



# BUYING A PROPERTY

INFORMATION

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Buying a property is a big deal! Not to mention a big expense. If you're thinking about buying your first property, it pays to know your rights as a buyer and how the buying process works. If it's been a while since you've been in the market this might be just the refresher you need. The process of buying a house will differ depending on whether the property is sold by private treaty or at Auction.

In this brochure, we give you a brief overview of some of the issues that you should consider when considering purchasing a residential property.

The purpose of this brochure is to provide you general introductory information. It is not designed to be a conclusive summary of the issues confronting a person interested in buying a property, as each property is unique. This brochure however, will give you general information in relation to some of the pitfalls to be avoided.

If you need to know more about how the law applies to your particular situation, please contact us for advice.

A black and white photograph of a contract document. A pen lies diagonally across the top left. A set of keys is on the right. The document has various clauses and fields. A dark banner with the text 'CONTRACT OF SALE' is overlaid on the left side.

## CONTRACT OF SALE

THE SELLER

DATE

THE PURCHASER

DATE

DATE

When you purchase a property you will be asked to sign a Vendor Statement and Contract of Sale. Both documents, once they have been signed by all parties and assuming that they comply with all relevant requirements, are final and binding Contracts. In this Information Sheet we use the word "Contracts" to describe both Contracts of Sale and Contract Notes. You will also be provided with a Due Diligence checklist by the selling Agent or this may be attached to the documentation. You should familiarise yourself with the matters outlined in this list.

## COOLING OFF PERIOD

The Cooling Off Period does NOT apply if: -

- You purchased the property at or within 3 business days before or after a publicly advertised Auction.
- You received independent advice from a solicitor before signing the Contract.
- The property is used mainly for industrial or commercial purposes.
- The property is more than 20 hectares in size and is used mainly for farming.
- You previously signed a similar Contract for the same property.
- You are an estate agent or a company.

Ideally, before you commence to negotiate to purchase or bid at Auction, you should check the matters raised in this Information Sheet.

However, if you have already signed a Contract for the purchase of a property without checking the matters raised in this Information Sheet, it may be possible to use the "3 day cooling off" period to withdraw from the Contract, but its application has limitations and a cost consideration.

A cooling offer period will apply to the purchase of real estate in Victoria if none of the exceptions listed to the left apply.

If you wish to discuss the implications of the cooling off period on your purchase you must telephone us immediately as time is short.

## GOODS/CHATELS



Goods or Chattels are moveable items such as carpets, light-fittings, internal and external blinds, drapes, dishwashers, swimming pool equipment, TV antennas, portable air conditioning unit, portable clothes lines and remote control devices. The list is endless.

You should carefully check that all Goods/Chattels are correctly listed in the Contract. If the property you are looking at buying is being sold at Auction, then you should seek clarification from the selling agent prior to the Auction to ensure that you know which Goods/Chattels are being sold with the property. If you are negotiating to purchase the property by way of Private Sale (i.e. other than by an Auction) then the issue as to which Goods/Chattels are being included in the sale should form part of your negotiations. Either way, you should carefully check that all Goods/Chattels are listed in the Contract before you sign.

## ZONING ISSUES



All property will be covered by a Planning Scheme, which will place the property within a zone and impose restrictions on its use and development. It is not uncommon for: -

- (a) The current use and development of the property to be inconsistent with the current zoning. If the use of the property is non-conforming, it may not be possible to obtain planning permission to rebuild or extend.
- (b) The current Planning Scheme to contain Overlays which may need to be reviewed to determine their effect on your proposed use of the property and the consequential cost of compliance with any specific term of the Overlay.

You should obtain the following from the selling agent or the relevant Council of Planning Authority:

- (i) Details of the zoning of the property;
- (ii) The pages of the Planning Scheme covering this zoning;
- (iii) Any Overlays affecting the property; and
- (iv) The pages in the Planning Scheme covering these Overlays.

**You should consult us as early as possible** to discuss the ramifications of the zoning and Overlays, as changes are usually complex and costly.

## STAMP DUTY & TITLES OFFICE FEES



Circumstances when Stamp Duty exemptions or reductions may apply: -

- Purchaser is a Concession Card holder.
- Purchaser is a first homeowner.
- Property purchased as Principal Place of Residence.

When budgeting for your purchase you should take into account government charges (Stamp Duty and Titles Office fees on the transfer and on your mortgage, if any), removal expenses, your lender's fees (including mortgage insurance, if any) and adjustments of rates and charges (which will increase the purchase amount by your share of the rates and charges paid by the Vendor which relate to the period after settlement).

If you require advice as to the applicable Stamp Duty and Titles Office fees, you should consult us as early as possible. Stamp Duty exemptions or reductions that may apply in some circumstances, including those listed to the left.

If you believe you may be eligible, you should consult us as early as possible to discuss the eligibility requirements. Alternatively, you can visit the State Revenue Office website and use their calculations tools which will give you an estimate of duty payable.

## CONDITION OF THE PROPERTY



When you purchase a property you buy it as you find it (unless there is a special condition to the contrary in the Contract). You should carry out a detailed inspection of the property to check the structure and condition of the property and to make sure appliances and fittings are in good working order. You may wish to engage your own builder or architect to inspect the property.

If the Vendor or the selling agent has agreed or promised to make any changes to the property, then you should consult us about the drafting of an appropriate special condition to be inserted into the Contract before you sign it.

If the Contract does not specifically provide for the Vendor to:

- (a) Attend to matters promised by the agent during negotiations or the auction; or
- (b) Hand the property over in a certain condition at settlement

You may be required to settle on the due date and then seek recourse by costly litigation after settlement. You should consult us as early as possible, to discuss the nature and extent of the matters to be addressed by the Vendor (if any) and to determine the appropriate condition to be inserted into the Contract to be sure the Vendor meets these commitments or your requirements.





The law requires the Vendor to provide details of any building permits issued in the last 7 years for a residence, whether or not the works have been built.

The law does not require the Vendor to provide details of any building works to a residence which have been built without a permit, whether or not built in the last 7 years for a residence, whether or not the works have been built.

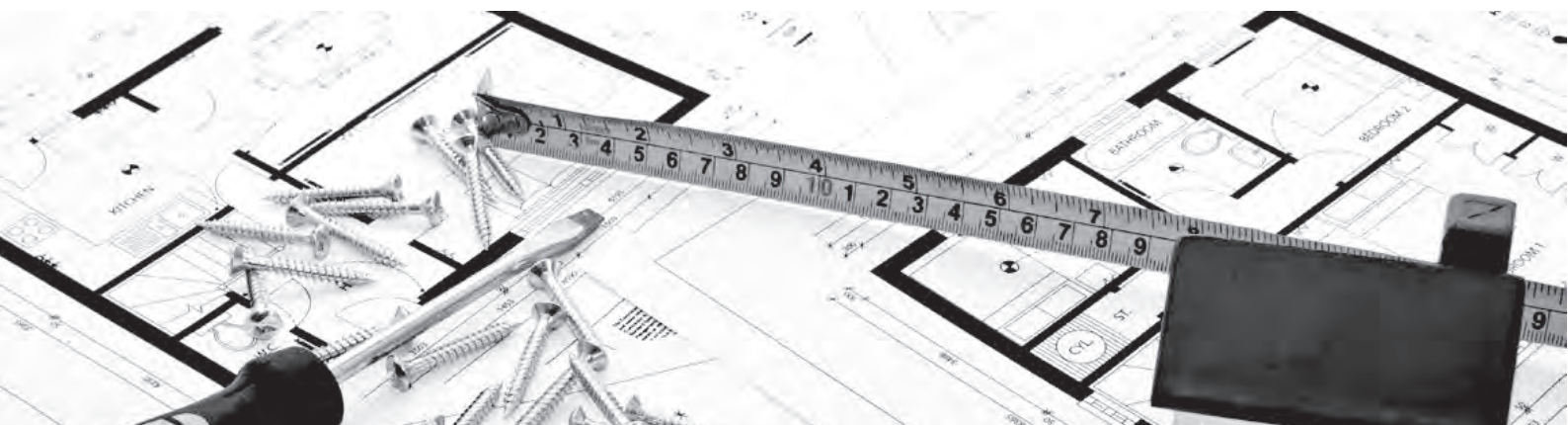
On signing a Contract, you may be liable for any illegal structure on the property unless appropriate conditions are included in the Contract.

Therefore, it is vital that all building works undertaken to the original construction have a building permit and either an unconditional Certificate of Final Inspection or Certificate of Occupancy.

The best time for making enquiries about whether all necessary building permits and final approvals for building works on the property have been obtained is before the Contract is signed or before the end of the cooling off period (if any). Once the Contract is signed and the cooling off period has expired, there is usually little that can be done if you become aware of illegal building work or failure to obtain permits and approvals (although sometimes a vendor will rectify a problem voluntarily).

If any buildings or alterations have been carried out in the last 7 years and the value of the work exceeds \$16,000 there should be insurance in force covering defects in the works. In the case of owner built works carried out in the last 7 years, regardless of value, the Vendor is obliged to provide an inspection report as to the condition of the works. We recommend you obtain a copy of the defects insurance and, if applicable, the inspection report from the selling agent or the Vendor before signing of the Contract or before the end of the cooling off period (if any).

If you have concerns as to whether all necessary building permits, final approvals and insurance has been arranged by the Vendor then you should consult us as early as possible to discuss the nature and extent of the matters to be addressed by the Vendor and to determine the appropriate steps to be taken to protect your position.



## OWNERS CORPORATION

If you are buying a property that is in a unit or apartment that is affected by an Owner's Corporation, you should obtain a copy of the Owner's Corporation Certificate from the selling agent.

This Certificate will disclose information such as:-

- (i) The Owner's Corporation fees and levies;
- (ii) Whether the Owners Corporation is proposing to perform any repairs;
- (iii) Any legal claims against the Owner's Corporation or any circumstances that may give rise to court proceedings involving the body corporate;
- (iv) The Owners Corporation rules;
- (v) Insurance arranged by the Owners Corporation;
- (vi) Whether any special levies have been struck  
Please note: if special levies are struck by an Owners Corporation after you sign a Contract the purchaser becomes responsible for the payment of such levies.

## MEASUREMENTS OF THE PROPERTY

You should obtain a copy of the Title Plan from the selling agent and measure the boundaries of the property and the distance to the nearest intersection so as to satisfy yourself that the physical location and boundaries of the property correspond with the Title Plan. If you are in any doubt then we are able to introduce you to a surveyor if you require.

If you intend to bid at Auction and are not satisfied that the actual property accords with the title, you should consult us well before the Auction. The nature and discrepancy will determine the appropriate course. Alternatively, if you are negotiating to purchase the property by way of Private Sale, then if you are not satisfied that the actual property accords with the Title you should consult us before completing your negotiations. Again, the nature of the discrepancy will determine the appropriate course.

If you have already signed a Contract, it is still very important that you measure the property immediately. The Contract may contain a Special Condition precluding you from making a claim for compensation for any misdescription or deficiency in area between actual property and Title unless a claim is made within 21 days from the date of the Contract.

In every instance, you should measure the property as soon as possible and let us know immediately if a problem arises.

## FINANCE



Before you make an offer to purchase a property or bid at an Auction, you should ensure you have made all necessary arrangements in relation to your financing of the purchase.

If your contract is subject to loan approval, you must make immediate application for the loan, do everything reasonably required to obtain approval and pay any deposit by the due date for payment specified in the Contract. If the loan is then not approved by the required date and immediate written notification is given to the Vendor, the Contract will be at an end.



## EASEMENTS



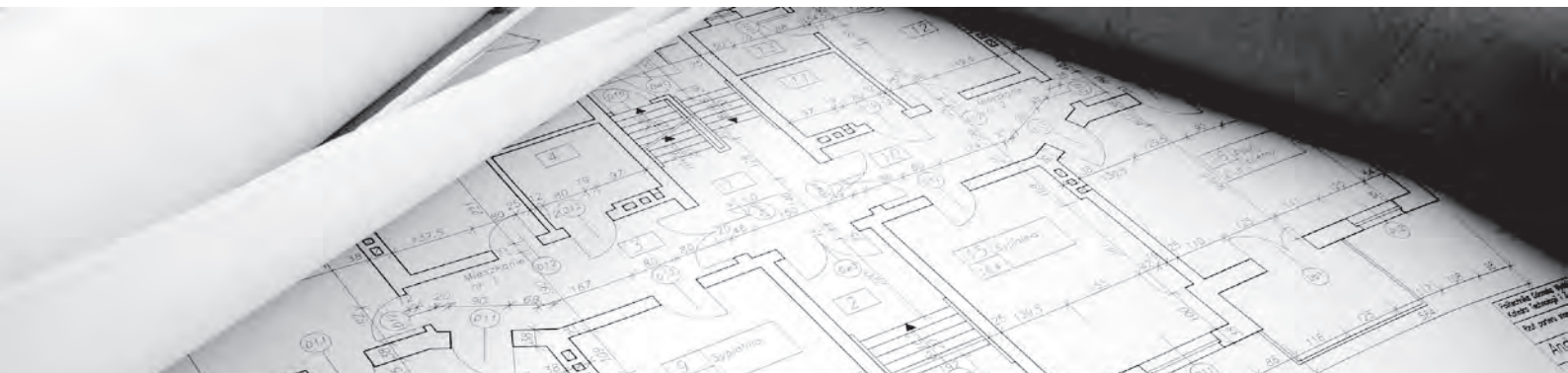
You should obtain a copy of the following from the selling agent:

- (a) Title Plan;
- (b) Drainage/Sewerage Plan; and
- (c) Water Authority Encumbrance Certificate.

These will disclose the nature and extent of:

- (i) Any easements traversing the property containing pipelines, wires etc for the benefit of adjoining properties; and
- (ii) Any drainage / sewerage easements traversing adjoining properties for the benefit of the property you wish to purchase.

You should check that there are no buildings built over these easements.





## RESTRICTIVE COVENANTS

A restrictive covenant may be registered on Title or the Contract may require you to grant a Restrictive covenant to the Vendor at settlement. Either way, you must understand the nature and extent of the restriction on:

- (a) The existing use of the property;
- (b) Your future use of the property.

Whether you are proposing to negotiate privately or at auction:

- (i) the detriment of a restrictive covenant on the property to be purchased; and
- (ii) the benefit of any restrictive covenant on a joining properties – need to be considered before you finalise your thoughts on value. You should consult us as early as possible to discuss the ramification of these covenants on your ownership of the property to be purchased as their removal in the future is now difficult due to changes in the Planning.

## SWIMMING POOLS

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## CONCLUSION



If you would like any further information or assistance, please do not hesitate to contact our friendly team at M A Legal on **1300 88 73 91** or email **[info@malegal.com.au](mailto:info@malegal.com.au)**





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