

GENERAL ADVICE GUIDE FOR

Purchasers



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THE PURPOSE OF THIS GUIDE

The purpose of this Guide is to provide clients or prospective clients of Beck Legal with an outline of what is involved in a conveyancing transaction as well as to make some recommendations for what you can do to ensure the process is a smooth one both for yourself and for us.

We understand that purchasing a property is a significant financial and emotional event and aim to make the process as simple and clear as possible for you. At the same time, we encourage you to take an active role in the process, as this ensures that you stay informed about what is happening and minimises the possibility for communication breakdowns.

This guide is not intended to constitute legal advice. We recommend you contact us to obtain advice specific to your circumstances.

THE STARTING POINT - THE CONTRACT OF SALE

The contract of sale records the terms of your agreement with the vendor to purchase their property.

The contract is a legally binding document and breaches of contracts of sale can have potentially devastating legal consequences. We are here to assist you in avoiding anything like that happening.

As the contract is designed to record your whole agreement with the vendor, anything which was agreed verbally with the agent or vendor directly does not form part of the contract and as such you should not rely on any verbal representations made to you. If you are concerned that aspects of your agreement with the vendor are not in the contract of sale, then you should advise our office before signing the contract.

You should check that the condition of the property is acceptable before you sign the contract. If there are any issues with the state of repair of the property or any goods included in the sale such as dishwashers, water tanks and garden ornaments, you should let us know so that we can address these in the contract for you.

You should also carefully check the fixtures (such as air conditioners and solar panels), fittings and goods included with the sale to ensure that they are all in working order at the time you sign the contract.

You may also look to obtain a pest and building inspection prior to signing. If you do, we recommend that the contract be made subject to obtaining those reports.

YOUR DEPOSIT

Most contracts will specify that you are required to pay a deposit amount (generally 10% of the purchase price) at the time you sign the contract or by a specified due date. The deposit must be paid to the vendor's real estate agent or solicitor and not the vendor directly. In most cases, the deposit

is paid to the agent. You should make sure that you attend to this payment by the due date as if you don't, you will be in breach of the contract which could mean that you lose the property or you could have to pay interest on the deposit amount.

RELEASE OF THE DEPOSIT

In Victoria, the vendor may request the deposit be released from the agent or solicitor before settlement, to be used however the vendor wishes. The document required to release the deposit to the vendor is known as a Section 27 Statement. For this to occur, you are entitled to be provided full details of any amounts owed by the vendor in relation

to the property (e.g. if the vendor owes money to a bank who has a mortgage over the property). If the vendor asks for a release of the deposit, we will review the information they are required to provide us. If the information provided is satisfactory, it is usual for a purchaser to consent to release of the deposit.

ARE YOU OBTAINING A LOAN TO FINANCE THE PURCHASE?

It is common for purchasers to obtain finance from a bank or financial institution to help fund their purchase. The contract will generally include a special condition specifying what timeframe the purchaser has after signing the contract to have their finance approved. If you aren't successful in obtaining finance approval in writing by the due date, you will be able to withdraw from the contract if we provide notice to the vendor's solicitor or agent before the due date. If you end the contract this way, the vendor must return the deposit paid under the contract.

A couple of key important things to note while you are waiting for finance approval:

- Some purchasers (incorrectly) think that if finance is not approved by the due date, then the contract simply ends. This is not the case. We need to provide written notice to the vendor's solicitor prior to the due date in order to end the contract on your behalf if you can't obtain finance. You need to let us know as soon as possible (and before the due date) if you will not be able to obtain your finance before the due date.
- Providing your bank or financial institution with all requested documents is very important to ensure that your finance is approved before the due date. Some banks have a process that can take weeks to complete so the sooner they have the information they require, the sooner you'll know if you can purchase the property or if we need to get you out of the contract.

After your finance is approved, the bank or financial institution will provide you with relevant loan documents to be signed well in advance of the settlement date.

Whilst a mortgage broker or your bank can assist you to obtain a loan, ultimately it is your responsibility to make sure your loan is in order in time for settlement. So it's really important that you play an active role in carefully reviewing the loan documents and return them to your lender as soon as possible. Any delay in returning the loan documents to the bank could result in delays to settlement and you incurring unnecessary costs such as penalty interest (which the vendor can charge you under the contract) and additional legal fees. If you'd like our help in making sure the documents are all in order, feel free to give us a call or send an email.

Don't be afraid to follow up your lender throughout the transaction to make sure that everything proceeds smoothly and on time for settlement.

THE DOCUMENTS YOU NEED TO SIGN

During the conveyancing process there will be a number of documents you will have to sign including the contract of sale, verification of identity documents and a client authorisation.

It is important that you use the same signature when signing all documents particularly if you are borrowing funds from a bank who will require matching signatures on all documents.

You will receive from us various documents which are necessary for

verifying your identity and allowing us to sign the required Titles Office documents on your behalf. It's important you complete and sign those documents and return them to us as soon as possible in order for us to prepare the required documents on your behalf.

If you receive a document and you are unsure how it is to be signed you should always contact our office.

INSURANCE

Usually, the contract will say that the property remains at the risk of the vendor until settlement. However, we still recommend that purchasers insure the property as soon as the contract becomes unconditional. This is because a vendor may not have any or enough insurance in place to protect the property in the event of damage before settlement.

A bank will usually insist that the property

be insured with their interest noted prior to settlement.

You may also wish to consider obtaining title insurance prior to settlement.

This insurance can protect you against any legal defects in title which are not disclosed to you by the vendor before you sign the contract.

In all cases, it is better to have too much insurance than not enough.

STAMP DUTY AND RELATED GOVERNMENT CHARGES

All property purchases in Victoria and New South Wales attract stamp duty. Stamp duty is a State Government tax a purchaser pays when they purchase a property. Generally speaking, the amount of duty payable depends on the value of the property, with more duty being levied the more expensive a property is.

The State Government, through the Titles Office, also charges a fee to have a title registered into the name of a new purchaser. This fee is generally much less than stamp duty and is also based on the value of the property. An estimate of these fees and duties will be provided in our letter of advice.

Where you borrow money from a bank or other financial institution to fund your

purchase, that financial institution will be responsible for paying the stamp duty and titles office fees on your behalf. These fees, together with any fees charged by the financial institution for their services, will generally be deducted from the amount the bank lends you.

For example, if you borrow \$300,000 and your stamp duty, titles office fees and other fees total \$15,000, the bank will only provide \$285,000 at the settlement. If more money is required for the settlement, you will be required to contribute the difference.

It is therefore in your interest to ensure that all expenses are taken into account when ascertaining how much you need to borrow.

STAMP DUTY EXEMPTIONS AND CONCESSIONS

Various exemptions and concessions for stamp duty are available in Victoria such as the first home buyer duty exemption (for purchases up to \$600,000), first home buyer duty concession (for purchases between \$600,001 and \$750,000), principal place of residence concession (for purchases up to \$550,000), pensioner exemption (for purchases up to on \$330,000), pensioner concession (for purchases between \$330,001 and \$750,000) and the off-the-plan concession.

We are able to assist you in applying for these concessions prior to settlement.

If you are buying 'off the plan' (ie. where the property is not yet built), the earlier in the construction process that you buy, the greater the duty saving. Duty is calculated on the full price less the value of building work after signing of the contract.

It is not calculated on the value of the land on the

contract date and any information in the contract relating to that value is often misleading.

Duty can only be calculated when the builder provides a statutory declaration relating to the cost of works after contract. This is governed by a strict formula and the declaration required to calculate the concession is not available until all works have been completed.

Accordingly, the builder cannot provide this declaration until very late in the conveyancing process and this often leads to uncertainty, because the financier will want to be sure that sufficient funds are available to pay duty at the full rate if the builder's declaration does not support a reduction.

Further, the off-the-plan concession is now only available to people who intend to occupy the property as their primary residence when the property is built.

GST

One of the most important reasons for us to check the contract before you sign is to see how GST is treated in the contract and whether you will have to pay an extra 10% on the price.

You will not ordinarily have to pay GST on existing residential premises. However, if a

property is used in a particular way (particularly if there are commercial or retail aspects to it) it can mean that GST is payable on your purchase.

We recommend that you speak with us and your accountant with respect to this issue prior to signing the contract.

WINDFALL GAINS TAX

In 2021, the Victorian government introduced a new regime intended to tax landowners upon the rezoning of their land. If a rezoning results in an increase in the capital improved value of the land greater than \$100,000.00, the landowner may be liable to pay Windfall Gains Tax (WGT) on the taxable value of the increase in value. A change from Farming Zone (FZ) to General Residential Zone (GRZ) that increases the value of the land may attract WGT, while a change of schedules within the same zone will not. For example, a change from Neighbourhood Residential Zone Schedule 2 to Neighbourhood Residential Zone Schedule 1 will not attract WGT liability.

Liability for WGT arises when the rezoning takes effect. This liability is imposed on the owner of the land and is a first charge on the land, having priority over all other encumbrances on the land. The tax rate is applied at a different

rate depending on the amount that the land value has increased. If the value of the land has increased by more than \$100,000.00 but less than \$500,000.00, WGT will apply at a rate of 62.5% to the value of the uplift above \$100,000.00. If the value of the land is increased by \$500,000.00 or more, the total of the value uplift will be taxed a rate of 50%.

Please also be aware that liability for this tax can be created even in circumstances where you have not applied for the land to be rezoned. Council may make a rezoning decision relating to land without the consent of the landowner, and if this rezoning increases the value of the land, WGT may be payable. Please let us know if you are considering applying for rezoning of the property you are buying at any point in the future. We can provide advice on liability under the WGT scheme, potential exemptions to the tax, and possible arrangements for deferral of payment.

TAXATION AND FINANCIAL IMPLICATIONS

The sale or disposal of real estate may cause a Capital Gains Tax event to occur meaning tax may be payable as a result of the sale. If the property has been solely utilised as your main residence you will usually qualify for the Main Residence Exemption. There may be circumstances where you do not qualify for the full Main Residence Exemption, if, for example, you have conducted a business from home or worked from home, or not resided in the property for the full period of ownership. Also, if you or your partner (if applicable) are in receipt of government benefits, the transaction or how you deal with the proceeds may affect your entitlements. If you or your partner are in receipt of

Centrelink entitlements or intend on claiming Centrelink entitlements within the next 5 years, you should consult with Centrelink, a financial advisor or accountant. Beck Legal are not taxation experts or financial advisors and you should seek appropriate accounting and financial advice concerning the taxation and financial implications of your transaction. Any information that we provide concerning the proposed taxation and financial implications of your transaction is for general information only and is intended to assist you in obtaining appropriate advice. It should not be relied upon as a substitute for expert advice.

FINAL INSPECTION

You are entitled to conduct a final inspection of the property in the week before settlement. You should contact the agent (or the vendor directly if there is no agent) to arrange this. The purpose of the inspection is to establish that the property is in the same condition it was when sold to you, fair wear and tear excepted. This means that the property may have deteriorated somewhat (perhaps the

lawns will not be mown or there may be some rubbish about) and you have to accept that, but you should report any substantial deterioration or damage (such as damage that may have occurred when the vendor moved out) to our office. We can then either arrange the vendor to complete the repairs or to arrange compensation at settlement.

ELECTRONIC CONVEYANCING

As part of the increased digitisation of property transactions, PEXA, Australia's first online platform for settlements, was introduced to Victoria in 2015. PEXA allows settlement to take place online, with electronic fund transfers and registration of documents to occur in real time. Since then the multiple State Revenue Offices have also gone paperless, requiring duties forms used for the assessment of stamp duty on conveyancing transactions to be completed and signed electronically.

Transactions completed on PEXA have the transfer and mortgage documentation checked in advance by Land Victoria and duty on the transfer assessed by the State Revenue Office in advance meaning there is no potential for nasty surprises. Wherever possible we will endeavour to settle your matter electronically.

SETTLEMENT

Settlement is the time when purchasers (and their lenders) pay the balance of purchase price to the vendor. Purchasers must provide us with any funds required for settlement which the lender is not providing by bank cheque or direct deposit. These funds need to be provided at least three clear days before settlement is due. Settlement takes place electronically through PEXA or at a location selected

by the vendor or, if they have a mortgage, their bank. If settlement is not electronic and the vendor nominates a location outside of Bendigo we will appoint a settlement agent to attend settlement on our behalf.

The settlement process can take up to 30 minutes. You do not need to attend settlement in any event.

COUNCIL RATES, WATER AND LAND TAX ADJUSTMENTS

The vendor is obliged to pay the rates on the property up to and including the day of settlement and the purchaser is responsible for them after the settlement.

We will calculate a rates adjustment at settlement to ensure that this happens. We do this by requesting the vendor pays the rates in full for the current financial year at settlement and then you as purchaser pay

the vendor at settlement a daily amount calculated from settlement day until the end on the current financial year.

We also notify all rating authorities (council and water) that you are the new owner immediately after settlement. From that point on, all notices will then be sent to you by the relevant authorities.

GETTING INTO THE PROPERTY

Keys are usually collected by you from the agent after settlement.

The agent will only hand over keys upon receipt of written authorisation from the vendor, which will be sent to the agent after settlement has taken place.

Other keys will normally be left in the property, along with instruction books and household information.

If there is no agent involved, you should contact the vendor directly.

WHAT YOU NEED TO DO AFTER SETTLEMENT

It is your responsibility to arrange for connection of electricity, gas and telephone services and steps should be taken in advance of settlement as there are sometimes waiting periods.

We will provide you with a statement of account in relation to your purchase which

will show all amounts you have paid in buying the property.

If you have borrowed money to assist you with the purchase, your financier will also report to you after settlement.

GETTING YOUR NAME ON THE TITLE

Clients often ask us how soon after settlement they will see their name registered on title as the new owners of the land.

In the case of electronic settlements (which we ordinarily use), the lodgement and

registration occurs on the day of settlement.

In the increasingly rare case where we (or your bank) have to lodge a paper transfer at the Titles Office, the process can take between 1 and 3 weeks.

HAVE YOU THOUGHT ABOUT A WILL?

The purchase of a property is an excellent reminder to check your Will to ensure that is up to date and accurate of your wishes. When you own a significant asset such as real estate, it is important to have a current Will in place.

If you wish to discuss your Will or have a new Will prepared please contact our office.

MOVING CHECKLIST

Some other items to consider when moving are:

- Book removalist – be mindful of the settlement time
- Notify Electoral Office/VicRoads of your new address
- Arrange to have your mail held or redirected to your new address
- If renting, provide notice, arrange property inspection and book cleaners
- Transfer or set up new connections at your new property for gas, electricity and telephone
- Contact all relevant authorities and notify them of your new address
- Book a locksmith to change the keys on moving day at your new home
- If your house will be empty for a while inform police and neighbours
- Prepare an action plan for moving day
- If renting, return keys to the agent or new tenant
- Once settled make sure you have all keys and relevant instructions to your new property



WE ARE HERE TO HELP

Feel free to contact us if you have any queries in relation to your purchase.

We are here to assist you before, during and after the purchase of your property.

177 View St Bendigo Phone 03 5445 3333
Level 1, 226 Beveridge Street, Swan Hill Phone 03 5032 4809

www.becklegal.com.au

