



Buying Property, Issues Before you Sign

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This booklet is not a complete statement of the law. It does not deal comprehensively with your particular situation.

This booklet is to provide general information to supplement our specific advice to you. Do not act in reliance on this booklet without our specific advice. We are responsible only if you give us specific instructions and for the specific advice we give.

This booklet was originally prepared in 1995 and has been updated as at January 2000. It does not reflect changes to the law after that date. You need to take specific advice on the possibility or effect of any such changes.

<i>Where do I sign?.....</i>	<i>5</i>
<i>Should the Buyer Beware?</i>	<i>5</i>
<i>What Should I Check About The Property before I sign?.....</i>	<i>5</i>
<i>Do I need an expert building surveyor to do an inspection?</i>	<i>5</i>
<i>Do I Need A Building Inspection Clause?</i>	<i>5</i>
<i>Should I Check the Neighbourhood?.....</i>	<i>9</i>
<i>Do I Need A Pest Inspection?.....</i>	<i>9</i>
<i>Who Has Mining Rights?</i>	<i>9</i>
<i>How Do I Know If There Is Hidden Pollution?</i>	<i>9</i>
<i>What Heritage Restrictions Apply?.....</i>	<i>9</i>
<i>Can I Buy a House Over the Internet?</i>	<i>10</i>
<i>Do I Need A Soil Test?</i>	<i>10</i>
<i>Do I need to check for Fire Regulation Compliance?.....</i>	<i>10</i>
<i>Do Commercial Buildings Need special Certificates?.....</i>	<i>10</i>
<i>Are there hidden cables?.....</i>	<i>11</i>
<i>Are there Aboriginal Relics?.....</i>	<i>11</i>
<i>Do I Need Australian Residency?.....</i>	<i>11</i>
<i>Can I Use The Property As I Wish?.....</i>	<i>11</i>
<i>Do I Need to Check the Title?</i>	<i>11</i>
<i>How Do I Get A Copy of the Title?.....</i>	<i>12</i>
<i>What Do I Need To Check With Council?</i>	<i>12</i>
<i>What Do I Check On the Contract?</i>	<i>13</i>
<i>Can I buy subject to finance?</i>	<i>13</i>
<i>Can I buy subject to sale?.....</i>	<i>14</i>
<i>Conditions Precedent.....</i>	<i>14</i>
<i>What goes with the Property?</i>	<i>16</i>

<i>Do Water Rights Go With The Property Automatically?</i>	16
<i>How Is the Contract Made?</i>	17
<i>What is the effect of the Contract?</i>	17
<i>What Deposit Do I need?</i>	17
<i>Does the Purchaser lose the Deposit ?</i>	18
<i>Should I search Before Or After I Sign The Contract?</i>	18
<i>What happens after I Sign the Contract?</i>	18
<i>Do First Home Owners get a special deal?</i>	18
<i>What is conveyancing?</i>	18
<i>What is the difference between a conveyancer and a lawyer?</i>	21
<i>What will the Conveyancing Cost?</i>	21
<i>Can the same firm act for the Vendor and the Purchaser?</i>	22
<i>Is it cheaper for one firm to act for both Vendor and Purchaser?</i>	22
<i>Vendor Disclosure Statement</i>	25
<i>Agreement To Sell And Buy</i>	29
<i>Price And Deposit</i>	29
<i>Completion</i>	29
<i>Conditions Precedent</i>	29
<i>Easements & Covenants</i>	30
<i>Title</i>	30
<i>Payment And Apportionment Of Charges</i>	31
<i>Purchaser's Default</i>	31
<i>Nominee</i>	31
<i>Removal Of Goods</i>	32
<i>Joint And Several Liability</i>	32
<i>Rights after Completion</i>	32
<i>Notices</i>	32

Depreciation (delete if not required) 33

Where do I sign?

Buying property is a big decision. Take care before you make the commitment of signing a contract.

If you are buying at auction special precautions are needed. We have a booklet similar to this dealing with auctions.

Should the Buyer Beware?

Vendors in Tasmania should advise purchasers of adverse title restrictions on use of the property. Otherwise, there is no current system of comprehensive disclosure required of vendors as part of the sale of real estate. Tasmania does not have in operation the laws of other states that require a vendor to give a minimum set of details about the property.

The agent will provide many details as part of marketing the property. Note the agent is working to win a sale and working for the vendor.

The purchaser is responsible to make his own enquiries.

A list of some possible questions for the vendor is attached at the back of this booklet. Purchasers may like to have vendors answer these in writing. A purchaser may be able to claim damages that follow from the wrong answers by the vendor.

Vendors are not legally bound to answer these questions and a vendor may refuse to do so. It is not usual in Tasmania to put such a comprehensive set of questions to the vendor. Whether the vendor answers is a matter for negotiation.

What Should I Check About The Property before I sign?

Unless a contract says to the contrary, land is sold on an “as is where is” basis. The purchaser takes the property as found. Inspect the property carefully before signing the contract.

The vendor does not automatically warrant the property has all necessary planning approvals or that any buildings are built to any particular standard or according to the building regulations.

Do I need an expert building surveyor to do an inspection?

Do you wish to rely on your own inspection of the buildings? Is the expense of an expert report justified?

Council can certify that a property complies with the planning rules and building regulations. Council may as part of this certificate pick up defects. Council bring their own agenda to any inspection that may not be the same as yours. Unless your concern is some special issue of approval, a private building inspector answerable to you may be a better choice

Do I Need A Building Inspection Clause?

Before paying for a Building Inspection Report you may want the security of knowing you can secure the property at an acceptable price.

Perhaps the vendor will agree to be bound sell subject to such a report.

Diverse issues and interests means there is no standard building inspection clauses.

Check any building inspection clause in the contract as to:

1. Timing.
2. Is there an obligation on the vendor to repair?
3. Is there a right for the vendor to repair and call for the purchaser to proceed once a defect is remedied?
4. Does the purchaser have a right of termination?
5. Can the parties be left to negotiate remedial works or price adjustment in the context of a right to terminate?
6. The extent of defect required to trigger a purchaser remedy.
7. A mechanism to deal with disputes or uncertainty.

Unless required remedial works are certain, price adjustment may be preferable to requiring remediation by the vendor. Vendors are not motivated to perform remediation to a good standard. Price adjustments are simple clear cut and not time sensitive. With a price adjustment, the purchaser is free to undertake the remedial works at a time, to a quality and in a way of the purchasers choosing.

Vendors who contracted on an as is where is price are unimpressed by purchasers with a long list of works to remedy defects that were a factor in the original price. These are matters of negotiation. Drafting can confront parties with the specifics of the premises of each parties expectations. An unclear building inspection clauses can install a contract which defers revelation the parties have not truly reached a common position.

Here are some sample clauses:

Right to withdraw after Inspection

- 1.1. The Purchaser may have reasonable access to the Property:
 - 1.1.1. pending settlement
 - 1.1.2. to undertake inspection of buildings,
 - 1.1.3. personally or by agents ,
 - 1.1.4. at the Purchaser's cost.
- 1.2. The parties obligations to settle will end and the purchaser will be entitled to refund of the deposit but no other compensation, if the Purchaser;

- 1.2.1. within 21 days of the date of the contract, (which time shall be “ of the essence”) ,
 - 1.2.2. serves personally or by fax,
 - 1.2.3. on the agent,
 - 1.2.4. a notice advising the Purchaser is dissatisfied with the Inspection.
- 1.3. The Purchaser must comply strictly with each of these conditions to terminate the contract under this clause.
 - 1.4. A party may refer any dispute on the right to terminate the contract under this clause to arbitration under the Commercial Arbitration Act.

Structural Inspection

- 1.5. The Purchaser may have reasonable access to the Property:
 - 1.5.1. pending settlement;
 - 1.5.2. to undertake structural inspection of buildings,
 - 1.5.3. personally or by agents; and
 - 1.5.4. at the Purchaser’s cost.
- 1.6. The parties obligations to settle will end and the purchaser will be entitled to refund of the deposit but no other compensation, if the Purchaser;
 - 1.6.1. within 21 days of the date of the contract, (which time shall be “of the essence”)serves personally or by fax on the agent, a copy of a building report, where a qualified building surveyor, certifies the main building on the Property has a structural defect and certifies the repair of that defect is likely to cost more than 2 per cent of the sale price.
- 1.7. The Purchaser must comply strictly with each of these conditions to terminate the contract under this clause.
- 1.8. A party may refer any dispute on the right to terminate the contract under this clause to arbitration under the Commercial Arbitration Act.

Building and Visual Inspection

- 1.9. The Purchaser may have reasonable access to the Property pending settlement;
 - 1.9.1. to inspect the Property, personally or by agents, at the Purchaser’s cost.

- 1.10. The Purchaser is contracting in reliance the photos supplied by email and over the internet do not misrepresent the property.
- 1.11. The parties obligations to settle will end and the purchaser will be entitled to refund of the deposit but no other compensation, if the Purchaser;
 - 1.11.1. within 21 days of the date of the contract, (which time shall be “of the essence”), serves personally or by fax, on the agent, a copy of a building report, where a qualified building surveyor certifies there are faults with the property, likely to cost more than 2 per cent of the sale price to remedy;
 - 1.11.2. where a qualified building surveyor certifies he believes the photos supplied by email and over the internet misrepresent the property, and that mis-description is likely to reduce the value of the property to the extent of more than 2 per cent of the sale price.
- 1.12. The Purchaser must comply strictly with each of these conditions to terminate the contract under this clause.
- 1.13. A party may refer any dispute on the right to terminate the contract under this clause to arbitration under the Commercial Arbitration Act.

Should I Check the Neighbourhood?

Look about the neighbourhood. Check the issues that may affect your property. The enquiries made by your lawyer will refer to your property and not the neighbours. The state of the neighbourhood will not be part of the standard issues dealt with in the contract.

Are there significant issues that should be searched or dealt with in the contract? For example if you are buying the block for the lovely open parkland next door, do you need to check it is public land and is expected to remain so? Is it the old quarry site that is about to be reopened or the site for council's new sewerage ponds?

Do I Need A Pest Inspection?

Pest inspections are common in some mainland states because of the particular prevalence of particular pests. Pest inspections are not ordinarily undertaken in Tasmania because pest infestation is not such a common problem. This is an issue to discuss with any person who is advising you on the physical condition of the property.

Who Has Mining Rights?

Ownership of land is separate from mining rights to land. Unless there was some relevant warranty, mining rights are irrelevant to the contractual relationship between you and the vendor. If this is an issue you need to resolve it before the contract is signed.

Most of Tasmania is subject to mining licences. One company, for instance, has exploration licenses that cover the whole of the Huon, Channel and Hobart areas.

An exploration licence is a licence to explore and not to mine. Holders of exploration licences may enter land regardless of the owners consent. An exploration licence holder must convert to a lease before mining. Miners need the written agreement of the owner before mining private land within 100 metres of any dwelling or dam.

How Do I Know If There Is Hidden Pollution?

There is no comprehensive register of polluted properties. Problem sites include oil and chemical storage sites and refuse disposal sites. Council and the state government each hold some records. Not all government records of contamination are available for search. Not all contaminated properties are recorded. If you think this may be an issue, you may need to search several registers but would be wise to consider an expert assessment.

What Heritage Restrictions Apply?

Until recently, the restrictions on Heritage properties were either on the title itself or as part of Council's planning rules. A more comprehensive system to regulate historic properties is now in place under the Historic Cultural Heritage Act.

Properties registered under the Historic Cultural Heritage Act are subject to special planning controls to prevent changes to the property that affect the historic cultural significance of the property. There is a register of affected properties that you may need to check.

Can I Buy a House Over the Internet?

The Internet is a powerful and effective marketing and research tool.

Be careful not to assume you can buy a house by Internet research with the same ease and reliability as a book or CD. You need to make an assessment of the particular property and the particular area.

Don't just review the value of what is being sold compared to your own existing local market. What is the market value where the house is for sale. It is hard to assess these things without physically visiting the property and the area.

Consider investing in a short visit to Tasmania if you are buying from the mainland. If you are not able to do so, an independent valuation report from a professional valuer may be a good investment. That valuation report should come from a valuer not associated with the selling agent.

Do I Need A Soil Test?

Be sure the land is not subject to soil movement or landslip. This is a particular danger for instance, if the land is steep or has deep loam. Council and the state government keep a register of landslip-affected land. Not all landslip-affected land is on these registers. If landslip is an issue a soil inspection would be wise.

Councils require an assessment of soil conditions as part of the building approval process. If you will need a building approval, discuss this with Council and obtain this inspection at the pre-contract stage. Difficulties with the soil conditions may or may not have contractual significance. If landslip is an issue it is best resolved before the contract is signed.

Do I need to check for Fire Regulation Compliance?

Tas Fire Service can report on their records on outstanding fire safety orders, recommendations as to appropriate fire safety works monitoring telephone line and their records on building compliance with fire regulations. They do not audit all buildings. They are not likely to have records for domestic or small buildings. If fire compliance is an issue, I would recommend an expert assessment rather than relying on government records. Tas Fire Service or a building surveyor can undertake an expert assessment. Building compliance with fire regulations might or might not have contractual significance.

Do Commercial Buildings Need special Certificates?

Owners of Commercial Buildings are required to have an annual certificate on maintenance of essential health and safety features. If you are buying a commercial building, check the maintenance of essential health and safety features and whether there is an up to date annual certificate.

These requirements are not typically enforceable against a vendor under the standard contract.

Are there hidden cables?

A register of the location of their cables and equipment is available through a service called "Dial before you Dig" on the web at www.dialbeforeyoudig.com.au or by phone on 1100. Check that register before planning or executing any project on the property that may affect cables and equipment.

Are there Aboriginal Relics?

You must not damage, conceal, expose, excavate, or otherwise interfere with Aboriginal relics. The government has declared some properties subject to protection for Aboriginal relics and has records of some but not all sites. Let me know if you wish me to search the register of protected properties. If this is a significant issue an expert assessment as well as a search of government records may be wise.

Do I Need Australian Residency?

People without residency status in Australia may need special Government permission to buy land. If you do not have permanent Australian residency status, please let me know.

If it would assist, I can send you a short brochure explaining the residency requirements in detail without charge.

Can I Use The Property As I Wish?

Before signing, check the property can be legally used as you intend, particularly if you intend a non-residential use. Most, but not all, properties can be used for residential dwelling.

Check permitted usage with the local Council. You may need a development application or a planning permission.

Check no restrictions on the title prevent you from using the property as you intend.

The standard contract allows you to make your offer conditional on being able to use the property for a use you specify in the contract. Make sure your intended use is properly specified. Describing an intended use as "a rural block" for instance does not say clearly enough the use you intend. If there is a secondary but important use make sure that is entered as well; e.g. "home with child day care centre".

Do I Need to Check the Title?

It is foolhardy to sign a contract to buy land without first checking the title documents. Usually the title is a Government certificate as to who owns the land and what restrictions are recorded against the deeds.

If the title is held under the old deeds system you may need to take special advice on the deeds.

If the title is held under the modern Government certificate system there will be a title plan of the land. Usually there will not be a plan of the building. The title plan will only show the boundaries of the land itself.

If it is a strata title, the title plan will show the buildings. Strata titles are special types of title designed for but not limited to multi story flats. If it is a strata title you will need more information on that aspect and we have a similar booklet to this on strata titles.

Check the land carefully against the title plan including:

- the property boundaries;
- no buildings encroach on adjoining land or road;
- is it the correct block;
- the area of the block;
- is there access off a useable public road; and
- use of the property other than the current owner, for example: as a right of way, for drainage or as part of their land.

You need to be certain about these matters. A surveyors report would allow you to be certain and would give you rights against the surveyor makes an error. A surveyors report is likely to cost between \$300 and \$1 000. It is possible that you may not discover difficulties that a surveyor would. Unless you are so certain as to these matters that you are willing to take the risk of not instructing a surveyor, you should incur the additional expense of a check survey.

If you have any doubt as to these matters, the surveyor's notes to the title plan, which may have some more detail on the boundaries which could assist. Aerial photos with title boundaries overlaid are available for many properties. If either would assist speak to the agent or your lawyer.

How Do I Get A Copy of the Title?

The estate agent should be able to get you a copy of the title.

Copies of title government valuation and last sale price information are available for Tasmanian properties via the internet at www.thelist.tas.gov.au. We can access this for you or you can get access using your credit card. There is a government search fee of \$200 to get a copy of the title.

www.thelist.tas.gov.au can also provide maps, zoning and sales and land valuation information.

What Do I Need To Check With Council?

Check with the local council planning, servicing and similar matters. Take notes, dates and names of the Council officers you deal with.

Check water, drainage and sullage services. Do any of these services rely on a private arrangement with neighbours? If necessary, check with the Council Health Inspector that a septic tank is permitted.

The council will be able to tell you the rates payable, what zone the property is in and the effect of that zoning under the planning rules, and what services are available. Ask if there is a new planning scheme on the way or planning applications in relation to the property.

Ask if council maintains the adjoining road.

Ask if council have building records for the property. Ask Council if they can provide records of building and planning approvals for the property.

Comprehensive records are only available for recent years at many councils.

Council may have other general information about the property and the area. It is worth asking generally if there are any other issues that council may be aware of that may restrict the enjoyment of your purchase in the manner that you intend but council cannot give you a comprehensive answer to such a question.

Council may have records of the land being flood or landslip prone?

It is possible to obtain a detailed report from council on its rights and powers in relation to the property. This search is usually undertaken as part of the conveyancing due diligence after you have already committed yourself to the property to make sure there are no adverse orders that the vendor must satisfy. Council typically takes about a fortnight to prepare such a report. They report cost just over \$200.00.

You can make your purchase offer subject to being satisfied with such a report but every condition makes your offer less certain and less attractive to the vendor.

What Do I Check On the Contract?

Read the contract carefully. Raise with the agent anything you do not understand. If that does not resolve your query get legal advice.

The contract will provide a date for completion. This is the changeover date to complete the transfer of ownership. Completion is sometimes called settlement. Check the date for completion will suit you. The typical period from unconditional contract to completion is 30 days. Check your particular needs.

Property is usually sold using a standard form of contract drawn by the Law Society. A copy is included at the end of this booklet the contract is fair to both parties. The Law Society approval is noted on the back page. Non-standard forms of contract are sometimes used. There may be additions or changes to the standard form. If the proposed contract is not a standard contract you should take legal advice.

Can I buy subject to finance?

A purchaser relying on getting finance can contract subject to the standard Law Society Contract by Clause 4.1(b) as shown above. Before you confirm make sure you have a final approval. Check any conditions to approval. Usually, for instance you would not risk confirming finance if the approval was still subject to valuation.

Can I buy subject to sale?

A purchaser relying on their own sale can contract subject to the standard Law Society Contract by Clause 4.1(c).

Conditions Precedent

- 4.1. The following are conditions precedent to completion of this Contract:
 - 4.1 (a) that, unless disclosed in this Contract, there are no restrictions on the use of the Property at this date which may hinder or prevent the Purchaser from using the Property for the purpose of residential property.
 - 4.1 (b) that The ANZ Bank makes available to the Purchaser a loan of Six Thousand Dollars (\$6,000.00) upon terms currently available in transactions of a similar nature within 21 days of this date.
 - 4.1 (c) that the Purchaser signs a contract within 60 days of this date for the sale of the Purchaser's property at Smith Street, Smithton to a person ready willing and able to perform the contract, at a price acceptable to the Purchaser. The Purchaser must not offer the property for sale for more than \$300,000.
- 4.2. The Purchaser must use all reasonable endeavours to fulfil the conditions precedent in clause 4.1 (b) and 4.1 (c) within the time allowed for doing so
- 4.3. The Purchaser may waive the benefit of any conditions precedent in clause 4.1.
- 4.4. If the Purchaser does not give unconditional notice of fulfilment or waiver of each condition precedent in clause 4.1 (b) and 4.1 (c):
 - 4.4 (a) in one of the ways described in clause 13; and,
 - 4.4 (b) before the time for fulfilment of each condition expires,
 - 4.4 (c) then the Vendor may treat this Contract as at an end.

Clause 4.1(c) only gives protection to the Purchaser to the extent that the offer on the new property is subject to signing a contract for the old.

To complete the purchase of the new property, the Purchaser will usually need not just signing the contract on the old property, but the actual receipt of funds from the sale of that property. Prudent purchasers ask the contract for their new property be subject to a further precondition that the contract proceeds to settlement.

Here is a template clause that can be added to the end of the standard contract.

The parties confirm the purchaser is funding the purchaser from the sale of the existing property of the Purchaser ("the Purchaser's sale")

- 1.2. *The Vendor may not force completion of this contract if the Purchaser's sale has not settled.*
- 1.3. *If the Purchaser's sale has not settled when settlement of this Contract is due, either party may serve notice on the other calling for completion of this Contract.*
- 1.4. *If this contract is not completed within 21 days of the date of service of that notice then;*
 - 1.4.1. *the parties obligations to complete the contract shall be void and at an end,*
 - 1.4.2. *the Purchaser shall be entitled to the return of any deposit paid, and,*
 - 1.4.3. *otherwise neither party shall be entitled to damages or compensation.*

What goes with the Property?

The sale of land includes all buildings and fixtures to buildings that are part of the land.

Check the contract specifies any extra things to be included with sale; like household goods.

It is best to specify in the contract things like stoves and TV antennae that are only arguably fixtures. Things like electric fencing, water pumps and tanks are often the source of confusion. If they are included in the sale, things like this are usually best specified in the contract.

Check the condition of these extras before you sign. There is no automatic warranty things are in working order or of a particular condition.

Do Water Rights Go With The Property Automatically?

Prior to the introduction of the Water Management Act 1999 in January 2000, legal entitlements to take water from rivers and streams in the State for commercial purposes were formally attached to the relevant land title. The Water Management Act removes this nexus so that water entitlements (water licences and their associated water allocations) are legal property held by the licensee separate from any land titles.

Hence, when rural property with irrigation enterprises is leased or sold, the lessor or purchaser does not automatically receive transfer of any water licences associated with those enterprises.

This matter is particularly relevant to any water storage dams on the property. While the ownership of the dam (and any relevant "dam permits" issued under

Part 8 of the Act) will generally transfer with the land title, the legal right to take water into the dam does not automatically transfer.

If the new owner or occupier of the land intends to take water into the dam, then that person will need to also transfer the water licence for that dam (or another relevant licence) under Division 4 of Part 6 of the Act.

While some dams are exempt from the requirement for a licence to take water into the dam, in the vast majority of cases it is an offence to take water into the dam (even "accidentally") without the appropriate licence.

How Is the Contract Made?

If there is a real estate agent, the real estate agent usually prepares the contract and first has it signed by the purchaser. The agent then presents this offer to the seller. At this point the seller either accepts or rejects the offer. If the offer is rejected, there may be further negotiation the vendor may sign an amended counter offer to put to the purchaser or ask for a new offer from the purchase. When the vendor is content with the offer of the purchaser, the vendor signs to accept the offer so the contract is formed binding both parties.

If there is no estate agent the parties negotiate direct or through their lawyers and when the basics of the deal are worked out the vendor usually gets his lawyer to draw a contract and sends a copy to the purchaser or the purchaser's lawyer for approval.

What is the effect of the Contract?

Once a contract is made the parties are bound to act according to its terms.

The contract should include all substantial matters agreed; for example, the contract should state any outstanding work the seller agrees to complete. The contract should specify any important assurances given in negotiations and any preconditions to you being able to proceed; such as approval of your home loan for instance.

The contract is the last opportunity for negotiation. In Tasmania there are no standard cooling off periods and no automatic rights to withdraw unless there is some specific provision in the contract.

What Deposit Do I need?

The vendor's interest in the land is a bond for the obligations of the vendor. If the vendor break the deal the purchaser can claim against the land. The deposit is a bond of the purchaser's obligation.

There is no legal requirement for any particular amount or for any amount at all. How much does he vendor want/need to feel safe enough? How much does the purchaser have handy?

If the purchaser is running short the purchaser can provide a deposit bond instead which is like an insurance policy for the deposit. The purchaser pay an insurance company to guarantee payment of a deposit.

A deposit of 10 percent of the purchase price is typical but the amount is subject to variation and the amount varies with the negotiation.

Does the Purchaser lose the Deposit ?

The deposit is a bond of the purchaser's obligation. If the purchaser wrongfully breaks the deal and if the breach is bad enough, the vendor may be able to call off the contract and then purchaser automatically loses the deposit. Minor breaches do not justify that.

If the contract fails because some agreed pre-condition to the contract does not happen, the purchaser will be able to get the deposit back.

Should I search Before Or After I Sign The Contract?

Complete your searches as far as possible before the negotiations. The results may affect the price or other parts of the negotiation. Some searches may need to be finalised after the contract is signed. If critical searches are outstanding when you need to put the contract in place see if the Vendor will agree to change the standard contract guarantee the result you want or to give you the right to withdraw if you do not get the result you want.

What happens after I Sign the Contract?

The purchaser bears the risk of damage to the property after the contract is signed. You should get insurance straight away.

If there is an estate agent, the agent will send the contract to your nominated lawyer to do the conveyancing. The lawyer will begin work on receipt of the contract.

Do First Home Owners get a special deal?

If this is the first home you have ever owned in Australia, you may be entitled to a government grant of \$7000.00.

<http://www.firsthome.gov.au/> has all the details or ask Tierney Law for more details.

Most lenders will process your application. If your lender cannot, Tierney Law can process your application.

First Home owners also have the stamp duty reduced by up to \$4,000.00.

What is conveyancing?

Conveyancing is the process of transferring ownership of property.

What is the Standard Conveyancing Procedure?

Each conveyance, although containing standard procedures, varies as to the particulars and structurally depending on whether real estate agents and

financiers are involved if there are partnership or co-ownership agreements between the parties, or dealings and rights beyond the transfer of property.

The following list gives a time line for typical conveyancing transactions:

- parties negotiate;
- parties consult professional advisers - instructions to act;
- general advice on the procedures of contract, specific advice on particular issues of the transaction;
- further negotiations;
- pre-contract searches and inquiries particularly with reference to matters of use, zoning, the quality of the land, buildings and the area;
- drafting and settling terms of contract;
- advice on insurance;
- signing and exchanging contracts;
- arranging insurance;
- investigation and report stage:
 - ◆ investigation of title;
 - ◆ check survey;
 - ◆ perusing and considering Land Registry search, advising client on covenants, easements, rights of way etc;
 - ◆ assessing encumbrances to be removed by vendor;
 - ◆ rates and charges search, Land Tax search, advising as to check survey and physical inspections of the property, adverse possession, boundaries etc;
 - ◆ Local Government rights search;
 - ◆ analysis of Planning Scheme;
 - ◆ bankruptcy search;
 - ◆ Heritage Register search;
 - ◆ Telstra search;
 - ◆ company search;
 - ◆ Business Names search;
 - ◆ Bills of Sale search;
 - ◆ Licensing search;
 - ◆ contaminated sites searches;
 - ◆ Building Regulations compliance search;
 - ◆ electricity easement search;

- ◆ mining rights search;
 - ◆ groundwater rights search; and
 - ◆ landslip enquiries.
- prepare documents to convey title and arrange execution;
 - Rates and Land Tax adjustments;
 - arranging payment of arrears and necessary undertakings;
 - arranging with financier security documentation;
 - report to client on searches;
 - arrange payment of settlement funds with client and financier;
 - advise client on security documents;
 - arrange completion and possession;
 - assess fulfilment of pre-completion obligations;
 - completion;
 - report to client on completion;
 - stamping of transfer documents;
 - lodging of title documents for registration;
 - prepare and lodge notices to statutory authorities of sale;
 - report to client as to registration;
 - payment of outstanding rates and land tax; and
 - safe custody storage of title documents.

Do you need to do all of that for every Property?

Not all searches are needed in all cases. In certain circumstances, some searches may be a danger rather than a safeguard.

The vendor's lawyer and the purchaser's lawyer have different roles. There is more work and more risk for the purchaser's lawyer.

What do Lawyers do with all the search reports?

Conveyancing interpret and advise on the information gathered from searches.

The result of searches may require:

- ◆ further investigation;
- ◆ action in relation to the other party to the transaction;
- ◆ action in relation to neighbours; or
- ◆ action in relation to government authorities. In each case the action may or may not have relevance to the rights of the parties under the contract.

If, by way of example, the Council report gives a statement of the zoning as "rural", it may be impossible to build a house in one part of a municipality but

permitted in another. The Council report itself will not mention any of this. A conveyancer needs to know when the prohibition applies, the rights of the purchaser against the vendor and what remedial action is possible.

Is Conveyancing just checking documents?

A conveyancer helps manage the transaction.

Conveyancing transactions involve many parties, Conveyancing transactions are time critical. Careful co-ordination is required.

The conveyancer has an important educational role in providing the client with sufficient knowledge to carry forward the transaction and advise generally on the rights and obligations of land ownership and the legal issues of financing and securities.

Property dealings usually involve a person's largest financial transactions. Property transactions are usually part of more major changes in a person's affairs. Failures in the process are likely to have more dramatic consequences for the client.

The conveyancing process is complex. It requires precision and prompt action.

The procedure can be difficult and time consuming. Transactions do not proceed as smoothly if one party is not familiar with the required procedures and has to learn as the transaction proceeds. There are more likely to be mistakes.

Solicitors are responsible for their work. Insurance supports the solicitor's responsibility. Someone acting for themselves or with informal assistance, takes on themselves the risk of mistakes.

Acting without proper advice is a dangerous and fearful experience.

What is the difference between a conveyancer and a lawyer?

The state government requires a person to be licensed as a conveyancer or admitted as a legal practitioner before they can charge undertake conveyancing for a fee.

Regulation of the conduct of conveyancing is needed to protect consumers and maintain standards of safe conveyancing.

Lawyers are more highly trained and highly qualified than conveyancers. Lawyers have at least a four years University degree and a six month post admission diploma. The initial Licensed Conveyancers were licensed without any formal training or education course. It has been suggested there may be a six months trade or diploma course for Licensed Conveyancers in the future.

What will the Conveyancing Cost?

Fees for this sort of work are completely deregulated. Lawyers and Licensed Conveyancers compete in an open market.

Fees vary from firm to firm. Get a quote.

Fees for this sort of work are completely deregulated. Firms compete in the market on price **and quality**.

The Law Society has a recommended scale which varies primarily according to the value of the property. Most firms ignore that recommended scale and charge less.

Can the same firm act for the Vendor and the Purchaser?

The same firm can act for both sides of a conveyancing transaction because there is no necessary conflict of interest. This is common but does raise issues if there turns out to be a conflict of interest.

Conveyancing transactions are not like divorces or car accidents where parties are inevitably in conflict. Most transactions proceed without any issue of conflict of interest.

If any conflict arises between one parties best interest and those of the other, the firm acting for both could not take sides in that dispute. The firm would need to stop acting for all parties if they could not act for the one party without acting contrary to the interest of the other. Both parties would be referred to other firms. That event could prevent the firm from disclosing information or giving advice contrary to the interest of one party.

Tasmania, and regional communities in particular, as small places often have both parties to a transaction who have the same lawyer. If the same firm acts for both parties, conflicts need to be picked up early and parties take independent advice early to deal with the conflict of interest.

Is it cheaper for one firm to act for both Vendor and Purchaser?

There is variation from firm to firm on cost where one firm acts for both Vendor and Purchaser.

At Tierney Law, the cost is slightly but not significantly cheaper for the parties where we act for both the Vendor and the Purchaser. There are some small savings within the firm in efficiency of communication and searching and these savings are passed on to the clients, but these are not the significant costs.

Substantially the same amount of work needs to be done where the same firm acts for the Vendor and the Purchaser. The responsibility is greater not less when the one firm acts for both parties.

At Tierney Law where we act for both the Vendor and the Purchaser, we run two separate files with a separate person responsible for each party. We believe this is necessary to maintain our quality standards and to be at maximum alert for possible conflicts of interest.



Your purchase – What to do and when to do it

This is a big picture view. Read our correspondence for the detail.

Find a Property

- ↑ Check property
- ↑ Check Title
- ↑ Check with Council
- ↑ Check costs
- ↑ Check Funds
- ↑ Check contract

Sign a contract

- ↑ Get agent to send contract to Tierney Law
- ↑ Read initial letter from Tierney Law
- ↑ Get final approval of finance
- ↑ Send instruction form to Tierney Law

Arrange finance

- ↑ Sort out any documents for the finance.
- ↑ Check boundaries/property
- ↑ Send boundaries confirmation to Tierney Law
- ↑ Arrange insurance
- ↑ Arrange settlement date
- ↑ Prepare to move
- ↑ Book removalist

Get ready to Settle

- ↑ Review search report and proposed figure from Tierney Law
- ↑ Arrange funds with Bank and Tierney Law
- ↑ Pre settlement inspection
- ↑ Arrange to collect keys after settlement

Settle

- ↑ Collect any keys
- ↑ Move in
- ↑ Review report confirming settlement from Tierney Law
- ↑ Check title after registered

Enjoy!

Vendor Disclosure Statement

Local Government Issues

1. In relation to this property have you received any notices or orders from the Council or any other person, including a statutory or government body relating to:
 - (a) nuisance abatement;
 - (b) fencing;
 - (c) rehabilitation or non-rehabilitation of land;
 - (d) tree, bush roots;
 - (e) land use;
 - (f) washing facilities;
 - (g) Plumbing Regulations;
 - (h) forbidden human habitation;
 - (i) Environment Protection;
 - (j) Environmental Infringement; and
 - (k) any other council notice or order that affects the land or use of the land?

Specific Issues that may be raised in other legislation

2. Is the land subject to periodic flooding or located in a flood prone area?
3. Is there a current planning permit applicable to the subject land? If so please supply a copy.
4. Is the land or the premises listed or subject to a notice as a significant item on the National Estate, on the National Trust Register, or under the Historic Cultural Heritage Act or any similar register restriction or legislation?
5. Is the property connected to the sewerage system?
 - (a) If no, has the council approved a septic tank or other system?
 - (b) If yes, specify the type of system approved as well as any conditions of approval and whether the owner is responsible for maintenance or repair of the system?
 - (c) If yes, specify is the system working well?

6. Since you purchased the property has there been any plumbing work performed which required a plumbing authorisation? If yes, has the certificate of completion been issued?
7. Is the land within a declared landslip area under the relevant legislation?
8. Is the land subject to any special order or restriction made any legislation pertaining to major developments?
9. Is the council responsible for the maintenance and repair of the specified highway or road?
10. Is the council entitled to make any part of the specified highway(s) construction at the owner's expense? If yes, please provide details.

Building Issues

11. In relation to his property, have you received any notices or orders from the council or other statutory or government body concerning;
 - (a) building demolition or 'subject to prescribed conditions';
 - (b) illegal Works;
 - (c) uncover, open up work, demolition or inspection;
 - (d) rectification, or notice to repair an unhealthy building; or
 - (e) any other council notice or order that affects any buildings or use of any building on the land?

If yes, please provide details.
12. Has any building been erected or has any building work been performed on the land, for which building approval has been provided by the council but for which a certificate of occupancy/completion has not been issued?
13. Is there any building on the land that has a housing indemnity policy in force? If yes, please provide details.
14. Since you purchased the property has there been any building work performed where a certificate of material compliance has been issued? If yes, have you received any council certificates with the endorsement 'This building was not the subject of the normal application, permit and inspection procedures' or such other unusual endorsements?

General

15. Are you aware of any defects, faults or problems with the chattels offered for sale or any structural features of the property, or any chattels or structural features that are not working properly?

Encroachments

16. Are all structures and improvements on the property wholly within the property boundaries? If no, please give details.
17. Are you aware of any structures or improvements on any adjoining properties that partially or wholly encroach on your property boundaries? If yes, please give details.

Private/Commercial Easements

18. Has any claim been made by a person to claim, obstruct or limit the rights of passage or way to and from the land? If yes, please give details.
19. Is the title to the land presently or prospectively affected by any rights by another person, other than the owner, the exercise of which interferes with the normal rights of the owner of the land? If yes, please give details.

Encumbrances

20. Are there any unregistered encumbrances or restrictions on the land that would not be discharged on the sale of the land? If yes, please give details.

Strata or Community Lot

21. Are there any arrears in relation to the contributions payable in relation to the unit/lot? If yes, please give details.
22. Is there any expenditure that strata/community corporation has incurred, or has resolved to incur, to which the unit holder/owner of the lot must contribute? If yes, please give details.

Aboriginal Heritage

23. Is the property subject to any native title claim or are there any aboriginal relics on the property?

Miscellaneous

24. Enter other questions to be answered by the vendor

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This disclosure form is a template for an intending Purchaser to present to the Vendor before agreeing on a price and signing a contract so the Purchaser can assess the property based on the representations made by the Vendor in answering the questions.

Regarding the Property At.....*enter address*

Owned by.....*enter name of Vendor*

Being viewed for purchase by..... *enter name of Proposed Purchaser*



Signed to confirm the above answers by the Vendor

Sample Typical Contract for Sale of Real Estate

This Contract is made the
Between Mickey Mouse 3 Disney Street, Hollywood
(called "the Vendor")
And Mel Gibson, Max Avenue, Smithton
(called "the Purchaser")

Agreement To Sell And Buy

The Vendor agrees to sell, and the Purchaser agrees to buy, free from encumbrances:

- 4.5. The vendor's property at 3 Disney Street, Hollywood as contained in Certificate of Title 2345/1 (called "the Property");
- 4.6. the following items;
- 4.7. Floor coverings, Light Fittings, Stove, Window Treatments, Fixed Heating, TV antennae (called "the Chattels")

Price And Deposit

- 4.8. The price is Sixty Five Thousand Dollars (\$65,000.00) , and is payable as follows:
 - 4.8 (a) a deposit of Six Thousand Dollars (\$6,000.00) to Tierney Law as stakeholder upon signing this Contract; and
 - 4.8 (b) the balance, either in cash or by a cheque drawn by a bank, on completion.
- 4.9. The part of the purchase price attributed to the chattels is agreed to be Two Thousand Dollars (\$2,000.00)

Completion

- 4.10. This Contract will be completed on the .
- 4.11. On completion the Vendor must ensure that the Purchaser obtains:
 - 4.11 (a) vacant possession of the Property; and
 - 4.11 (b) possession of the Chattels.

Conditions Precedent

- 4.12. The following are conditions precedent to completion of this Contract:
 - 4.12 (a) that, unless disclosed in this Contract, there are no restrictions on the use of the Property at this date which may

hinder or prevent the Purchaser from using the Property for the purpose of residential property.

4.12 (b) that The ANZ Bank makes available to the Purchaser a loan of Six Thousand Dollars (\$6,000.00) upon terms currently available in transactions of a similar nature within 21 days of this date.

4.12 (c) that the Purchaser signs a contract within 60 days of this date for the sale of the Purchaser's property at The ANZ Bank to a person ready willing and able to perform the contract, at a price acceptable to the Purchaser. The Purchaser must not offer the property for sale for more than \$.

4.13. The Purchaser must use all reasonable endeavours to fulfil the conditions precedent in clause 4.1 (b) and 4.1 (c) within the time allowed for doing so.

4.14. The Purchaser may waive the benefit of any conditions precedent in clause 4.1.

4.15. If the Purchaser does not give unconditional notice of fulfilment or waiver of each condition precedent in clause 4.1 (b) and 4.1 (c):

4.15 (a) in one of the ways described in clause 13; and,

4.15 (b) before the time for fulfilment of each condition expires,

4.15 (c) then the Vendor may treat this Contract as at an end.

Easements & Covenants

The Property is sold:

4.16. together with all easements and covenants benefiting it;

4.17. subject to all easements which are:

4.17 (a) registered; or

4.17 (b) apparent from an inspection of the Property; and

4.18. subject to all easements and covenants disclosed in this Contract.

Title

The Vendor warrants to the Purchaser that, at completion:

4.19. the Vendor will provide a good marketable documentary title to the Property;

- 4.20. none of the Chattels will be encumbered in any way;
- 4.21. the Chattels and the Property will be the absolute property of the Vendor, or the Vendor will have the power to require a transfer of the title to the Purchaser; and
- 4.22. the Property will be free from charges payable to any authority either now or in the future for anything which has occurred before this date. The Vendor indemnifies the Purchaser against all liability of that kind.

Payment And Apportionment Of Charges

- 4.23. The Vendor must pay all land tax, rates, charges and assessments charged or to be charged against the Property for the period ending on the 30th of June after completion.
- 4.24. All payments made by the Vendor under the preceding subclause must be apportioned between the Vendor and the Purchaser as at the earlier of:
 - 4.24 (a) the date of possession; and
 - 4.24 (b) the date of completion.
- 4.25. Land tax must be apportioned as if the Property were the Vendor's only Tasmanian land.

Purchaser's Default

- 4.26. If the Purchaser fails to complete the purchase as provided in this Contract, then, unless the failure is due to the Vendor's wilful default:
 - 4.26 (a) the deposit will be forfeited to the Vendor;
 - 4.26 (b) in addition to any other remedies available, the Vendor may:
 - 4.26.b.1. resell the Property and the Chattels in any manner and on any terms the Vendor chooses; and
 - 4.26.b.2. claim any loss on resale from the Purchaser as liquidated damages.
- 4.27. Any profit on resale will belong to the Vendor.

Nominee

- 4.28. The Purchaser may nominate, in writing, other persons or corporations to complete this Contract.
- 4.29. If the Purchaser makes a nomination, then the Purchaser remains personally liable to the Vendor for the performance of all of the Purchaser's obligations under this Contract.

Removal Of Goods

- 4.30. Prior to completion the Vendor must remove from the Property all items not included in the sale.
- 4.31. The Purchaser will not be liable to compensate the Vendor for trespass to, damage to, or loss of items left on the Property after completion for more than seven (7) days following notice by the Purchaser to the Vendor to remove them.
- 4.32. The Vendor must indemnify the Purchaser against all claims made against the Purchaser in respect of items not included in the sale, but left on the Property after completion.

Joint And Several Liability

Any liability of a party to this Contract attaches jointly and severally to each person or corporation named as comprising that party.

Rights after Completion

After completion:

- 4.33. the Purchaser retains the benefit of title warranties to the Chattels;
and
- 4.34. each party retains the benefit of all provisions requiring or contemplating that the other party do something after completion.

Notices

- 4.35. A notice given by one party to the other will be properly given if signed by any one or more persons or companies constituting the party giving the notice, and it is given either:
- 4.35 (a) by letter:
- 4.35.a.1. to the receiving party personally; or

4.35.a.2. posted to or left at the address of the receiving party shown on this contract; or

4.35.a.3. posted to or left at the office of the receiving party's solicitor;

4.35.a.4. or

4.35 (b) by facsimile transmission:

4.35.b.1. to the receiving party's facsimile number shown in this Contract; or

4.35.b.2. to the office of the receiving party's solicitor.

4.36. A notice may be signed on behalf of the giver of the notice by the giver's solicitor.

4.37. A notice may be given to any one or more of the persons or companies constituting the receiving party on behalf of all of them.

4.38. A posted notice will be taken to have been delivered when it would have been delivered in the ordinary course of post.

Depreciation (delete if not required)


~~The price attributable to the structural improvements in respect of which depreciation has been claimed for the purposes of income tax is the amount shown in the vendors books of account.~~

Add any annexure below. For Example, Agreement on Fencing.

SIGNED by the Vendor

 Mickey Mouse


in the presence of *witness*:

signature 
name
address
occupation

SIGNED by the Purchaser

 Mel Gibson

in the presence of *witness*:

signature 
name
address
occupation

Either party may be at risk if the property is damaged before completion.

Each party should protect their interest by insurance.