SPAA Conveyancing made simple

# What is conveyancing?

Conveyancing is the legal process where ownership of real estate, house or land, is transferred from one person to another. The person making the sale is the vendor and the purchaser is the buyer.

This involves the preparation of legal documents – including a contract of sale and transfer of land document which are signed by both parties – property searches carried out on the property and attending settlement of the matter.
The parties or participants to a conveyancing transaction are:

- Vendor – the seller
- Purchaser – the buyer
- Financial institution (the bank) – where they have provided finance in exchange for a mortgage over the property
- Solicitor or Licensed conveyancer managing the transaction on behalf of the vendor and purchaser respectively

## What is the conveyancing process?

While there are procedural differences between all States and Territories they nevertheless follow the same general processes.

In South Australia individual(s) agree to buy a house or land either directly from the vendor or via the vendor's agent through a process of making an offer which is then accepted by the vendor.

## **This marks the beginning of the conveyancing process**:

### Step 1: Contract of Sale is drawn up

The Contract of Sale is completed between the vendor and purchaser and is the primary document setting out the **rights and obligations of the parties**. The obligations of the parties are to be performed over a period of time, culminating with payment by the purchaser of the purchase price and transfer by the vendor of the title to the property.

**A contract of sale should not be signed and exchanged until the purchaser has reviewed the contract with their nominated conveyancer.**

### Step 2: Deposit paid

When the contract of sale is signed purchasers are often required, as a rule of thumb, to pay a deposit of 10% of the purchase price as a sign of good faith in their interest in the property. The amount of the **deposit can vary** and is usually advised by the vendor or agent.

### Step 3: Contracts signed

Once contracts of sale have been signed by all parties and exchanged, this means that the buyer and seller each hold an **identical contract** signed by the other party.

### Step 4: Purchaser insures property

The buyer should then **insure the property**, although the purchaser is not responsible for any damage which may occur until such time as settlement has occurred and the title transferred. Lending institutions may **require that proof** of building insurance is provided, with the lender noted as an interested party, as a prerequisite to completion of settlement of the loan for the property purchase.

### Step 5: Cooling off period

There is a **'cooling off period'**, which does vary by state, and gives the purchaser a level of protection through which they can withdraw from a contract in certain circumstances. The cooling off period does not apply to a **purchase at auction**.

### Step 6: Transfer of title

The transfer of land/property document is then prepared by the purchaser's conveyancer and then signed by the purchaser.

### Step 7: Stamp duty payment

The purchaser pays the relevant stamp duty amount for the registration of the document. The signed document is then forwarded to the vendor's conveyancer for completion by the vendor.

### Step 8: Transfer document stamped

The purchaser's conveyancer will then arrange for the transfer document to be stamped before settlement, so the purchaser can register the transfer immediately after settlement has taken place. This will often be a requirement of the purchaser's lending institution for the transfer and so the mortgage can be registered promptly.

### Step 9: Formal questions conducted

The period of time between the purchase of the property and settlement – the point at which the property transfers – does vary between the states and territories and is typically **30 to 90 days** but this can vary by agreement.

During this period there is an exchange of formal questions and answers about the property between the purchaser and vendor conducted by respective conveyancers, referred to as requisitions on title.

### Step 10: Searches made for defects

From the purchaser's perspective further searches and enquiries will be made by the conveyancer to identify any defects in title, unapproved construction on the property and land contamination amongst other things.

### Step 11: Calculation of final payment

In the lead up to the settlement date the vendor's mortgagee must be contacted to calculate the payout figure at settlement, arrange attendance at settlement to provide a discharge of mortgage and to hand across the title to the property.

### Step 12: Adjustments calculated

Then 'adjustments' will be made up to the date of settlement, by the purchasers conveyancer which are then agreed by the vendors representative to allow for council and water rates, most commonly, that the vendor has paid. These adjustments are then part of the final settlement calculation for money to be paid across at settlement.

### Step 13: Settlement

Settlement day then arrives and this is the day the purchaser provides the agreed money to the vendor. The purchaser's conveyancer will complete a final search before settlement to ensure that the title is free from any restrictions that may have occurred between the date of exchange of contracts and settlement.

Settlement is usually physically attended by both the vendor and purchaser's conveyancer and the financial institutions. This is where the title documents are handed over in exchange for the final payment of the agreed purchase amount.

And then you've finally reached the end of the conveyancing process and have either sold your property for cold hard cash or are the proud new owner of a nice piece of real estate.