



# FAQ

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## Residential Conveyancing

*This document summarises some of the more commonly asked questions regarding residential conveyancing. Refer to the [useful links](#) section of our website for more general information on conveyancing. If your question is not answered here or you need further advice on residential conveyancing please phone us on 02 6651 8440 or email [info@bryantmckinnon.com.au](mailto:info@bryantmckinnon.com.au).*

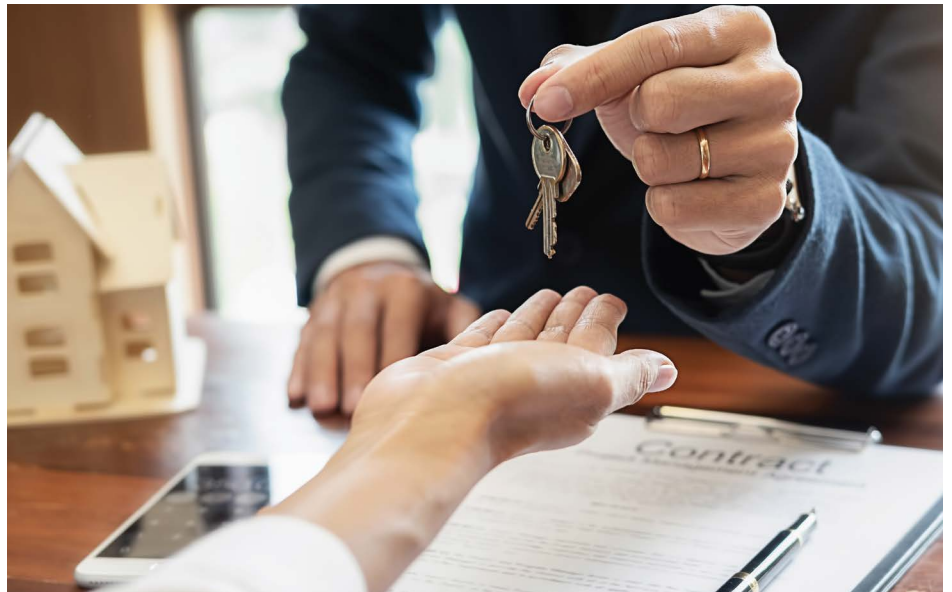
### What is conveyancing?

Conveyancing is the process of transferring (conveying) ownership of land and any improvements on that land from one person or entity to another. This is done according to the terms of a written contract for sale.

Every state has different laws regarding real estate conveyancing, on top of federal legislation. Conveyancing is a complex process, with conditions, documentation and key dates that must be adhered to.

### Can I manage conveyancing myself?

It is perfectly legal to manage your own conveyancing and there are DIY kits available. However, it is critical that the process is managed correctly to secure your investment.



We recommend you think carefully about the risks involved. You may be better off employing a professional conveyancer or solicitor with expertise and professional indemnity insurance to protect you.

### What is the difference between a lawyer and a conveyancer?

In NSW a conveyancer is a specialist in property transfer, licensed by NSW Fair Trading. They are trained and licensed to handle conveyancing matters only. They can give advice on title transfers and matters relating to conveyancing, but cannot provide general legal advice.

A lawyer or solicitor is a legal professional, qualified to deal with conveyancing and other legal matters. In addition to conveyancing, a solicitor is qualified to offer legal advice and take legal action in relation to your property.

### What are the different types of ownership structures for a residential property?

When buying a property, it's important to buy the property in the correct name, as it can have a significant impact on both taxation and estate planning. Changing it later is difficult and may have unwanted tax implications.

Personal ownership simply means that you own the property in your own name. If the property is an investment vehicle, you can claim any losses against your personal income under negative gearing laws.

Company and trust ownership are ownership structures that are sometimes considered by high-income or high-net-worth clients. These can help to protect your assets and deliver tax advantages.

If the buyer chooses to exercise their cooling off rights and withdraw from the contract, the Purchaser will forfeit from their deposit 0.25% of the total purchase price.

A cooling off period does not apply on properties purchased at auction, or where contracts are exchanged on the same day as the auction after it was passed in.

**Settlement date:** the date on which ownership of the property is transferred as set out in the contract.

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**Joint tenants** is one way of buying a property with another person. This structure means you both own the property “jointly and severally” and ownership and tax claims are shared equally. If one person dies, the property is automatically wholly owned by the survivor, with no need to transfer title.

**Tenants in common** is another way of buying property as a couple. This structure allows the parties to determine fixed ownership shares, which could be 50:50, 1:99 or anywhere in between. Each party can deal with their share as they see fit, and their share of the property will go into their estate to be distributed on their death according to the terms of their Will.

## What are the key dates to be aware of in the conveyancing process?

**Exchange/Contract date:** the date when the buyer and seller exchange signed contracts, deposits are paid and the agreement becomes binding. Before exchange, the seller can continue to negotiate with other prospective buyers.

**Cooling off period:** A cooling off period is the period of time during which the buyer can change their mind and pull out of the contract without having to provide a reason. In NSW, this period is five business days after exchange of contracts.

## What is “Stamp Duty” and do I need to pay it?

Stamp duty is a tax payable by the buyer to the state government when the ownership of land transfers. The amount is calculated as a percentage of the purchase price, and varies depending on whether the property is to be lived in by the buyer, or bought as an investment property. Concessions are available to first home buyers under certain eligibility rules.

## What is “gazumping” and does it still occur?

Gazumping refers to a situation where a buyer has verbally agreed to buy a property, but then the seller signs a contract with a second buyer before the agreement is finalised.

In NSW, two separate but identical contracts are signed, one by the buyer and one by the seller. The buyer then completes all necessary enquiries, including searches, building and pest reports. When they are satisfied, they exchange contracts with the seller. The contract becomes binding upon exchange. Before exchange, you can be gazumped.

To help avoid this, have your finance pre-approved and your inspection reports done promptly. The sooner you can exchange contracts, the better protected you are.







## What is the difference between “exchange” and “settlement”?

Exchange occurs when the buyer and seller exchange signed contracts. This legally completes the process of sale, and the agreement becomes binding. At the time of exchange the buyer will be required to pay a deposit.

Settlement is the date on which the title is transferred from seller to buyer. The buyer’s lawyer or conveyancer will meet with the seller’s lawyer or conveyancer and representatives from the buyer’s and seller’s banks. The remainder of the sale price must be paid, documents for title property are transferred and the buyer becomes the legal owner of the property.

## What is an “off the plan” purchase and how does it differ from a standard purchase?

Buying ‘off the plan’ means buying a property that is yet to be built. This means you are paying for a property where the end product, completion

date and value on completion are uncertain, so there are risks involved.

It is important to review the contract of sale carefully to ensure you know exactly what you are buying and the terms in the event of cancellation, substitution of fittings, and/or defects. The contract should include things like the floor plan, strata plan, schedule of finishes, home owners warranty insurance and an occupation certificate from the local council.

*Finance must be organised in time for the lender to provide funds to the seller on or before the settlement day.*

The contract should also include a Sunset Date, which is the date by which the developer must complete the terms of the contract. You may be able to rescind the contract and receive a refund of the deposit if the developer is unable to meet the sunset date.

On signing of the contract, you will be required to pay a deposit, usually 10-15%. The remainder is due on settlement, which depending on

the stage of development could be months or years in the future.

In NSW investors are required to pay stamp duty upfront on off-the-plan properties, while owner occupiers can delay payment by up to 12 months.

## What do I need to know about buying at auction?

The main thing to know about buying at auction, as opposed to by private treaty, is that there is no cooling-off period. You have to settle on a property purchased at auction even if it doesn’t pass building or pest inspections, you change your mind or you’re unable to obtain finance.

If buying at auction you need to be prepared. Finance should be pre-approved. Arrange inspections, conduct a title search and get a property valuation before the auction. Get a copy of the contract and obtain advice from a lawyer or solicitor.

## Should I have the Contract checked before I buy?

Yes.

In NSW a residential property cannot be put on the market until a contract

of sale has been drawn up. If you are interested in a property, ask for a copy of the contract as soon as possible.

Get your lawyer or conveyancer to review the contract and ensure it aligns with your understanding. If you wish to change any part of the contract, your lawyer or conveyancer can do this on your behalf. The seller must then agree to requested changes before contracts are exchanged.



## When do I need to organise finance and how is my lawyer or conveyancer involved in this?

Finance must be organised in time for the lender to provide funds to the seller on or before the settlement day. Some contracts have a clause requiring the buyer to have loan approval by an earlier date, so that the seller has peace of mind.

When buying at auction it is best to have pre-approved finance since there is no cooling off period.

Your conveyancer or solicitor will be able to help by liaising with your lender, ensuring that they've received the right documentation and making sure they will be able to attend on settlement day.

## What are settlement price adjustments?

Some charges, such as council rates, land tax, water and sewerage rates, attach to a property and remain with it even after sale. When buying

or selling a house, liability for these charges needs to be established. The settlement adjustment process apportions any outstanding bills between the buyer and the seller. The settlement price is then adjusted, determining the final amount the buyer pays and the seller receives.

*Under NSW law, transfer duties are not payable on transactions that give effect to a court order.*

## Is it required to have a building and/or pest inspection before property changes hands?

A building and pest inspection is not compulsory, but it is very strongly recommended.

Potential buyers would usually conduct a building and pest inspections in advance of contract exchange. If you are purchasing by auction this is the best option, as you will not have a cooling off period after auction.

## If I'm involved in a family law property settlement can the house be sold without court orders?

The property can be sold if there is no caveat on the title or court injunction preventing the sale. If you are worried that your ex-partner will sell the house, act quickly to get an injunction preventing them from doing so.

If you are both agreed on selling the house and want to do so without obtaining court orders, you can do so. However, if one of you wants to buy out the other party you will be liable for stamp duty.

Under NSW law, transfer duties are not payable on transactions that give effect to a court order. So, going through the process of getting a court order to sell the family home will exempt you for stamp duty. If you and your ex-partner have been unable to agree on how sale proceeds will be divided, you can still sell the property if the house is owned jointly. The mortgage and other outgoings

will be paid off at settlement and net sales proceeds held in trust by your conveyancer or solicitor until you and your ex-partner reach agreement on how to divide the proceeds or the Court issues Property Settlement Orders.

*This is general information only. We are here to advise you on your specific circumstances; please get in touch to set up an initial consultation.*