

PROPERTY LAW REFORM RESIDENTIAL CONVEYANCING PRACTICE – ALL STATES AND TERRITORIES

Issue	Preferred	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Who is involved in the process?	Lawyers, licensed conveyancers and real estate agents.	Solicitors are the primary conveyancing practitioners.	Lawyers (Referred to as solicitors in NSW) and Licensed conveyancers.	Lawyers, licensed conveyancing agents and real estate agents all prepare and exchange contracts of sale.	Real estate agents and lawyers.	Usually a real estate agent, registered conveyancer, or solicitor.	Lawyers and real estate agents. Prefer that: agents prepare contracts and forms. Handed over to lawyers once parties agree.	Legal practitioners, conveyancers, and estate agents. (Estate agents not involved in conveyancing practice, apart from preparation of prescribed forms of contracts of sale).	Lawyers, licensed conveyancers, and real estate agents.
At what stage are they involved?	<p>VENDOR:</p> <ul style="list-style-type: none"> ▪ a real estate agent enters a sales agreement with the vendor; ▪ a lawyer/ licensed conveyancer prepares the contract; and ▪ a lawyer/ licensed conveyancer attends to the execution or exchange (where not exchanged) then undertakes all necessary activity to settlement and post-settlement. <p>[where state legislation permits, a real estate agent will prepare and attend to the execution or exchange of contract for sale]</p> <p>PURCHASER:</p> <ul style="list-style-type: none"> ▪ a real estate agent is involved up to the execution or exchange of the contract, a lawyer/licensed conveyancer from the acceptance of offer to settlement and post-settlement; and ▪ lawyers/licensed conveyancers attend to the execution or exchange (where not exchanged) then undertake all necessary activity to settlement and post-settlement. <p>[where State legislation permits, a real estate agent will attend to the execution or exchange of contract for sale and forward it to the lawyer/licensed conveyancer]</p>	<p>Agent enters agreement with vendor prior to commencing the sales process.</p> <p>As a matter of law an agent must have written agreement in place with a vendor or they cannot enforce a claim for commission.</p> <p>There are requirements for the inclusion of specified elements in the agency agreement and these are specified in the Agents Act.</p> <p>Under the Civil Law (Sale of residential Property) Act, no residential property can be placed on the market without the “<i>Required Documents</i>” being finalised.</p> <p>In certain circumstances agents can do the exchange of a contract but again it is usually handled by the solicitors, except in the case of an auction.</p> <p>If agent does handle the exchange of a contract the documents are then sent to solicitors to complete the transaction.</p>	<p>Lawyer and Licensed conveyancer:</p> <ul style="list-style-type: none"> ▪ Acting for vendor: the initial preparation of contract, prior to the listing for sale by the real estate agent. After the real estate agent has found a buyer they become involved in the balance of the transaction. ▪ Acting for a purchaser: from the period immediately after offer to purchase has been accepted. <p>Real estate agent:</p> <ul style="list-style-type: none"> ▪ After receipt of contract from conveyancer/ lawyer, until offer to purchase has been accepted and contracts exchanged. 	Real estate agents forward exchanged contracts to lawyers & conveyancers who commence the conveyancing process.	Agents for contract process and lawyers (if applicable and appointed by buyers and sellers) for post contract to settlement. Consumers may elect to do own conveyancing.	Contract prepared by real estate agent or registered conveyancer or solicitor Vendor’s disclosure statement (known as Form 1 or Section 7 Statement and which includes notice of purchaser’s cooling off rights) must be signed by vendor or vendor’s agent. Unless vendor acting on own behalf, the vendor’s statement is prepared on vendor’s behalf by real estate agent (if using a real estate agent) or registered conveyancer or solicitor (private sale). Conveyancer or solicitor implement the contract and undertake the conveyance including all relevant documentation.	Real estate agents prepare contract offer where both parties have agreed and signed. The lawyers representing each party then take it through to settlement.	<p>Estate agents are generally involved in the initial stage of a sale / purchase.</p> <p>Legal practitioners / conveyancers become involved at an early stage preparing documentation.</p> <p>Financiers may also be involved at an early stage in many transactions, including providing finance for consumers attending auctions.</p> <p>State Revenue Office, Land Registry and Valuer-General’s Office involved in “back-end” stages after a sale / purchase is completed.</p>	<p>Real Estate Agent:</p> <ul style="list-style-type: none"> ▪ lists and markets the property, prepares and complete the Contract of Sale (Offer and Acceptance) between the parties; ▪ provides copies of the completed contract to sellers and the original to the buyers. <p>Licensed Conveyancer and/or solicitor:</p> <ul style="list-style-type: none"> ▪ accepts the conveyancing for the transaction; ▪ arranges all conveyancing procedures to registration on behalf of either the buyer or the seller. <p>Lawyers:</p> <ul style="list-style-type: none"> ▪ can be instructed by financial institutions to prepare mortgage or discharge documentation; ▪ may attend settlement on the financial institutions behalf; ▪ may be instructed by a client to issue default notices or provide legal advice on difficult aspects of any transaction.

What is the principal legislation?	Ideally, a uniform or harmonised Conveyancing Act and Real Property Act.	Civil Law (Sale of Residential Property) Act 2003; Agents Act 2003 (Contains obligations for compliance by agents with the Civil Law (sale of Residential property) Act 2003.	<i>Conveyancing Act</i> ; <i>Real Property Act</i> ; <i>Conveyancing (Sale of Land) Regulation.</i>	<i>Agents Licensing Act</i> governs real estate agents and conveyancers with <i>Legal Practitioners Act</i> governing lawyers.	<i>Property Agent and Motor Dealers Act 2001</i> ; <i>Property Agents and Motor Dealers Regulation 2001 and Codes and Conduct</i> ; <i>Legal Profession Act 2004</i> ; <i>Property Law Act 1974</i> ; <i>Land Sales Act 1984.</i>	<i>Land and Business (Sale and Conveyancing) Act</i> (regulates transaction); <i>Real Property Act</i> (regulates property interests).	Property Agents and Land Transactions Act 2005.	Transfer of Land Act 1958; Property Law Act 1958; Estate Agents Act 1980; Estate Agents (Contracts) Regulations 1997; Sale of Land Act 1962; Duties Act 2000; Legal Profession Act 2004; A New Tax System (Goods and Services Tax) Act 1999.	Settlement Agents Act 1981 (as amended) covering sales under the Transfer of Land Act and Strata Titles Act.
Who prepares a contract?	Lawyers and licensed conveyancers, and in some cases real estate agents.	Usually it is the solicitors for the vendor but no legislation exists that requires this to be the case.	Lawyers and Licensed Conveyancers.	Lawyers licensed conveyancing Agents and real estate agents.	Real estate agent or lawyers. Commonly the agent.	Real estate agent or registered conveyancer or solicitor prepares contract and vendor's disclosure statement (see above).	Real estate agent or lawyer.	Refer above.	Usually Real Estate Agents. (Approximately 90%). Licensed Conveyancers can also prepare contracts under the Settlements Agents Act 1981.
What is the form of the contract?	Minimum contract content should be prescribed. Different contracts may be used provided that prescribed content requirements are met.	Standard form of Contract is used as issued by Law Society of the ACT, but originally designed with input from the REIACT. Legal firms then have their own special conditions which they add.	While not mandatory, the industry universally uses the standard form under joint copyright of Law Society of NSW and Real Estate Institute of NSW.	Standard form is the main contract as authorised by the Department of Justice for conveyancers and real estate agents. Lawyers generally use the same format but are not bound to use it.	Standard Form copyright jointly produced by REIQ approved by QLS. Other forms of contract may be used.	Usually standard form - no "exchange/ requisitions on title".	REIT standard contract or one prepared as a standard by a lawyer or real estate agent.	Refer above.	The Offer and Acceptance contract is a standard form, copyright by the Real Estate Institute of Western Australia (Inc) (REIWA). The copyright for the Joint Form of General Conditions for the Sale of Land is held jointly by The Law Society of Western Australia (Inc) and REIWA. "Off the Plan" contracts are usually prepared by Solicitors for the developers and incorporate the Joint Form of General Condition.
Is there compulsory disclosure?	There should be compulsory disclosure in respect of a consistent set of prescribed matters. Warranties should be given in respect of matters which may detrimentally affect the property on the basis that an affectation must be disclosed.	The Civil Law (Sale of Residential property) Act requires the vendor to prepare or have prepared what are termed the <i>Required Documents</i> prior to a property being placed on the market. By law an agent is	Yes, under the <i>Conveyancing Act</i> and <i>Conveyancing (Sale of Land) Regulation</i> . Matters to be disclosed: ▪ Prescribed documents to be attached; and ▪ Warranties: (in	No.	PAMD legislation requires Agent to disclose any benefits received to both buyers and sellers. Full disclosure must be adhered to by the agent to both sellers and buyers.	Yes. The vendor's disclosure statement must be served on the purchaser at least 10 days before settlement – see section 7 of the <i>Land and Business (Sale and Conveyancing) Act</i> .	New legislation involving compulsory vendor statements is under development as at September 2007.	Yes. Sale of Land Act 1962. Disclosure required by the Trade Practices Act 1974 and the Fair Trading Act 1999 must also be considered (ie deceptive & misleading conduct).	For strata titled properties there is compulsory disclosure of prescribed information. There is no compulsory disclosure for freehold titles.

		required to have a copy of the <i>Required Documents</i> prior to placing a property onto the market.	compliance with legislation).						
When are parties bound?	Parties should be bound on exchange of a written contract and subject to continuing adherence by the parties to contract terms.	By way of exchange of the contracts as per standard Contract Law obligations.	Exchange of counterparts.	On exchange of contracts.	When Seller signs and Buyers or buyers representative' (eg solicitor) receives full copy of signed contract. There are strict procedures relating to presenting and signing of relevant residential contracts. Also buyer's attention must be drawn to warning statements and contract throughout negotiations and upon execution of a completed contract.	The parties are bound on completion of the contract. However, a purchaser may have a right to cool off that may be exercised after that time (see below). Conditions precedent and subsequent may also need to be complied with.	On exchange of contract.	The Instruments Act 1958 requires a contract in writing.	Parties to the contract are immediately bound subject to conditions precedent being met with a timely fashion.
Is there a cooling off period?	A cooling off period should be available for all sales excluding those conducted by auction or tender. The cooling-off period should represent the period required to obtain finance.	There is a provision in the Civil Law (Sale of Residential property) Act for a cooling off period, but this can be waived if the buyer signs a standard release after receiving legal advice from a solicitor. The cooling off period does not apply in the case of Auctions.	All contracts for the sale of residential property have a five working day cooling off period. There is no cooling off period for auctions.	A 3 working day period for purchasers only.	Cooling off period applies to all residential contracts except a sale by auction, ie under the hammer. 5 business days. Commences when buyer is bound as above – the cooling off period begins any time on a business day, and ends at 5pm on 5 th business day.	Section 5 of the <i>Land and Business (Sale and Conveyancing Act)</i> . A purchaser who has a right to cool off generally must do so within 2 clear business days after the later of the making of the contract and the service of complete and accurate vendor's statement. There are 2 exceptions. No right to cool off exists where – <ul style="list-style-type: none"> ▪ the property is purchased at auction; ▪ the purchaser is a company; ▪ the purchaser has, before entering into a contract, received independent, certified legal advice; ▪ some situations where the sale is by tender; or ▪ some situations where the sale is made by the exercise by the purchaser of an option to purchase. 	Not yet, but coming. Likely to be 2 working days for contract offers and 1 ordinary day for sole agency.	Yes. Sale of Land Act 1962. Cooling-off (3 business days, no monetary limit) with statutory exceptions.	With the exemption of retirement properties that are deemed to be a retirement village there is no cooling off period but most purchases are "conditional" upon finance approval.

When are searches done?	Searches must be done at a time when remedies such as: cooling off, not proceeding to exchange or allowances provided for in contract, are available to the purchaser.	Standard searches are provided by the vendor as part of the <i>Required Documents</i> package. Purchaser's solicitors usually undertake their own prior to an exchange of the contract.	Quality inspections (pest, building, strata etc) are done prior to exchange of contracts or before the cooling off period expires. Other inquiries and searches of Government departments etc. are done after the buyer is committed to the contract.	Searches are attended to once the buyer commits.	A search is required to be done at time of listing and afterwards as the occasion arises.	Searches should be conducted by the agent prior to preparation and service of the Form 1 upon the purchaser. They should also be separately conducted by the conveyancers on receipt of the contract in order to verify the accuracy of the vendor's statement.	When contract received by buyer's solicitor / prior to settlement.	Prior to preparation of Sale of Land Act, section 32 statement / contract of sale. Additional searches may be undertaken by the purchaser's legal practitioner / conveyancer following exchange of contracts.	There is a compulsory requirement for searches to be carried out by both the vendor and the purchaser promptly.
Are there any requisitions on title?	Any questions (commonly referred to as requisitions) should be either subject of matters for disclosure or asked and answered prior to the exchange of the contract.	Standard requisitions are provided by the vendor as part of the <i>Required Documents</i> package. A purchaser's solicitors usually undertake their own prior to an exchange of the contract.	There are several standard forms of requisitions used and it is normal practice to use those standard forms. Requisitions must be raised within 21 days of the date of contract.	Yes, they must be served within 14 days following the date of the contract and returned answered 7 days after service. There are moves afoot to remove requisitions on title from the standard contract.	Term of REIQ Contract 7.3 – the buyer may not deliver any requisitions or enquiries on title.	No. This is dealt with as part of the vendor's disclosure statement.	Same as above.	Transfer of Land Act 1958, 7 th Schedule General Conditions of Sale of Land provides for requisitions on title for land under the Transfer of Land Act. Property Law Act 1958, 3 rd Schedule General Conditions for Sale of Land provides for requisitions on title for land not under the Transfer of Land Act.	The 2002 Joint Form of General Conditions removed the requirement for Requisitions on Title.
What happens with insurance risk?	Insurance risk should pass to the purchaser on settlement or occupation, whichever occurs first.	There is no alteration to the standard contract obligations as far as an insurable interest is concerned.	Insurance risk passes on completion, or occupation, whichever occurs first.	Risk passes to the purchaser on settlement.	Buyer from 5pm next business day after Contract date.	Purchaser's risk at execution of the contract by the parties (except as varied by Commonwealth's <i>Insurance Contracts Act</i>).	Risk passes to the purchaser on settlement.	With the vendor until settlement. If the vendor contracts out of this then the vendor must supply details of his insurance or the purchaser has the right to avoid the contract.	Risk of the property is held by the seller until possession or settlement whichever is the earlier. Upon possession or settlement whichever is earlier risk passes to the buyer.
When should stamp duty be paid?	The time for payment of stamp duty should be uniform and in accordance with the re-write of the Stamp Duty Acts undertaken by all the States and Territories.	Stamp Duty is to be paid within 90 days of exchange or before settlement, whichever is sooner.	Stamp Duty: Normally paid prior to submission of the transfer by the purchaser to the Vendor, transfer is to be submitted at least 14 days prior to completion. Concessions are available to First Home buyers (under certain conditions).	Payable on settlement or 60 days from the date of the contract, whichever is the earlier. First Home Owners may be eligible for a concession.	30 days from becoming unconditional or if there are no conditions within 56 days. Settlement date not relevant to when stamp duty is payable.	Payable by the purchaser's conveyancer on their client's behalf prior to the time of settlement. Concessions are available for First Home Buyers. Also there is a Bushfire Relief concession available in certain circumstances.	TBA	Yes. Payable on transfer of land document / conveyance. Varying rates of duty depending on consideration. Various statutory exemptions apply.	Stamp Duty is paid within certain time frames of a contract becoming unconditional and prior to settlement. Concessions are available for First Home Owners.
Is there registration ?	Registration should be compulsory in all jurisdictions for transactions where the ownership of the land is changed. This should be complied with by the purchaser's mortgagee or the Lawyer/Licensed	All transfers and mortgages are required to be registered at the Title Office.	Registration at the Land and Property Information Office (Department of Lands) is attended to after completion by whoever is holding the title documents.	Purchasers representative lodges the transfer on settlement at the cost of \$90.00.	Regulated Form 1 and Form 24 is to be completed for transfer; transfer of freehold land requires stamp duty. The Transfer needs to be presented to the Office of State Revenue (OSR)	Payable by the purchaser's conveyancer on their client's behalf. Fees must accompany the lodgment of documents at the Lands Services Group for registration.	TBA	Yes. Transfer of Land Act 1958. No registration for conveyances of general law land.	Registration is attended to by the buyer's licensed conveyancer if the dealing is cash. If a lending institution is involved, lodgment will be attended to by the

	Conveyancer acting for the purchaser.		As most transactions are under the <i>Real Property Act</i> , registration should take place in all instances.		for stamping prior to lodgment. Lodgement occurs after settlement. Usually attended by buyer's solicitor and/or the buyer's mortgagee.				lender. Lodgment must be within 3 days and is generally completed by the Department of Land Information (DLI) within three to four weeks.
What mandatory fees are charged?	Costs and fees of lawyers and licensed conveyancers should not be regulated.	Not regulated.	Not regulated.	Not regulated.	Not regulated.	Not regulated.	Not regulated.	Not regulated.	Fees charged by settlement agents are regulated by the State Government.