



CONVEYANCING

NORTHERN BEACHES

We look after all Properties in NSW.

RJ Thomas Solicitor

Knowledge transformed into results



WE LOOK AFTER ALL PROPERTIES IN NSW

Your property will probably be the biggest investment you'll ever make. It will certainly be one of the most important. So you'll be keen to make sure that the legal work is carried out efficiently and competently.

RJThomas is constantly up to date in relation to the government subsidies, first home owner grants and stamp duties exemptions or concessions that are available. Whether you are buying, selling or getting a mortgage you can contact us by phone or e-mail and we will respond immediately.

We keep our customers informed and up to date at all times. We are fully insured and regulated by the Law Society of NSW which lays down stringent rules of professional conduct.

**PLEASE EMAIL A CONTRACT FOR ME TO LOOK AT -
YOUR FIRST CONTRACT IS FREE**

Ask your Real Estate Agent or your Vendor to Email the contract to me rjthomas@rjt.com.au

CALL US NOW - 9977 8211

ADVICE FOR PURCHASERS OF PROPERTY

Vendor and Purchaser

These expressions are used in contracts and mean seller and buyer respectively.

Offer and Acceptance

Once you have decided to buy a property, it is normal to make an offer to the seller through the agent. This may not be the advertised price and most sellers will reduce the price. When the offer is accepted, the Agent will issue a Sales Advice document to the Vendors Solicitor or Conveyancer and another one to us. If you are buying at auction you should bring or email a copy of the contract to us before the auction and consider building, pest or strata inspections.

Pre -purchase inspections

When it comes to purchasing property what you see is what you get. The Vendor is under no obligation to point out any potential issues or defects in the property.

If you are buying a house, we strongly recommend purchasing a pest inspection and a building inspection. We can arrange both of these for you. If buying a unit, we recommend a Strata inspection to go through the records of the Owners Corporation to see if there are any potential problems.

The Contract

By law an Agent must have a copy of a contract before marketing of the property can commence. This is a draft contract and some conditions may be altered during negotiations. We suggest you do not sign a contract without our advice. Sometimes buyers see a property they want and if there are other buyers, they may sign a contract with a 5 day cool-off and the agent will exchange.

The Deposit

Most contracts call for a 10% deposit but in some cases the Vendor will agree to a 5% deposit. If you do not have the deposit in cash, it may be possible to arrange a Deposit Bond and you should ask us to explain this to you. Deposits may be paid by personal cheque.

Exchange

There is no binding agreement between a Vendor and Purchaser until both parties have signed identical copies of a contract, a deposit has been paid and the contracts are dated and exchanged.

Contracts and Cool Off

The law says that a buyer may have 5 business days cool off from the day after a contract is made (exchanged). This will not apply if the seller does not wish to allow it and in that case we have to provide a certificate (S66W) waiving the cool off period.

A cool off period allows contracts to be exchanged, giving the buyer a chance to secure the property whilst doing inspections and arrange finance. It is normal to ask for a deposit of between 0.25% and 0.5% of the selling price to be handed over at exchange. If a buyer enters a contract with a cool off and then withdraws (rescinds) in the 5 days, the buyer forfeits 0.25% of the purchase price. This is taken from the deposit held.

Completion Date

The contract will specify a completion (settlement) date. Under normal conditions this time frame is 6 weeks but can vary on agreement with the seller. This date is the last date on which settlement should take place. If you are currently renting property it is wise not to give notice to your landlord based on this date. Settlement can sometimes be delayed and you may find yourself without a residence.

If the Vendor and Purchaser agree later to move the date forward or back, this is acceptable. Most contracts have a condition that if the Purchaser does not settle by the completion date, then the Vendor is entitled to issue a Notice to Complete which means the Purchaser must settle within 14 days of the Notice. There is usually a provision that the Purchaser has to pay default interest for the period between the original completion date and the actual date of settlement.

If settlement does not take place by the end of the notice period, the Vendor has the right to claim the deposit and terminate the contract.

Whilst there is often a penalty for a buyer not settling, if a Vendor does not settle on the due date, the normal only remedy is for the Purchaser to issue a Notice to Complete requiring settlement in 14 days or earlier. If the Vendor does not settle their affairs within this timeframe, the Purchaser has the right to rescind the contract and claim the deposit back. However it is extremely rare for a contract to be rescinded. Most matters are solved by negotiation.

Tenants

If there are tenants in the property, please let us know if they are to leave the premises by settlement or to remain.

Finance (Mortgages)

Before entering into a contract you should have your finance arranged at least in principle if you are needing to borrow. Most lenders will give you a general indication of how much you can borrow and an approval subject to the valuing of the property. We will not give you financial advice but we will explain the terms of mortgages to you. Please advise us if you have difficulty in arranging finance, and we will be able to put you in touch with somebody who can help. We will not take any commissions from lenders for arranging finance as we believe it is not ethical for us to do so.

Stamp Duty

Stamp Duty is a state government tax and as it is a sliding scale, you should ask us how much it will be. It is normally paid about two weeks before the settlement date. It must be paid within 3 months from the exchange date if it is going to be a long settlement period although there are exceptions for "off the plan" purchases for units.

We will require a copy of your ID to satisfy the Office of State Revenue requirements for stamping. Further information can be obtained from the Office of State Revenue www.osr.nsw.gov.au

Foreign Investment Review Board.

Please advise us if you are not an Australian citizen or do not have permanent residency status and we will apply for permission for you to purchase if we think you are eligible. For further information see www.firb.gov.au

Insurance

If you are borrowing finance, then your lender (mortgagee) will want insurance with their interest noted as mortgagee. Up until completion date, the risk is the vendors but even if you are not borrowing, we recommend you insure the property. If you are purchasing a unit, the Owners Corporation will have insurance on the building but you might consider taking out special unit insurance to cover things like the kitchen and contents, especially if you are going to rent the unit out.

Even more importantly, you must ensure that you are fully covered with regard to personal risk protection. This includes protection for life cover, total and partial permanent insurance, crisis (trauma) cover and income protection. We strongly recommend that you consult a financial planner in order to obtain advice about what structure should be held and whether or not such protection is tax deductible.

Between exchange and settlement

In this time we will conduct a series of inquiries to ensure the property is not affected by any government departments such as road widening. We will also liaise with you as regards signing on mortgage documents. Many lenders require documentation be signed in our presence and that we certify that you understand the conditions of the mortgage.

Pre Settlement Inspections

Most contracts entitle you to an inspection of the property before settlement. We suggest this be done very close to settlement day to ensure the sellers are leaving the property in good order and have done everything required of them. Vacant possession means the seller has an obligation to remove rubbish from the property and all furniture etc. If you feel the property is not being left in a satisfactory state after your inspection, let us know as soon as possible and list the items that need attention.

Occupation before settlement

This is not usually allowed but can be done in certain circumstances and often a fee is payable. If you require this and know the vendor agrees, please ask us to arrange it.

Preparing for Settlement

A few days before the settlement date we send a calculations sheet to the Vendors Conveyancer or Solicitor with what we calculate the necessary adjustments are for rates, water rates, rent if applicable, strata levies etc. Once these amounts are agreed they will forward to us a direction as to how cheques are to be drawn. We will then direct your lender on how to draw cheques and if you are contributing further funds then we will inform you of what bank cheques to draw. Cheques for settlement must be Bank Cheques unless we advise otherwise. We usually direct payment of our fees and other cheques for rates etc. from the lenders funds in order to reduce the amount of cheques required from you.

Settlement

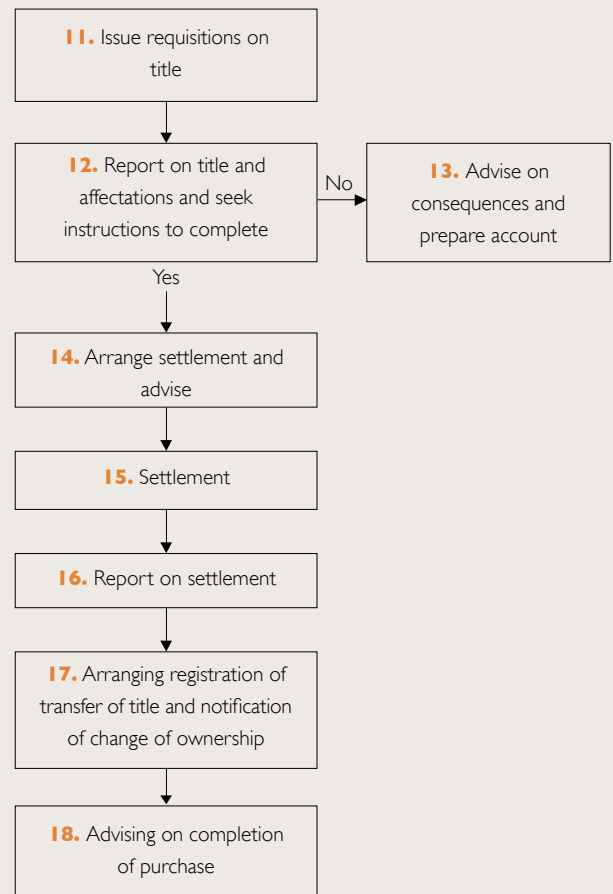
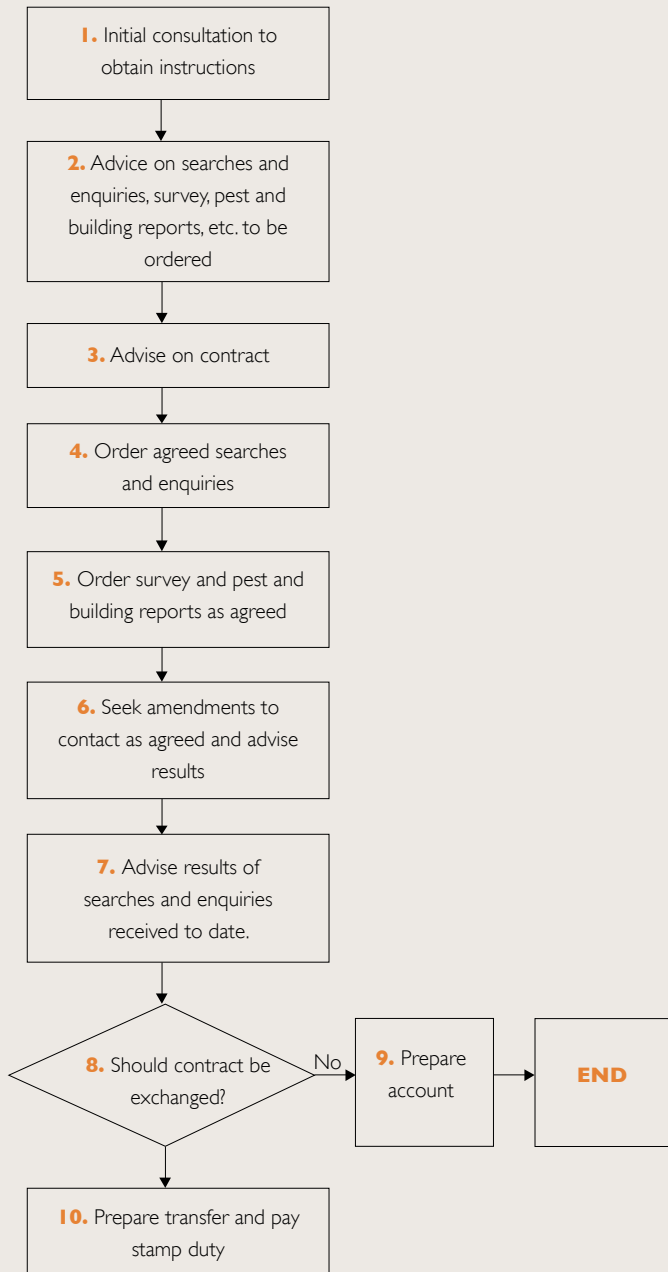
We meet, with the Vendors settlement agent and any mortgagees involved. Documents and money are exchanged to transfer title to you. On completion we notify the Agent that settlement is complete and authorise release of keys to you.

General

Obviously the buying and selling of property can be a complex matter and there are often unexpected matters that may arise. If you have had discussions with the Vendor about access or other matters please inform us as they may affect your legal rights. Sometimes disputes arise but most situations and rights are covered in the contract or case law and can be resolved by negotiation.



FLOW CHART OF CONVEYANCE PURCHASE PROCESS



ADVICE FOR VENDORS OF PROPERTY

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Preparation of Contract

By law there must be a draft copy of a contract made available for viewing by prospective purchasers before a property is marketed. We prepare this contract for you and attach copies of Council s149 certificate, drainage diagrams, copy of title and plans and any other relevant documents such as leases, surveys etc.

We discuss with you the inclusions and any special requirements including swimming pools and smoke detectors.

Legislation provides that the vendor warrants there is no matter which a council could issue a demolition or upgrading order on the property. If you know or even suspect that some of the building or improvements on the property (including pools) may have not been council approved, please bring it to our attention as we can disclose it in the contract to prevent a claim by the purchaser.

Tenants

Please advise us if there are tenants in the property as we will need to attach a copy of any current lease to the contract. If the lease has expired but the tenants are still renting under 'continuation' we need to discuss whether the property is being sold with vacant possession.

Land Tax and Capital Gains Tax

If the property is your permanent residence, you will normally not be liable for land tax. If the property is vacant land or if you have rented the property, there could be land tax payable and we ask you to discuss this with us.

For Capital Gains Tax you should talk to an accountant.

Marketing

In the majority of cases you will appoint a Real Estate Agent to sell your property. They will negotiate their fee structure and advertising budget with you and ask you to sign an agreement. Marketing agreements will either be "exclusive" which gives them the sole right to sell or it be an "open" agreement if you are listed with several different agents. Please contact us for further advice if needed.

The Negotiation

The agent is bound to submit any offers received to you unless the agent is instructed that there is no point submitting offers below a certain price. Sometimes you may find that you have several buyers making offers but because one may have some special requirement e.g. 3 months settlement, you may prefer another offer. There is no binding contract between you and the purchaser until both parties have signed and exchanged contracts and the deposit has been paid.

It is common that there is a lot of negotiation until an agreement is reached. This may revolve around time for settlement, amount of deposit (although usually it is 10%), inclusions and even occupying premises before settlement if you are moving out. Sometimes the vendor even rents the property back after settlement.

Exchange

Exchange is when the vendor and purchaser each sign and date their copy of the contract, the required deposit is paid and the copies are physically 'swapped'. The Vendor receives the Purchaser's signed copy and the Purchaser receives the Vendor's signed copy.

There are two types of exchange:

Exchange with a Cool-off Period

The contract provides that the contracts may be exchanged (can be by an agent, Solicitor or licensed conveyancer) which gives the purchaser the right to an agreed amount of time (normally 5-10 business days) after the exchange date to organize finance, strata, pest & building reports etc.

Unconditional Exchange

Not all vendors will allow a "cool-off period" especially if it is a desirable property. In this case the vendor will ask the purchaser to get all finance and reports done and then exchange unconditionally. A conveyancer or solicitor usually provides a "s66W" certificate to the Vendor's solicitor or conveyancer after explaining that there is no cool-off period. Your agent will be the best guide to you in choosing which way to go. At this time the agreement comes into force. The Vendor can not withdraw but the purchaser may if a cool-off period applies but they must do so within 5 working days. In this case the purchaser forfeits 0.25% of the purchase price to the Vendor. If there is no cool-off period both parties are bound on exchange.

Deposit

In most cases (other than when a deposit was paid by the Deposit Bond), the Agent will hold the deposit paid by the purchaser. Once the matter settles, the agent is authorised to deduct their commission and pay the balance to the Vendor.

Release of the Deposit

Generally the deposit is held by the agent until settlement but if you want to buy another property, it may be possible to get release of deposit to another agent for that purchase. If this is necessary please advise.

Existing mortgage (Loan)

Once contracts have been exchanged, we will notify your existing mortgagee to prepare a discharge of mortgage and advise us a payout figure. In all instances your lender will require an authority to be completed by you and we will advise you of this. If you do not have a mortgage and own your property outright, please locate your Certificate of Title as we will need this for settlement.

Vacant possession

The property must be completely vacated by settlement. All furniture must be removed and the premises must be left in good order. If you have a house all rubbish and debris must also be removed from the outside the property.

Keys

Once you have vacated the premises, you should deliver the keys to the agent who will hold them until they are advised settlement has taken place.

Rates & Bills

At settlement we adjust Council and Water rates and Strata levies if applicable. It is up to you to organize reading and cancellation of gas, telephone and electricity. The Council, Sydney Water, Land Titles office and the Owners of the Strata Plan will be advised by the purchaser's solicitor or conveyancer of change of ownership of the property.

Settlement

This is an actual meeting of the Purchaser's solicitor and Conveyancer, where the title to the property is handed over in exchange for the balance of the purchase money. It is also often attended by your mortgagee if you have a loan on your property and the purchaser's mortgagee is advancing money for the purchase. One settlement is complete we advise the agent that settlement has taken place and keys may be released.

Settlement time

Most settlements take place between 12:00PM and 3:00PM and this gives you time to move out on the day. We will advise the time settlement is to take place.

Insurance

You should keep insurance up to date until settlement as the property is still your risk until then. After settlement notify your insurer and apply for a refund of premium if applicable.

Balance of settlement monies

We will receive bank cheques for any surplus after paying out your loan if applicable. Please advise us where you would like these cheques to be sent or if you prefer we can pay them into a bank account at a small fee (provided you bank with one of the mainstream banks) if you advise us details. Of course if you are purchasing a property, proceeds of your sale will probably be used for the purchase and we will organise this.

CONTACT



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