

The buying process

Paying an initial deposit

Once you have made an offer on a property, you may be asked to pay an initial deposit. This won't mean that the property is yours or that it gets taken off the market. It only proves to the seller that your offer is serious. The seller or agent can take as many initial deposits as they like for the one property. However, when you pay this deposit, they must let you know if someone else makes a later offer on the same property and tell you in writing that:

- They have no obligation to sell the property to you
- You have no obligation to buy the property
- They will refund your deposit if you don't end up entering into a contract to buy the property.

It is important to remember that the agent selling the property is not working for you, the buyer, but the seller.

Gazumping

Gazumping occurs when you have a verbal agreement with the agent or seller to buy the property at an agreed price and you pay a holding deposit, but the property is not sold to you in the end. This usually happens when the seller has decided to sell the property to someone else.

Sellers are entitled to get the best price for the property and the agent's job is to help them.

Unfortunately, this could mean that you lose out if someone offers a higher price. This is because, until you exchange contracts, there is no legally binding agreement between you and the seller.

If you are gazumped, neither the agent nor the seller is obliged to compensate you for the money you've spent on legal advice, inspection reports, finance application costs and inquiries.

Exchanging contracts

By law, a residential property cannot be put on the market until a sale contract has been drawn up. You have the right to examine the contract at any time during the buying process, even before you make an offer.

Exchanging sale contracts is an important step in the legal process of buying a home. Before exchange, the agreement is usually just verbal and not binding. Up until you exchange contracts both you and the seller have the right to change your mind.

After you have discussed the contract with your solicitor or conveyancer and all the proper inquiries have been made, you will be ready to exchange contracts. There will be two copies of the sale contract: one for you and one for the seller. You each sign one copy before they are swapped or 'exchanged'.

This can be done by hand or post and is usually arranged by your solicitor, conveyancer or the agent. If the agent is handling the exchange, you must expressly authorise them to do so. Following exchange, you have a financial interest in the property so it's wise to get it insured.

Cooling-off period

When you buy a property in NSW there is a five business-day cooling-off period after you exchange contracts. During this period you have the option to get out of the contract as long as you give written notice. The cooling-off period starts as soon as you exchange and ends at 5pm on the fifth business day.

A cooling-off period does not apply if you buy a property at auction or exchange contracts on the same day as the auction after it is passed in.

You can waive the cooling-off period by giving the vendor a '[66W certificate](#)'. This is a certificate that complies with [Section 66W](#) of the [Conveyancing Act 1919](#).

If you use your cooling-off rights and withdraw from the contract during the five business-day period, you will have to pay the vendor 0.25% of the purchase price. This works out to be \$250 for every \$100,000. Sometimes, there are more buyers looking for homes than there are properties on the market. This is called a sellers' market. In this case, you may want to organise a quick contract exchange. This way you can reduce the possibility of someone beating your offer and get your building and pest inspections done during the cooling-off period. You will still be able to back out if there is a problem. It is possible to waive, reduce or extend the cooling-off period with the consent of the seller.

Settlement

Settlement usually takes place about six weeks after contracts are exchanged. This is when you become the legal owner of the property. The balance of the purchase price and other adjustments are paid on this date.

Conveyancing

If you want to buy or sell a home, land or investment property you'll have to sign a contract. The legal work involved in preparing the sale contract, mortgage and other related documents, is called conveyancing. It's possible to do your own conveyancing. However, most people get a licensed conveyancer or solicitor to do the work for them. This fact sheet explains what is involved with conveyancing.

Who can do conveyancing work?

You have three options to get your conveyancing done:

1. Use a licensed conveyancer
2. Use a solicitor
3. Do it yourself.

Before you start organising your conveyancing, it's important to do your homework first.

Using a conveyancer In NSW, conveyancers must be licensed with the Department of Fair Trading. Most conveyancers hold an unrestricted licence that allows them to perform the full scope of conveyancing work for residential, commercial and rural property. Conveyancers are licensed to do legal work such as preparing documents, giving legal advice on contracts and explaining the implications. Before you decide to use a particular conveyancer, check if they are licensed with us first. Licensed conveyancers must have professional indemnity insurance to protect you in case they make a mistake or are negligent in their work. If they are dishonest with the money you have entrusted to them, you may have access to the Compensation Fund administered by the Department of Fair Trading. Here's how to find a conveyancer:

- Look them up in the [Yellow Pages](#) under 'Conveyancing Services'
- Call one of the professional associations listed overleaf

If you want to complain about a conveyancer call the Legal Services Commissioner on 9377 1800 or 1800 242 958 or call us on 9895 0297.

Using a solicitor

While conveyancers and solicitors are equally qualified to do conveyancing work, solicitors can also give you legal advice about other matters. Solicitors, like licensed conveyancers, must also have professional indemnity insurance for your protection.

Here's how to find a solicitor who does conveyancing:

- Look up the [Yellow Pages](#) under 'Conveyancing Services'
- Call the Law Society of NSW on 9373 7300 or 1800 357 300 (outside Sydney)
- Do a search for specialists in 'property law' in your local area on the [Law Society](#).

To complain about a solicitor call the Legal Services Commissioner on 9377 1800 or 1800 242 958.

Law Consumers' Association Tel. 9267 6154

Buying at auction

Buying at auction can be a nerve-racking experience so it's a good idea to familiarise yourself with the process by attending an auction or two as a spectator.

It is important to have your solicitor or conveyancer examine the sale contract before the auction to make sure that everything is in order. It is also important to have your finance arranged and made all the necessary quality inspections.

It is important to take the time to find out what prices properties in the area have sold for, so you have a guide for the market value of the home you want.

Before auctioning a property, the seller will nominate a 'reserve' price which is usually not told to the interested buyers.

The reserve price is the lowest price that the seller is willing to accept. If the highest bid is below this price, the property will be 'passed in'. The seller will then either try and negotiate a price with interested bidders or put the property back on the market.

If the bidding continues beyond the reserve price, the property is sold at the fall of the hammer. If you are the successful buyer, you must then sign the sale contract and pay the deposit on the spot (usually 10%).

If you want someone else to bid on your behalf, that person must give the auctioneer a written authority from you, before the auction starts.

It is important to note that there is no cooling-off period if you buy at auction. If the property is passed in at auction but you end up exchanging contracts on that day anyway, the cooling-off period doesn't apply.

Getting finance

Budgeting for a loan

Before you try to get a loan, it helps to have worked out what you can afford to pay each week in loan repayments. If you need help with budgeting or calculating your repayment ability, you can get help from a financial counsellor. Their services are free and available through *Credit Help line* on 1800 808 488. You might also try your local neighbourhood centre or community legal centre. Some charities and church groups will also help. If you need an interpreter, call the *Telephone Interpreter Service* on 13 14 50.

What is a mortgage?

When a financial institution lends you money to buy your home, it acquires a legal interest in the property. In this case, the property is said to be 'mortgaged'. A mortgage acts as a form of security in case you fail to make the repayments.

When you mortgage your property, you give the home loan provider the authority to lodge their interest in the property with the [Land and Property Information New South Wales](#) (LPINSW). This means that you don't have a clear title to the property and cannot sell it without their consent.

As the property owner, you are called the 'mortgagor' and the home loan provider is called the 'mortgagee'.

Shopping for a mortgage provider

It's wise to shop around for a mortgage provider as you would for a car or a house. It's a big commitment and there are many players in the market. Doing your homework could save you thousands of dollars in the long run.

Check out the 'Which mortgage?' section on the [Cannex](#) Web site for a comparison of all the home loans available on the market. This site also compares personal loans, overdrafts and credit card deals.

Mortgage brokers

Increasingly, Australians are using mortgage brokers to find home loans that suit them. A mortgage broker is an agent between you and your home loan provider. They look at your individual situation and then arrange the loan they believe is best for you.

While using a mortgage broker can save you time and hopefully money, keep in mind that generally they receive their commission from the home loan provider. So, there is always the risk that they could recommend a mortgage that isn't the best one for you.

If you decide to use a mortgage broker, do your homework first so you know you're getting a good deal. It's also wise to ask them a few questions before you arrange a meeting. For example:

- Who do you represent?
- How do you get paid?
- Does the commission you receive vary between mortgage providers?

Look in the [Yellow Pages](#) to find a mortgage broker in your area. In most cases, they will arrange to come to your home to talk with you.

How the law protects you

A few years ago, the credit laws changed to give more protection to people borrowing money. This law is called the *Consumer Credit Code*. It requires home loan providers to give you information that is clear and easy to understand, so that you can make a decision on whether you can afford to borrow. The *Consumer Credit Code* applies to:

- Mortgages
- Housing loans
- Credit cards
- Department store cards
- Overdrafts
- Hire of goods.

Before you sign a mortgage contract, the home loan provider must give you:

- Details about fees and charges in a *pre-contractual statement* and
- An information statement, which outlines your rights and obligations.

Pre-contractual statements should tell you:

- The amount of money you are borrowing
- The annual percentage interest rate
- How the interest is calculated and when it is charged
- The credit fees and charges to be paid or how they will be calculated
- How they will inform you of changes affecting interest rates and fees or charges.

Important. Always read the mortgage contract thoroughly before you sign it. It's a good idea to take a copy home so you can study it and get legal advice if you are unsure about some of the terms. Remember you are not obliged to sign anything on the spot.