



# Reality Check

a real estate guide for buyers and sellers in the ACT



**ACT**  
Government

Third Edition

This guide is prepared by Access Canberra and sets out the rights and responsibilities of buyers and sellers in residential real estate transactions in the *ACT under the Civil Law (Sale of Residential Property) Act 2003* and the *Agents Act 2003*.

Copies of this guide can be obtained from Access Canberra:

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While everything practicable has been done to ensure the accuracy of information in this guide, no liability is accepted for any loss or damage whatsoever attributable to reliance upon any of that information.

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# Introduction

## Thinking of buying or selling a home



Buying or selling your home will be one of the biggest financial transactions you will ever undertake. There are many important decisions to make. The aim of this guide is to help you make the right ones.

There are no uniform laws governing the sale of real estate across Australia. In the Australian Capital Territory, there are two important pieces of legislation that apply to the sale of real estate:

*Civil Law (Sale of Residential Property) Act 2003.* This Act sets down the rules that must apply to all real estate transactions. This ensures standard practices apply to all transactions, and the requirements for disclosure mean that sellers and agents cannot misrepresent property and consumers cannot be misled.

*Agents Act 2003.* This Act regulates real estate agents. It requires all agents, salespeople and property management personnel to be either licensed or registered. It sets out standards of character and levels of competency for people and companies trading in real estate.

This guide describes the basic steps involved in a real estate transaction and offers tips on how to avoid some of the common pitfalls.

You should also seek specialist advice and assistance from as many sources as possible, to ensure you are fully informed before making any legally binding decisions.

If you have any concerns, please call Access Canberra on 13 22 81 or you may wish to consider contacting the ACT Law Society on (02) 6247 0300.



# 1. Good advice for buyers



# Chapter 1

## Making the right choices



There are two aspects to purchasing a home. Put simply, you need to find a property that appeals to you and a finance arrangement that suits your circumstances.

Be prepared to shop around in both these areas to find the product that is best for you.

### 1.1 Protection for home buyers

Understanding the rules that apply to property sales in the ACT will help you make good real estate decisions.

The *Civil Law (Sale of Residential Property) Act 2003* applies to all residential real estate sales in the ACT, whether they are undertaken by private sellers or through real estate agents.

The Act offers protection for you by setting down clear disclosure requirements for sellers and agents when a property is offered for sale. A seller must provide reports about the physical condition of the property.

As a prospective buyer, you can inspect the contract for the sale of residential property. This will detail the particular conditions that the seller wants to apply to the transaction. The seller may have added some special conditions to the contract, and you need to be sure how they affect your position. This is a matter on which you should seek advice from your solicitor.

By having this knowledge when properties are inspected, prospective buyers can quickly make an offer for the property, and sellers can obtain the benefit and convenience of a rapid sale.

The *Agents Act 2003* requires all real estate personnel in the ACT to be of good character, to possess prescribed competencies and qualifications and to conduct themselves professionally and ethically at all times.



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## **Buyer's tip**

*These laws are a source of protection for you as a real estate buyer. However, your greatest protection is your knowledge and awareness of your own circumstances and being disciplined to make realistic and honest property and financial decisions.*

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## 1.2 Being informed

The first and most important thing about being informed is to work out what you 'need' and what you 'want' in your new home. Needs are essentials. Wants are features and fittings that can be acquired over time.

Important things to consider are location, proximity to facilities and services you need, the required size of the home and the area of the land the property is on. When you have decided on what you need, then start thinking about the home you want to buy. New or old home – renovating is fun, but it can be expensive and disruptive. Gardens and grounds – maintenance of grounds and gardens may be time consuming, and possibly expensive. Features and fixtures – what appliances and fittings are vital, and what can be added later.

Talk to people and learn as much as you can about the property buying and selling process. You can look into real estate values in your preferred areas by attending auctions and speaking with different real estate agents.

Newspapers will give you auction results and the prices of properties listed for sale. There are also some property websites that have information regarding property sales in particular areas such as **allhomes.com.au** and **realestate.com.au**

Other ways of finding properties for sale include:

- noting signboards in front of properties
- reading real estate industry magazines
- hearing of listings by word of mouth.

In the past, most real estate transactions involved the purchase of a free-standing residence on its own block of land. However, many people are now purchasing units or apartments. These dwellings can be held under different property schemes.

A solicitor can advise you on how the various types of title will affect your ownership rights and responsibilities. You should discuss the advantages and disadvantages of holding a title under the different property schemes.

There are other important things to consider when buying a unit or apartment. You will be living in close proximity to others, which may create unusual situations. You may be bound by rules about what you can and cannot do.

If you purchase a unit or apartment, you will become a member of the owners corporation. Under the *Unit Titles (Management) Act 2011*, you are buying not only the unit or apartment, but also ownership and usage rights of the common property shown by the units plan.

The owners corporation was previously known as the 'body corporate'. If you become a member of the owners corporation, through unit ownership, you have the right to vote on decisions about the common property and other decisions that affect the unit plan. You also contribute your share of costs for repairs, maintenance and insurance, not only for your own home, but also for the common property shared jointly with others.

You should thoroughly check the building and compliance report, and pest inspection report accompanying the contract for the sale of residential property that is held under a property scheme.

However, depending on the type of unit being offered for sale, these reports may not be required. A full listing of the required documentation for each style of property is provided in Chapter 14 of this guide.

You may also consider buying a home or unit 'off-the-plan'. This usually means purchasing a building before it has been constructed. This involves prospective buyers viewing plans and models or visiting a display to see what they will be buying. When buying off-the-plan, be aware that delays in completing the building may defer settlement and occupation of the dwelling.

In this type of purchase, deposit monies can be tied up for significant periods of time. You should consider the use of a deposit bond or arranging investment of the deposit monies.

It should be noted that, unlike purchasing an already existing property, when purchasing off-the-plan you are buying a product that you haven't physically seen yet. Ask to see examples of the builder's work so you can assess the quality of work



previously completed. The standard contract for the sale of residential property not yet built allows for certain variations to the plans that do not reduce the size by more than 5%. Anything inside this range is generally acceptable and you would not be entitled to compensation in this instance. You should be extra cautious when signing the contract for the sale of residential property for this type of purchase.

Most contracts for off-the-plan properties include a maintenance period of at least 90 days. This clause usually excludes fixing items, which are otherwise covered by a manufacturer's warranty.

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### **Buyer's tip**

*You will not get any legally binding statement as to when an off-the-plan will be finished. Special Conditions to the Contract will give the builder a right to extend the date through any cause beyond their control.*

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## 1.3 Shopping around

Start to shop around once you have a clear idea of what you are seeking. Find out the services and products offered by real estate agents, solicitors and loan providers. Not all services are the same, and the cost may vary greatly from one service provider to the next.

Be mindful that the cheapest quote offered may not be the best option for you. Also remember that any money you save can be gainfully used in purchasing your new home.

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### **Buyer's tip**

*Buyers should be aware that until the mid 1980's, loose fill asbestos insulation was sold and used in the ACT by a local company called Mr Fluffy. The ACT Government has established a taskforce to provide advice and assistance on asbestos related issues. For further information regarding asbestos or the Asbestos Taskforce contact Access Canberra on 13 22 81 or visit [www.worksafe.act.gov.au](http://www.worksafe.act.gov.au) or [www.asbestostaskforce.act.gov.au](http://www.asbestostaskforce.act.gov.au)*

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Any person who is concerned about the possibility of loose-fill asbestos insulation in their home, or a home they are interested in purchasing, should refer to a list on the Asbestos Response Taskforce website of all houses which are known to have been affected by loose-fill asbestos insulation. A list of affected properties may be found at **[www.asbestostaskforce.act.gov.au](http://www.asbestostaskforce.act.gov.au)**.

In 2014, the ACT Government announced the Loose-fill Asbestos Insulation Eradication Scheme under which it offered to buy all homes in the ACT affected by

loose-fill asbestos (Mr Fluffy) insulation. If participating in this Scheme, Mr Fluffy houses can only be bought and sold to the ACT Government. For further information see [www.asbestostaskforce.act.gov.au](http://www.asbestostaskforce.act.gov.au).

It should be noted that there still may be properties which contain loose-fill asbestos insulation that have yet to be identified by the ACT Government and which may not be listed on the Asbestos Response Taskforce's website. Any person who is in any doubt about the presence of loose-fill asbestos insulation, or any asbestos in a home that they are interested in buying, should engage the services of a licensed Asbestos Assessor to provide specialist advice on the presence of this material. A list of licensed Asbestos Assessors is available at [www.worksafe.act.gov.au](http://www.worksafe.act.gov.au).

While it is not compulsory to obtain an asbestos assessment report, if an owner has a current assessment report that has been undertaken by a licensed Asbestos Assessor, it must be provided in the contract of sale for the property. For more information visit [www.worksafe.act.gov.au](http://www.worksafe.act.gov.au).

## 1.4 Liveability Features (the 17 Things™)

The real estate industry has worked collaboratively with the sustainable design, construction and assessment industries to develop 'the 17 Things'.

The 17 Things™ are property features which reflect both the energy and water efficiency potential of a property, as well as its connection to a vibrant community experience.

They have the potential to reduce running costs and increase comfort if used correctly by the occupant. This information may be useful for home owners who have invested in the features, or renovators wanting to know where to start.

### The 17 Things™ are:

1. Climate zone for this property
2. Living locally
3. Orientation
4. Cross-ventilation
5. Zoning
6. Insulation
7. Density of building materials
8. Windows (glazing)
9. Shading or sun control
10. Efficient heating and cooling devices
11. Energy efficient lighting
12. Efficient hot water system
13. Solar photovoltaic (PV) system
14. Low water garden
15. Water efficiency devices
16. Rainwater tanks
17. Energy rating

There are now specially upskilled sales agents and property managers called Liveability Real Estate Specialists who are trained to identify these features. To find out more about the 17 Things™ or to contact a Liveability Real Estate Specialist see [www.liveability.com.au](http://www.liveability.com.au)



## 1.5 Taking your time

Never rush or be pressured into hasty decisions. Think of the money involved - your money - and the number of years you will spend paying off your mortgage. Remember, this is a big financial decision and a hurried decision could cost you greatly.

Don't feel defeated if you miss out on the first suitable property you find because, generally, another equally appealing property will come on the market in the near future.

Your chances of finding the right property will improve if you continue to do your real estate research, and also register your interest with a number of agents.

Although it is important to try to get a firm date in writing when the property will be finished, you may not get any legally binding statement and the special conditions of the contract will give the builder a right to extend the date through any cause beyond their control.

## 1.6 Ask questions that are important to you

If you find a property you like, make sure you ask the real estate agent questions that are important to you about the property's history, location and characteristics.

Stigma associated with a property will affect the property price and the decision of purchasers as to whether they will purchase the property. A stigmatised property is one that has a stigma attached to it due to something that has happened at the property or near the property such as asbestos, murder, major crime, health or safety issues including toxic waste and chemical residue.





# Chapter 2

## Finding the right finance



Most people who buy a home will have to borrow money to complete the purchase. When this occurs the lender obtains a legal claim to the property until the loan is fully paid out. This legal claim is referred to as a mortgage. The lender is the mortgagee and the borrower is the mortgagor.

### 2.1 Assessing your financial situation

Before you approach any lenders, you should carefully assess your financial situation. This will enable you to determine a loan amount that you can comfortably afford now and that will allow for any changes that may happen in the future. Things such as starting a family, interest rate increases, other unavoidable household expenses and emergency situations, will all change your financial position.

There are additional costs to consider with a house purchase, such as:

- legal fees
- loan establishment fees
- government charges
- owners corporation contributions (for a unit purchase)
- general rates and water rates
- reimbursing property inspection fees
- moving costs
- furniture and fittings
- insurance on buildings and contents.

### 2.2 Understanding lending criteria

Although lenders have their own way of assessing clients, they generally use similar methods to work out how much they will lend you. The major considerations are:

- your income and ability to repay the loan
- the 'loan to value ratio' (that is the percentage of either the purchase price or the value of the property that lenders will agree to lend).

A lender will work out the maximum amount you can borrow. However, only choose a finance package that you can comfortably and realistically afford.

As a general rule, aim to spend less than one third of your gross income on mortgage repayments.

## 2.3 Making your contribution to the purchase price – The deposit

Generally you will be required to contribute to the purchase price of a property. The amount you will need to contribute may vary from lender to lender and can be affected by the type of loan available.

Some lenders require you to provide bank statements to prove that a certain amount of the deposit came from your own savings. Other institutions now recognise a contribution to the purchase price or security offered by the parents or relatives. This may suit some intending buyers.

In some cases you may borrow the full purchase price, requiring no contribution by you; however, lenders are usually reluctant to provide 100% of the purchase price.

In everyday language people often refer to the buyer's contribution as a 'deposit'. In the strict legal sense the deposit is the sum the buyer will forfeit if they do not complete the contract after exchange. It is important to understand how much money is at risk if you do not complete the purchase.

If you are borrowing 80% or more of the purchase price, lenders usually require you to pay for mortgage guarantee insurance.

## 2.4 Obtaining mortgage insurance

Mortgage insurance (or mortgage guarantee insurance) is usually a once-only premium, paid at the time the property purchase is settled.

This insurance does not protect your interests; it will not cover you if you experience difficulties repaying your loan. It is designed solely to protect the lender's investment if you default on the loan. It is used in circumstances where a borrower defaults on their loan and the amount owed exceeds the amount received when the lender sells the property.

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### **Buyer's tip**

*You should be aware that if you do default on your loan and the mortgage insurance is paid out, the insurance company will pursue you to recover the debt. Under the National Consumer Credit Protection Act 2009 a lender **can** require you to take out mortgage insurance.*

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## 2.5 Considering consumer credit insurance

Consumer credit insurance is insurance that protects your property in case you are forced to default on loan repayments due to sickness, accident, unemployment or other unforeseeable events.

Before you purchase this type of insurance, you should consider the costs, terms and restrictive conditions (such as a time or monetary limit on coverage).

If you do not have this insurance and cannot meet the loan repayment schedule for any reason (including those mentioned above), this is a breach of your contractual obligations and may result in you losing your property.

Repayment problems are usually experienced as a result of a crisis or an unexpected change in your circumstances. These difficult circumstances will feel far worse if there is also a prospect of you losing your home.

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### **Buyer's tip**

*Under the National Consumer Credit Protection Act 2009 it is **against the law** for a lender to require a borrower to take out Consumer Credit Insurance.*

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# Chapter 3

## Choosing the loan that's best for you



### 3.1 The *National Consumer Credit Protection Act 2009*

To ensure fair dealing and to protect the interests of borrowers, all lenders must abide by the *National Consumer Credit Protection Act 2009*. This Act sets down rules on all credit for personal, domestic or household purposes.

Under this Act, before you sign a finance contract, lenders must provide you with:

- a statement outlining your rights and obligations
- a pre-contractual statement setting out certain financial information, which must be included in the finance contract document
- a schedule of comparison rates.

This not only protects you and other borrowers but also helps you to compare loans and lenders and make an informed choice.

### 3.2 Comparing loan options

Choosing the right home loan can be as important as choosing the right home. Keep in mind that the loan that offers the lowest interest rate may not always be the best option when fees, ongoing charges and penalties are included. Studying and understanding the home loan market will help you identify the most suitable loan for you.

To help you compare loans with different features, conditions and interest rates, lenders are required to supply a 'comparison rate' assessment of the loan. A comparison rate is a tool that allows you to check the real cost of a home loan and to compare loans between different lenders.

The comparison rate expresses the total cost of the loan as a single percentage rate for the life of the loan. The rate is calculated by totalling the loan amount, the interest and any other fees and charges that apply initially or over the life of the loan.

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### **Buyer's tip**

*You should use a comparison rate to compare loans between different credit providers. For example, the lender's advertised interest rate may be 6.30% but a comparison rate that includes fees and charges over the life of the loan, may be 6.95%. When using a comparison rate, make sure the loans being compared are of the same amount and length of time.*

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You can apply for a home loan even though you may not have selected the actual property you want to buy. Most lenders will approve a loan 'in principle' (a pre-purchase approval of a maximum loan amount), and this will give you a spending limit when searching for a property. This approval usually lasts from three to 12 months and needs to be renewed after that.

You should note however, that a loan in principle is only a guide to your approximate spending limit. You will need to get formal loan approval on the particular property you want to purchase before exchanging contracts.

There are two main types of lenders:

- banks, and
- non-bank lenders, such as
  - a) credit unions
  - b) building societies
  - c) mortgage originators.

Many lenders now conduct their business through the internet or by telephone, and some will even arrange convenient home visits.

Mortgage lending has changed a lot in recent years. More and more loans are obtained with the involvement of a broker. Some people who find it hard to get a loan from 'traditional' lenders like banks, credit unions and building societies, are being offered finance from a variety of new lenders with more relaxed criteria.

You must be extremely cautious about obtaining a loan where your capacity to repay is not closely checked by the lender. Similarly, you must not falsify any information you have to supply in the application of a home loan.

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### **Buyer's tip**

*It is vital to get independent information before you sign up to a loan – especially if you think it will be difficult for you to comfortably meet the repayment schedule.*

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## Telephone assistance

The Care Inc Financial Counselling Service has an information line available every week day morning, between 9:00am-5:00pm. You can contact them on (02) 6257 1788 to obtain advice before entering into a particular loan or if you are having trouble repaying an existing loan. Alternatively you can visit their website at [www.carefcs.org](http://www.carefcs.org)

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### 3.3 Understanding finance brokers

A finance broker (also known as a mortgage broker) is a person who can arrange finance for you from one or more lenders. Before engaging the services of a broker, you should ask for some information about the way they do business.

For example:

- are they a registered finance broker?
- do they have professional indemnity insurance?
- do they charge you a fee for their services?
- do they belong to a reputable industry association?
- do they offer a wide range of loans from a variety of independent lenders?
- are they a lender as well as a broker (as this may affect their recommendations)?
- are they independent or do they deal only with a certain lender?

Then be sure:

- they disclose any fees, commissions and other benefits they obtain from you signing up for a loan through them
- they justify their recommendations
- they show you a copy of the application and any financial details they will send to the lender on your behalf
- they provide you with a comparison rate calculation for each of the lending options they give you
- NOT to pay an upfront fee. However, a fee for valuation, if required, may be charged up front, but the broker must hold the money in trust.

### 3.4 Choosing the right loan

The variety of home loans available offer different rates and features. You should obtain as much information as possible from lenders and have the terms and conditions of the loan explained in writing.



## **Remember, do not sign any documents before you have sought expert advice.**

Most lenders have software (mortgage simulators) that can create a model of a mortgage, taking into account the amount and length of the loan and the repayments (weekly, fortnightly, monthly). A graph will show how much will be paid off the loan each year.

Repayment choices and additional costs (if you wish to end a loan or switch to another option) must be taken into account before making your final choice. For example:

- a flexible repayment option may be an advantage if you are planning to start a family; a basic loan with less flexibility may not allow you to vary your repayments
- substantial costs may be incurred for ending or switching from certain loans.

### 3.5 Assessing your loan options

Lenders may offer you a variety of different loans. The most common forms of home finance are detailed below.

**Variable loans:** Variable rate loans, where the interest rate varies throughout the life of the loan, are the most common type of loan. The lender adjusts the rate according to the official interest rate set by the Reserve Bank of Australia. Competition with other lenders may also affect the interest rate. An interest rate rise of 1% may not sound like much but it can amount to as much as \$170 a month on a \$200,000 loan.

Most lenders will offer several variable loans, with different rates and selected extras. As a rule, loans with lower interest rates generally have fewer options and features. Those with higher rates may offer features such as a redraw facility to allow you to draw on money already paid off the loan. They may even allow extra payments and early loan payouts without penalty.

**Fixed interest loans:** These loans are set at a fixed rate for a certain period, generally somewhere between one and 10 years. They allow you to organise your finances and repayments without the worry of interest rate movements. Most fixed loans have a restriction on extra repayments and limited extra features. The lender may also charge a 'break cost' if the loan is discharged during the fixed period, for example, paying out the loan or refinancing. Be sure you understand the implications of paying a break cost; it could end up being quite costly for you. If you choose this type of loan you may not benefit from a drop in interest rates, but you will not suffer if interest rates rise during the term of the loan.

**Split loans:** Many lenders will allow you to split the loan into a partly fixed rate and a partly variable rate. You can choose the split that suits you, for example, an 80% fixed rate with a 20% variable rate. This way you can personalise the loan to combine the security of a fixed loan with some of the features of a variable loan.

**Capped rate loans:** These are loans with interest rates that cannot go higher than an agreed percentage for a fixed period of time but may decrease during the fixed period.

**Honeymoon loans:** This type of loan features interest rates that are lower for the first six to 12 months. After this period the loan reverts to a standard variable rate and the repayments increase. Be cautious, as some of these loans may include 'switch costs' at the end of the honeymoon period.

**Home equity loans:** This is like a revolving line of credit where all salaries or wages are paid into the loan account. A linked credit card is used to pay for day-to-day expenses, which are then paid off once a month via the loan account. The advantage is that your salary is being used to pay off the loan, which may happen more quickly and cheaply.

However, without discipline you may overuse the credit card and by overspending, your loan will not be paid off as quickly. Additionally, some loans have penalty rates if the credit limit is exceeded. Interest on these loans is usually set at a higher variable rate than standard, and fees and charges may also be higher.

**Bridging loans:** A bridging loan is finance used to cover the financial gap that occurs between purchasing a property and selling an existing property or asset. There is a certain time period, usually six to 12 months, in which the existing asset must be sold.

A bridging loan can be secured by both an existing asset or property and the new property. Bridging finance is often much more expensive than ordinary home loan finance.

**Vendor terms financing:** Under a vendor terms finance contract, finance is supplied by the seller, rather than by an established credit provider.

Be very cautious of vendor terms finance contracts. The penalties if you default can be severe. You could lose:

- your house
- any repayments already made
- your First Home Owner Grant
- your good credit rating.

Before entering into a vendor terms finance contract, you should:

- seek independent legal advice
- make sure repayments can be made
- be clear about what will happen if repayments are missed
- get an independent valuation of the property.

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### **Buyer's tip**

*Consumer protection agencies across Australia strongly recommend against vendor term finance arrangements. Many consumers have been seriously disadvantaged by vendor term arrangements that include inflated purchase prices and above-market interest rates.*

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**Solicitor lending:** This is another alternative means of obtaining finance for a home loan. The loans are usually 'interest only' and require payment of the principal after a relatively short period of time. You should obtain independent legal advice before considering or entering into this type of loan arrangement.

## 3.6 Other things to consider

**Early repayments:** Making lump sum payments, higher loan repayments or more frequent payments will help you pay off your loan more quickly. While the term of most home loans is 25 years, the trend lately has been to shorten the term to around 15 years. Be aware that some home loans may have restrictions on making extra or increased repayments.

**Interest rate rises:** In determining the size of the loan and repayments, you should allow for rises in interest rates. Over the last 20 years, mortgage interest rates have been as low as 2.5% and as high as 7.5%.

**Mortgage offset:** This allows interest on your savings to be credited against interest charges on your mortgage. This can help to reduce the term of the loan by paying off the interest earlier. Carefully check the terms and conditions as hidden fees and charges may apply.

**First Home Owner Grant (FHOG):** First home buyers may be eligible for a once only payment, currently being \$10,000 and only available on a previously unoccupied new or substantially renovated home. As at September 2015 the total value of an eligible property is capped at \$750,000. Joint applicants are restricted to a single application for a single property, and only one payment of \$10,000 will be made if eligible. Check the list of other eligibility requirements on the ACT Revenue website and the FHOG Guide and Application form. Any of the eligibility



requirements may change from time to time so you should always check the ACT Revenue Office website to confirm current requirements.

For further information regarding the First Home Owner Grant (FHOG) contact the ACT Revenue Office on (02) 6207 0028, or via their website at [www.revenue.act.gov.au](http://www.revenue.act.gov.au)

**Lender's valuation:** Your lender may require a valuation of the property to ensure their loan is appropriately secured.

### 3.7 Applying for a loan

After you have investigated the loan options available, you should apply for the loan that is best for you.

The lender is required by law to check your financial position and your ability to repay your loan. To speed up the approval process you should have the following paperwork ready:

- photocopies of current bank statements
- proof of share holdings and other assets
- details of any second income, bonuses, allowances or benefits
- payslips or a letter from your employer stating your length of employment and salary
- if self-employed, tax agent income statements and income tax returns
- if self-employed, profit and loss statements certified by a qualified accountant
- if also selling a home, copies of exchanged contracts for the sale of residential property or a solicitor's letter confirming a firm buyer
- if paying out an existing mortgage and starting a new home loan, a letter from the present lender stating the amount owing and proof of past payments
- if you have already decided on a property, a photocopy of the front page of the contract for the sale of residential property.

**The loan agreement:** You should consider having your solicitor read the finance contract before you sign it. Each contract and pre-contractual statement must include:

- the amount of credit to be provided
- the annual percentage rate/s or a reference rate and how that is ascertainable
- how the interest is calculated and when it will be charged
- the credit fees and charges
- how changes in the contract will be advised
- any default of interest and how it will be calculated
- the frequency of account statements
- relevant commission charges
- whether mortgage guarantee insurance is required
- details of credit-related insurance financed under the contract.

**After the finance contract is signed:** The lender must give you a copy of the signed contract. Regular account statements must be sent to you and should include:

- all fees and charges
- the amount of credit provided during the statement period
- interest charges, including when they were charged
- the annual percentage rate, including any changes during the statement period
- the opening and closing balances
- the date the statement period begins and ends
- payment transfers to and from other accounts
- minimum payments owed and the due date
- insurance payments made, the name of the insurer and any commission paid
- any corrections to previous accounts.

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### **Buyer's tip**

*If you are unsure about anything in the finance contract, ask the lender for an explanation. You should also seek advice from a solicitor or financial advisor.*

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# Chapter 4

## Dealing with real estate agents



### 4.1 Only deal with qualified people

In the ACT there are laws that govern the licensing and conduct of real estate agents to ensure they provide professional services and behave in an ethical manner.

Only deal with a real estate agent who is licensed or employed by a licensed agent as a registered salesperson. Licensing and registration requirements apply to anyone who is in the business of buying, selling, leasing or dealing in any way with real estate on behalf of another person.

Ask the agent for proof of their valid licence or registration to show that they or their employer are licensed. An employee should present their registration identification material on request. An agent who is not licensed is not entitled to charge a commission on a sale.

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### Telephone assistance

If you have any doubts about the qualifications of an agent or agency, contact Access Canberra on 13 22 81 to check the status of the people you are dealing with.

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### 4.2 The agent's responsibilities to the buyer

As a buyer, you can deal with as many agents as you want. Leaving your details with a number of agents will increase your chances of being contacted if the type of property you are looking for becomes available. You will usually not pay for the services of an agent, unless you formally engage them in writing as a buyer's agent.

If you use a buyer's agent, make sure that he or she is a licensed real estate agent. A buyer's agent may source properties, bid at auction and generally represent you during the buying process. You will pay a fee or commission for this service.



You, as a buyer, can generally expect the selling agent to:

- take your details and advise you about suitable properties for sale
- answer any questions about listed properties
- arrange inspections
- have a copy of the contract for the sale of residential property available, along with the required documentation that applies to the residence being sold
- inform you of any commercial or other relationships they have with suppliers of products and services involved in a house purchase
- communicate offers to the seller.

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### **Buyer's tip**

*It is important for you to know, whenever you deal with an agent, that their responsibility is to the seller, unless they are acting as a buyer's agent.*

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# Chapter 5

## Beginning the buying process



In the ACT, the seller of a residential property must provide certain documents and reports before the property is offered for sale. The availability of this information to prospective buyers is designed to minimise the delay between the inspection of a property and the making of an offer on the property.

Of these, the most important document is the contract for the sale of residential property. This sets out the rights and obligations of the buyer and seller.

The material supporting the contract for the sale of residential property sets out any conditions on the land and dwelling. A seller must provide reports about the physical conditions of the property. The seller may have added some special conditions to the contract, and you need to be sure how they affect your position. This is a matter on which you should seek advice from your solicitor. This information will be provided by appropriate agencies or prepared by experts with professional indemnity insurance. You have some limited protection if a problem is missed in the inspection and you suffer loss or damage because of this. A full listing of the required documentation is provided in Chapter 14 of this guide.

### 5.1 Visiting an open house

Your first inspection of a home will probably be at an open house. This visit will give you an initial viewing of the property and the opportunity to check whether the property meets your basic needs of location, age, size, position, style and condition.

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#### **Buyer's tip**

*If you are viewing a number of properties in one day, it is a great idea to take notes and to fill out the 'Property Inspection Records' included in the back of this guide. You should also discuss with the agent or seller the possible arrangements for further access and inspection of the property.*

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You should make a close inspection for signs of structural problems and compare your observations to the information in the building inspection report. Some things to look for are:

- sloping or bouncy floors
- cracked walls
- damp brick walls
- blisters or bubbles on paintwork
- mouldy walls, lifting tiles, peeling paint or pools of water in wet areas
- fretting (crazed) brickwork
- sagging roof framing or cracked and broken roof tiles.

Any unapproved structures must be disclosed in the contract for the sale of residential property and the building and compliance inspection report. If you become aware of any unapproved structure after the exchange of contracts, you can ask the seller to arrange for the structure to be approved. If the structure is not approved before completion of the sale, you may cancel the contract without paying any costs.

Do not sign a contract for the sale of residential property for an owner-built property before checking the dwelling very carefully. If there is a query concerning defective or incomplete work, have the matter sorted out to your complete satisfaction before signing the contract.

## 5.2 Checking the contract for the sale of residential property documents

As well as inspecting the property itself, you should have all legal aspects relating to the land and title checked before exchanging contracts. You can take a copy of the contract for the sale of residential property to your solicitor to check everything is in order.

Accompanying the contract will be a number of reports that the seller is required, by law, to provide. These reports will provide an assessment of the physical condition of the structures being sold, as well as a statement of any provisions that may influence or restrict what can be done to the house or on the land.

Each of the required documents is described below, but the documents that must accompany the contract for the sale of residential property are different for each type of property being sold. A required document checklist for each type of property is provided in Chapter 14 of this guide.

**The contract for the sale of residential property:** A seller must have a draft contract for the sale of residential property ready before a property is first offered for sale. The draft can be prepared by the seller or their solicitor. Section 11 of the *Civil Law (Sale of Residential Property) Act 2003* describes conditions that must be included in this contract and will be implied into the contract even if not stated.

**The Crown Lease:** Sets out the conditions upon which the land is held and how that land may be used, for example, residential, rural or commercial use.

**The Certificate of Title:** Sets out who the legal owner of the property is and in what manner they hold the land, for example, as a joint tenant with another person. It will also indicate whether anyone other than the registered owners claim an interest in the property, for example, a bank holding a mortgage over the property.

**A copy of any encumbrance shown on the Certificate of Title:**

Shows the details of any caveats or restrictive covenants over the land.

**A statement about any encumbrance not shown on the Certificate of Title:**

This gives details of any unregistered mortgage or other unregistered encumbrances.

**Asbestos assessment report or asbestos advice:** Sellers of residential premises are required to provide an Asbestos Assessment Report, which has been prepared by a Licensed Asbestos Assessor (Class A), with a contract for sale. If there is no Asbestos Assessment Report, or the seller is unable to obtain the report, the seller must instead provide Asbestos Advice with the contract for sale. This Advice is available at [www.asbestos.act.gov.au](http://www.asbestos.act.gov.au) (refer to Asbestos Laws). *Note:* Obtaining an Asbestos Assessment Report is optional. If, however, a Report does exist and is accessible, it must be provided with the contract for sale.

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## Telephone assistance

For more information regarding current asbestos requirements in the ACT, contact Access Canberra on 13 22 81 or visit [www.worksafe.act.gov.au](http://www.worksafe.act.gov.au) or [www.asbestostaskforce.act.gov.au](http://www.asbestostaskforce.act.gov.au).

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**The deposited plan:** Will show the plan of the land and any easements on the land. An easement is a defined area over which another person or organisation has permanent access rights. An easement normally takes in the land above and adjacent to electricity cables, water and sewage pipes. An easement cannot usually be built over or under, so the location of easements will affect the position where a home, garage, pool or extension can be erected.

**A Building Conveyancing Inquiry:** Conducted by Access Canberra and will provide copies of the:

- certificate of occupancy
- survey certificate
- approved building plans
- drainage plan
- building file summary sheet.

**A Lease Conveyancing Inquiry:** Conducted by Access Canberra and will provide information, if any exists for the property, about:

- heritage listing
- outstanding rent under the crown lease
- development applications affecting the property
- breaches of the crown lease
- any orders issued against the property
- the compliance certificate (compliance with provisions of crown lease)
- applications for dual occupancy
- a contaminated land search.

**An Energy Efficiency Rating Statement:** Gives details about the energy efficiency of a property.

**A Building And Compliance Inspection Report:** Provides details about the structural soundness of a property and information about whether structures on the land have been approved under the relevant legislation.

**A Pest Inspection Report:** Provides details of any termite or other pest infestations.

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### **Buyer's tip**

*The building and compliance, and pest inspection reports, state that they may be relied on for a certain period of time, usually 180 days from the date the report is prepared. If you are purchasing a property after the stated period, you may wish to obtain an updated report at an additional cost.*

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**A copy of the unit's plan or proposed unit's plan:** Applies only to unit title property and shows the plan of the unit and the common property within the unit development.

**A Certificate of Title for the common property:** Contains information about the common property.

**A copy of the minutes of meetings of the owners corporation and executive committee for the last two years:** Is required for a multi-storey unit instead of a building conveyancing inquiry, building and compliance inspection report, and pest inspection report.

**A Unit Title Certificate:** Issued by the owners corporation for a unit; provides information about any outstanding levies for the unit, any resolutions that affect the proportionate contributions for the unit and a copy of the articles for the body corporate.

You should carefully consider the information contained in all these reports. It is recommended you seek specialist advice if there are any findings in these reports that you do not fully understand.

Now that you have a complete assessment of the structure, as well as all the information relating to the enhancement and development potential of the land, you will be empowered to determine the offer you will make on the property.

### 5.3 Determining the market value of a residential property

The price you pay for a property will have an impact on the amount you borrow, the cost of transfer duty and your own peace of mind and happiness in respect of the purchase.

Your objective as a buyer is to purchase a property at the best possible price and to avoid paying a price that is beyond the market value of the property. Working against you is the selling agent's determination to get the best possible price for their client.

When you identify a particular property that meets your requirements and circumstances, you should consider obtaining an independent valuation of the property by a qualified property valuer.

A Certified Practising Valuer normally has a tertiary qualification in a property discipline and is a member of the Australian Property Institute (API). This means they are bound by a code of conduct and, like accountants or solicitors, must always act



in the client's best interests. Unlike agents, property valuers do not sell real estate and, therefore, they are in a position to provide totally independent and objective advice about the market and a specific property.

Sometimes thousands of dollars can be saved as a result of obtaining an independent property valuation. Costs can vary depending on the property to be valued.

An independent valuation is an important tool in the buying process that may save you considerable stress and a significant amount of money. For one of the most important financial decisions of your life, you should seriously consider obtaining independent professional valuation advice.

The API ([www.api.org.au](http://www.api.org.au)) can provide assistance in selecting a reputable valuation firm.

## 5.4 Buying off-the-plan

Purchasing a property 'off-the-plan' is becoming more common with the development of new suburbs in the ACT and changes to assistance for first home buyers. There are a number of advantages to buying off-the-plan, including the ability to lock in the current market price for a property, despite it not yet being completed. Waiting for a property to be completed also provides you with the opportunity to save more money, organise your finances or if required, sell your home.

There are also a number of risks to buying off-the-plan, which include the inability to view the actual property prior to exchanging contracts, the inability to secure finance until a few months before completion of the property, and the potential of a falling property market which could result in difficulty in securing finance for the amount needed. You should research both the advantages and risks of purchasing off-the-plan prior to exchanging contracts.

## 5.5 Making an offer

When you have found the right property you can make your offer via the selling agent or directly to the seller in the case of a private sale. The agent may require a deposit to accompany your offer, but it is only a holding deposit and it will be returned if your offer is not accepted or if you change your mind. Your offer is not legally binding until the exchange of contracts for the sale of residential property. Exchange of contracts takes place when a contract signed by the buyer is handed over in exchange for a contract signed by the seller. It is at this stage that a mutually binding contract is made and a deposit is paid.

A deposit is legally payable on exchange of the contract for the sale of residential property. **Do not sign the contract without carefully reading and understanding it.**

## 5.6 Gazumping

Gazumping occurs when a seller and buyer verbally agree on a price for a property, but before the buyer can exchange a contract to secure the property, the seller accepts a higher price from another buyer. The first buyer is now said to have been gazumped. It is important for you as a buyer to note that an agent is required by law to submit all offers to the seller right up to the time of exchange of contracts.

## 5.7 How much should you offer?

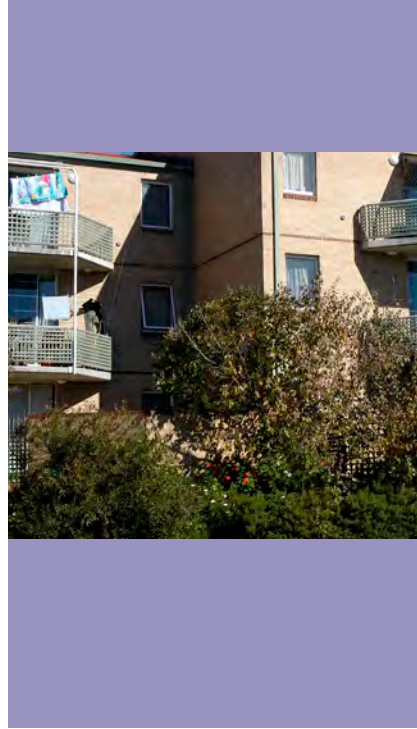
The decision on how much to offer is a difficult one to make. You have to decide whether to make your best offer upfront or offer a lower price and be prepared to negotiate up. Be aware that if another person makes an offer at the same time as you, the seller may decide to accept that offer, without giving you the chance to alter yours.

If you are not confident about this process you may prefer to engage a buyer's agent to do your bargaining for you. You will be charged a fee for this service.

If you make an offer to buy in writing you should insert a date by which your offer will lapse. If you are not confident your offer will be successful you should continue to inspect other suitable properties.

## 5.8 Buying by tender

This form of selling is also used from time to time. It involves requiring all interested buyers to put their offer in writing, usually the maximum they are willing to pay. These offers are then taken to the seller, and they have the opportunity to pick the highest price. The seller is not obligated to accept any offers made by written tender. You may be required to provide a deposit with your offer. There is no cooling-off period when buying residential property by tender.



## 5.9 Using a deposit bond

A deposit bond, or guarantee, is an alternative to providing a cash deposit or personal cheque upon the exchange of contracts for the sale of land. The use of a deposit bond requires the specific approval of the seller and needs to be written into the contract for the sale of residential property.

You may wish to seek advice on the use of deposit bonds from your bank or solicitor.

## 5.10 Organising a pre-settlement inspection

You are entitled to inspect the property you are purchasing about one week before settlement, or at reasonable times with reasonable notice. These inspections should be pre-arranged with the seller or the seller's agent. The contract states that in regards to goods, the condition at settlement is subject to 'fair wear and tear'. However, you should insure the property from the time of exchange of contracts. It is generally accepted that risk of accidental damage is borne by the buyer from the time the contracts are exchanged.

## 5.11 Arranging insurance

Once the contract for the sale of residential property is exchanged, it is your responsibility to insure the property. Even though it may be covered by the seller's insurance up to the date of settlement, it is strongly recommended that you take out appropriate building insurance and contents insurance, if applicable, effective from the date of exchange of contracts. Your lender will usually require you to take out insurance on the property to protect its interest as mortgagee.

If you have bought land or a land/home package, you need the protection of builder's warranty insurance. In a case where the contract for the sale of residential property is more than \$12,000, the builder must take out builder's warranty insurance or be a member of an industry fidelity fund.

Builder's warranty insurance will protect a homeowner where:

- the builder has died
- the builder becomes insolvent
- the builder has disappeared
- the builder has not completed the work
- there are structural defects up to six years after completion and non-structural defects up to two years after completion.

You should make sure that your builder complies with the relevant legislation.

It is also the responsibility of the builder to fix defects or complete the work according to the plans and specifications in a domestic building contract.

## 5.12 Understanding the cooling-off period

A cooling-off period of five clear working days applies to residential sales. This may be required by some sellers. This period does not include weekends or public holidays. This allows you to consider the offer you made and begins from the first valid weekday after the contract for the sale of residential property has been exchanged.

If you change your mind for any reason about the sale during the five-day period you can withdraw from the contract for the sale of residential property.

The cooling-off period does not apply in the following cases:

- the property was purchased on the same day as a public auction at which the property was passed in and you were a registered bidder
- you waive your cooling-off rights after having received independent advice from a solicitor
- you are a corporation
- the property was sold at auction or by tender.

You may decide to waive your cooling-off rights or to shorten the period. To do this you must receive legal advice from a solicitor (but not the seller's solicitor), and obtain a signed certificate from your solicitor, which you must then give to the seller.

To terminate the contract for the sale of residential property within the five-day cooling-off period you must provide written notification to the seller or their agent. You are then liable for a fee of 0.25% of the purchase price, which is equal to \$250 per \$100,000. This can be deducted from the deposit that was paid when the contracts were exchanged, and the remainder of the deposit will be returned to you.

After the cooling-off period has expired, the standard contract for the sale of residential property conditions provide that if you want to end the contract you will lose the deposit paid. If that is less than 10% of the purchase price you may be liable to pay the balance of the 10%. The standard contract also indicates that the buyer has to pay the costs of a resale and the drop in price of a resale (provided the resale occurs within 12 months).

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### **Buyer's tip**

*If you decide to cancel the contract for the sale of residential property and the cooling-off period hasn't been waived you must cancel with the seller or the seller's agent in writing. Always keep a copy of the cancellation letter for your records.*

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## 5.13 When do you own the property?

While the exchanging of contracts for the sale of residential property is legally binding, the sale is only finalised at settlement when all checks have been made, the title and transfer documents exchanged and the balance of the purchase price has been paid.

Once settlement is completed, the agent is notified and you can obtain the keys and take possession of the property.

## 5.14 Goods and Services Tax (GST)

Most sales of residential homes will not be subject to GST. However, it does apply in some cases. Do not sign the contract without checking whether GST applies. If you are uncertain, seek professional legal advice.

The contract for the sale of residential property must clearly specify whether the price is inclusive or exclusive of GST and how the GST will be calculated.

# Chapter 6

## Buying your home at auction



### 6.1 Attending an auction

There are strict rules that apply to the conduct of an auction. These rules ensure the auction is a fair and transparent process for all.

The marketing campaign for the sale of a home by auction is similar to that of a private sale. The house will be advertised, and open house inspections will begin about four weeks before the auction date.

Before the auction the agent may contact potential buyers to gauge their level of interest. This gives some idea of the possible attendance and bidding range on the day.

The auction may be conducted on-site or at an off-site location such as a function centre or hotel.

On the day of an on-site auction the property will be open for inspection, for at least half an hour before the bidding starts. This allows prospective buyers the chance to have one final look at the property and the paperwork. The agent or auctioneer must display a copy of the conditions of sale at the place of auction for a minimum of 30 minutes before the auction begins. The contract for the sale of residential property and required documents must also be available. You must read these carefully before bidding.

When an auction is conducted off-site, a number of properties may be auctioned in succession. The contract for the sale of residential property and required documents must be available for each of the properties listed for auction.

Offers may be made through an agent prior to the auction. The process of negotiation is the same as for a private sale.

### 6.2 Registering to bid

Buying property in the ACT by auction requires all potential bidders to register prior to making a bid. This is usually done prior to the auction.

If you are bidding to buy the property jointly with another person (for example, your spouse or partner), only one of you needs to register. If you are bidding for another person or a company, you need to reveal the name and address of that person or company. If you are bidding for another person on the telephone you must register and provide the name and address of that person in a written sales authority to the seller's agent.

Registering and obtaining a bidder number does not mean you must bid; it simply gives you the right to do so.

A bidder can register with the real estate agent at any time prior to the auction but will only be given a bidder's number on presenting proof of identity on the day of the auction.

If you arrive late at an auction and wish to bid, you must locate the agent quickly and register as a bidder. It should only take a few minutes for the agent to note your details and give you a bidder number. If you need to make a bid immediately, hold up your hand to alert the auctioneer that you will be making a bid after you have registered. As soon as you have your number, your bid can legally be accepted.

A bid from an unregistered bidder is still valid, however the auctioneer does not have to accept a bid from an unregistered bidder. Action may be taken against an auctioneer that accepts a bid from an unregistered bidder.

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### **Buyer's tip**

*Although you are able to register if you arrive late, it is advisable to arrive as early as possible to register and prepare for the auction. It can be a stressful event; therefore, it is a good idea to be prepared and allow time to compose yourself.*

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## 6.3 Proving your identity

The agent will write your name, address and the details of your proof of identity on a registration sheet together with details of any other person or company for whom you may be acting. This creates a bidder record for each property being sold at an auction.

The details in the bidder record are strictly confidential and cannot be shown to the buyer or seller, nor can the real estate agent or auctioneer use the details for any other purpose after the auction. The agent must store the records securely for three years after the auction. A card or document issued by a government agency, bank or credit union showing your name and address is accepted as proof of identity.

For example:

- a passport
- a driver's licence
- vehicle registration papers
- a rates notice
- a tax assessment
- a bank statement.

## 6.4 How the auction rules affect you

There are heavy penalties for anyone who breaks the strict rules that apply to the conduct of an auction.

Before accepting a bid, an auctioneer must state that:

- the auction will be conducted according to the auction rules
- any additional conditions will be made available for public inspection
- he or she must indicate by bidder number who made a bid
- the law prohibits an intending bidder from making a false bid or in any way intentionally preventing another person from bidding at an auction
- the law allows the auctioneer to make one seller bid during the auction. This bid must be announced as a seller bid
- heavy penalties apply to anyone who engages in prohibited conduct.

## 6.5 Bidding at an auction

An auctioneer will strive to sell the property for the highest possible price.

Before bidding starts, you (the prospective buyer) should:

- decide on a definite upper limit, based on a firm offer of finance from a lender
- check all documents including the contract for the sale of residential property and other required documents, preferably through a solicitor
- organise the method of payment to pay the deposit, if successful
- register your details in the bidders' record and obtain a bidder number
- organise someone to bid on your behalf, if desired
- understand that the terms of the contract are fixed and no cooling-off period applies.



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### **Buyer's tip**

*If your bid is successful there will be no right to withdraw from the contract and no cooling-off period. If you do not complete the purchase you will be at risk of losing your deposit.*

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Anyone at a public auction is allowed to ask the auctioneer a reasonable number of questions about the property, the contract for the sale of residential property and the rules and conduct of the auction.

The auctioneer can set the amount by which bids increase. These are called 'rises' or 'bidding advances'. You may make your bid at the set amount, or you can offer a figure higher or lower than the standard rise. The auctioneer has the choice to accept or reject the bid.

The auctioneer must call a bidder's number when taking a bid.

## **6.6 On the market!**

At some stage the auctioneer may call a pause to the auction and seek advice or instructions from the seller. If the seller is satisfied that the reserve has been met or is prepared to sell to the last bid offered, then the agent will announce that the property is 'on the market'. This means that bidding has reached the value at which the property can be sold.

If you are the successful bidder at an auction, you will be immediately required to sign the contract for the sale of residential property and pay a deposit. The deposit can often be paid in a number of ways including bank cheque, electronic funds transfer and deposit/bank guarantee. You should check with the seller or the agent before the auction about what kind of deposit will be required. This is usually done by personal cheque, but you may be able to negotiate with the agent and seller ahead of time to pay by bank cheque and the remainder by cash or electronic funds transfer. It is important that the buyer's details are entered correctly on to the contract.

If the seller's reserve is not met, the auctioneer will seek further bids. If the reserve is still not met, then the property may be 'passed in' or withdrawn from auction. The seller must then first negotiate with the highest bidder to pursue a sale.

If a property is passed in on a seller bid, then an agent cannot quote this passed in amount when advertising and marketing the property without stating that it was a seller bid.

# Chapter 7

## Explaining the legal process for buyers



### 7.1 Should I use a solicitor?

A conveyance of land is the transfer of ownership of land and all structures on that land from the seller to the buyer. This is usually done with the help of a solicitor. Buyers and sellers should generally be represented by their own solicitor.

It is not compulsory to engage the services of a solicitor when buying a home. You may conduct the buying process yourself; however, using a solicitor is highly recommended, as it can be a difficult and complex time. Although a solicitor is an added cost, they have the knowledge and skills to both complete the purchase of your home and relieve you of most of the associated stresses and responsibilities.

Having a professional performing these services for you also has the extra benefit of security. If a solicitor makes an error that ends up costing you money, you may claim damages from the solicitor or their insurer. If you make an error while performing the conveyancing yourself, you will not be able to claim damages and may lose money as a result.

If you decide to purchase a home without the help of a solicitor, the following information outlines the legal processes you will have to follow and the documents you must provide.

Before a house is offered for sale, the seller is required to make available a draft contract for the sale of residential property and other documents to give prospective buyers a comprehensive package of information about the property they are buying.

### 7.2 Using a Do-It-Yourself (DIY) Conveyancing Kit

DIY conveyancing kits are available, but you are not covered by a solicitor's professional indemnity insurance if complications arise or something goes wrong. If a solicitor makes a mistake, which causes you financial loss, you may claim the loss from the solicitor or the solicitor's insurance. If you make a mistake in doing your own conveyancing, it could be very costly for you. There is a lot at stake, so before you decide to do your own conveyancing make sure you are completely confident that you can manage it.

## 7.3 Finding your solicitor

Any solicitor you engage must have formal legal qualifications, hold a current practising certificate and have professional indemnity insurance. Your solicitor can perform general legal work for you and provide legal advice when you need it. Some solicitors specialise in conveyancing and property law.

A buyer can use a solicitor to examine the seller's contract for the sale of residential property and the required documents, and then ensure that the transfer of title is done correctly. A solicitor can also explain the different types of title, which may affect a buyer's ownership rights and responsibilities.

You would be wise to have the solicitor check the contract and attached documents before making an offer or bidding for a property at auction. Your solicitor can also provide valuable advice and guidance with your financial matters.

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### Telephone assistance

If you are uncertain about selecting a solicitor, you should contact the ACT Law Society on 6274 0300 to obtain details of solicitors who can meet your requirements. Alternatively you can visit their website at [www.actlawsociety.asn.au](http://www.actlawsociety.asn.au)

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## 7.4 Understanding the draft contract for the sale of residential property and required documents

Each of the required documents listed in Chapter 14 of this guide will help you be fully informed when purchasing a property. They provide you with relevant information regarding the property you are interested in and give you an insight into requirements and restrictions relating to extensions and expansions.

These documents also advise you of the structural soundness of the property and of any pest infestations that may be present. It is a good idea to read through these documents carefully and consult a solicitor if there is anything that you do not fully understand.

## 7.5 Paying for the documents and searches

A seller is required, by law, to obtain all the required documents that accompany the contract for the sale of residential property. The seller has the right to ask the buyer for reimbursement for the building and compliance inspection report, and the pest inspection report. These are generally reimbursed at the time of settlement. Costs for all other documents are borne by the seller.

## 7.6 Transfer of land

The Transfer is the document that transfers the land from the seller to the buyer. It is lodged with Access Canberra and describes how the land is to be held if purchased by more than one person.

In this case, the land can be held either as joint tenants or as tenants in common. If held as joint tenants and one person dies, ownership of the land is automatically transferred to the survivor or survivors. Tenants in common hold shares that may or may not be equal. Each has the right to dispose of their portion or interest in the land, as they see fit and their share is not extinguished by their death.

## 7.7 Paying duty

Duty is a government tax to be paid by the buyer. The trigger for duty on transactions concerning property liability arises on the date the transaction, agreement or contract is entered into.

In most cases duty must be paid within 90 days of exchange, but this is dependent on the type of transaction. The date the duty is due should be checked with the ACT Revenue Office as interest applies to late payments.

If you are obtaining a loan to purchase a property and have included the duty in the loan amount, you must confirm with your lender if you are able to gain access to that money, for the purpose of paying duty, prior to settlement.

Duty is calculated as a percentage of the purchase price of the property or the market value (whichever is the greater).

Duty concessions and exemptions apply to certain transactions provided that eligibility criteria for the concessions and exemptions are met. Check the ACT Revenue website for more information including current eligibility requirements.

**The Home Buyer Concession (HBC) Scheme:** currently applies only to previously unoccupied new or substantially renovated properties and the total gross household income threshold is \$160,000 (as at September 2015) with no dependent children. Check the list of other eligibility requirements on the ACT Revenue website and the HBC Guide and Application form. These requirements include the eligible property and eligible land value thresholds. Any of the eligibility requirements may change from time to time so you should always check the ACT Revenue Office website to confirm current requirements.

**Pensioner Duty Concession (PDC):** Pensioners selling a residential property and buying a more suitable property in the ACT may be eligible for a concession on their stamp duty. Check the list of eligibility requirements on the ACT Revenue website and the PDC Guide and Application form. These requirements include the eligible property and eligible land value thresholds. Any of the eligibility requirements may change from time to time so you should always check the ACT Revenue Office website to confirm current requirements.

### **Over 60s Home Bonus Scheme (Home Bonus Scheme):**

Non pensioners aged 60 and over selling a residential property and buying a more suitable property in the ACT may be eligible for a concession on their duty. Check the list of eligibility requirements on the ACT Revenue website and the Home Bonus Scheme Guide and Application form. These requirements include the eligible property and eligible land value thresholds. Any of the eligibility requirements may change from time to time so you should always check the ACT Revenue Office website to confirm current requirements.

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## **Telephone assistance**

Contact the ACT Revenue Office on (02) 6207 0028 or visit **[www.revenue.act.gov.au](http://www.revenue.act.gov.au)** for complete details.

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## 7.8 Completing settlement

Settlement occurs when the balance of the purchase price is paid to the seller in exchange for the title to the property.

This is an official process held between legal and financial representatives of the buyer and seller. The settlement date is also when the buyer has access to the keys and can take possession of the property, unless other arrangements have been made.

At settlement, all charges such as rates etc will be adjusted between the seller and the buyer. The seller is responsible for rates up to and including the day of settlement. The buyer is liable from the day after settlement.

Settlement usually takes place between 30 to 90 days after signing the contract for the sale of an existing residential property, but this can be decided between the buyer and seller. This timeframe may not apply where the property is a new development.

## Resolving disputes and complaints

If a buyer has a problem with a real estate agent, they should raise the matter with the manager of the agency. If the matter cannot be resolved and the agent is a member of the Real Estate Institute of the ACT (REIACT), the buyer should call REIACT on (02) 6282 4544. Complaints about all agents can be made to Access Canberra on 13 22 81.

## Key points for buyers

- You must inspect the draft contract for the sale of residential property and attached documents for the property before making an offer to purchase.
- You are not required to carry out searches for the property or obtain building and compliance or pest inspection reports as that is the seller's responsibility. However, if you wish you are still able to obtain your own reports, but this will be at an additional cost to you.
- The contract for the sale of residential property will include a set of standard conditions set out in the new legislation. Even if omitted, these conditions will apply to the transaction.
- Once contracts for the sale of residential property are exchanged, you will have a five clear working day cooling-off period during which time you may withdraw from the contract, unless you waive your cooling-off rights after receiving independent advice from your solicitor.
- If you withdraw from the contract for the sale of residential property during the cooling-off period, you must do so in writing, you must also pay the seller a forfeiture from the deposit equal to 0.25% of the purchase price (\$250 per \$100,000 of the purchase price).
- You are responsible for paying the seller for the building and compliance, and pest inspection reports if you purchase the property.
- You should take out the appropriate insurances on a property as soon as contracts for the sale of residential property are exchanged.
- You are entitled to inspect the property you are purchasing at reasonable times with reasonable notice; these inspections should be pre arranged with the seller or the seller's agent.



## 2. Good advice for sellers

# Chapter 8

## Choosing your real estate agent



### 8.1 Understanding your rights

When you engage a real estate agent, you are essentially paying them a fee to sell your house for the amount and in the time frame that suits you.

A real estate agent can give you a lot of information and advice about the real estate market. This will include approximate values, likely selling time and suggestions for an effective marketing plan. They also have their own clients, which may include prospective buyers.

Not all real estate agents charge the same amount. You should discuss the sale of your property with a number of agents before you choose the one for you.

The fees and commissions charged by real estate agents are negotiable. You should negotiate your fees by comparing prices charged by other agents. You should also check if the fee quoted includes GST; and how much extra is involved with advertising.

An agent is bound by rules of professional conduct to always act in your best interests and to engage in good real estate agency practices.

The *Agents Act 2003* requires all real estate personnel to be of good character, to possess prescribed competencies and qualifications, and to conduct themselves professionally and ethically at all times.

By law, real estate agents must:

- fully inform you of the terms and conditions of the sales agreement you will be required to complete if you engage their services
- communicate all offers to you, unless otherwise instructed in writing by you
- state an estimated selling price in the sales agreement
- disclose any seller bid (if at auction and auction rules allow a seller bid)
- act in accordance with your instructions.



By law, real estate agents must NOT:

- use underquoting, overquoting or dummy bidding
- retain advertising or other rebates, without advising you
- charge you more for outgoings than was paid by the agent
- charge more than was authorised by you in writing.

You can generally expect the real estate agent to:

- give an estimated selling price of the property
- ensure you have in your possession the required documents and reports that must accompany any residential property offered for sale
- advise on a method of sale
- advertise and market the property, and provide a marketing plan
- organise and attend open house and other inspections
- attract prospective buyers
- communicate all offers
- organise and/or conduct an auction if this is the agreed selling method
- arrange the signing of the contract for the sale of residential property.

## 8.2 Determining the selling price of a residential property

Before you begin to select an agent to sell your property, you should obtain a realistic idea of what it is worth. You can begin to do so by attending auctions and open inspections of other properties in the area. Real estate websites such as **allhomes.com.au** or **realestate.com.au** will also give an indication of property prices.

With this information as a guide, you should consider the benefits of obtaining an independent valuation of your property by a qualified property valuer. This valuation will inform you of the current market value of your property.

The current market value of your property is the amount that potential purchasers are likely to pay for your property given the current conditions in your local market and having regard to both the positives and negatives of your property.

Knowing the current market value of your property will provide many benefits. They include:

- Preventing you from underpricing or selling your property for less than it is really worth. This is particularly relevant for absentee owners who may not be familiar with conditions in the local market.

- Avoiding over pricing your property. Properties with an asking price well above market value frequently remain for sale for long periods of time and don't attract genuine interest from purchasers. Often such properties become a 'stale' listing and are more difficult to sell even if the asking price is reduced.
- Assisting you to decide to go through the sale process. If the current market value of your property is significantly lower than your required sale price you may decide not to sell or to wait until the market has improved.
- Helping you select your real estate agent. When you have an independent valuation of your property and know its current market value, you are in a much better position to judge the comparative merit of the agents who are competing for your business.
- Enabling you to set an appropriate reserve price if you intend to sell your property by auction.

Private sale	Auction
The seller and buyer agree on a sale price through negotiation, often via an agent.	Price is decided by competitive bidding and the property is sold to the highest bidder acceptable to the seller.
The contract for the sale of residential property can be conditional, that is, the buyer can make the sale subject to the availability of finance or other conditions (with the sellers approval).	The contract for the sale of residential property is unconditional, that is, the buyer cannot make it subject to finance, inspection and the like.
For residential properties the buyer has a cooling-off period of five clear working days (but this may be waived).	There is no cooling-off period for sale by auction.

An independent valuation is an important tool in the selling process. It can save you considerable stress and be the basis for a satisfactory and reasonably quick sale process.

The cost of an expert valuation will vary depending on the property. In the context of the sale process, this is generally money well spent.

## 8.3 Selecting an agent

The selection of an agent is a crucial decision when selling a property. There are several ways to help you make this decision:

- attend local auctions and check the prices of sales – this will help you gauge the value of your home and assist in your discussions with an agent
- friends and acquaintances can be useful sources of information
- read promotional material from a range of agencies – local agents are more likely to be familiar with the local market
- ring and talk to several agents and arrange to meet them
- find out if they belong to a recognised industry association.

## 8.4 Points to discuss

When talking to agents, you should raise some important points. For example:

- their knowledge of the market in the area
- their marketing plan for your property
- their estimated selling price of the property
- their commission or how much they will charge
- the cost of advertising and other outgoings
- can you see testimonials from other clients?
- the terms and conditions of their sales agreement.

When you have narrowed your choice of agents, you should ask the agent to provide you with a written proposal to sell your property. Their proposal should include the following information:

**The marketing plan:** One of the most important factors when choosing an agent is their marketing plan. You should ask for a detailed written outline of the agent's plans for selling your home. This will be based on the agent's experience, the type of property and any of your special wishes. This plan will include an estimated selling price.

**The estimated selling price:** The real estate agent estimates a price the property is likely to attract, based on experience and knowledge of the market. It is recorded in the sales agreement as either a single amount or a price range.

The estimated selling price is not a valuation or a guaranteed selling price. It is recommended, however, that you use it as a guide when deciding on the reserve price. If selling at auction the price does not have to be the same as the reserve price.

**Commissions:** Most agents charge you a commission as their fee, on completion of the sale. An agent cannot obtain a commission unless you have signed a sales agreement. There is no set amount for a commission; it is negotiable between you and your agent and can be set at whatever amount you both agree on.

The commission can be calculated as either a flat rate or a percentage of the sale price. Whichever it is, it must be recorded in the sales agreement. If it is recorded as a percentage (%), it must also be shown as a figure in dollar terms for the estimated selling price. If your agent is using a commission scale, make sure it clearly outlines how much you must pay. GST is payable on the commission fee, and the agent's quoted fee needs to be inclusive of GST.

**Commission sharing:** The agent is also required to advise you in writing if they will be sharing the commission with anyone other than another agent or agent's employee in their agency, or a licensed real estate agent with whom they are in partnership. The statement must list the people with whom the commission is to be shared, prior to you signing the sales agreement.

**Advertising and other outgoings:** As well as the agent's commission, there will be costs for the advertising and marketing of your property. Even if the property does not sell, you may have to meet these costs. The only way to avoid this is to negotiate a 'no sale, no fee' arrangement in the sales agreement. If this is possible, make sure there are no hidden charges. You can ask the agent to give you a written schedule outlining advertising and other expenses.

All expenses, including advertising, are negotiable and must be recorded in the sales agreement.

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### **Seller's tip**

*Do not choose an agent just because they give you the highest estimated selling price. You should have several agents inspect your home and give you their estimated selling price. Ask them to justify their price by demonstrating similar properties sold at similar prices in the area. Also consider the contents and validity of the agent's documented marketing plan.*

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## **8.5 Signing a sales or listing agreement**

When you choose an agent, you will be asked to sign a written sales or listing agreement. This is a legally binding agreement that appoints the agent to sell your property. It will set out the details of your agreement with the agent, including the:

- estimated selling price
- negotiated commission

- negotiated marketing expenses
- duration of the authority.

Sales or listing agreements can be complex, some state that the agent is to be paid even if they do not introduce the buyer, or that the agent obtains a claim over the property for their fee. Some sales or listing agreements state that even after the agreement has lapsed, the agent may still be due their fee for a buyer introduced during their agreement period. This means if you engage a second agent you may end up paying two lots of commission.

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### ***Seller's tip***

*If you are unsure about the contents of a sales agreement it is strongly recommended you seek independent legal advice.*

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**Types of agreements:** There are two forms of commonly used sales agreements – general and exclusive. With a general agreement, you can list with more than one agency and only pay commission to the agency that sells the property.

An exclusive agreement is used when engaging the services of one agency only. You must not sign more than one exclusive agreement. If you do so, it is likely you will be required to pay more than one commission. An agent may be entitled to claim a commission under an exclusive agreement, even if you end up selling your home yourself.

**What can be negotiated:** You can negotiate many aspects of the sales agreement with your agent. You should discuss the conditions of the agreement and be entirely satisfied with all the conditions before signing. The following terms are open to negotiation.

**The method of sale:** Each of the methods of sale, that is, by auction or private sale, has advantages and disadvantages. An agent will be able to recommend the best method to suit your personal situation. This is covered fully in the next chapter.

**The agreement period:** The length of time the agreement is in force is fully negotiable and should be carefully considered. Once you sign the agreement you will not be able to revoke the agreement without the agent's authority. It is recommended to consider an agreement period of not more than 60 days with no automatic extension period. When the agreement period expires and the property has not been sold, you should notify the agents in writing if their services are no longer required. Depending on the conditions of the agreement this notice may need to be given prior to the agreement expiring.

**Other terms and conditions:** Read all the terms of the agreement carefully, and be sure you understand them. All the conditions are negotiable before signing. Any changes, whether adding, removing or amending, must be made to the sales agreement and initialled by you and your agent. All verbal agreements should be noted in writing on the agreement and again signed by both parties.

**Service agreement:** If you wish the agent to do anything that is not covered in the sales agreement, this is known as a service agreement. This can take the form of a list that records these requirements. This should be attached to the sales agreement and is signed by both you and the agent.

Before you sign the sales agreement, you should discuss with your agent how and when the commission will be paid. When you sign the sales agreement the agent must provide you with a copy of the agreement, signed by the agent, within 48 hours.

# Chapter 9

## Deciding on the method of sale



### 9.1 Deciding on a method of sale

The two most popular ways of selling a home are by private sale or auction. The better selling option for you will be influenced by the type of property and location, your available time frame, your personal preference and the market.

**Private sale:** In a private sale (also known as a 'private treaty') the property is advertised at a set price or within a price range. Offers are invited from prospective buyers. The sale is negotiated between the buyer and seller, usually with the help of an agent; however, you can sell without the help of an agent. If you use an agent, ensure that the agent is licensed to sell property in the ACT.

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#### Telephone assistance

To check if an agent is licensed or registered contact Access Canberra on 13 22 81.

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**Auction:** An auction is a public sale, usually where a real estate agent is the auctioneer. The auction is set for a certain place, date and time. Prospective buyers bid and the property is sold to the highest bidder, provided you, as the seller, accept the bid.

An agent may advise you on a method of sale. This advice should be supported by recent sales information. You should understand all the pros and cons before deciding on a method of sale. For example, although the agent's commission is generally the same, there are usually extra costs when selling at auction.

### 9.2 Selling by tender

This form of selling is used from time to time. It involves requiring all interested buyers to put their offer in writing, usually the maximum they are willing to pay. These offers are then taken to you, the seller, and you have the opportunity to pick the highest price. You are not obligated to accept the highest offer or any offer if you are not satisfied with the offers made. You may require tender offers to be accompanied by a deposit. As with selling by auction, there is no cooling-off period when selling by tender.

## 9.3 Understanding the auction 'reserve price'

The reserve price is the lowest amount for which you are willing to sell your property at an auction.

It is very hard to put a price on your own family home. To help you decide on the lowest selling price for your home you should:

- use the agent's estimated selling price as a guide
- research sale prices in your area
- consider paying for a valuation by an independent valuer
- not allow your emotion or attachment to the home to cloud judgments
- be realistic.

## 9.4 Considering the marketing campaign

The aim of the marketing campaign is to reach prospective buyers and encourage them to inspect your property. The most popular ways of doing this are described below.

**Direct notification:** The agent may have a list of likely buyers who can be notified when suitable properties come on to the market. These are people who have either contacted the agent asking to be notified or have left their personal details at another open house inspection.

**Advertising:** This is the main way of attracting people to look at a property. The method of advertising depends on the type and location of the property and the amount of money you are willing to spend on advertising. These ads inform possible buyers that the home is for sale and lists the inspection dates and times. It also





includes the names and contact details of the agents who are handling the sale. Generally your home should be advertised in the local newspapers and possibly in the window of the real estate agency.

**The internet:** This is a popular way potential buyers find properties for sale. A lot of agencies have their own websites, and there are several large property websites that are used by many real estate agents such as **allhomes.com.au** and **realestate.com.au**. Using the internet for advertising will enable interstate and overseas buyers to view your property.

Websites can show photographs and 'virtual tours' as well as current inspection times and other details of interest. Buyers can also register free of charge and receive regular e-mail updates of properties that may suit them.

## 9.5 Holding an open house

Advertising lets prospective buyers know the dates and times your home is open for inspection. This should generally be for 30 to 45 minutes, once or twice a week. Buyers may also request an alternative inspection appointment through the agent.

Anyone who enters an open house is usually asked to leave a contact name and telephone number with the agent. This is necessary for security and also gives the agent a list of potential buyers.

It is not a legal requirement for a person to leave their details with an agent at an open house. But you can make this a condition of entry to your home by stating this in the sales or listing agreement.



You should present your home in its best possible condition at an open house. It is also recommended that you be absent from the home for the duration of the open house and lock away any valuables.

## 9.6 Accuracy in advertising

Property advertising must not be misleading or deceptive in any way. It is illegal to present a property, either verbally, in writing or by photograph, with false information. You must ensure that all facts given to the agent about your property are true and up to date. If the advertising is not true and a buyer can show that you have not presented your property accurately, the buyer may be able to take legal action.

A real estate agent must not quote or advertise a figure that is less than the estimated selling price or less than the range stated in the sales agreement.

# Chapter 10

## Now the selling begins



### 10.1 Preparing your contract for the sale of residential property

You must prepare a contract for the sale of residential property, before the property is offered for sale. This is usually done by your solicitor. This draft contract must be available for buyers to consider before they make an offer to purchase. This contract can be amended to include particular clauses and special conditions.

Under section 11 of the *Civil Law (Sale of Residential Property) Act 2003*, certain conditions must be included in the contract for the sale of residential property. If this is not done, the law will 'imply' them into the contract. This means you (the seller) will be bound by the conditions even if they are not written into the contract.

The implied conditions give consumers protection and may, in some cases, provide a buyer with grounds to withdraw from the contract for the sale of residential property. Your solicitor will explain these conditions and their effect on you.

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#### **Seller's tip**

*A pro-forma contract for the sale of residential property can be purchased from the ACT Law Society should you wish to draft your own contract.*

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#### **Telephone assistance**

The ACT Law Society can be contacted on (02) 6274 0300 or via their website at [www.actlawsociety.asn.au](http://www.actlawsociety.asn.au)

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### 10.2 Obtaining the required documents

You are legally required to provide certain documents with the contract for the sale of residential property. These reports give the buyer the legal and technical details they may need to know about your property before they make an offer to buy.

The required documents vary depending on the type of property being sold. The documents are described in more detail in section 12.3, and a full checklist of documents for the type of property you are selling is included in Chapter 14 of this guide.

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## Telephone assistance

Most of the documents you need are held by Access Canberra at [www.act.gov.au/accessCBR](http://www.act.gov.au/accessCBR) or call 13 22 81. Also visit the Environment and Planning Directorate at [www.environment.act.gov.au](http://www.environment.act.gov.au) or call (02) 6207 1923.

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The remaining documents which give the buyer details of the condition and quality of the property, are obtained by hiring an expert building inspector to produce a report about the property.

## 10.3 Understanding professional building and compliance, and pest inspection reports

Reports must be prepared for previously occupied residential properties offered for sale in the ACT. They are a building and compliance, and pest inspection report.

A building and compliance inspection report will identify and describe faults in the property. The report will also note any unsafe or unauthorised renovations and extensions; however, it does not generally include information regarding plumbing or electrical faults. This report must be attached to the contract for the sale of residential property and be available on request by a buyer. A buyer may use the information in this report in their purchase negotiations.

A pest inspection report will identify and describe any evidence of termites and other pests and the possible effects this may have on the structure. All inspection services must have professional indemnity insurance to protect the buyer if a problem is missed in the inspection.

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### **Seller's tip**

*First impressions can be a powerful selling feature. You should present your house and grounds in their best possible condition. However, you must not cover up, misrepresent or in any way mislead a buyer about the true nature of your property.*

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## 10.4 Receiving an offer

You may sell your property directly to a buyer, but it is more common to deal through a real estate agent. If selling through an agent, any offer to buy will be made through your agent, who is required to relay all offers to you, unless otherwise instructed in writing by you. An offer may be made verbally but it is not legally binding until contracts are exchanged.

Your agent may require the prospective buyer to lodge a holding deposit, but this is not compulsory. The holding deposit must be returned to the buyer if you do not accept the offer or the buyer withdraws their offer.

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### **Seller's tip**

*You are not compelled to accept an offer for your property. Do not accept a lower offer for the sake of a quick sale unless you are completely satisfied and willing to sell at that price.*

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In a private sale buyers and sellers can negotiate certain conditions. For example, the sale can be subject to obtaining finance or the sale of an existing property. If the contract for the sale of residential property is 'subject to finance', the buyer must nominate a lender in the relevant section of the contract or on a separate annexure which is then attached to the contract. Private sales are rare.

If you do not accept the offer, the agent may go back to the buyer and see if they are prepared to make another offer. Through a process of negotiation the agent will try to arrive at a price acceptable to both parties. This negotiation may involve verbal offers but will only be legally binding when contracts are exchanged.

Often there is more than one person interested in a property. Through a process of offer and counter-offer the agent will negotiate between the parties to obtain the highest possible price for you.

## 10.5 Exchanging contracts for the sale of residential property

You may decide to accept a buyer's offer if you are happy with the price. When you receive an offer that you intend to accept, you should advise the agent of your decision. You will then be required to exchange contracts for the sale of residential property with the prospective buyer who made that offer.

A legally binding contract does not exist until a contract signed by you and a contract signed by the buyer are exchanged. A deposit is payable at this time.

## 10.6 Taking a deposit

This is the amount of money the buyer must pay to you, the seller, upon the exchange of contracts for the sale of residential property. The deposit may be specified in the contract but it is negotiable. The deposit is usually paid to your real estate agent or solicitor who will place the money in a trust account until settlement day.

In special cases you may ask the buyer to release the deposit money from the trust account earlier than the settlement date. This requires the buyer to give written permission.

## 10.7 Explaining the settlement period

Settlement is the date on which the remainder of the purchase price is paid to you and the title of the property is handed to the buyer. You, as seller, usually set the date of settlement in the contract for the sale of residential property. The settlement period for an existing property is usually between 30 to 90 days but you may allow the buyer to arrange an alternative settlement period prior to signing the contract.

## 10.8 When is it sold?

While the signing of the contract for the sale of residential property is legally binding, the sale is only finalised at settlement when all checks have been made, the title and transfer documents exchanged, the balance of the purchase price has been paid, and if a deposit has been paid it has been released.

# Chapter 11

## Selling by auction



There are strict rules that apply to the conduct of an auction. These rules ensure the auction is a fair and transparent process for all.

The sales campaign before an auction is similar to that of a private sale. There are advertising and open house inspections for around four weeks leading up to the auction date.

Before the auction, the agent may call potential buyers to gauge their level of interest. This gives some idea of the possible attendance and bidding range on the day.

The auction may be conducted on-site or at an off-site location such as a function centre or hotel. When an auction is conducted off-site, a number of properties may be auctioned in succession.

### 11.1 Auction conduct

There are heavy penalties for anyone who breaks the strict rules that apply to the conduct of an auction.

The contract for the sale of residential property and required documents must be available for inspection prior to the auction commencing.

There are conditions that apply at auctions. These form the basis of the rules the auction is conducted under. The *Civil Law (Sale of Residential Property) Act 2003* makes certain auction conditions mandatory. These can be added to, but any additions cannot be inconsistent with the conditions prescribed by the Act.

The conditions for an auction can allow for a seller bid and must be displayed for not less than 30 minutes before an auction begins.

In addition to the auction conditions there are other legal requirements in conducting an auction. For example:

- a record of bidders must be made by the seller's agent
- it is unlawful for an auctioneer to accept a bid from a person not displaying their bidder number
- no dummy bid may be made by or on behalf of the seller

- if a seller bid is allowed to be made under the auction conditions, when the auctioneer makes that bid they must explain that it is a seller bid
- only one seller bid can be made during the auction.

## 11.2 Understanding a seller bid

A seller bid is a single bid that can be made on your behalf during the auction.

A seller bid is legal but only when made by the auctioneer and only where:

- allowed by the auction rules
- the auctioneer announces before the auction starts that a seller bid is permitted
- the auctioneer announces before or while making the bid, that it is a seller bid
- there is one seller bid made during the auction.

A seller bid is generally used to raise the price of the property or to stimulate bidder interest if the auction is waning. Whether a seller bid is permitted at an auction will be decided between you and your agent and must be outlined in the auction rules.

## 11.3 Dummy bidding

Dummy bidding refers to an auctioneer making or accepting a false bid, either pulled out of the air or from a 'plant' in the crowd. This practice is illegal. If the seller makes a dummy bid, they and the auctioneer may be prosecuted. A seller bid made by anyone other than the auctioneer is treated as a dummy bid.

## 11.4 Keeping a bidder record

Anyone intending to bid at an auction must register with the agent in the bidders' record. The intending bidder must provide the agent with their name and contact details and show proof of identity. The bidder will be given a bidder number that is noted with their personal details in the bidder record. They must show this number to the auctioneer when making a bid.

A bidder can register with the real estate agent at any time prior to the auction but will only be given a bidder's number on presenting proof of identity on the day of the auction.

The details in the bidder record are strictly confidential and cannot be shown to the buyer or seller, nor can the real estate agent or auctioneer use the details for any other purpose after the auction. The agent must store the records securely for three years after the auction.



A buyer who arrives late at an auction and wishes to bid, may still do so. It is possible for a buyer to locate the agent quickly and register as a bidder. It should only take a few minutes for the agent to note the buyer's details and give them a bidder number. If the buyer wants to make a bid immediately, they can hold up their hand to alert the auctioneer that they will be making a bid after they have registered. As soon as the buyer has a number, their bids can legally be accepted.

A bid taken from an unregistered bidder is still valid, however the auctioneer does not have to accept a bid from an unregistered bidder. Action may be taken against an auctioneer that accepts a bid from an unregistered bidder.

## 11.5 On the market!

At some stage the auctioneer may call a pause to the auction and seek advice or instructions from you. If you are satisfied that the reserve has been met or are prepared to sell to the last bid offered, then the agent may announce that the property is 'on the market'. This means that the property can then be sold.

If your reserve is not met, the auctioneer will seek further bids. If the reserve is still not met, then the property will be 'passed in'. You may then commence negotiations with the highest bidder to continue the selling process.

## 11.6 When is it sold?

When the auctioneer has received advice that the property is on the market, the auction will resume and other bids will be sought. After the final bid, the auctioneer will announce the property is sold. At this point the successful bidder is legally bound and must sign the deposit.

The deposit can often be paid in a number of ways including bank cheque, electronic funds transfer and deposit bond/bank guarantee. You should check with the seller or the agent before the auction about what kind of deposit will be required.

As this is an auction, the buyer cannot make the contract subject to conditions and there is no cooling-off period.

The sale is finalised at settlement when all checks have been made, the title and transfer documents have been exchanged, the balance of the purchase price has been paid, and if a deposit has been paid it has been released.



### 11.7 Advertising after an auction

If a property is passed in on a seller bid, then an agent cannot quote this passed in amount when advertising and marketing the property without stating that it was a seller bid.

# Chapter 12

## Explaining the legal process for the seller



A conveyance of land is the transfer of ownership of land and all structures on that land from the seller to the buyer. This is usually done with the help of a solicitor. Buyers and sellers should be represented by their own solicitors.

### 12.1 Should I use a solicitor

It is not compulsory to engage the services of a solicitor when selling your home; you may carry out the selling process yourself. However, using a solicitor is highly recommended as it can be a difficult and complex time and although a solicitor is an added cost, they have the knowledge and skills to assist in the selling of your home, relieving you of some of the stresses that can be involved.

Having a professional performing these services for you also has the extra benefit of security. If a solicitor makes an error that ends up costing you money, you may claim damages from the solicitor or their insurer. If you make an error while performing the conveyancing yourself, you will not be able to claim damages and may lose money as a result.

Irrespective of whether you use a solicitor or whether you conduct the selling process yourself, there are statutory requirements that must be met and standard procedures to be followed. They are outlined below.

### 12.2 Finding your solicitor

Any solicitor you hire must have formal legal qualifications, hold a current practising certificate and have professional indemnity insurance. Your solicitor can perform general legal work for you and provide legal advice when you need it. Some solicitors specialise in conveyancing and property law.

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#### Telephone assistance

Most of the required documents can be obtained from Access Canberra at [www.act.gov.au/accessCBR](http://www.act.gov.au/accessCBR) or calling 13 22 81 and the Environment and Planning Directorate at [www.environment.act.gov.au](http://www.environment.act.gov.au) or calling (02) 6207 1923. Other reports are prepared by a private contractor hired by you to inspect the conditions

of the property. A solicitor can be hired by a seller to prepare all the necessary documents including the contract for the sale of residential property. Make sure that all charges including disbursements are discussed before engaging a solicitor. Some solicitors specialise in conveyancing and property law.

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## 12.3 Understanding the draft contract for the sale of residential property and required documents

There are a number of documents that must be available when the property is offered for sale. These provide the buyer with all the technical and legal details they will need to know about the property.

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### Telephone assistance

For more information regarding asbestos requirements in the ACT contact Access Canberra on 13 22 81 or visit the website [www.asbestos.act.gov.au](http://www.asbestos.act.gov.au) Each of the required documents is described below. A checklist of the required documents for each type of property is provided in Chapter 14 of this guide.

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**The contract for the sale of residential property:** A seller must have a draft contract for the sale of residential property ready when a property is first offered for sale. The draft can be prepared by the seller or their solicitor. Section 11 of the *Civil Law (Sale of Residential Property) Act 2003* describes conditions that must be included in this contract and will be implied into the contract even if not stated. The conditions are included in the standard ACT Law Society Contract.

**The Crown Lease:** Sets out the conditions upon which the land is held and how that land may be used, for example, residential, rural or commercial use.

**The Certificate of Title:** Sets out who the legal owner of the property is and in what manner they hold the land, for example, as a joint tenant with another person. It will also indicate whether anyone other than the registered owners claim an interest in the property, for example, a bank holding a mortgage over the property.

**A copy of any encumbrance shown on the Certificate of Title:** Shows the details of any caveats or restrictive covenants over the land.

**A statement about any encumbrance not shown on the Certificate of Title:** This gives details of any unregistered mortgage or other unregistered encumbrances.

**Asbestos advice and website:** Owners and occupiers (including people renting or leasing who have an obligation to repair and maintain the premises) of premises need to give tenants and prospective tenants; prospective buyers; tradespeople; and maintenance workers, written information on what they know about asbestos at the premises. There is no requirement to obtain a professional asbestos survey for this purpose. To help you provide the information, you may refer to the *Asbestos Advice* from [www.asbestos.act.gov.au](http://www.asbestos.act.gov.au).

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## Telephone assistance

For more information regarding asbestos requirements in the ACT, contact Access Canberra on 13 22 81 or visit the website [www.asbestos.act.gov.au](http://www.asbestos.act.gov.au).

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**The deposited plan:** Will show the plan of the land and any easements on the land. An easement is a defined area over which another person or organisation has permanent access rights. An easement normally takes in the land above and adjacent to electricity cables, water and sewage pipes. An easement cannot usually be built over or under, so the location of easements will affect the position where a home, garage, pool or extension can be erected.

**A Building Conveyancing Inquiry:** Conducted by Access Canberra and will provide copies of the:

- certificate of occupancy
- survey certificate
- approved building plans
- drainage plan
- building file summary sheet.

**A Lease Conveyancing Inquiry:** Conducted by Access Canberra will provide information, if any exists about the property about:

- heritage listing
- outstanding rent under the crown lease
- development applications affecting the property
- breaches of the crown lease
- any orders issued against the property
- the compliance certificate (compliance with provisions of crown lease)
- applications for dual occupancy
- a contaminated land search.

**An Energy Efficiency Rating Statement:** Gives details about the energy efficiency of a property.

**A Building and Compliance Inspection Report:** Provides details about the structural soundness of a property and information about whether structures on the land have been approved under the relevant legislation.

**A Pest Inspection Report:** Provides details of any termite or other pest infestations.

**A copy of the units plan or proposed units plan:** Applies only to unit title property and shows the plan of the unit and the common property within the unit development.

**A copy of the minutes of meetings of the owners corporation and executive committee for the last two years:** Is required for a multi-storey unit instead of a building conveyancing inquiry, building and compliance inspection report, and pest inspection report.

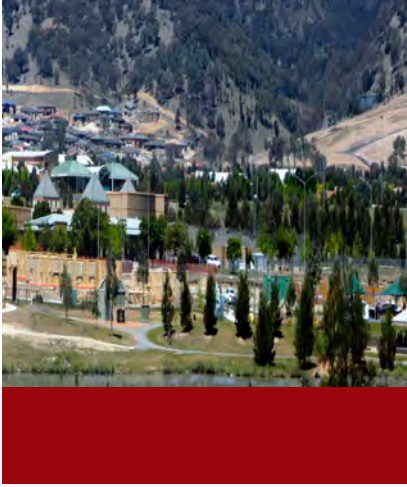
**A Unit Title Certificate:** Issued by the body corporate for a unit; provides information about any outstanding levies for the unit, any resolutions that affect the proportionate contributions for the unit and a copy of the articles for the body corporate.

## 12.4 Paying for the documents and searches

A seller has the right to be reimbursed by the buyer for the building and compliance inspection report, and the pest inspection report. These are generally reimbursed at the time of settlement. Costs for all other documents are not recoverable from the buyer.

## 12.5 Using a Do-It-Yourself (DIY) Conveyancing Kit

DIY conveyancing kits are available, but you are not covered by a solicitor's professional indemnity insurance if complications arise or something goes wrong. If a solicitor makes a mistake, which causes you financial loss, you may claim the loss from the solicitor or the solicitor's insurance. If you make a mistake in doing your own conveyancing, it may prove costly for you. There is a lot at stake, so before you decide to do your own conveyancing make sure you are completely confident that you can manage it.



## 12.6 Transfer of land

The Transfer is the document that transfers the land from the seller to the buyer. It is lodged with Access Canberra and describes how the land is to be held if purchased by more than one person.

In this case, the land can be held either jointly or as tenants in common. If held jointly and one person dies, ownership of the land is automatically transferred to the survivor. Tenants in common hold shares that may or may not be equal. Each has the right to dispose of their portion or interest in the land, as they see fit.

## 12.7 Completing settlement

The settlement date is when the balance of the purchase price is paid to the seller in exchange for the title to the property.

This is an official process held between legal and financial representatives of the buyer and seller. The settlement date is also when the buyer takes possession of the property.

At settlement, all charges such as rates etc will be adjusted between the seller and the buyer. The seller is responsible for rates up to and including the day of settlement. The buyer is liable from the day after settlement.

Settlement usually takes place between 30 to 90 days after signing the contract for the sale of an existing residential property, but this can be decided between the buyer and seller.

## Resolving disputes and complaints

If a buyer has a problem with a real estate agent, they should raise the matter with the manager of the agency. If the matter cannot be resolved and the agent is a member of the Real Estate Institute of the ACT (REIACT), the buyer should call REIACT on (02) 6282 4544. Complaints about all agents can be made to Access Canberra on 13 22 81.

## Key points for sellers

- You will need to prepare a draft contract for the sale of residential property before you offer your property for sale
- You will need to conduct the due diligence searches and attach the documents to the contract for the sale of residential property (these are the required documents)
- The contract for the sale of residential property must include a set of standard conditions set out in the new legislation. Even if omitted, these conditions will apply to the transaction. These are contained in the standard ACT Law Society Contract.
- Once contracts for the sale of residential property are exchanged, the buyer has a five clear working day cooling-off period during which they may withdraw from the contract
- If a buyer withdraws during the cooling-off period they must do so in writing and pay you a forfeiture from the deposit equal to 0.25% of the purchase price (\$250 per \$100,000 of the purchase price)
- You have the right to be reimbursed by the buyer for the building and compliance inspection report, and the pest inspection report.



# 3. General information



# Chapter 13

## Frequently asked questions



### ***When looking to buy, do I have to pay for the services of a real estate agent?***

No. Agents generally earn their income from the sale side of the transaction.

However, if you engage the services of an agent to source suitable properties for you or to negotiate or bid on your behalf, you may have to pay that person to act as your buyer's agent.

You should clarify this matter with an agent before you ask them to do anything on your behalf.

### ***Do I have to pay my finance broker a fee or does the lender do that?***

Finance broker charging methods and fees can vary.

Usually a finance broker will receive a commission from the lender. You should never pay a finance broker 'up front' unless the money is for a valuation report. This money is to be held in trust by the finance broker.

### ***Does a lender have to give me a comparison rate?***

Yes. The *National Consumer Credit Protection Act 2009* requires a lender to provide you with a comparison rate for a loan before you agree to or sign a finance contract.

### ***Do I have to give my details to an agent at an open house?***

No. An agent cannot legally force you to give them your details at an open house.

However, a seller can make it a condition of entry to their home that anyone inspecting their property provides their details.

### ***If I make an offer on a property, does the real estate agent have to pass this on to the seller?***

Yes. It is a requirement under the *Agents Act 2003* for an agent to pass on any and all offers to the seller, unless the seller has otherwise specified in writing to the agent. The seller has the right to reject any offer or negotiate a higher offer.

***Does providing a holding deposit guarantee me the property?***

No. The holding deposit does not bind the buyer or the seller. Until contracts for the sale of residential property are exchanged, the seller can still receive new offers that may be more attractive than yours.

***Am I entitled to get my holding deposit back if I change my mind before contracts for the sale of residential property are exchanged?***

Yes. A holding deposit is essentially a gesture of good faith.

If you change your mind before exchange or if the seller rejects your offer or removes the property from sale, then you are entitled to a full refund of your holding deposit.

***Will it cost me anything to cancel during my five-day cooling-off period?***

Yes. If you decide to cancel the contract for the sale of residential property within the cooling-off period, you will be required to pay to the seller, 0.25% of the purchase price, which is equal to \$250 for every \$100,000. For example, if the agreed sale price was \$300,000, you would be liable to pay \$750 to the seller.

***Does mortgage insurance cover my loan if I get sick or lose my job?***

No. Mortgage insurance does not give you a benefit under any circumstances. It is there solely to protect your lender's investment.

You need to obtain consumer credit insurance if you want cover for situations where you are unable to pay your loan due to unforeseen circumstances.

***When can I move into my new home?***

Generally you are able to pick up the keys and take possession of the home on the settlement day, unless other arrangements have been made with the seller.

***I am having someone bid for me at auction. Do we both have to register?***

No. Only the person at the actual auction must register; however, they must divulge your details and advise that they are bidding on your behalf.

***Can I change the conditions of the contract for the sale of residential property if I have the winning bid at an auction?***

No. The conditions are final when purchasing at an auction and cannot be changed after the fall of the hammer.

***Do I get a cooling-off period if I buy at auction?***

No. Once the hammer falls on your bid at an auction you are compelled to purchase the property. You have no cooling-off period.

***Can the auctioneer sell my details on the bidder record to telemarketing companies etc?***

No. Under the *Civil Law (Sale of Residential Property) Act 2003*, the bidder records are confidential and must not be used for any other purpose other than the auction to which they relate to. They cannot be shown to either you or the seller.

***When I register to bid at an auction, how long are my details kept?***

The bidders' record must be kept for three years after the auction.

***Do I have to use a solicitor when selling my house?***

No. It is not compulsory to use a solicitor when selling your house. However, the conveyancing process is complex, and there may be unexpected issues that arise. It can be a stressful process for people who are not familiar with it.

***I've signed an exclusive sales agreement with an agent. I would like to change agents, can I do this?***

No. If your exclusive sales agreement is still current, then you must wait until it lapses and then advise your agent in writing that you no longer require their services before you sign up with another agency. If you do sign another exclusive agreement whilst you already have one, you may be liable to pay two lots of commission.

Depending on the terms of the agreement, even after your agreement has lapsed with an agent, they may still be able to claim a commission if a buyer originally introduced by them buys your property while you have signed another agreement with a different agent. It is best to get legal advice before entering into any sales agreement.

***Do I, as the seller, have to pay for the building and compliance, and pest inspection reports?***

Yes. As the reports are required to be attached to the contract for the sale of residential property before a property is listed, it is your responsibility to pay for those reports at that time. When you have a buyer for your property you are entitled to recover the costs for the building and compliance, and pest inspection reports from them at settlement.

### ***How do I obtain the various documents as outlined in the new rules?***

Most of the documents can be obtained from Access Canberra and the Environment and Planning Directorate. The remaining documents can be obtained by engaging a building inspector/building consultant, pest inspector and energy efficiency rating assessor. Some building inspectors offer a 'package deal' ie they prepare the building/pest/compliance reports and an EER.

### ***What qualifications do I need to look for when seeking the services of a building inspector, etc?***

You should always ask a person you intend to hire about their qualifications and experience and whether they hold professional indemnity insurance.

### ***What is the fine for not complying with the laws relating to required documentation?***

Access Canberra has the power to issue on the spot fines or prosecute a person who offers property for sale and does not have the contract for the sale of residential property and required documents available for inspection by a buyer.

### ***Am I allowed to make a bid at my auction to boost my selling price?***

Yes. You are allowed **one** seller bid at your auction. The intention to use a seller bid, if required, must be written into the auction conditions. When the seller bid is made at the auction it must be announced as the seller bid. If you make more than one seller bid, it will be considered a dummy bid and you and the auctioneer may be fined.

# Chapter 14

## Required document checklists



### **Required documents for the sale of an existing residence:**

- a copy of the contract for the sale of residential property
- a copy of the crown lease
- a copy of the certificate of title
- a copy of any encumbrance shown on the certificate of title
- asbestos assessment report or asbestos advice
- a statement about any encumbrance not shown on the certificate of title
- a copy of the deposited plan
- a copy of the following building conveyancing inquiry documents provided by the Environment and Planning Directorate:
  - certificate of occupancy
  - survey certificate
  - approved building plans
  - drainage plan
  - building file summary sheet
- a copy of the following lease conveyancing inquiry documents (if any exist) provided by the Environment and Planning Directorate:
  - statement about heritage listing
  - statement about outstanding rent under the crown lease
  - statement about development applications affecting the property
  - statement about breaches of the crown lease
  - statement about any orders issued against the property
  - statement about whether a compliance certificate (compliance with provisions of crown lease) has been issued
  - statement about applications for dual occupancy
  - contaminated land search
- energy efficiency rating statement
- building and compliance inspection report
- pest inspection report.

**Required documents for the sale of a new property and off-the-plan property:**

- a copy of the contract for the sale of residential property
- a copy of the crown lease
- a copy of the certificate of title
- a copy of any encumbrance shown on the certificate of title
- asbestos assessment report or asbestos advice
- a statement about any encumbrance not shown on the certificate of title
- a copy of the following lease conveyancing inquiry documents (if any exist) provided by the Environment and Planning Directorate:
  - statement about heritage listing
  - statement about outstanding rent under the crown lease
  - statement about development applications affecting the property
  - statement about breaches of the crown lease
  - statement about any orders issued against the property
  - a statement about whether a compliance certificate (compliance with provisions of crown lease) has been issued
  - statement about applications for dual occupancy
  - contaminated land search
- energy efficiency rating statement
- a copy of the deposited plan (but not for off-the-plan units).

**Required documents for a unit in a multi-storey unit complex:**

- a copy of the contract for the sale of residential property
- a copy of the crown lease
- a copy of the certificate of title
- a copy of any encumbrance shown on the certificate of title
- asbestos assessment report or asbestos advice
- a statement about any encumbrance not shown on the certificate of title
- a copy of the units plan or proposed units plan
- a copy of the certificate of title for the common property
- a copy of the following lease conveyancing inquiry documents (if any exist) provided by the Environment and Planning Directorate:
  - statement about heritage listing
  - statement about outstanding rent under the crown lease

- statement about development applications affecting the property
- statement about breaches of the crown lease
- statement about any orders issued against the property
- compliance certificate (compliance with provisions of crown lease)
- statement about applications for dual occupancy
- contaminated land search
- energy efficiency rating statement
- a copy of the minutes of meetings of the owners' corporation and executive committee for the last two years
- a unit title certificate under the *Unit Titles (Management) Act 2001*.

**Required documents for a townhouse/villa style unit:**

- a copy of the contract for the sale of residential property
- a copy of the crown lease
- a copy of the certificate of title
- a copy of any encumbrance shown on the certificate of title
- asbestos assessment report or asbestos advice
- a statement about any encumbrance not shown on the certificate of title
- a copy of the building conveyancing inquiry documents provided by the Environment and Planning Directorate:
  - certificate of occupancy
  - survey certificate
  - approved building plans
  - drainage plan
  - building file summary sheet
- a copy of the units' plan or proposed units' plan
- a copy of the certificate of title for the common property



- a copy of the following lease conveyancing inquiry documents (if any exist) provided by the Environment and Planning Directorate:
  - statement about heritage listing
  - statement about outstanding rent under the crown
  - statement about development applications affecting the property
  - statement about breaches of the crown lease
  - statement about any orders issued against the property
  - compliance certificate (compliance with provisions of crown lease)
  - statement about applications for dual occupancy
  - contaminated land search
- energy efficiency rating statement
- building and compliance inspection report
- pest inspection report
- a unit title certificate under the *Unit Titles (Management) Act 2011*.

**Required documents for land:**

- a copy of the crown lease
- a copy of the deposited plan
- a copy of the certificate of title
- a copy of any encumbrance shown on the certificate of title.



# Chapter 15

## Glossary



### ***Auction***

A public sale of property in which the highest bidder is normally the successful buyer.

### ***Breach of contract***

The breaking of one or more of the terms or conditions of a contract.

### ***Bridging finance***

A short-term loan (approximately six to 12 months or less) that is used to fill the time gap between buying another property and either selling the one you own or obtaining a long-term loan. This type of borrowing is usually at a higher interest rate.

### ***Building consultant/ inspector***

An expert experienced in designing and/or constructing a building. When employing an expert for a building and compliance and pest inspection report on a property, you should ask whether he or she has indemnity insurance. A building consultant or inspector is not required to be registered or licensed.

### ***Buyer's agent***

A real estate agent who acts solely for the buyer by sourcing suitable properties and representing the buyer throughout the buying process.

### ***Caveat***

A note on the title that an interest in the land is claimed by a third party.

### ***Certificate of occupancy***

A document which shows that the building is suitable for occupation.

### ***Certificate of title***

A document that shows who owns the property, and whether there are any limitations on the title such as mortgages, easements or encumbrances.

### ***Commission***

Paid by the seller to the estate agent, normally when the property is sold. It is usually a percentage of the selling price of the property. The amount of commission is negotiable between the seller and the agent.

### ***Common property***

Areas of property that are used by and belong jointly to all of the owners of a property. This applies to such properties as apartment blocks or multi-dwelling complexes.

### ***Comparison rate***

A tool that allows the true cost of a loan (interest rate, fees and charges) to be compared with other loans using a single figure percentage.

### ***National Consumer Credit Protection Act 2009***

Regulates all credit for personal, domestic or household purposes. To ensure fair dealing and to protect the interests of consumers, all lenders must comply with the *National Consumer Credit Protection Act 2009*.

### ***Consumer credit insurance***

An option for borrowers to guard against losing their property in case they default on the loan repayments. This will safeguard the loan if repayments cannot be made because of sickness, accident or unemployment.

### ***Contract for the sale of residential property***

A legal document prepared by the seller, usually with the aid of a solicitor, which outlines the details of the sale.

The contract must be prepared before the property is first offered for sale, and it must be available for inspection by all interested persons and prospective buyers.

The contract for the sale of residential property becomes legally binding at the conclusion of the five-day cooling-off period that commences on the first valid day after contracts are exchanged between the buyer and the seller. It should be noted that the cooling off period can be waived.

### ***Conveyancing***

Transferring the ownership of a property from the seller to the buyer or transferring the ownership to a buyer from the seller. It is often performed by a solicitor.

### ***Covenant***

An agreement that creates an obligation on the titleholder of a property to do or refrain from doing something. For example, a restrictive covenant could state that no more than one dwelling may be built on the land.

### ***Deposit***

A percentage of the purchase price paid by the buyer when contracts for the sale of residential property are signed and exchanged. It is usually 5-10%. The deposit must be held in a trust account by an estate agency or by the seller's solicitor or held jointly in a trust account by the seller and buyer (See also holding deposit.) Where it is 5%, Annexure B is added so the seller can sue the buyer for the other 5% if the seller terminates the contract as a result of the buyer's default.

### ***Deposit bond***

Offered by some lenders as an alternative to a cash deposit. It is also known as a deposit guarantee.

### ***Disbursements***

Additional charges by solicitors on top of their fee for extras such as postage, phone calls and government charges. All solicitors charge extra for disbursements.

### ***Dummy bid***

A false bid made or accepted by the auctioneer. Dummy bids can include bids made by a non-genuine bidder and 'fictitious' bids pulled out of the air by the auctioneer. Any bid made on behalf of the seller by anyone, other than the auctioneer under the auction rules, is considered a dummy bid. Dummy bidding is illegal.

### ***Easement***

A defined area over which another person or organisation has permanent access rights. For example easements.

### ***Encumbrance***

A third party's right that obstructs the unencumbered use or transfer of a property. Examples are easements, mortgages or caveats.

## ***Equity***

Having 'equity in your own house' refers to the difference between the market value of a property and what is still owing on a mortgage. This will increase as the loan is repaid or as the property's market value increases.

## ***Estimated selling price***

The price an estate agent estimates a property will attract. It must be recorded in the sales agreement as either a single figure or as a range, for example, \$400,000-\$440,000.

## ***First Home Owner Grant***

A scheme providing eligible first home buyers with a non-income tested, one-off payment of \$12,500. The 2015/16 ACT Government Budget announced that this amount will decrease to \$10,000 from 1 January 2016.

## ***Fittings***

Items which can be removed without damaging the property such as garden ornaments or curtains. They must be listed in the contract for the sale of residential property if the buyer wants them to remain with the property.

## ***Fixed interest rate***

An interest rate that remains unchanged for a set period.

## ***Fixtures***

Items which are attached to the property and cannot be removed without causing damage to the property such as bathroom suites, built-in wardrobes and kitchen stoves. They are usually included in the sale.

## ***Gazumping***

Gazumping occurs when a seller and buyer verbally agree on a price for a property but, before the buyer can exchange a contract to secure the property, the seller accepts a higher price from another buyer.

## ***Gross income***

Total income before income tax and expenses are deducted.

### ***Holding deposit***

An amount a buyer gives to the estate agent, acting for the seller, when making an offer on a property. This is not compulsory and is refundable if the offer is rejected or if the buyer pulls out of the sale.

### ***Interest only loan***

Throughout the term of the loan, only the interest is paid off. The loan itself (the principal) is repaid at the end of the time limit of the loan.

### ***Joint tenants***

The form of ownership where two or more people purchase a property together. If one dies, his or her share of the property passes to the surviving owner/s. (See also tenants in common.)

### ***Mortgage***

A written contract giving the lender of finance certain rights over specific property, for example, the house being bought by the borrower as security for the loan.

### ***Mortgagee***

An institution lending money to a person for the purpose of purchasing a property.

### ***Mortgage guarantee insurance***

Paid by the borrower to protect the lender against failure by the borrower to keep up mortgage repayments or to pay back the loan in full when it is due. Such insurance normally applies where the borrower's loan exceeds 80% of the value of the property.

The lender is paid any shortfall by the insurer, who will then try to recover that from the borrower.

This type of insurance is taken out by the lender with the cost passed on to the borrower. The borrower remains liable for any shortfall, for example, if the property is sold and the proceeds do not cover what is owed to the lender.

### ***Mortgagor***

A person who owes money on a property he or she is buying. The money is usually owed to a lending institution.

### ***Net income***

Your income after income tax and mandatory levies have been deducted.

### ***Off-the-plan***

Purchasing 'off-the-plan' involves buying a property before it has been built. Such purchases are usually based on the architect's plans and models.

### ***On the market***

The point at an auction where an amount, which the seller is prepared to sell at, is reached or exceeded. (Also see Reserve Price.)

### ***Outgoings***

Any costs incurred by the seller on top of the agent's commission. For example, advertising costs. All outgoings are negotiable.

### ***Overquoting***

The illegal practice of overstating the estimated selling price of a property. This is usually done to encourage a seller to list.

### ***Owners corporation (previously known as the body corporate)***

The collective ownership of the common areas in a block of apartments or multi-dwelling complex. It is responsible for the administration and upkeep of the areas shared by all the owners (common property).

### ***Passed in***

The circumstance where a property for auction is not sold, usually because it has not reached the seller's reserve price.

### ***Principal***

The amount of the loan itself without interest or other charges associated with the loan.

### ***Private sale***

A private sale is negotiated between the buyer and seller usually with the assistance of a real estate agent.

### ***Real estate agent***

A licensed person who is authorised to act for another in the selling, buying, renting or management of a property. Agents usually act for the seller.

### ***Rebates***

Discounts received, usually for bulk purchases such as advertising. Any rebates received by an agent must be divulged to the seller.

### ***Reserve price***

A seller's minimum sale price for the property. It may be recorded in the sales agreement.

### ***Sales agreement***

A legally binding document that details the agreement between the seller and the agent and is signed by both parties. Many aspects of the sales agreement, such as commission and advertising costs, are negotiable between both parties.

### ***Seller bid***

A bid made on behalf of the seller. Seller bids can only be made by the auctioneer and only when the auction rules allow it. The auctioneer makes this statement before bidding starts and announces the one permitted seller bid as, or before, it is made.

### ***Settlement***

The occasion when ownership of a property passes from the seller to the buyer and the balance of the sale price is paid to the seller. If a deposit was paid, it is released.

### ***Solicitor***

A legally qualified person who undertakes legal work and provides legal advice for a fee. A solicitor may specialise in conveyancing and property law.

### ***Tenants in common***

A form of joint ownership of a property in which each person owns a share of the property, equally or unequally. On the death of one owner, the deceased's share passes to his or her beneficiaries, who assume the role of tenant in common with the other existing owner/s.

### ***Title***

A legal document that identifies who has a right to the ownership of a property.

### ***Transfer of land***

The Transfer is a document that records the change of ownership of a property from the seller to the buyer.



### ***Underquoting***

The illegal practice of understating the estimated selling price to prospective buyers, either directly or through advertising, to encourage greater interest in a property.

### ***Unit title***

Individual ownership of an apartment or unit within a block or multi-unit complex. This is separate from, and additional to, the joint ownership of common areas shared by all the property owners in the building or complex.

### ***Valuation***

An assessment of the value of a property by a registered valuer, usually for a fee.

### ***Vendor***

The person selling the property.

### ***Vendor terms finance contract***

Also known as a terms contract or a wrapping agreement, it occurs when finance is supplied by the vendor rather than by an established credit provider.

# Chapter 16

## Contacts

### Access Canberra

Enquiries: 13 22 81  
Website: [www.act.gov.au/accessCBR](http://www.act.gov.au/accessCBR)

### ACT Law Society

Enquiries: (02) 6274 0300  
Fax: (02) 6247 3754  
Website: [www.actlawsociety.asn.au](http://www.actlawsociety.asn.au)

\*Two brochures *Buying a Home* and *Buying a Unit* are available from this website.\*

### ACT Revenue Office

Enquiries: (02) 6207 0028  
Fax: (02) 6207 0026  
Website: [www.revenue.act.gov.au](http://www.revenue.act.gov.au)

### Care Inc Financial Counselling Service

Enquiries: (02) 6257 1788  
Fax: (02) 6257 1452  
Website: [www.carefcs.org](http://www.carefcs.org)

### Environment and Planning Directorate

Enquiries: (02) 6207 1923  
Website: [www.environment.act.gov.au](http://www.environment.act.gov.au)

### Real Estate Institute of the ACT (REIACT)

Enquiries: (02) 6282 4544  
Fax: (02) 6285 1960  
Website: [www.reiact.com.au](http://www.reiact.com.au)

# Chapter 17

## Property inspection records

The following Home Buyer's Checklist has been prepared for your use. Enjoy hunting for your new home!

**Keep a record of the following useful information when buying:**

**PROPERTY DETAILS:**

- Address .....
- Advertised Price .....

**PROPERTY DETAILS:**

- Selling Agent .....
- Representative .....
- Phone Office .....
- Phone Mobile .....

**EXHIBITION DETAILS:**

**DOCUMENTS SIGHTED:**

- Contract for the Sale of Building and Compliance
- Residential Property Inspection Report
- Pest Inspection Report
- EER Rating

**AUCTION BIDDING RECORD:**

- Prices for bids 1-6
- Bid 1 .....
- Bid 2 .....
- Bid 3 .....
- Bid 4 .....
- Bid 5 .....
- Bid 6 .....

**STRUCTURAL FEATURES: (include tick or number as appropriate)**

- |   |  |
|---|--|
| <input type="checkbox"/> No. of Bedrooms          | <input type="checkbox"/> No. of Bathrooms      |
| <input type="checkbox"/> Family Room              | <input type="checkbox"/> Dining Room           |
| <input type="checkbox"/> Lounge Room Study Garage | <input type="checkbox"/> Entertainment Area(s) |
| <input type="checkbox"/> Carport                  | <input type="checkbox"/> Workshop              |
| <input type="checkbox"/> Storage Area             | <input type="checkbox"/> Pool/Spa              |

**OUTDOOR FEATURES: (include a brief comment)**

- The Look .....
- Bricks .....
- Paint .....
- Block Size .....
- Gardens .....
- Play Areas .....
- Block Slope .....
- Streetscape .....
- Fences etc. ....

**OTHER CONSIDERATIONS: (include a brief comment)**

- Heating & Cooling .....
- Insulation .....
- Room Sizes .....
- Orientation .....
- Shade Trees .....
- Shops .....
- Public Transport .....
- Schools .....
- Other .....