

You First,
then the rest.

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Buying Property Guide



First State
Conveyancing



Buying Property

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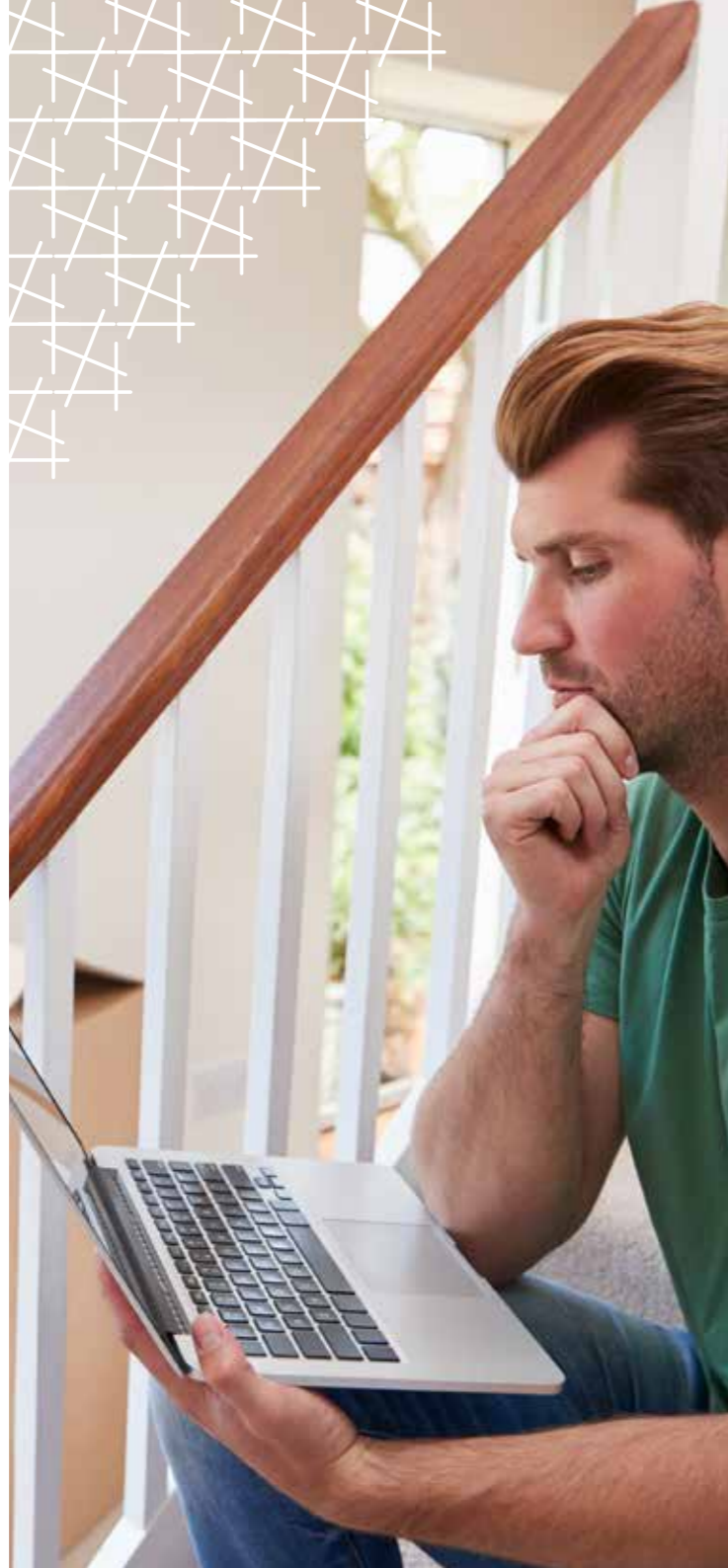
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I'm ready to buy property

What do I do first?

When you have decided to buy a property, the first thing you should do is consult your First State Conveyancer. They are equipped to guide you through the process and advise on what you can and cannot do when dealing with an estate agent, your cooling off rights, conditions of the purchase and all costs involved in the transaction. It is important to be as informed as possible before negotiating a price with the agent so that you know what you can afford.

Your First State Conveyancer is also there to clarify anything that you are unsure of and help you with all matters relating to the purchase of real estate.



Contract for the sale of land

The Contract is the legal document that records the terms of the agreement between seller and the buyer. The Contract includes many of the details relevant to the property being purchased. The Law states that the Real Estate Agent must provide a complete copy of the Contract to a prospective purchaser for any residential property to look at and to obtain legal advice on.

The Contract will contain a Planning Certificate. This shows, amongst other things, the zoning of the property and any planning issues affecting the property. There should also be a full title search showing any easements or restrictions affecting the use of the property and any mortgages registered on the title. A sewer diagram and Internal House Diagram should also be attached to ascertain where the sewer main and other pipes are located.

The contract also contains a list of all inclusions that are to be sold with the property.

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The contract date will determine the date of settlement or completion of the Contract. This is the date that a buyer usually receives the keys to the property and the Vendor receives balance of money owing.

There are several conditions that are enshrined in legislation affecting the contract that may not be stated in the written contract. It is wise that you have your first state conveyancer explain the full effect of the contract before signing.

Building and pest inspections

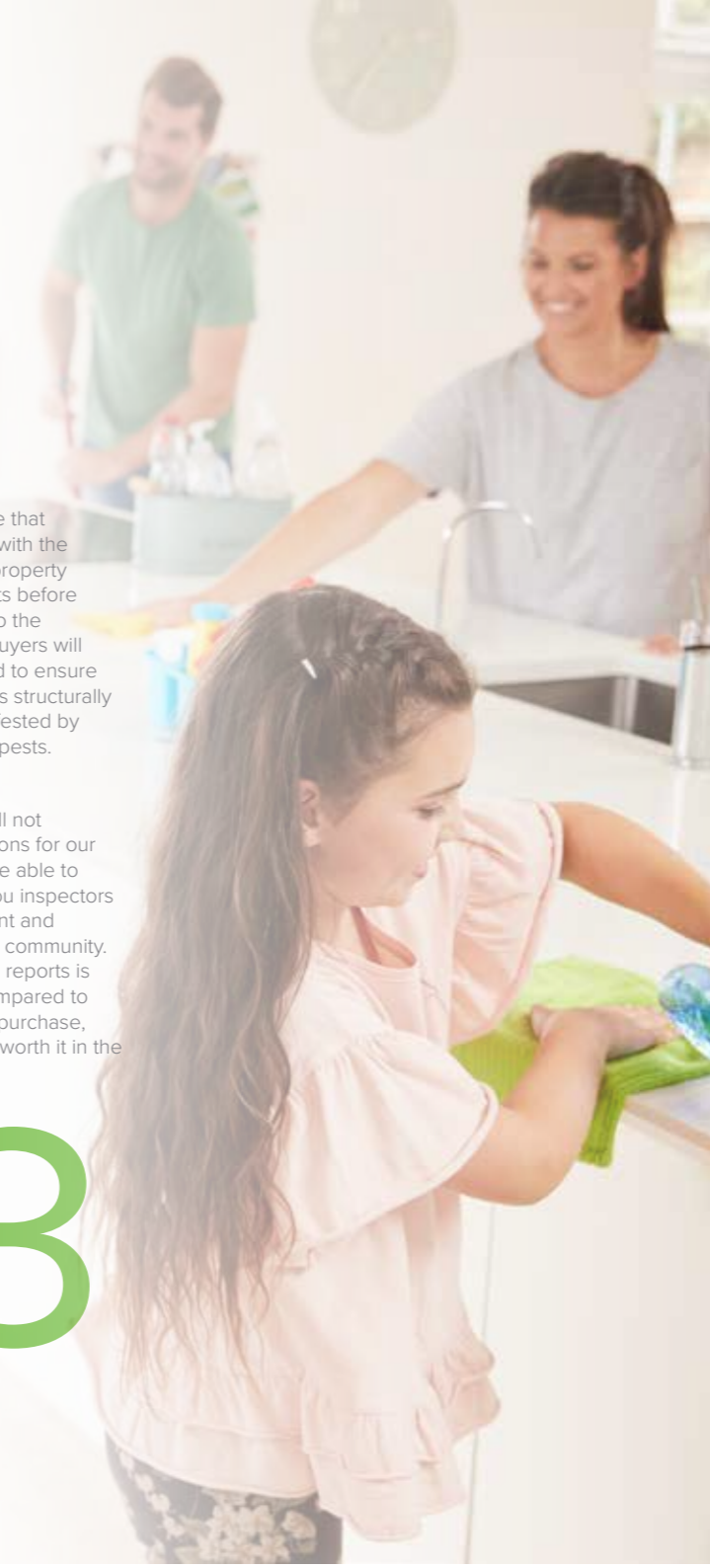
Most buildings will have small defects, but these will generally be minor works of a cosmetic nature, noticeable on your own inspection. It is important to get an experienced inspector to advise on any structural issues, drainage problems or pest activity that may affect the property.

It is recommended that you obtain both a pest and building inspection to give you peace of mind. You should choose inspectors that carry Professional Indemnity Insurance so that you have a chance of compensation if an error occurs.

It is vital to ensure that you are satisfied with the condition of the property and improvements before fully committing to the purchase. Most buyers will be recommended to ensure that the building is structurally sound and not infested by termites or other pests.

While First State Conveyancing will not organise inspections for our clients, we may be able to recommend to you inspectors that are competent and trusted within our community. The cost of these reports is minimal when compared to the price of your purchase, and is more than worth it in the long run.

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Strata inspections

When buying a unit, townhouse or villa, you are normally buying into a strata scheme.

You should obtain a strata inspection, which is a search of the books and records of the owners corporation that is relevant to the strata lot being purchased. There are firms who specialise in these inspections. They do not inspect the building, only the written records kept by the owners corporation, which is usually done at the office of the managing agent.

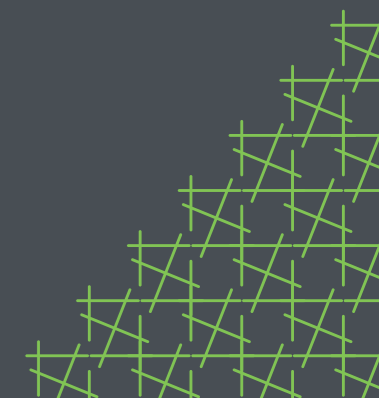
The inspection will tell you:

- What insurances are in place?
- How much are the quarterly levies?
- What is the financial position of the scheme?
- Whether there are any

ongoing maintenance problems

- Whether there are any special levies struck for the cost of any works to be done; and
- Any other matters that may be reported in the records or minutes of meetings

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Finance

Before applying for a loan, you should look to calculate exactly how much you can afford to pay on loan repayments.

There are many places you can apply for a loan, including banks, credit unions and mortgage brokers. It is wise to research before applying, as there are so many types of loans that it is difficult to completely understand the complexities of the different types of loans.

If you have decided on which type of loan you require, you can apply direct to the financial provider of your choice. If you are unsure, consult a mortgage broker. Mortgage brokers have access to banks, credit unions and lenders and can assist in finding the loan that best suits your needs. Normally, the finance provider pays the brokers fee, meaning there is no extra cost for using a broker.

You do not pay a fee to a mortgage broker if a loan is not or cannot be arranged for you. It is wise to have an idea of what rates are available at the time you apply, as different institutions pay different commissions to brokers.

You should be aware that any loan over 80% of the valuation price of the property may incur lenders mortgage insurance. This insures the lender, not you. The premium depends on the loan to valuation ratio, which increases as the loan amount gets closer to the valuation price.

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Exchanging contracts

Once the terms of the contract are negotiated, the exchange of contracts will take place. Contracts are usually prepared in duplicate. The vendor signs one copy and the purchaser signs the other. The contracts are exchanged and dated and the deposit is paid by the purchaser.

The contract can be exchanged in one of two ways:

1 BY THE ESTATE AGENT: in this instance the contracts are signed and exchanged shortly after the sale price has been agreed upon between the parties. The agent will attend to the exchange of Contracts and send the appropriate signed contract to the respective Conveyancer. The buyer will usually have a 5 business day cooling off period in which to obtain any pest, building survey or other recommended reports. They will also secure finance approval and have the contract explained to them by their Conveyancer. The Vendor does not have the benefit of the cooling off period.

2 BY THE CONVEYANCER: in this case it would be normal for the buyer to have all reports done, finance approval and the contract explained by their Conveyancer before the contracts are exchanged. It is usual practice for the buyer to waive their cooling off rights so that the contract is binding on both parties and from the date of exchange taking place.

Until such time as the contracts are exchanged, either party can withdraw from the transaction. It is only once contracts are exchanged that the parties are bound to proceed, and in the case of the buyer having a cooling off period, the buyer is not fully committed to the contract until the cooling off period expires.

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Cooling-off period

Every contract for the sale of residential property less than 2.5 hectares in size has a cooling off period of five business days. This means that after entering into the contract, the purchaser has five business days in which to 'cool off' or change their mind, after which the vendor is locked into the contract and cannot withdraw from the sale. If the purchaser finds that for any reason he or she does not want to proceed with the purchase, they can rescind the contract within the five-day period. If they do rescind the contract, they forfeit to the vendor 0.25% of the sale price. The contract is then at an end and neither party has any further claim against the other.

The purchaser can waive the cooling off period by having their First State Conveyancer provide a Section 66W certificate which has the effect of waiving the purchasers rights to the cooling off period.

There is no cooling off period if the property is sold at public auction or on the same day as the property was listed for auction sale.



The deposit must be paid on or before exchange of contracts or in strict accordance with any other payment terms outlined in the contract. The deposit is usually 10% of the total sale price and is usually paid to the estate agent. They will hold the deposit in a trust account and are not usually authorised to release it until after settlement. It is normal practice for the authority to be handed over at completion.

A Deposit Bond is a guarantee that while the deposit is not paid at the exchange of contracts it will be paid on completion, and if the purchaser is in default, the underwriter guarantees payment. A deposit bond is usually used when the purchaser is selling and all proceeds are coming from their sale, the purchaser is borrowing 100% of the purchase price or for some other reason the buyer does not have a cash deposit. Your lender or conveyancer may be able to issue the deposit bond for you.

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Payment of deposit

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Title insurance

A Title Insurance policy is a no-fault contract of indemnity based upon an agreed representation of the state of title to a particular property as at the policy date (being the date of settlement).

During a conveyancing transaction, your First State Conveyancer will work diligently to identify risks that may affect the property. They will often find matters that could affect use of the property in the future; however, there are also risks that the most diligent process cannot uncover which may be insured under a Title Insurance policy.

First State Conveyancing recommends that all purchasers obtain Title Insurance. The policy can be arranged by First State Conveyancing for a small fraction of the overall purchase price and provides immense peace of mind.

Insurance

All purchasers should arrange insurance for the property.

The risk of damage to the property is usually the vendors responsibility until the settlement date or the date that the purchaser takes possession of the property. Where a purchaser takes possession of a property before settlement, they will be responsible for the risk to the property and the improvements from the date that they take possession.

If the property is substantially damaged before completion, the purchaser may have a right to rescind from the contract and have the deposit refunded. If the damage is minimal, the purchaser may be able to proceed with the purchase subject to a decrease in sale price to account for the cost of repairing the damage.

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Stamp duty

Stamp Duty is a tax levied by the NSW State Government. The duty payable depends on the sale price, meaning the higher the price, the higher the duty. It is the purchaser's responsibility to pay stamp duty before settlement or within three months of the date of exchange (whichever occurs first). A fine is payable for late payment.

The Office of State Revenue has a number of schemes available to home buyers which are fully described at www.revenue.nsw.gov.au. Your First State Conveyancer can assist with any stamp duty queries you may have.

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Buying with an existing tenant

If a tenant occupies the property and has a current lease, you will take over responsibilities as a landlord on settlement. There is usually no need to enter into a new lease as the current lease remains in force. You are bound by the terms of the pre-existing lease as the new landlord.

When the tenant remains in the property, the rent needs to be adjusted. If the rent is paid in advance, the vendor will credit the portion of the rent already paid to the vendor. This applies from the day after settlement. If the rent is in arrears, no adjustment is made.

Quite often the managing agent will make the rental adjustment.

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Council, water rates and strata levies

Council Rates

The Contract provides that council rates be adjusted between the vendor and purchaser as at the settlement date. Council rates are levied for the financial year. They will be adjusted so that the vendor pays the rates up until the day of settlement and the purchaser will be liable from then until the end of the rating period. Any outstanding rates are paid from the sale proceeds.

Council rates may be paid by installments or annually. The rates are a charge on the land. Any outstanding rates become the liability of the purchaser. It is usual practice that the purchaser's conveyancer obtains a rates certificate from the council, which describes the amount of the annual rates, what payments have been made and what amount is outstanding.

Water Rates

In some areas, the water rates are paid to council and may be incorporated within the council rates. In areas where a separate water authority supplies the water or sewer services, an adjustment must be made at settlement.

The same principals apply to water rates as for council rates. Water rates are generally quarterly rates. The adjustment made will be for the current installment.

A water usage charge may have to be paid by the vendor. An assessment of whether a charge is payable or not can be done in one of two ways:

- a meter reading can be organised. This is quite expensive and would be payable by the purchaser; or
- an estimate can be done, by using the last installments water usage rate.

It is useful to estimate because the cost of having the meter read is often more than the charge itself. The vendor will make an allowance to the purchaser for the usage charge so that when the actual bill for water usage is received, sometimes months after settlement, payment is the purchasers responsibility.

Strata Levies: Unit, Townhouse, Villa

If you are purchasing a lot in a strata scheme, the quarterly strata levy will also need to be adjusted. The levy is adjusted in the same manner as council rates. The quarter for strata levies may begin at any time. This is due to the levies commencing on a date determined at the first annual general meeting held by the Owners Corporation.

There may also be special levies to consider. A special levy is struck when and if there are not enough funds held by the owner's corporation to cover running expenses or a job that needs to be completed.

Normally a special levy struck before the date of the contract has to be paid in full by the vendor. Sometimes the special levy is paid in installments. If this is the case, the vendor is usually required to pay all installments.

Land tax on investment properties and holiday homes

If you are buying an investment property or holiday home, you could be liable to pay land tax. Land Tax is only payable where the value of the land is above the relevant land tax threshold. This is determined on an annual basis. Land tax usually does not apply to your principal place of residence or to primary production land.

All property owners who may be liable for land tax must register by 31 March each year. If you think you may be liable for land tax, register with Revenue NSW. This can be done online at www.revenue.nsw.gov.au.

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Pre-settlement inspection

As the purchaser, you may be entitled to undertake a final inspection of the property prior to settlement, before you make the final payment and take occupation of the property. This is to ensure that all inclusions are in place and nothing is damaged, as it is extremely difficult to have repairs done or inclusions returned after the vendor has left and settlement has been completed.

What you need to do before settlement

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Prior to settlement, it is wise to make a list of all the places you need to advise of your change of address and see that this is done immediately after settlement takes place.

If obtaining finance, you will need to ensure that you sign all of your loan documents with your bank or broker as soon as requested by them so as to avoid any delays.

Any final moneys that need to be paid by you prior to settlement will need to be provided to your Conveyancer a few days before settlement. These will often be paid into a trust account.

Settlement

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The day of settlement is normally 28-42 days after exchange of contracts. It is possible for settlement to take place on an earlier or later date if both parties agree.

Contracts normally have a condition that if settlement is delayed through no fault of the vendor, the purchaser will pay interest to the vendor to compensate the Vendor for the delay in settlement.

It should be discussed with your conveyancer if, when signing the contract, the proposed settlement date is inconvenient. Unless the vendor agrees to a negotiated settlement date, it may be too late to change the settlement date after the contract is exchanged.

Nowadays, only a handful of matters are paper based and settled manually. The vast majority of settlements are conducted electronically. First State Conveyancing is an Industry Leader in Electronic settlements, having been recognized as the first legal firm in the entire country to achieve 500 electronic settlements.



After settlement

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Following settlement, the agent will be advised to release any keys being held to provide the purchaser with access to the property. It is common practice for the purchaser's conveyancer to give written direction to the agent authorising release of deposit and keys to the vendor's conveyancer following settlement.

Your First State Conveyancer will send you final letters of confirmation of your purchase together with final statements and any other documents they hold following settlement. You should attend to notifying the places that you have previously determined of your change of address.

You will not receive a Certificate of Title (Title Deed) if you have borrowed funds to assist with the purchase, as all title documents will be retained by your lender. It is the lender who will register the transfer into your name with the NSW Land Registry Services.

When your lender attends the NSW Land Registry Services

office they will also lodge a 'Notice of Sale'. This is the document that is used by NSW Land Registry Services to notify Council, any relevant Water Authority, and the Valuer General of the change in ownership so that all future rates notices are issued in your name. Sometimes there may be a delay in your lender lodging these documents for registration and consequently a delay in advising the rating authorities of your details. If the settlement occurs before Council or water rates notices are issued, they may be issued in the wrong name. If you move into the property and receive correspondence from Council or any relevant water authority in the previous owner's name, the assessment is most likely for your payment.

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Moving in

Occupation of the property is not granted until after settlement has been completed, unless early possession is a condition of the contract. It should not be assumed that the vendor will allow you to move in before settlement even if the property is vacant.

If you are using a removalist, it is difficult to organise a time for the removalist to arrive and load and then to arrive at your new property coinciding with the settlement time. It may be best to arrange for the removalist to wait for confirmation to unload.

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