



BUYERS GUIDE TO CONVEYANCING

New South Wales



Bell
Conveyancing

Why consult a conveyancer first?

The first thing you should do is appoint a conveyancer to act on your behalf and to advise you on how a conveyancing transaction is run. Your conveyancer will guide you through the minefield involved in buying real estate. You will need to know what steps should be taken before you commit to a particular property and what you should and should not do when dealing with an estate agent. Your conveyancer will also make sure that you are aware of all the additional costs that may be involved so that you can work out a budget and know exactly what you can afford when negotiating the purchase price with the agent.

Your conveyancer will also clarify any matters that you may not be completely aware of relating to the purchase of property.

Meet our Team Bathurst & Orange



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The Contract for the Sale of Land

The law provides that the real estate agent must have available at all times a complete copy of the contract for the sale for any residential property so that the purchaser may obtain legal advice before signing.

The contract will contain all the details of the land and should have attached:

- a zoning certificate (shows all the local council's approved use zoning for the property),
- a full title search (shows all recorded interests in the land e.g. easements, restrictions on the use of the property, mortgages, caveats etc.), and
- a sewer diagram (showing the location of the regulatory authority's sewer(s) in relation to the land).

Not all things that affect the sale will be written into the contract. There are several matters enshrined in legislation that are not noted in the written contract, so it is important that you have your conveyancer explain the effect of the contract to you before you sign and commit yourself to it.

The contract will normally specify a time period of 42 days of settlement to take place calculated from the date of the contract. However, the number of days can be negotiated, or a specific date can be nominated. This is particularly important where, for example, the settlement date must coincide with settlement of another transaction. This completion date and the ramifications of a late settlement should be discussed with your conveyancer before the contract is signed.

The contract will also contain a list of all the items that are included with the property. These things should be confirmed or negotiated through your conveyancer before the contract is signed. It is usually best to confirm with the vendor what items including fixtures the vendor intends to remove to avoid disappointment and arguments later.

Building & Pest Inspections

Under legislation, the vendor is only required to disclose any matters affecting the title of the property. There is no requirement for the vendor to provide any information as to the quality of any building on

the land. Before you commit yourself to the purchase of a property, you should discuss with your conveyancer what inspections (if any), you should obtain.

If you are buying a house, it is recommended that you obtain both pest and building reports. They will give you peace of mind and, compared to the investment you are about to make, the cost of these reports is minimal.

Some defects may be obvious to the untrained eye however a building inspection will not only report the usual minor maintenance and cosmetic issues but will advise on any structural or building problems that may not be obvious including drainage or damp. Remember: even a new building can have defects.

A pest inspection will report on any visible old or current structural pest activity that may be present. Pest inspections will only report on structural wood boring pests and will not normally advise on the presence of cockroaches, mice, rats etc.

When choosing your inspectors, ensure that they have the appropriate qualifications and experience and carry professional indemnity insurance so that if they miss something that is detrimental, you have some chance of being compensated for any error or oversight. Try and use someone who has been recommended to you so that you know of their work and competence.

Strata Inspections

If you are buying a unit, townhouse or villa, you are buying into a strata scheme and while a pest and/or building inspection will advise you if your particular lot is clear of any structural or pest problems, it cannot advise you on the other lots in the scheme and may be limited in its coverage of the common property areas.

You should, therefore, obtain a report of the books and records of the owners corporation, commonly called a strata inspection report. The inspector will not physically inspect the building, only the written records kept by the owners corporation. Usually, a managing agent is appointed by the owners corporation to keep these records, so the inspection is done at the office of the managing agent.

The inspection will cover things such as:

- the insurances the strata plan has in place,
- the current quarterly levies for your lot and whether or not they are paid,
- if there is any proposal to increase the levies in the near future,
- the current financial position of the strata scheme including the current budget,
- details of any ongoing maintenance problems,
- if there are any special levies struck or proposed to cover any major work,
- any other matters that may be reported in the records or the minutes of meetings.

If a lot has any structural or maintenance problems, it is usually a common property issue, and the owner will normally report it to the managing agent for rectification. These notifications should be recorded in the strata records. However, this cannot be relied on.

Finance

It is essential that you have written unconditional finance approval to hand before the contract is binding (see Exchange of Contracts and The Cooling Off Period sections below). Your lender may provide you with pre-approval before you start looking for your property however it will usually be subject to and conditional upon the bank obtaining a satisfactory valuation. Should the bank's valuation be lower than the amount required, the loan approval may fall through.

There are many places you can apply for a loan such as banks, credit unions, mortgage lenders or a finance broker. It is wise to shop around and do your homework before you apply so that you have an idea of what is being explained to you. There are many different types of loans, and it is important that you are aware of the differences between them before you decide which is right for you and your circumstances.

Once you have decided on which type of loan you require you can apply direct to the finance provider you have chosen. If you are unsure then it may be a good idea to consult a mortgage broker. Mortgage brokers have access to many lending institutions and can find the loan that best suits your needs. Normally there is no extra cost for using a broker because the lender pays the broker's fee for referring the loan to them. We recommend that you do some homework though to have an idea of what rates are available, and what fees and charges may apply. Although the lender pays the mortgage broker's fee, be aware that different institutions pay different rates of commission so it is possible that the loan you are referred to may not be the best for you but the best commission for the broker.

Mortgage Insurance

Also be aware that where a lender approves a loan for an amount which is more than 80% of the lender's valuation of the property, there will also be a mortgage insurance premium to pay which will increase the size of the loan. Mortgage insurance protects the lender in the event of default, but only the extent of any loan moneys still outstanding once the security property has been sold, and the borrower sued for the remainder. The premium will depend on the loan/valuation ratio and will increase as the loan amount draws closer to the purchase price. The mortgage insurance premium is a major expense that you may not have allowed for and can amount to several thousand dollars depending on the amount of the loan.

Exchange of Contracts

Once the vendor and buyer have agreed on the price and any other special terms of the sale, the Contract for Sale is finalised in duplicate so that one copy can be signed by the vendor and the other copy can be signed by the buyer. The two copies are then compared to ensure that they are identical, and if so, they are dated and swapped or "exchanged" so that each party holds the copy signed by the other party. Normally at this point, the full deposit must be paid to the stakeholder nominated in the contract (see Payment of the Deposit below) unless the contract specifically provides an alternative arrangement for payment.

There are two ways to bring about an exchange:

By the Estate Agent

Here the contracts are usually signed and exchanged in the agent's office shortly after the sale price and any other terms have been agreed to. The agent then sends the appropriate copy of the contract

to each party's conveyancer, and if the property is residential, the buyer will have the statutory 5 business day cooling off period (see The Cooling Off Period section below) in which to get any reports, unconditional finance approval etc. The seller does not have the benefit of a cooling off period and cannot withdraw. The danger for the purchaser with this method, however, is that once contracts are exchanged the vendor may not agree to any amendment to the contract even though the buyer has not had the opportunity to obtain legal advice.

By the Conveyancers

Here the agent advises both conveyancers of the agreed terms of the sale; the vendor's conveyancer issues the finalised contract to the purchaser's conveyancer for checking and possibly negotiation while the purchaser arranges his reports and unconditional finance approval. Once everything is in order, the contracts are exchanged however with this method it is usual practice for the buyer to waive their right to the cooling off so that the contract is binding on both parties from the moment of exchange.

The Cooling Off Period

Under legislation, all contracts for the sale of residential property (having an area of less than 2.5 hectares) have a cooling off period of five business days ending at 5:00pm on the fifth business day. This means that from the date of exchange, the purchaser has five business days in which to make enquiries, carry out inspections and obtain unconditional finance approval before the contract becomes binding. If the purchaser decides not to proceed, the purchaser can rescind the contract within the cooling off period. If the purchaser does choose to rescind, the purchaser must 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 seller is locked into the contract from exchange and cannot withdraw from the sale.

The cooling off period does not affect the completion period in any way. Completion periods expressed in terms of a number of days run from the date of exchange regardless of whether or not there is a cooling period.

The purchaser can waive the cooling off period by having the contract explained by a conveyancer or solicitor and a certificate signed by that conveyancer or solicitor and the certificate handed to the seller's conveyancer on exchange. This certificate is commonly called a "Section 66W Certificate" because it is issued in accordance with s66W of the Conveyancing Act 1919.

The cooling off period can also be shortened by the use of the 66W certificate whereby it will be stated that the purchaser has agreed to shorten the period to whatever number of days has been negotiated.

The vendor can also agree to extend the cooling off period. If the agreement is made at the time of exchange, it must be included in the contract by adding a special condition. The pre-printed pages must NOT be altered. Alternatively, if the request is agreed after exchange, it can be evidenced by an exchange of correspondence.

The cooling off period only applies to residential properties having an area of less than 2.5 hectares. However, there is no cooling off period if the property is sold at public auction or if the contracts are exchanged on the same day as the property is listed for auction sale.

Payment of the Deposit

It is standard and essential term of the contract that the deposit be paid on before the making of the contract (i.e. on exchange) or in strict accordance with any other payment terms detailed in the contract. The deposit paid is usually 10% of the sale price but can vary. It is normally paid to the estate agent who holds it in trust pending completion as stakeholder.

If a holding deposit has been paid before the contracts are exchanged, it will become part of the 10% deposit, and the amount paid on exchange of contracts should be adjusted accordingly.

If the purchaser fails to pay the deposit in accordance with the terms of the contract or if the cheque for the deposit is not honoured on presentation, the seller is entitled to terminate the contract at any time up until the deposit is received.

The agent holds the deposit in trust for both the seller and purchaser and cannot release it or deal with it without consent from both parties. It is normal practice for the purchaser's consent to release to be handed to the vendor's representative at completion so that the agent can account to the seller immediately after settlement. The agent will deduct its commission from the deposit before accounting to the vendor for the balance.

Where a purchaser does not have sufficient funds to cover the 10% deposit, the vendor may agree to accept a deposit bond which is a guarantee issued by an underwriter to secure the deposit between exchange and completion in the event the purchaser is in default. Where a deposit bond is provided to secure the deposit, the purchaser must then pay the full price (plus any other moneys due under the contract) to the vendor at completion.

Insurance

The risk of damage to the property stays with the vendor up until the earlier of completion or the purchaser taking possession of the property.

The vendor is required to take care of the property up until completion, and the property should be handed over at completion in the same condition, subject to fair wear and tear, as it was at the date of exchange.

If the property is substantially damaged before completion, the purchaser has a right to rescind and have the deposit refunded provided they do so with 28 days of becoming aware of the damage. If the damage is not substantial but more than minor, then the purchaser may choose to proceed with the purchaser subject to an adjustment of the sale price to account for the cost of repairing the damage done.

Stamp Duty

Generally, stamp duty is payable on the Contract for Sale by the purchaser and may also be payable on some mortgages where the property is purchased for investment properties.

Stamp duty is calculated on the sale price: the higher the price, the higher the duty. It is the purchaser's responsibility to pay the stamp duty. The Office of State Revenue allows up to 3 months for the duty to be paid before the fines become payable however the duty must be paid on or before completion in order for the associated Transfer document to be registerable at the Department of Lands.

A stamp duty calculator can be found on the Office of State Revenue website.



Rates & Levies

Council Rates

Council rates are levied on a financial year basis. The standard terms of the contract provide that the rates be adjusted between the vendor and purchaser as at the settlement date so that each party pays the rates for the period that they own the property. The adjustment is calculated on the basis that the rates are paid in full regardless of whether they are in fact paid or not. Any outstanding rates are paid from the sale proceeds (being the vendor's money).

While councils may accept rates by instalments, the amounts and the time periods between the payments are not always equal therefore to obtain an accurate calculation the adjustment is made on the full amount for the next full year.

Council rates are a charge on the land and any outstanding rates become the liability of the purchaser, so it is essential that they are paid in full at settlement. One of the property enquiry certificates the purchaser's conveyancer will obtain is from council and sets out the amount of the annual rates, what payments have been made and what is outstanding including any penalties for late payment.

Water Rates

In some country areas, the water rates are paid to council and may be incorporated within the council rates. In other areas, a separate water authority supplies the water and sewer service and an adjustment of these rates must also be made at settlement.

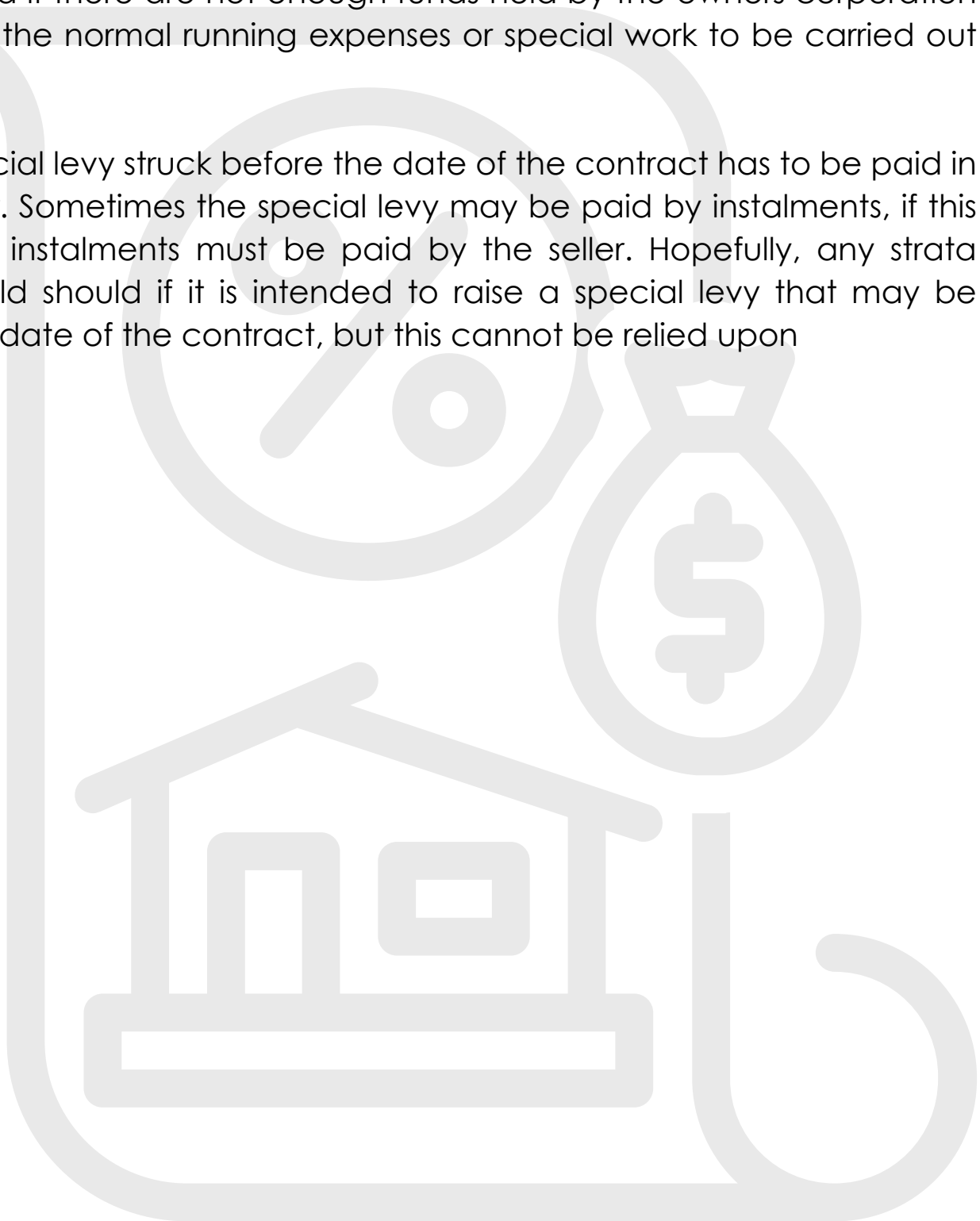
Unlike council rates, there may be an additional water usage charge to be paid by the vendor for the water used by the vendor from the time of the last meter reading up to the day of settlement. This is usually estimated on the basis of the vendor's average daily usage at the time of the last meter reading multiplied by the number days to settlement. This amount is then deducted from the amount due by the purchaser on completion. The purchaser is then wholly liable for the next water usage bill when it issues.

Strata Levies - Unit, Townhouse, Villa

If you are purchasing a lot in a strata scheme, the quarterly strata levy will be included in the settlement adjustments. The levy is usually issued quarterly and therefore adjusted in the same manner as water rates. However, unlike water rates, the quarters for the strata levies are not necessarily the usual quarters of the calendar year.

There may also be special levies to take into consideration. A special levy is struck when and if there are not enough funds held by the owners corporation to cover either the normal running expenses or special work to be carried out on the building.

Normally a special levy struck before the date of the contract has to be paid in full by the seller. Sometimes the special levy may be paid by instalments, if this is the case, all instalments must be paid by the seller. Hopefully, any strata inspection would should if it is intended to raise a special levy that may be struck after the date of the contract, but this cannot be relied upon



What to do before Settlement

Prior to the settlement date, you should make a list of all those places you need to advise your change of address and see that this is done immediately settlement takes place. Do not do it before settlement, just in case there is a delay in the settlement.

As settlement will normally take place at a venue not necessarily close to your conveyancer's office, any final moneys that need to be paid by you will need to be drawn and given to your conveyancer the day before settlement. You should be advised by your conveyancer who to make this payment in favour of a couple of days before it is due. However, you should be aware that because of the procedures followed by some financial institutions, the final cheque details may not be known until the day before the settlement. You should be prepared to receive the details and be able to provide your conveyancer with the final cheques on short notice. While this is not very convenient, it is in the most cases unavoidable.

Pre-settlement Inspection

As a purchaser, you are entitled to and should take advantage of, a pre-settlement or final inspection of the property before you make the final payment and take occupation of the property.

Once settlement takes place, it is too late to be finding that some of the inclusions are missing or that something has been damaged. It is extremely difficult to be able to have repairs done, or inclusions returned after the seller has left and settlement completed.

The ideal time to do the pre-settlement inspection is immediately before the settlement. However this is usually not very practical. It is usually done the day before, or early on, the day of settlement. This way if there is a problem there is some time to sort out the problem before settlement. If there is some concern that something may go missing or damage be done between the inspection and settlement, then you have no alternative than to try and re-inspect just before settlement takes place.

Settlement

The day of settlement is determined by the date of exchange of contracts and is normally 35 or 42 days after that date. It is possible for settlement to take place on an earlier or a later date if both parties agree.

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

If when signing the contract, you consider the settlement date is not convenient for you, it should be discussed with your conveyancer at that time. It is too late to realise the settlement date is not convenient after the contract is exchanged unless, by chance, the vendor agrees.

The settlement time, on the day of settlement, is determined by the availability of all parties to the transaction. Banks usually require settlement to take place at 2:30pm.

Your conveyancer or your conveyancer's agent will arrange the settlement on your behalf. There is no need nor is it normal practice for you to attend settlement. Settlement is conducted electronically in a digital workspace.

The parties normally attending a settlement digitally will be the conveyancer for the buyer, the buyer's lender, the conveyancer for the seller, and the seller's discharging lender.

It is at settlement that the electronic deeds of the property are registered into the name of the buyer and any new mortgage will also be registered as an encumbrance.

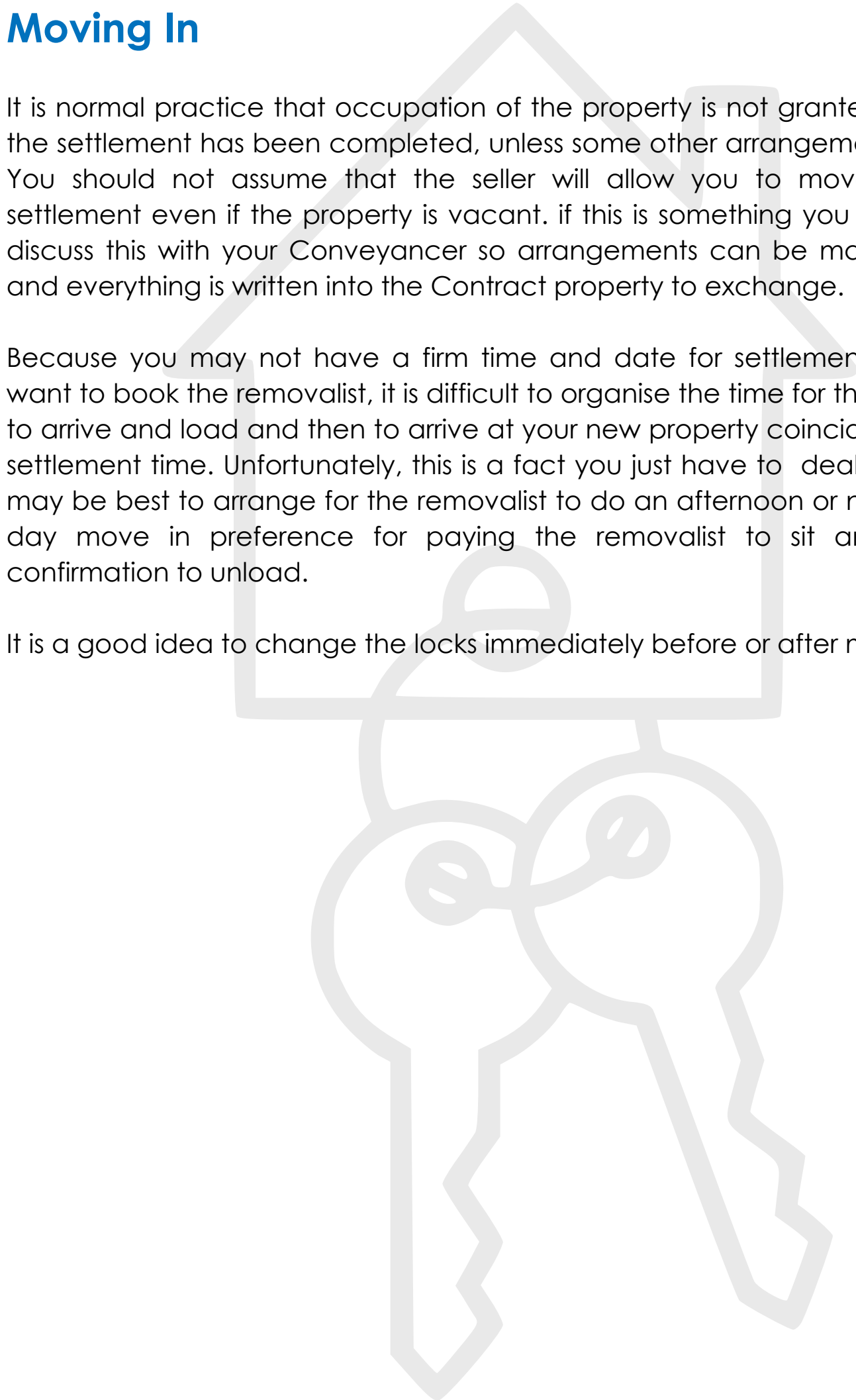
The deeds are electronic and a copy is available to you via your Conveyancer if required, at a cost.

Moving In

It is normal practice that occupation of the property is not granted until after the settlement has been completed, unless some other arrangement is made. You should not assume that the seller will allow you to move in before settlement even if the property is vacant. If this is something you will need to discuss this with your Conveyancer so arrangements can be made, agreed and everything is written into the Contract property to exchange.

Because you may not have a firm time and date for settlement when you want to book the removalist, it is difficult to organise the time for the removalist to arrive and load and then to arrive at your new property coinciding with the settlement time. Unfortunately, this is a fact you just have to deal with, and it may be best to arrange for the removalist to do an afternoon or next business day move in preference for paying the removalist to sit and wait for confirmation to unload.

It is a good idea to change the locks immediately before or after moving in.



Buying with an Existing Tenant

If a tenant occupies the property and they have a current lease, then you take over the vendor's role as landlord immediately settlement has been effected.

There is no need to enter into a new lease as the current lease remains in force and as the new landlord you are bound by the terms of that lease.

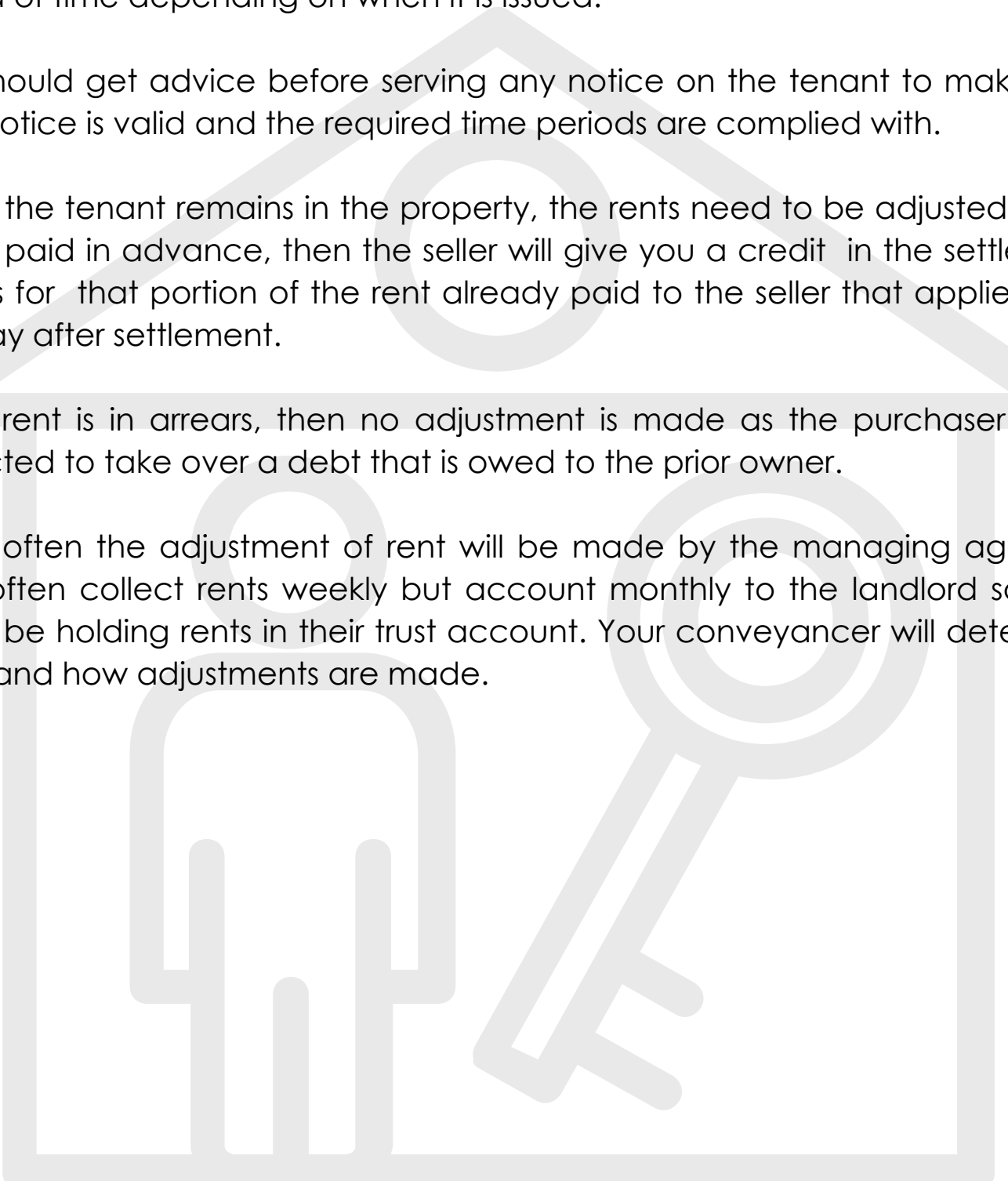
If you want to have the tenant vacate the property, then you will need to serve on the tenant a notice of termination which must allow the required period of time depending on when it is issued.

You should get advice before serving any notice on the tenant to make sure your notice is valid and the required time periods are complied with.

When the tenant remains in the property, the rents need to be adjusted. If the rent is paid in advance, then the seller will give you a credit in the settlement figures for that portion of the rent already paid to the seller that applies from the day after settlement.

If the rent is in arrears, then no adjustment is made as the purchaser is not expected to take over a debt that is owed to the prior owner.

Quite often the adjustment of rent will be made by the managing agent as they often collect rents weekly but account monthly to the landlord so they could be holding rents in their trust account. Your conveyancer will determine what and how adjustments are made.



After Settlement

Immediately following settlement, the estate agent will be advised so that they have authority to release any keys being held so that the buyer can have access to the premises. It is normal practice for the buyer's conveyancer to give to the seller's conveyancer at settlement, a written direction to the agent authorising release of deposit and keys. This direction or "order on agent" is usually faxed to the agent, so they have written authority to release the keys to the buyer. When confirmation of the settlement is given to you by your conveyancer, you can then collect the keys from the agent and move in.

Your conveyancer will send to you, usually during the week after settlement, final letters of confirmation of your purchase, together with final statements and as any other documents they hold.

You will not receive a Certificate of Title (Title Deed) if you have borrowed any money to assist with the purchase because all title documents are retained by the lender. It is the lender who will register the transfer into your name at the Land Titles Office.

When your lender attends the Land Titles Office, they will also lodge with the title documents a "Notice of Sale". It is this document that is used by the Land Titles Office to notify Council, Water authority and Valuer General of the change in ownership so that all future rate notices issue in your name. Sometimes, there may be a delay in your lender lodging these documents for registration and consequently, there is a delay in advising the rating authorities of your details. If the settlement occurs just before the Council or Water authority issue their rate notices, they may issue in the wrong name. Be aware of this so that if you move into the property and receive correspondence from Council or Water authority in the previous owner's name, the enclosed assessment is probably for your payment and not the previous owner.

You should now notify all those places that you have determined need to know of your change of address.

Land Tax on Investment Properties and Holiday Homes

If you are buying an investment or a holiday home, you may be liable for land tax. Land Tax is only payable where the value of the land is above the land tax threshold, which is determined on an annual basis. Where more than one taxable property is owned, the cumulative value of all land must be above the threshold.

Land Tax generally does not apply to your principal place of residence or to primary production land.

If you think you may be liable for Land Tax, you need to register with the Office of State Revenue (OSR). This can be done online at the OSR website www.osr.nsw.gov.au or call 1300 139 816 for more information.

All property owners who may be liable for Land Tax must register by 31 March each year.



Buying Off the Plan

Strata units are often advertised for sale before construction is completed. Buying a strata unit under these circumstances is known as "buying off the plan". The Office of Fair Trading has a brochure on 'Buying off the Plan' which is available from their website www.fairtrading.nsw.gov.au.



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