What is the Conveyancing Process in NSW?

Conveyancing is the legal process of transferring a property from one person to another. Here, sellers and buyers must prepare the documentation necessary to complete the transfer. If you are a seller or a buyer in NSW, you need to ensure you have completed each step properly so that each stage of the conveyancing process goes smoothly. This article sets out the four stages of the conveyancing process, namely pre-contract, exchange and settlement.

**Pre-Contract**

At this stage, the seller’s solicitor will prepare a draft contract for the sale of property. The document will include a title search to verify the owner of the property. In preparing the contract, it is important to check:

* whether there are any charges on the property that may affect the sale;
* if the title deeds are in order
* whether the rates and charges are fully paid; and
* whether there are any restrictions on the property.

The seller also needs to complete legal forms from various government departments. It is important to remember that some certificates can take several weeks to obtain.

After the seller has completed the searches and has agreed to the terms with the buyer, both parties will need to sign the prepared contracts.

**Exchange**

During the exchange process, the contract for sale becomes binding on the buyer and seller. Exchange consists of a meeting between the seller’s solicitors and buyer’s solicitors, where the parties exchange the signed contracts. At the meeting, both parties’ solicitors confirm the contracts are identical. They then date and swap the documents. At this point, the contract becomes legally enforceable. This means the sellers and buyers need to comply with the terms of the agreement. If not, they may face consequences.

**Adverse Matters Affecting the Property**

The seller has a continuing obligation to let the buyer know of any matters which may adversely affect the property being bought. Once the parties have signed the contract, the buyer is legally may assume the seller has given them all of the relevant information about the property. The buyer may also assume that the seller has provided a warranty that they have disclosed all adverse matters.

If after the parties have signed the contract the buyer finds an adverse matter affecting the property, the buyer may have grounds to rescind the contract. They may rescind based on the seller’s breach of an implied contractual warranty to disclose all adverse matters, but only if the buyer:

* was unaware of the adverse matter; and
* would not have signed the contract had they known about the adverse matter.

**Deposit Cheque**

During the exchange process, the buyer’s representative will provide the seller’s representative with a cheque for the deposit. The real estate agent will hold the deposit in trust until settlement.

**Stamp Duty**

The buyer needs to [pay stamp duty](https://legalvision.com.au/faqs-stamp-duty-and-discretionary-trusts/) on the property they are purchasing. Liability for stamp duty arises on the date the parties exchange the contracts. The buyer needs to pay the stamp duty within 90 days of the contract date or prior to settlement.

**Cooling-off Period**

A contract for sale of property needs to include a cooling-off provision. It allows a buyer to rescind the contract for any reason. The cooling-off period begins on the day the buyer signs the contract and is usually five business days long. If a buyer elects to rescind the contract, they are required to forfeit 0.25% of the purchase price. If a cooling-off provision is not provided, then the buyer may rescind the contract at any time up until completion.

Most sellers request buyers to issue a section 66W certificate. This certificate allows the buyer to waive or shorten the cooling-off period. Asking buyers to issue section 66W certificates is standard practice. A cooperative buyer will likely issue one to expedite the exchange and settlement process.

**Pre-Settlement Inspection**

A buyer of a property is entitled to a pre-settlement inspection in the three days before completion. The buyer’s agent will usually arrange the inspection. If the property is to be sold with vacant possession, the seller will need to make arrangements; to vacate the premises before settlement. The seller should empty the property of all possessions and leave it in a clean and tidy condition.

If the buyer has any issues with the property, they may be able to withhold settlement under the seller resolves them. Neither party can terminate the contract immediately for such a breach. However, the buyer can delay settlement to give the seller time to fix the issues. If the buyer wants to avoid delay, then it may be possible to continue the settlement, with the buyer withholding part of the payment from the seller until they resolve the matter.

**Settlement**

Settlement marks the final point in the conveyancing process. Here, the buyer takes possession of the property and all remaining finances are settled.

Before settlement, the buyer will prepare and finalise settlement figures and cheque details. They will then arrange a settlement time and venue. For the property to change hands, the settlement agent needs to ensure any existing mortgage is paid-off and [caveats on the property](https://legalvision.com.au/what-is-a-caveat/) are lifted. They must also register the transaction to make the transfer official.

During the process, the buyer pays the balance of the property’s purchase price. They will also hand over the order on agent, which authorises the agent to release the deposit, minus disbursements such as the agent’s commission. The seller then has to give the buyer the executed transfer document and title documents. Usually, the buyer and seller’s nominated representatives attend the settlement. They need to ensure all of the documents are correct and handed over to the party who will hold security after settlement.

Representatives of the seller’s mortgagee and buyer’s mortgagee may attend the settlement to:

* receive final payment of the mortgage, in the case of the seller’s mortgagee; or
* secure their rights on the new mortgage, in the case of the buyer’s mortgagee.

If there is an outstanding mortgage on the property, a representative from the bank will also attend the settlement to receive money owing on the seller’s loan. The lending body will pay the loan money and the buyer will pay the rest of the balance. Furthermore, the buyer’s solicitor will authorise the seller’s representatives to collect the deposit from the real estate agent.

Finally, the parties will sign the transfer and title deed documents and the lender will arrange for the Land and Property Information (LPI) to register the transfer and mortgage on title. The lending body will hold the title documents and mortgage until the term of the mortgage is complete.

**Keys**

Immediately following settlement, keys and other access devices such as garage remotes and security alarm codes are handed over to the buyer. If the property is the seller’s primary residence, they have until midday on the day following settlement to hand over the keys. In some instances, the buyer may refuse to settle until the seller gives them the keys and security codes.

Giving the keys to the buyer is more than a symbolic gesture. This is because the seller is effectively handing over physical possession of the property. At this stage, the buyer’s bank will register the change of title and mortgage and notify the relevant authorities of the changes. Therefore, it is important to ensure the keys and access devices are provided.

**Final Checks and Deposit**

When the parties have handed over the relevant documents, cheques and access devices, the buyer’s bank will conduct final checks at the Land Titles Office in respect of:

* [caveats;](https://legalvision.com.au/how-do-i-remove-a-caveat-in-new-south-wales/)
* mortgage discharge; and
* transfer and title documents.

The transfer of ownership takes place at this point.

Furthermore, a written direction from the buyer’s solicitor to the vendor’s representative will authorise the agent to release the deposit. This direction, also known as an *order on agent,* is usually faxed to the agent.

**Insurance Risk**

In NSW, the insurance risk passes from the seller to the buyer on settlement or early possession. It does not pass during the exchange of contracts. For this reason, sellers should keep insurance coverage on their property until settlement. It is important that after settlement, the seller notifies their insurance company in writing that they no longer require the cover.

The buyer of the property accepts the property in the state and condition it is in on the date of the contract. Of course, this is subject to fair wear and tear. Risk of damage to any of the buildings and other fixtures remain with the seller until settlement. This is the case unless the contract specifies otherwise. If any building or fixtures are substantially damaged after the exchange, the buyer may rescind the contract. They must do this by giving notice in writing within 28 days of becoming aware of the damage.

**Key Takeaways**

In NSW, the conveyancing process is crucial to ensure the transfer of property from one person to another. The sellers and buyers must organise the relevant documents, cheques and inspections so the process can run smoothly. There are also additional matters to consider, including stamp duty, cooling-off periods, payment of deposits and insurance risk. If you have any questions, contact **Kilpatrick Hatton Solicitors on 0249 208300 or fill out the form on this page.**