



**Easy Legals –
Avoiding the costly
mistakes most people
make when buying a
property including
buyer’s checklist**

Our Experience is Your Advantage



1. Why is this guide important?

Thank you for ordering this guide from Masons Lawyers. Masons Lawyers is a vibrant South East Queensland based law firm which specialises in a variety of areas of law including Conveyancing. If you are reading this guide you have either decided to buy your own home or an investment property.

Whilst the primary focus of this guide is to give people entering into the property market an indication of the different considerations that are necessary prior to entering into the conveyancing process, this guide should also be useful for persons looking at making future investments in property.

For the majority of people, buying their own home is the biggest and most important investment that they will ever make. Whether you are buying your first property or you are a seasoned investor who owns multiple properties it is vital that you understand the basics of a residential conveyancing transaction before you start to negotiate with a real estate agent and before you sign a contract for the purchase of a property to ensure that you understand the obligations that you will have to comply and to ensure that you know your rights.

The purpose of this guide is to give you guidance through the conveyancing process, including what it involves and why it is vital that you understand the basics on the conveyancing transaction. Given the nature and importance of each and every transaction you need to understand why using a competent solicitor provides you with the best opportunity to ensure the transaction is completed successfully.

In our experience there are usually three criteria that people use to determine whether they want to use a particular conveyancer to handle their transaction. These are:

- (a) Knowledge and experience to properly handle the transaction;
- (b) Certainty of price; and
- (c) Speed of service.

Whilst each of these criteria are important you need to ensure that you appoint a solicitor to act on your behalf who has a knowledge of the complexities involved in the transaction and not simply the firm that will act for you for the lowest price. Often firms will charge a lower price and then add extras onto their price for settlement agents, extensions for settlement or where complexities arise.



It is our experience that it is preferable to provide clients with a quote for a fixed fee for the transaction rather than been hit with those hidden extras so that you, as the client, are aware of the actual cost up front.

An example of this is where you enter into a transaction but an extension is required, many 'low cost' solicitors will charge additional fees for an extension. As you can see from this example it is not simply a matter of choosing the cheapest quote that you receive. It is important that you engage a solicitor that will be upfront with you and have sufficient knowledge in the conveyancing process to act quickly.

This e-book is made up of 7 Chapters (including this one) and is set out as follows:

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Yours Sincerely,

Masons Lawyers

Per: Jeremy Streten, Legal Practice Director

Warning: This eBook contains general advice & information only and has been prepared without taking into account your personal goals, objectives and financial situation. Before acting on any information contained in this eBook contact us so we can ensure that it is applicable to your situation. Masons Lawyers takes no responsibility for any actions, repercussions or loss resulting from your independent actions without seeking and consulting independent advice. This guide is not legal advice but is general advice. Should you have specific questions or circumstances you should contact your lawyer to obtain specific advice.



2. I have heard of the Conveyancing transaction but do not know what it means?

Most people have heard the term “conveyancing” but do not know what it means. It is a term that is used to describe the process by which the ownership of a property is transferred from a person to another person. In Queensland you can use a lawyer to assist you in the conveyancing process. It is a process that is complex but can be streamlined by lawyers who have experience in these transactions and an effective understanding of the law.

Conveyancing in Queensland is different to most other states in Australia but is generally speaking the same throughout the state. Within Queensland most of the difference involves the differences between local Council areas and their requirements for the transfer.

Whilst no two conveyances are exactly the same the process of conveyancing in Queensland is generally as follows:

- (a) The buyer and other prospective buyers inspect a property for sale to make a decision about whether to buy the property from the seller.
- (b) Ordinarily where the buyer wishes to purchase the property the buyer will then make an offer to buy the property from the seller. The seller then has the choice to accept the offer, reject the offer or attempt to negotiate a different deal with the buyer.
- (c) Once an agreement is reached the buyer and the seller sign a contract for the sale of land usually including all of the improvements (such as buildings) on the land.
- (d) The parties each appoint a separate lawyer to handle the conveyancing process and the lawyer reviews the contract and explains to their client the various obligations and rights placed on their client as a result of signing the contract and also explains what must be done by the buyer in order to ensure that the buyer is able to 'settle' the transfer of the property.
- (e) The term settle is the time that the buyer actually pays the purchase price to the seller and the seller actually transfers the property to the buyer.

Fact: No two conveyances are exactly the same



- (f) The lawyer drafts all of the required legal documents to give legal effect to the transfer of the property. The lawyer also ensures that the legal documents are signed, as necessary, by the parties to the transaction.
- (g) Ordinarily the lawyer acting for the buyer will also lodge a document known as a settlement notice on the title to the property. The purpose of this document is to prevent the seller from transferring the property to a third party behind the back of the buyer.
- (h) Also the lawyer conducts searches through the numerous government and body corporate records to ensure that the property is as it appears and ensure that there are no problems that need to be addressed pursuant to the terms of the contract. It is important that you engage a competent and experienced lawyer so that they can properly review these searches to ensure that your rights are protected.
- (i) The lawyer liaises with banks and other parties to ensure that everything and everyone is coordinated for the day of settlement and on the day of settlement, each party's lawyer attends the place of settlement and settles the transfer of the property.

Fact: the conveyancing process is complicated and you need a competent lawyer to handle the conveyance

As can be seen from this very brief outline of the steps to be taken in the conveyancing process, the process is a complicated one with a variety of different steps required to ensure that the parties comply with both the terms of the contract and legislation governing the process. It is strongly recommended that each party to the transaction appoints a lawyer to handle the process to ensure that an experienced person is handling to transaction and nothing is missed.

At Masons Lawyers we pride ourselves on our experience. Our Property Team has over 30 years conveyancing experience in acting for all parties involved in the conveyancing process and we are ready to assist you today.

If you have any question please contact one of the Masons Lawyers' team in either our Brisbane office on 3117 3780, our Caboolture office on 5428 1111 or on our Hotline 1300 000 LAW. Alternatively please visit our website <http://www.masonslawyers.com.au/MasonsLawyers2163/Page/23408/Conveyancing.aspx> to submit a request for an obligation free quote for our firm to handle your conveyance.



3. I have heard of the Cooling off period, what is this and what does it mean for me?

In Queensland, where you buy a residential property that is not bought at an auction you have the benefit of a 5 day cooling off period in which you have 5 business days to decide whether you wish to proceed with the purchase of the property without a substantial penalty from the seller.

3.1 When does the cooling off period start and when does it end?

The 5 day cooling-off period starts the day that you as the buyer receive a copy of the residential property contract signed by both the buyer and seller. The cooling-off period ends at 5pm on the final day of the 5 day cooling-off period. When the cooling-off period ends, the buyer may not terminate the contract under the cooling off period.

Fact: The 5 day cooling off period is a period in which the buyer has 5 business days to decide whether they wish to proceed with the purchase of the property

3.2 What is the purpose of the cooling off period?

The purpose of the cooling off period is to give you as the buyer the ability to terminate the contract if you change your mind on purchasing the property. This was introduced as a consumer protection for buyers to ensure that buyers had the option to terminate the contract for a small period of time for any reason.

3.3 What happens if there is a dispute between the buyer and the seller as to the commencement of the cooling off period?

In any dispute concerning the commencement of the cooling-off period, the seller must prove when the buyer received a copy of the contract.

3.4 Waiving or shortening the Cooling off period

You may also choose to waive or shorten the cooling-off period. Where the buyer wants to do this, the buyer must be interviewed by a lawyer and the lawyer must sign a Form 32a - Lawyer's certification, that must be signed and dated. The buyer must



then provide this to the seller or the seller's agent before the buyer signs the contract.

The lawyer's certificate does not apply to residential property sold at auction.

3.5 What are the consequences of terminating the contract during the cooling-off period?

To terminate the contract under the cooling off period, you or your lawyer must write to the seller, their solicitor or agent giving notice that the contract was been terminated under the cooling off period.

The seller must refund any deposit paid by the buyer within 14 days of terminating the contract, but may deduct a termination penalty equal to 0.25 per cent of the purchase price.

This means that if no deposit is held from the buyer that no termination penalty is payable to the seller.

Many lawyers do not realise this distinction and we have experience in negotiating on behalf of buyers to ensure that they are not paying a penalty unless they are obliged to pursuant to the law.

At Masons Lawyers our Property Team has extensive experience in advising clients in relation to the obligations regarding the cooling off period and the circumstances where it should be used. Also we have experience in providing competent and timely advice to clients wishing to waive or shorten the cooling off period.

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4. You have decided to buy the property. What now?

As discussed in Chapter 2 once you decide that you want to enter into a contract to purchase a property there are a number of considerations that you must take into account before signing the contract. Unfortunately, due to the nature of the real estate industry, sellers and agents are eager to immediately sign a buyer up to a contract to buy a property. On rare occasions a buyer will not be given sufficient time to obtain independent advice in relation to what they are signing and whilst this is only true of a minority of agents buyers should always be vigilant to ensure that their rights are protected before entering into a contract to purchase a property.

Of course it is always preferable that as a buyer you provide a copy of your contract to your lawyer prior to entering into the contract. However this is not always possible as it can be difficult to obtain advice from a lawyer on weekends when many contracts are signed.

The following list of considerations are standard aspects of the transaction that you must consider prior to entering into the contract:

- Purchase Price – a solicitor cannot provide you with advice on the purchase price for the transaction it is important that you consider the purchase price properly, not only to ensure that you can afford the price but to ensure that you are buying the property for the right price.
- Deposit – a deposit for the purchase of property in Queensland should be no more than 10% of the Purchase Price. If it is more than there are consequences that follow that are not dealt with in this e-book. The deposit is the amount that you pay to the stakeholder (usually the agent) and can be forfeited to the seller if you default under the contract.
- Finance – it is important that you consider how you are going to be able to afford to purchase the property. If you are going to borrow money from a financier you must ensure that the contract is subject to obtaining finance approval.

Fact: When signing a contract important considerations include:

- Purchase Price
- Deposit
- Finance
- Building and Pest Inspections
- Encumbrances
- Is the property leased?
- Completion



- Building and Pest Inspections – when buying a property you should always make the contract subject to you obtaining a building and pest inspection of the property that you are purchasing.
- What do you do if an encumbrance is listed on the contract? An encumbrance is definitely something that you should be concerned about. If an encumbrance is listed then you should ask the agent for an explanation of what it is about and then seek advice from your lawyer as it may adversely affect your property.
- Is the property leased? If the property is leased you need to ensure that you consider when the lease ends and what rent is been obtained. The question of when the lease ends is important where you want to live in the property as it may affect when you can move in. On the other hand if you are looking to buy an investment property it may affect your return if the tenant leaves. You should also consider the tenants that are in the property and the bond that is held. This may be important depending on the tenants and how much work may be required to rectify any damage to the property caused by the tenants.
- Special Conditions – depending on your circumstances or the condition of the property you may require special conditions in the contract. Some agents will draft their own special conditions however it is always advisable that you check these conditions with your solicitor to ensure the effect of the clause is in accordance with your requirements.
- Completion – there are a number of factors that determine when the parties what to settle the contract. It is ordinary that you settle at least 30 days from the contract date to settle the purchase of the property.

This brief overview of what is required before a buyer enters into a contract is intended to give you the basic framework prior to entering into the contract and empower you make informed decisions about the conditions in the contract and salient details prior to entering into the contract.

At Masons Lawyers we have extensive experience in advising clients on all aspects of the contract and in drafting the special conditions required by the parties in contracts to ensure that they fulfil your requirements and protect your rights.

Contact one of our Property Law team today in either our Brisbane office on 3117 3780, our Caboolture office on 5428 1111 or on our Hotline 1300 000 LAW. Alternatively please visit our website <http://www.masonslawyers.com.au/MasonsLawyers2163/Page/23408/Conveyancing.aspx> to submit a request for an obligation free quote for our firm to handle your conveyance.



5. What questions should you ask the real estate agent before signing the contract?

There are many questions that you should ask a real estate agent before you sign the contract to buy a property. The number and type of questions will vary depending on the property that you are buying and your experience in the property transaction field.

This chapter attempts to set out a number of basic questions that you should ask the agent, other questions may arise and you should not be afraid to ask the agent any questions that may come to mind and investigate any additional matters further to ensure that you are fully informed before buying a property.

Generally you should ask:

- (a) How long has the property been on the market?

This question is really going to give you an idea of whether the seller is keen to sell. It is difficult to provide any definitive formula to take from the answer. However, generally, most sellers become more keen to sell their home the longer it is on the market. Once a property has been for sale for 6 to 8 weeks, many Sellers (and agents) are starting to think that their selling price is too high. If the agent tells you that the property has been on the market for at least 6 weeks, ask them if the price has been already reduced or whether the seller would consider a reduced price less than the listed price (where a listed price is given).

In addition to this, the period of 6 to 8 weeks is generally the nearing the expiry of the agents agreement with the seller to sell the property and therefore may be extra keen to sell the property.

- (b) Will the seller negotiate on price?

This may sound ridiculous, but do not underestimate its power. By asking this question an agent might just give up the information you want to know before you make an offer.

Fact: Do not be afraid to ask questions of the agent to ensure that you get what you are paying for.

- (c) Why are they selling?

Knowing the answer to this question can give you an indication in relation to how eager the seller will be to sell, enabling you to work out their timetable or deadline for



selling. For example, if the agent tells you that they are moving to another location to start work in 4 weeks, you know they are motivated to sell as soon as possible. Whereas if they are downsizing because the kids have left home and they still have not bought a new place, they may be willing to hold out longer to get the right price.

- (d) Have they had any offers so far, if so how much?

This is an important question to find out whether the previous offers have been made and what amounts have been declined, or offers that have been successful but possibly fallen through. This can give you an idea of what the seller will accept, and also give you an indication as to what price other potential buyers believe the property is worth.

- (e) What is the lowest price that the seller will accept?

As an agent acts on behalf of a seller often they will not tell you this information but it is worth asking to see what the answer is. For example, if an agent says "They'll take \$450,000", you know not to make an offer over this amount. Even if they do not give you an exact amount, they are likely to give you an indication as to the price that the seller may be willing to accept.

As stated above this list of questions is not a definitive list of questions, other questions may involve information about the property and whether the agent is aware of any changes in the area that may affect the value or amenity of the property (i.e. whether infrastructure is being considered or being built that may increase or decrease the traffic flow in the area).

The exact consequences of these types of questions depend on the circumstances and you should always have your lawyer verify any information of this nature provided by the agent as the agent may not be aware of all proposals in the area that may affect your decision to buy the property.

If you are unsure of any aspect of the property it is strongly recommended that you seek professional advice, whether from your lawyer or another appropriate professional (such as a town planning professional) to ensure that all of your concerns are addressed and that you are aware of matters that may affect the property you are buying.

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6. You have signed the contract what do you do now?

Congratulations, you have now signed a contract to buy your new property. What do you need to do now?

6.1 Instruct a Solicitor.

It is important that you immediately get the contract into the hands of your lawyer to ensure that your rights are protected.

Upon receiving your instructions to act your conveyancer should immediately:

- (a) Provide you with a copy of the signed contract.
- (b) Give you a comprehensive letter of advice setting all of the important dates in respect of the contract. The advice from the right conveyancer will also advise you on all aspects of the property transaction and the contract that has been entered into between the parties. The purpose of this letter of advice is to provide you with all of the information required for the transaction.
- (c) Advise you in relation to the searches and the time frames for searches. One of the vital roles that a solicitor undertakes are searches relating to the property to ensure that you are buying the property that you believe you are buying. Not only does this mean undertaking searches to identify the property but to also undertake searches to ensure that there is no adverse encumbrance or decision that may affect the property.

Fact: Once the contract is signed you must:

1. Instruct a solicitor;
2. Organise finance
3. Organise building and pest inspections

It is important that you have a competent solicitor review the search results to ensure that your rights are protected as the results of searches may raise concerns in relation to the property and potentially, in serious cases, give you as the buyer the right to terminate the contract.



The timing of the searches are important, you need to determine how long searches will take so that you can ensure that the searches are obtained with enough time prior to settlement to ensure that the result can be properly analysed. The right conveyancer will make you aware of this timing and provide you with all of the necessary information to progress with the transaction.

6.2 If you require finance

Depending on whether you have appointed a mortgage broker or not you should either contact your mortgage broker, another mortgage broker or your bank to organise your approval for finance to provide you with the funds to purchase the property.

You should notify your solicitor as to whether you have sufficient funds to purchase the property or if you will be obtaining finance. If you are obtaining finance you should provide your solicitor with the name and contact details of your bank or mortgage broker to ensure that this is actioned as soon as possible to ensure that you have finance approval prior to the finance date in the contract.

6.3 If your contract is subject to a building and pest inspection

Where your contract is subject to a building and pest inspection it is important that you immediately appoint a building inspector and a pest inspector to provide you with a comprehensive report to ensure that the building does not have any issues that could require urgent repair or does not have a pest (i.e. termite) problem.

It is vital that you obtain these inspections as soon as possible to ensure that you are satisfied with their results and want to go ahead with the property purchase.

At Masons Lawyers our Property Team has extensive experience in advising buyers in relation to all aspects of the property conveyancing transaction.

Visit our website

<http://www.masonslawyers.com.au/MasonsLawyers2163/Page/23408/Conveyancing.aspx>

today to obtain an obligation free quote for Masons Lawyers to act on your behalf in your conveyancing transaction.



7. Conclusion

As set out in this E-Book there are a number of significant factors that you must assess when buying a property.

Whilst the price of the conveyance is not the most important consideration it is obviously one that is essential to buyers of residential property. Remember that you get what you pay for and if you want to find the right conveyancer you must ensure that you use a conveyancer with sufficient experience at a competitive price to act on your behalf.

Experience = knowledge and is your safe guard for you to ensure that you know your obligations pursuant to the contract that you sign and to ensure that your rights are protected sufficiently to ensure that you get the property for which you are paying.

At Masons Lawyers our Property Law team has extensive experience in assisting buyers of property to achieve the best result.

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<http://www.masonslawyers.com.au/MasonsLawyers2163/Page/23408/Conveyancing.aspx>

today to submit a request for an obligation free quote for our firm to handle your conveyance. Ordinarily we do not charge more to assist clients with this aspect of the transaction and absorb our time spent into the conveyancing transaction.



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8. Resources

Buyer's Checklist

The following checklist should be followed before you buy a property:

- What property do I want to purchase?
- Has the agent answered all questions that I have and do I need anything clarified?
- Do I need to waive the cooling off period?
- What is the Purchase Price?
- What deposit has to be paid and when does it have to be paid?
- Do I need the contract to be subject to finance approval?
- Do I need the contract to be subject to building and pest inspections?
- Are there any encumbrances? Do I need my conveyance to explain these in more detail?
- Is the property leased? What are the implications for me?
- When is completion? Does this suit me?
- If not done before, once the contract is signed, instruct a solicitor
- Does my solicitor have the required experience?
- Contact my financier to arrange finance
- Contact my building and pest inspector to arrange building and pest inspections