



LAWPOINT

10 STEPS TO BUYING PROPERTY IN NSW



Congratulations! You've decided to buy a property. Your home is likely to be the most expensive purchase you will ever make. So, whilst it is incredibly exciting, it is important that you understand the process involved in buying your home so you're using your head before following your heart.

There are 10 main steps to buying a home in NSW that will ensure you make a smart decision and protect your valuable asset.

This simple guide will help you understand the main issues and steps in the conveyancing process.

It is not intended to be relied upon as legal advice or as a substitute for legal advice. If you need advice specific to your circumstances, please contact Lawpoint on 02 9517 1887 or email reception@lawpointlawyers.com.au to arrange an appointment.





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STEP 1 : GET LOAN PRE-APPROVAL FROM A BANK AND REMEMBER IT'S NO GUARANTEE

Approach your bank (or other financier) for a loan pre-approval before you start searching for your property. This means the bank will pre-approve your home loan based on the information you have provided. It will give you clarity on what you can afford to buy.

The bank might ask for information like payslips, bank statements or details of your monthly expenditure, so make sure you have your paperwork ready to expedite the process.

Some banks may offer pre-approval without these documents. But that means the pre-approval will be subject to more conditions and these conditions can vary between banks. The main conditions that are usually imposed by banks are formal verification of your income and other information that you have informally provided during the application process as well as a valuation of the property you want to purchase to ensure that you are not paying too much for it.

It is always wise to try and satisfy the conditions of pre-approval before you purchase a property, so as to reduce the risk that the loan will not be approved. Give the bank all of your payslips, bank statements and tax returns to verify the information that you have provided as part of your application. That way the bank can eliminate those conditions from the pre-approval letter. It is also a good idea to ensure that the bank has assessed your credit worthiness so that you can be sure that the bank is willing to lend to you based on your specific credit score/worthiness.

It's important to know that pre-approvals are not binding on the bank. In other words, if your circumstances change after you get the pre-approval (such as losing your job), the bank can decide not to proceed with the loan, may reduce the amount it is willing to lend you or impose other conditions on the loan.

Pre-approvals are also usually only valid for a fixed period (normally 3 or 6 months). After that, you have to reapply for the loan and be assessed again. It is important that if your pre-approval is coming to an end, you contact your bank to have it extended so that when you are ready to buy the perfect property, your approval is valid and will not expire before the process is complete.

STEP 2 : APPOINT A LAWYER

It's wise to appoint your lawyer once you're ready to start looking to buy. This means you'll have a lawyer you trust ready to go, rather than trying to find one at the last minute once you're ready to buy. You'll save yourself time and give yourself piece of mind.





Once you have found a property that you want to buy, you need to get a copy of the contract from the real estate Agent. This contract needs to be reviewed by a lawyer before you proceed with the purchase. Contracts are complicated legal documents and require careful consideration by a qualified and skilled lawyer.

We will review the contract to ensure that it includes all the necessary conditions to protect your interests and to ensure that the contract doesn't disclose any issues which could become very costly in the future. The contract review should be done before you are legally committed to the purchase.

Lawyers should disclose their fees to you at the time of appointing them. The costs are generally fixed for the whole conveyancing process. In addition to the legal fees, disbursements will be payable for expenses such as search fees which the lawyer incurs on your behalf.

STEP 3: DUE DILIGENCE

This is where lawyers play a crucial role. We will carefully review the contract having regard to various legal considerations and instructions from you as to what you expect from your purchase. These considerations include:

- 1) The amount of the deposit to be paid (either 5% or 10%).
- 2) What items will be included in the sale. These include fittings and fixtures like a dishwasher, air conditioner or stove but can also include more decorative items such as pot plants or furniture.
- 3) Is the property being offered as vacant possession (meaning it will be empty when you settle and you can move in) or is it tenanted? If it is tenanted with a valid lease in place, you cannot evict the tenant so it is important to know what are the terms of the lease and whether those terms are acceptable to you.



- 4) Do you need the contract to be subject to finance (see above) which means you will need the contract to be subject to a cooling off period (which we discuss further below).
- 5) Does the contract have all the necessary certificates attached to it and are those certificates satisfactory or do they disclose some legal or other issue with the property which would result in you not wanting to buy the property?
- 6) Do you need an extended settlement date? The standard settlement period is 42 days, but that can be extended or reduced by negotiation with the vendor, for example, if you need to wait for your current property to be sold first before you can complete the purchase of your new property.

STEP 4: PEST/BUILDING AND STRATA REPORTS

We always recommend that you obtain a pest and building report before purchasing a property. Almost all contracts contain clauses preventing the purchaser backing out of a contract if the property is subsequently discovered to have a pest infestation (such as termites) or defects of any kind.

We will arrange for a professional to inspect the property and provide a written pest and building report which details any defects in the property which you may not have noticed. Defects are not always easy to spot and vendors can often take steps to prepare the property for sale which conceal these defects such as painting over a mouldy wall or water damage from a leaky roof. Some defects are almost impossible to identify without an expert, such as damp concealed in walls. These defects can sometimes be serious and cost thousands or tens of thousands of dollars to repair. The report itself can sometimes be useful to help you to bargain down the price of the property to cover the rectification cost of these defects.

A pest and building report will usually cost between \$400 and \$600 and is prepared as a joint report. Although this may seem like a lot of money, it is a small price to pay to find out about costly repairs which may mean that you decide not to proceed with the purchase.

If you are buying a unit, then it is equally important to obtain a strata report. The inspector will inspect the strata records to identify any issues within the strata scheme. These issues could include defects with the building, disharmony or disputes within the building, an unhealthy financial position of the strata scheme, whether any special levies are likely to be raised in the future over and above



As with pest and building reports, a strata report is a good investment to avoid any unexpected issues that you may be responsible for after you purchase the unit. The cost of a strata report is usually around \$300.00.

STEP 5 : NEGOTIATE PRICE AND TERMS



Once the due diligence process is undertaken and is satisfactory, it's now time to negotiate the terms of the purchase.

Usually, the price is something you will negotiate directly with the seller (via the real estate agent). We will negotiate the terms of the contract on your behalf and this is done with the seller's lawyer.

Once the terms, including price, are agreed, it's time to sign contracts.



STEP 6 : COOLING OFF PERIOD

In NSW, buyers (except those buying a property at under auction conditions) have an automatic right to a 5 business day cooling off period. This period of time after contracts have been signed and exchanged, where you can change your mind and back out of the contract. If you do this, you will only be required to forfeit 0.25% of the purchase price.

If the contract is subject to a cooling off period and due diligence hasn't been done before contracts were exchanged, they should always be done during the cooling off period to give you enough time to cancel the sale if the investigations turn up any issues.

Only the purchaser can cancel the contract during a cooling off period. The seller cannot back out. For this reason, sellers will often require a buyer to provide to them what is known as a section 66W certificate. If this certificate is provided by your lawyer, you are waiving your cooling off rights and that means you are unconditionally bound by the contract once you exchange. If you back out later, you will lose 10% of the purchase price and the seller can also sue you for damages including legal costs and the difference between the later sale price and what the property was sold to you for (if the difference exceeds the 10% deposit forfeited by you).

The important point to remember is that buyers at auctions and those from whom a seller has requested a s66W certificate must make sure all investigations are done and pre-approval is in place from their bank before bidding at auction or signing an unconditional contract as they will not have the benefit of the 5 day cooling off period during which they can back out of the purchase.

STEP 7 : STAMP DUTY

It is important to factor in the amount of stamp duty that you will have to pay on the purchase price of your property. Stamp duty is payable at settlement or 3 months from the contract date, whichever happens earlier.

The amount of stamp duty you pay may be reduced in certain circumstances if you are a first home buyer. The reductions are as follows:

- 1) You will not pay any stamp duty if the purchase price of your property is under \$650,000.
- 2) You will receive a discount on stamp duty on the property if the purchase price is between \$650,000 and \$800,000.





In addition, first home buyers may be eligible for a grant to assist with the purchase of the property, but only where the property is new and is valued at less than \$600,000.

Each of these schemes has other qualifying criteria including that you must live in the property for 12 months after purchase. If you your spouse has previously received the benefit of the first home buyer scheme, you are not eligible to receive it again.

STEP 8 : BETWEEN EXCHANGE AND SETTLEMENT

During this period (usually 42 days), you will take steps to get your loan documents signed so that the bank will be ready to advance the loan funds to you at settlement.

We will continue to undertake our due diligence, which includes conducting various searches on the property to check whether the property is negatively affected in any way. For example, we will conduct a search with RMS to see if your property may be voluntarily acquired to build a road or freeway or road widening at some time in the future. There are however limitations to these searches as only approved proposals will be disclosed. This doesn't of course guarantee that a property that is clear today may not be required at some future time for these purposes.

During this period we will also ask certain questions of the seller. These are known as requisitions on title. Depending on the answers provided by the seller, we may identify issues which require further investigation. In very rare circumstances, these issues may be so serious as to give you a right of rescission, which means that you will have the right to back out of the contract and recover the whole deposit paid by you.

STEP 9 : PREPARING FOR SETTLEMENT

As settlement approaches:

- 1) We will ask you to undertake what's known as a pre-settlement inspection. This is arranged by you directly with the real estate agent. You will inspect the property to ensure that it is in the same condition as it was when you first purchased it. If there is any damage, you will notify us of those issues and we will seek to have them resolved. The pre-settlement inspection is best undertaken either on the day of settlement or on the day before settlement.





- 2) We will prepare what is known as a settlement adjustment sheet. This document adjusts things such as council rates, water rates and strata levies to ensure that the vendor is responsible for those charges up to the date of settlement and you are responsible for them after settlement.
- 3) Based on the settlement adjustment sheet, the total funds required to settle will become known. If you are buying the property without a loan, this is the amount that you will need to pay before settlement. If you are getting a loan, we will calculate the amount you need to contribute over and above the amount being contributed by your bank. Once this has been done, we will request that you place the funds into our trust account and these funds must be received by us as cleared funds at least one (1) day before settlement.
- 4) If you have not already done so, you will need to effect insurance to protect your property on and from the date of settlement. This is usually a condition of all banks prior to settlement and they

STEP 10: SETTLEMENT

Settlements (with a few exceptions) must now be undertaken via electronic conveyancing (known as PEXA).

PEXA (Property Exchange Australia) is an online property exchange that allows lawyers, conveyancers, lenders and other parties to complete transactions and lodge documents to complete the sale and purchase of property or financial settlements relating to mortgages over property.

Electronic conveyancing allows transactions to be completed quicker and allows real time lodgement of documents with Land Registry Services. With electronic conveyancing, these documents are lodged instantly so that buyers can have confidence that their interest in the property is registered immediately to protect their new asset.

The electronic system also checks and matches information, detecting errors prior to settlement. If an error is detected, the system notifies the relevant parties, reducing the risk of settlement failure due to a data entry error or something that may have been inadvertently missed.

Once everyone is satisfied that the documents are accurate and all is in order, the parties electronically sign the documents to verify the transaction is ready to settle and your purchase settles electronically.

Various government departments will be notified of your purchase and the change in ownership of the property, which we will take care of.





After settlement, we will notify you and authorise the agent to release the keys to you and you are then free to collect the keys from the agent at your convenience.

Time to enjoy your new property!

Congratulations, you are now a property owner (with your partner, the bank!). Buying a property is a major achievement and one that you should be proud of, so enjoy it.

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