

ACG
**Stonnington
Conveyancing**

Australasian Conveyancing Group

Property Conveyancers

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PURCHASER “FAQ” SHEET & PRE-PURCHASE CHECK LIST / NOTES

1. COOLING OFF

“Cooling Off” does not apply to purchase just before, at, or after public auction. It also does not apply to company purchasers, or to commercial properties, larger farms and in a few other cases. The Vendor cannot cool off – only the Purchaser. Where the right to cool off applies, it must be done in writing within three (3) business days after your signing of the contract. If you wish to cool off on a purchase that you have just signed for, please contact our office immediately. Lastly, please note, the Vendor may retain some of the deposit paid, being the higher of \$100.00 or 0.2% of the purchase price (equivalent to \$200.00 for every \$100,000.00 of the purchase price – e.g. for a \$1M property, the Vendor may retain \$2,000.00 of the deposit.

2. GST

Is the contract (on the “Particulars of Sale” page as well as the clauses and conditions) expressed to be inclusive of GST, or Plus GST or is there no mention of GST? Previously occupied residential property is almost always GST exempt; however, for a potential extra 10% on top of the purchase price, it is worth getting absolute certainty on your purchase!

(It should be noted that all newly subdivided vacant land, all newly constructed property, commercial properties, some farm land property, first sale after subdivision, etc. can be, and usually are, chargeable with GST where the vendor is registered for GST purposes.)

If you the purchaser (or the purchasing entity – e.g. a company or trust) are GST registered and there is GST payable (either included in the purchase price or in addition to the purchase price), and it is calculated using the “Margin Scheme” it is essential you are aware that the GST cannot be claimed back as an input tax credit – the GST is “lost forever”.

3. STAMP DUTY AND OTHER SETTLEMENT COSTS

Unfortunately, the actual cost of buying a property is usually about 7% higher than the actual purchase price. The main additional cost is stamp duty, which is usually just less than 6%. Substantial concessions are available to “off-plan” purchases (i.e. where you are buying a dwelling property that is not yet built). First Home Buyers and Regional Developments. Other concessions may be available to you, but are less significant. Other costs you should allow for, are the Land Titles Office registration of transfer fee, PEXA (e-Settlement fees), and, where applicable loan costs, removalists (can be expensive), an adjustment for your share of the current year’s rates and taxes, and, most importantly, our fees!

4. FLEXIBILITY OF SETTLEMENT DATE & “OFF PLAN” PURCHASES

If the purchase is “off plan” or part of any other building or subdivision that is yet to be finalised, how critical is the settlement date to you?

These types of project (subdivisions of vacant land, and especially construction of apartments) often run months or even years overdue. Be prepared for delays. However, in the case of new apartments, if suitable for occupation it can sometimes (do not rely on it!) be negotiated that you are granted the right to move in “on licence” (for a weekly fee) prior to completion of the conveyancing legal process leading to settlement.

“Off plan” contracts usually contain clauses that allow the Vendor 18-36 months (sometimes even longer) to be ready for settlement. Often such clauses give the Purchaser the right to terminate the contract only after that period of time. As stated, until then, expect delays, have a contingency plan in place for where you can live and bear in mind you can probably do nothing about the delays for 18-36 months (we would need to check the contract in each case for exact timing).

5. VACANT POSSESSION OR TENANCIES

It is absolutely critical that if you are buying a dwelling and require vacant possession for your own use, that where there is a tenant currently renting the property, that the contract terms reflect your need for vacant possession, and that the tenant has completely vacated and a final inspection is done prior to the agreed settlement date. In particular, the “Particulars of Sale” page should indicate that you require vacant possession (usually done by ensuring the words “Subject to Lease” have not been added in the relevant box in the “Particulars of Sale” page in the Standard Sale Contract. Sometimes, there should also be a Special Condition added that the vendor is to serve the required notice to vacate upon the tenant at the vendor’s expense within seven days of the day of sale and the settlement date should be at least 70 days (not 60 or less!) or 90 days (as the case may be) depending on the amount of notice required to obtain vacant possession from the tenant, which varies depending on the nature of their tenancy agreement and the reasons that the vendor requires vacant possession.

6. **FINANCE**

Especially for auctions where you will always buy on a “cash unconditional” obligation to complete settlement, it is absolutely essential that you already have the funds which you may need to borrow pre-approved, or at the very least, organised with a lender with whom you have an established relationship. It is essential that you realise whenever buying without the protection of a “subject to finance” clause, that you are legally obliged to complete settlement even if you cannot obtain the loan funds you rely upon.

If needed, we can refer you to a choice of loan consultants/finance brokers, each of whom have access to approximately 20 different lenders so you can really be sure you are getting the best possible “deal” from your lender.

7. **EASEMENTS**

Contained within the Vendors Statement, you should have been provided with a copy of the Certificate of Title and a copy of the plan of the land and surrounding allotments which you are considering purchasing. In the area ruled off with a dotted line and marked “E-1, E-2, E-3” etc., is likely to mean the indication of services (usually laid underground) such as sewerage or drainage (stormwater) pipes, electricity cables etc. Whilst we would need to check any individual title documents, the usual situation is that these areas cannot be built over with any “permanent” structure. It is also advisable to avoid the planting of large trees and shrubs in these areas. If buying an existing property, you should check that no such structures are already over such land and if buying vacant land or planning to build over such easements, it is wise to work on the assumption that you will not be able to build over them. However, it is sometimes possible to obtain the consent of the party that has laid or uses those services. Please speak to us if you require further clarification of easements and your obligations of owning land that is subject to an easement.

Especially if you are buying and intending to complete major extensions or complete re-development, we also strongly recommend you access the website www.dialbeforeyoudig.com.au, which can provide additional information about the exact location of service pipes and cables that are often laid outside registered easements or not shown on title by easement at all!

8. **PROPERTY WITH AN OWNERS CORPORATION**

If you have never owned property subject to an Owners Corporation (“OC”) before, please ask us for a copy of our information sheet, titled “**Buying into an Owners Corporation.**” In a nutshell, the operation of an OC has both advantages and disadvantages in that certain costs are shared creating less of a financial burden per owner, the OC will exercise some control over the activity of the owners of the other surrounding properties in terms of appearance of the properties and behaviour on site, however some of the disadvantages are that those very same controls also restrict things that you may wish to do. Common examples of things you can generally not do without the consent of the OC (granted by the majority and sometimes unanimous vote of the other owners in the OC) are the keeping of pets within the group, changes to the external appearance of your property, structural changes internally or externally etc.

We regard it as absolutely essential that you contact the Secretary or Manager of the OC before committing to purchase a property that is subject to an OC. The sort of items you should be discussing with them are approvals for pets, any known liabilities of the group which will have to be paid for by owners; for example, major structural problems (e.g. building footings, roof repairs, etc.), major maintenance items (e.g. whole group external painting), etc. You should also query any problems with any particular owners or occupiers in the group, ask how much money is held in the Bank by the OC and what charges are likely to be raised against the owners in the near future.

9. CARE OF THE PROPERTY UNTIL SETTLEMENT

It is a generally accepted principle that the property must be substantially in the same condition at the date of settlement as it is on the day of sale. As there is often some delay between these two dates, i.e. at least 30 days and often 60 or 90 days etc., it is often very difficult to recall the exact condition of every aspect of a property. Accordingly, we recommend that you take as many Photos and Notes as possible on the condition of the property and you may even wish to consider taking a “whole property” walk around video to assist you in remembering the condition of the property at the day of sale. Please note that you have a right by law to re-inspect the property in the last seven days before settlement. It is essential that you arrange this inspection with the real estate agent, preferably after the vendors or occupiers have moved out, but preferably sufficiently early before settlement such that you may report to us any concerns you may have about any areas which have not been properly maintained. Please note, fair wear and tear is allowable.

10. BUILDING INSPECTIONS AND TERMITE INSPECTIONS

If you are reading this, you have obviously taken the trouble to consult us prior to signing a contract to check out the full contractual, legal and financial rights and obligations under the contract you are considering signing. That is very wise, however, all your efforts may be wasted if the property has substantial physical defects which are not identified and costed into your budget prior to committing to the purchase. In this regard, you may wish to obtain a detailed building inspection from a reputable Registered Building Inspector. Some inspectors will also perform a basic termite inspection, although in many cases they recommend you get a separate contractor specifically in the area of pest control. If you wish to book a building inspection, and you do not already know a building inspector, there are many listed in the Yellow Pages, however, you may wish to ask us, as we have a few “on our books” with whom we and our clients have had very satisfactory dealings in the past.

11. SMOKE ALARMS AND SWIMMING POOLS

There are now strict laws in relation to smoke alarms and adequate safety barriers around swimming pools. In a nutshell every dwelling must have a suitable number of smoke alarms (the law allows battery operated ones) but we strongly recommend installing “hard wired” and preferably interconnected smoke alarms. The great advantage of interconnected hard wired smoke alarms is that if one alarm is activated by fire, each and every alarm in the property will instantly be activated at the same time such that you get extremely early warning of any smoke in the dwelling. If smoke alarms are not already installed, you will have to do so within 30 days of settlement.

As regards swimming pools, in essence every swimming pool exceeding 30 centimetres in depth must be adequately fenced with a safety barrier of a minimum height, and with a suitable gate with a safety latch which young children cannot reach and/or open easily. These guidelines are legislated by state law and administered by the relevant local council. If you require further details of these obligations, please contact the local Council or this office.

12. USE OF “AND/OR NOMINEE”

It is distinctly preferable that you decide *exactly* which name or names will end up going on title and the respective percentages to hold **before** you sign the contract!! From the Stamp Duty perspective, this is especially the case if you intend to hold between two parties in uneven shares (e.g. one person or company 70% and another 30%). Where you intend to own the property in any name, names or entity (e.g. a company or trust) which is different from or in addition to the person or persons signing the contract as purchaser, the words “and/or Nominee” should still be written immediately after the purchaser’s name on the contract. Additional documentation will be required and you should discuss this matter with us **before** signing the contract. If errors are made in this area, it may well cost you, as Purchaser additional Stamp Duty and costs!

13. PAYMENT OF DEPOSIT

The Vendor usually requires a deposit to be paid upon signing of the contract. The deposit is usually 10% of the purchase price and this is especially likely at auction. Payment by personal cheque is allowable. However, only with prior approval of the Vendor, it may be able to be negotiated that the deposit is, say, 5%, “paid” by lodgment of a security “Deposit Bond”, “Bank Guarantee” or even paid on a later date. Any variation to the usual “10% rule” needs to be put (preferably by us) to the agent and approved by the Vendor prior to an Auction.

14. INSURANCE

Most Contracts of Sale in Victoria provide that the property is at the risk of the Vendor until settlement. However, if the property was damaged, and you still wished to settle, and the Vendor failed to insure, you may have difficulty enforcing any re-building or repairs upon the Vendor. Accordingly, we strongly recommend that the Purchaser takes out their own insurance well before settlement. However, this does not apply if the property is subject to an Owners Corporation and the Owners Corporation holds a complying single insurance policy for all buildings on the total site. A copy/details should be included in the Vendor’s Statement – and please see Item 8 above. If borrowing funds, your lender is also very likely to require a copy of a fully paid insurance certificate before settlement.

15. BUYER’S ADVOCATES / AGENTS

If any (or all!) of the above sounds all too daunting, please ask us questions.

Alternatively, you may wish to appoint us not just as your Conveyancers, but also as a “Buyer’s Advocates” to look after you through the whole process. Rather like a Private, Personal “Property Concierge”.

Stonnington Conveyancing – FAQ - Purchaser.doc & Notes

In a nutshell, due to our qualifications and experience, we can almost always buy a property for less, and under better, more attractive terms than our clients.

When acting as your Buyer's Advocate, we will not only check the Contract, Vendor Statement and the Searches and Certificates, but also the Property itself for Sub-Location, Floor Plan, Siting, Light Levels, etc., and give specific advice on certain issues, but, we will also take care of everything else including the final Due Diligence AND all the Negotiating and Signing on your behalf - all very time consuming and a process that can be very frustrating and highly emotional for you – but much less so for us.

As Buyer's Advocates, in addition to our usual Pre-Signing Report, we will also assess the "Agent's Comparables", and research other recent sales in the suburbs you are looking at, inspect any specific property you are interested in and give you a justified and realistic estimate of what you should be prepared to pay – a lower and upper limit. If that range is acceptable to you, we will then commence negotiations with the Vendor's Real Estate Agent and attempt to purchase the property for you – by negotiation, or attendance and bidding at auction, where applicable.

Our Buyer's Advocacy services are particularly helpful to a Purchaser where you are new to Victoria or an area, where you are always very short of time, where buying purely as an investment to check the "numbers" add up, where you have been looking for several months and seem to be always misjudging the selling prices, where you are uncomfortable with the Vendor's selling agent, or where you wish to remain completely anonymous until the contract is signed.

Remember that we as your Conveyancers and Buyer's Advocates look after YOUR interests as Purchaser, whereas the selling agent is appointed by, and acts for the Vendor, not the Purchaser.

You find it – then Let us assess it, and buy it better for you!

Please advise if you require further information about our Buyers Advocacy services.

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