical to securing your home.

At JV Legal we offer timely, practical advice on your purchase and help you to realise this in managing your settlement keeping you informed at each step in the settlement process. We liaise with the agent, your broker, your bank and most importantly, communicate with you to make the process a positive experience with minimal stress.

We hope you have found this purchasing guide helpful and look forward to assisting you further.



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