



UNDERSTANDING CONVEYANCING

Garth Brown, principal of Brown and Brown Conveyancers, spoke with *Australia's Best* about the importance of conveyancing in protecting any business looking to purchase land, warehousing or facilities.

In my 15 years of experience as a conveyancer, one of the most frequently asked questions I'm asked is, "What does a conveyancer do?" This is of special interest to both vendors and purchasers – especially the purchaser who doesn't have a preconceived notion about who should handle the conveyance or what to expect.

To answer this question, an explanation of conveyancing will help to show how clients are prepared for the stages ahead.

The role of a conveyancer is a working communication partnership with the vendor or purchaser. In law, conveyancing is the transfer of title of property from one person to another and occurs in three stages:

- Before contract
- Before completion
- After completion

A typical conveyancing transaction contains two major landmarks:

The exchange of contracts

- Vendor and purchaser sign separate contracts
- They swap and date the document, supported by a deposit
- Equitable title passes

Completion

- Legal title passes
- Vendor's title is handed over
- Balance of purchase price is paid

WHY THE NEED FOR A PROFESSIONAL CONVEYANCER?

With over 60 per cent of all legal negligence claims being a result of conveyancing mistakes, it is important to consider whom you trust to handle purchases competently and properly.

Professional conveyancers have the knowledge and experience to adequately protect your asset now and in the future. Some defects may be unseen when signing a contract, which reveals the importance of engaging a professional to investigate the property for potential devaluation issues.

A single conveyance can require the knowledge of more than 60 different areas of the law. No matter how smooth the transaction, there is almost always a hitch, and without the assistance of an expert it will be difficult to deal with problems.

Over the past decade, specialised conveyancers have become more in demand. Currently, an estimated 30 per cent of all conveyancing work in New South Wales is handled by conveyancers and is growing every day. Interestingly, in South Australia most conveyancing is handled by land brokers – the equivalent to conveyancers in New South Wales.



VENDORS AND PURCHASERS LIVE AND BREATHE EVERYTHING ABOUT A CONVEYANCE WHILE IT IS HAPPENING. CONVEYANCING IS ALL ABOUT PUTTING YOURSELF IN THE CLIENT'S SHOES, FINDING OUT THEIR NEEDS, AND HAVING THE NEXT BASE COVERED



WHAT IS A STARTING POINT?

A potential buyer of property must ensure that he or she obtains a good and marketable title to the land – for example, proof via identification checks that the seller is the owner and has the right to sell the property, and that there is no factor that would impede a mortgage or resale.

The system of conveyancing is usually designed to ensure that, in advance of purchase, the buyer is aware of any restrictions and secures the title to the land and the rights that come with the land. In most mature jurisdictions, conveyancing is facilitated by a system of land registration. This is designed to encourage reliance on public records and assures purchasers of land that they are gaining a good title.

WHAT WILL A CONVEYANCER DO?

A conveyancer represents your interests throughout the transaction. As your purchase proceeds, your conveyancer will:

- recommend variations in the contract to suit your specific needs (for example, the settlement date)
- carry out exhaustive searches to ensure that you get what you are paying for (for example, that land boundaries are correct and that your dream home is not perched on top on an abandoned mine)
- ensure that the other party fulfils their side of the contract
- advise you of any further implications of the contract (for example, land tax; or if it is an investment property and there is a relationship breakdown, you will need to update your will)
- identify the inclusions and exclusions with the sale (for example, is an alarm, dishwasher or airconditioner included?)
- determine whether the seven-year home warranty insurance for structural problems is available after completion of

the first seven years

- discover whether a railway or highway will come through your property while you are the owner.

TRAPS TO AVOID

Defects liability clause

What does the contract say about carpet or tiles that have been laid incorrectly, or where the wrong tiles or kitchen appliances have been installed?

Leases

Are there any leases? Are they registered on the title or not? Have any of the options to renew the lease been exercised, or are they about to be exercised? Will the contract be for vacant possession?

Is the goods and services tax (GST) part of the purchase price?

Some vendors are registered for GST, and the sale price would attract GST. If so, you need to make sure a tax invoice is handed over to the purchaser so they can claim on their GST submissions to the Australian

Taxation Office. The stamp duty will be calculated on the full contract price, which is purchase price plus the GST.

Is the warehouse or commercial premises part of a strata scheme where a body corporate or strata manager has been appointed?

This is where all owners in the complex usually pay a quarterly strata fee to a strata management company for the cleaning and maintenance of the common areas at the complex and for building insurance.

Has one-third of the strata scheme settled?

If yes, an annual general meeting and appointment of a strata manager must take place within two months of settlement of 33% of the strata scheme. This is known as the initial period and is discussed in the strata report.

Strata report

A strata or community report investigates:

- the amount of levies per quarter
- the minutes of recent meetings
- history of expenses
- whether the building is insured for the correct amount
- when the last valuation was undertaken
- whether there is enough building insurance coverage.

This report would also look at whether there are any special levies to be struck in the future – for example, roof or carpet replacement and any concrete cancer issues (concrete disintegrating because of rust within the structure). Special levies (levies struck above the normal quarterly levies) become an issue only if purchasers have to come up with large amounts of additional money. In this situation, try renegotiating the sale price; otherwise, do not sign the contract.

HOW YOU CAN ADDITIONALLY PROTECT A COMMERCIAL UNIT OR WAREHOUSE AFTER SETTLEMENT?

The commercial unit or warehouse can be protected after settlement through title

insurance, which offers greater security to purchasers. This is a common conveyancing practice in America and Canada, but is new in Australia and has been used for only three years. A conveyancer cannot possibly know all current or potential issues before the signing of the contract.

The policy is a once-only premium whereby the title insurer will compensate the property owner for any boundary encroachments after settlement and while they remain the title-holder of the commercial or warehouse property. These include:

- illegal building structures on the land
- fraud on title
- the wrong house/warehouse/commercial property on the title
- unpaid council and water rates after settlement
- unknown title defects that materially affect the value and use of the property, such as underground fuel tanks.

Although this list is exhaustive, it does not cover contaminated land, termite damage or structural problems.

OUR SUPPLIERS

In a fast-moving property market like Sydney, our suppliers have to move quickly to produce information so purchasers and vendors can secure a purchase or sale. The difficulty with the Sydney property market is that, after a price has been agreed on and before the contract has been signed, there may be other purchasers tendering higher offers, particularly on the North Shore and eastern suburbs.

ABOUT THE AUTHOR

Garth Brown, B.Bus, AIC, JP, is a Certified Practising Conveyancer and principal of Brown & Brown Conveyancers located at Crows Nest in Sydney. Garth has been practising for the past 15 years and is highly respected in the industry.

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Our suppliers tender reports such as:

- building reports: any major or minor structural issues with a building
- surveys: are internal measurements of new buildings or warehouses correct? Are the boundary fences standing in the correct positions?
- geo-tech reports: what is underneath the ground the building is standing on (for example, unacceptable landfill and any soil contamination)?
- strata and community reports: for strata and community lots.

Communication with our purchasers and vendors is a mixture of SMS, email and telephone. They are updated every couple of days and are supplied with a simple easy-to-read checklist to understand what to expect next. This cements a strong working relationship with our vendors and purchasers, and creates trust and reliability. Conveyancing is about purchasing a relationship: 'Do I like and trust this person?' 'Is he interested in my goals?'

Vendors and purchasers live and breathe everything about a conveyance while it is happening. Conveyancing is all about putting yourself in the client's shoes, finding out their needs, and having the next base covered!