

Buying & Selling Residential Property



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Buying or Selling property, be it family home or investment property, is one of the biggest decisions and financial commitments you will make in your life. This booklet contains information and tips on how we at Inder Lynch can help you.

INTRODUCTION

1 What is an agreement for sale and purchase?

It is a contract between two parties for the sale and purchase of real estate. It contains all the relevant information pertaining to the transaction, including the parties names, legal description as well as physical address of the property being purchased, details of price paid, any conditions that are attached to the transaction and settlement and possession dates. Once the agreement for sale and purchase is signed by both parties it is a binding contract. It is important to note that there are now two forms of agreement for sale



and purchase in use – the standard ADLS/REINZ agreement for sale and purchase, which has been in use for many years and the new REINZ agreement for sale and purchase.

2 ***What are chattels/items?***

Chattels/items can be generally described as those items in the house which can be moved, and are not affixed to the land or dwelling. The agreement for sale and purchase lists a number of items which are usually sold with the property. This list can be changed by the parties, depending on what chattels or items are included in the sale. It is also prudent for a purchaser to check the condition of the chattels listed in the agreement before signing. The seller's only obligation is to provide those chattels/items listed in the agreement on settlement in the same condition they were in at the signing of the agreement.



3 ***What is a condition?***

A condition is a term of the contract which is inserted for the benefit of either the vendor or the purchaser. If

the condition is not satisfied by the date specified in the agreement, then the agreement may be cancelled. The party must take reasonable steps to satisfy the condition set out in the agreement. Some common conditions in the agreement include finance, approval of the title, sale of an existing home, obtaining a satisfactory LIM report from the Council, or building inspection report, or valuation.

SELLING A PROPERTY

1 Do I list with an agent or do I sell privately?

This is a common question asked by vendors. Some may think that selling privately will save them money however you need to remember also that there are experts available who can take a lot of the worry and stress away from you especially when it comes to marketing the property and dealing with potential purchasers.

If you do list with an agent, you need to think about whether you will provide them with a sole agency or general agency.



Sole agency is where you give one agency the right to sell your property whilst general agency is where you may list your property with several different agencies or sell privately. If you do provide an agent with sole agency, you need to consider how long you wish to give that agent that sole right. If a buyer is introduced to a property within the sole agency period you will be liable for the agent's commission whether or not the agent sold it. You need to remember that if you wish to still market your property for sale privately when it is listed with an agent, you must get the agent to agree to this at the outset, and note on the agency agreement that you are entitled to continue marketing the property for sale privately.

In most circumstances, an agent is entitled to receive their commission once the agreement becomes unconditional.

2 What are Vendors Warranties/Promises?

The existing ADLS agreement for sale and purchase refers to warranties; the new REINZ agreement refers to promises. Essentially they mean the same thing. Both forms of the agreement make references to warranties or promises that the vendor makes on behalf of the property. In essence, these are matters which you as the vendor are certifying to the purchaser are correct, or have been completed. They cover such things as Code Compliance Certificate requirements for any building that may have been undertaken on the property, or requirements regarding obtaining building consents etc. If you are selling a property it is important that you know exactly what you are promising or warranting in the agreement, and if you are not sure, then you should discuss this with your Solicitor before signing. If you give a warranty which later turns out to be false or inaccurate,

you could be liable to pay the purchaser damages for the loss suffered by the purchaser.

3 Why get a deposit?

Always request a deposit. If for some reason once the agreement has become unconditional the purchaser does not settle the contract, you are entitled to retain that deposit. You must remember however that the real estate agent is still entitled to receive the commission once the Agreement is confirmed unconditional therefore it is advisable to obtain at least sufficient to meet the commission and legal expenses.

4 What is a Cash-out or better offer clause?

A cash-out clause, as it is commonly known, is a clause in the agreement which gives the vendor the right to consider other offers for the property. If the agreement contains this clause, it means that if the vendor receives another written offer for the property then the vendor can give the purchaser notice of that agreement and require the purchaser to declare the contract unconditional within a certain time or risk having the agreement cancelled by the vendor in favour of the second offer.

5 What do I need to know about keys?

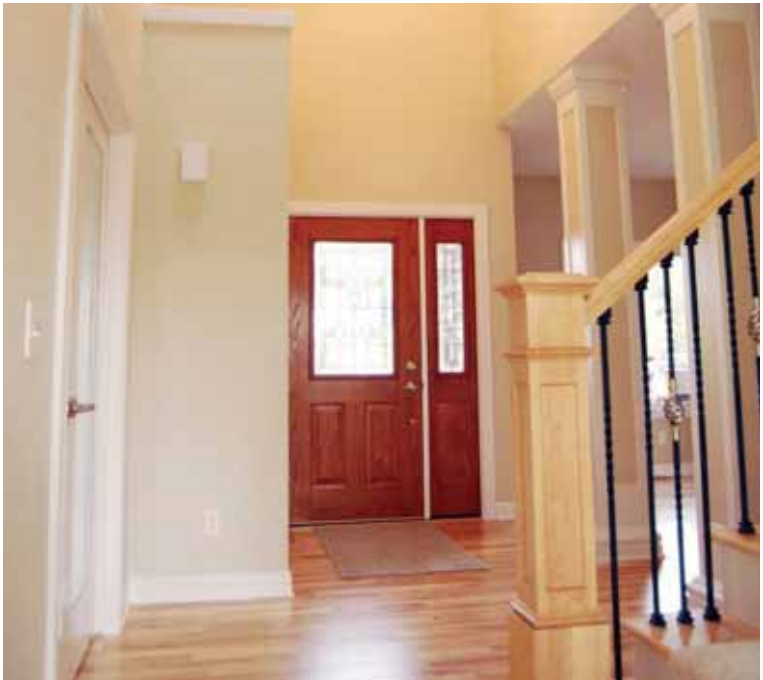
Be aware that vendors on selling a property with vacant possession must supply keys to all exterior lockable doors



irrespective of whether a key has never been held in respect of a particular door. The agreement for sale and purchase is quite specific in that it states vendors must provide keys to all exterior doors, including garage remotes and security codes for alarms. In particular garage remotes must be in good working order. However this does not apply to tenanted properties.

6 *When do I have to move out?*

Unless you have made prior arrangements with the Vendor at the time of signing the Sale and Purchase Agreement you will be required to give the Purchaser vacant possession of the property on the settlement date. You will be given sufficient time to move from the property and clean but you will also need to consider the requirements of the Purchaser. The keys will be released to the Purchaser once the vendor's lawyers have received confirmation that the sale funds have been paid to them by the purchaser.



What happens on settlement day?

If you have a mortgage on the property, we will arrange with your bank to release the mortgage from your title. Following receipt of the settlement funds from the purchaser's Solicitor, we will release the documents relating to your title to the purchaser so that the title can be transferred to the new owner. We will attend to the repayment of your mortgage to the bank, along with any other outstanding payments due on the property (Regional & District Council rates, final water meter reading). As the seller, it will be your responsibility to have completed your final power and gas readings, as well as arranging the transfer of your telephone. The balance of the sale proceeds will be then paid to you, or transferred towards your purchase if you are on buying another property.

REMEMBER – PLEASE HAVE YOUR SOLICITOR SIGN ANY AGREEMENT BEFORE YOU SIGN IT. ONCE THE AGREEMENT IS SIGNED YOU HAVE A BINDING CONTRACT.

BUYING A PROPERTY

Do I need to pay a deposit?

The payment of a deposit is a sign of good faith that you will complete the purchase. That deposit goes to the real estate agent who is required to hold it until the Agreement becomes unconditional. The deposit is deducted from the purchase price of the property on settlement. Always insist on a trust account receipt for payment of the deposit from the agent. If the agreement does not proceed because a condition cannot be satisfied, the real estate agent will refund the deposit to you in full.

2 **Are there different ways of recording ownership?**

(a) Fee simple title – commonly known as freehold

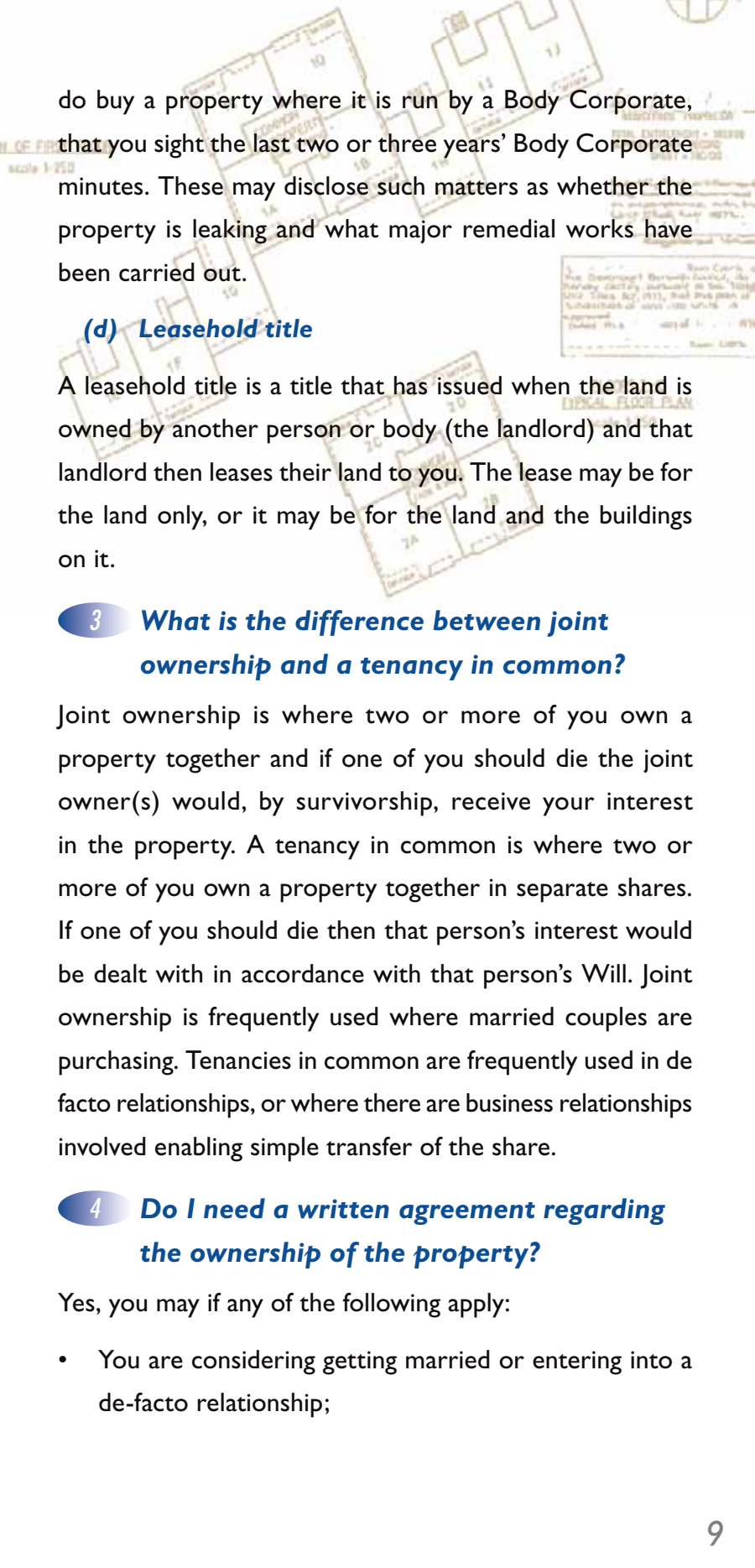
Ownership of a fee simple title, or freehold title (as it is commonly known) simply means that you own the land described in that title outright and it is not held or shared with any other person or entity.

(b) Crosslease title

This is a form of ownership where more than one home is on the same surveyed piece of land. It is common where newer homes have been built in older areas of the city. The buildings themselves have been surveyed and the plan of the buildings appears on the Certificate of Title and all the owners lease your dwelling to you for 999 years at a nominal rent. Separate titles issue to the owner stating ownership of the share of the land and referring to the dwelling which is leased. There are often problems with crossleasing where people have undertaken additional work without having had the certificates of title changed.

(c) Unit title

It is a freehold form of unit ownership, created by statute. There is a separate certificate of title for each unit and all units form part of a Body Corporate. The Body Corporate is responsible for owning and maintaining the areas described as “common area” around the unit titles. This might include driveways, elevators and stairwells (in apartment blocks), grassed areas etc. With Unit Titles there must be only one insurance policy covering all buildings. The body corporate will hold regular meetings of all owners to make decisions regarding the whole property. We recommend that if you



do buy a property where it is run by a Body Corporate, that you sight the last two or three years' Body Corporate minutes. These may disclose such matters as whether the property is leaking and what major remedial works have been carried out.

(d) Leasehold title

A leasehold title is a title that has issued when the land is owned by another person or body (the landlord) and that landlord then leases their land to you. The lease may be for the land only, or it may be for the land and the buildings on it.

3 What is the difference between joint ownership and a tenancy in common?

Joint ownership is where two or more of you own a property together and if one of you should die the joint owner(s) would, by survivorship, receive your interest in the property. A tenancy in common is where two or more of you own a property together in separate shares. If one of you should die then that person's interest would be dealt with in accordance with that person's Will. Joint ownership is frequently used where married couples are purchasing. Tenancies in common are frequently used in de facto relationships, or where there are business relationships involved enabling simple transfer of the share.

4 Do I need a written agreement regarding the ownership of the property?

Yes, you may if any of the following apply:

- You are considering getting married or entering into a de-facto relationship;

- You wish to keep this property or your contribution to it as your separate property;
- You and the other purchaser are contributing different amounts either to the purchase price or to the repayments of the loan and other outgoings;
- You are in a business relationship;
- You want a clearly agreed process for the eventual sale of the property and the division of the profits.

It is essential that your current circumstances and future intentions be carefully considered to ensure that the ownership structure, for the purchase of the property, reflects your long-term intentions.

5 ***What do I need to know about finance?***

Your agreement may be conditional upon you obtaining suitable finance. We will require written confirmation from your bank or mortgage broker of the amount and the terms of the loan by the conditional date in the sale and purchase agreement. Once this is received we will confirm the information with you and then advise the vendor's Solicitors accordingly. It is vital that any loan offer is not subject to issues such as a valuation, income verification etc.



If your mortgage finance were to be obtained from a source other than a bank we would recommend you discuss this with us prior to signing the sale and purchase agreement.

6 What is a LIM?

A Land Information Memorandum (commonly referred to as a LIM) is a report from the Council where the property is situated and contains all information on the Council's file relating to the property. In particular the LIM contains information on building and resource consents that may have issued on the property, details on the zoning which affects that property, and details of the current rates information. A number of Councils will also include plans and diagrams of sewer and water connections as well as any building consent plans. The LIM report will usually contain information concerning any special features about the property (for example, is it in a high wind zone, aircraft flight path). It is important to understand that the LIM report will only contain information that the Council knows about. Put another way, if the Council does not know about an illegal structure or some other feature on the property then it will not show up in the LIM report. Notwithstanding this however, we strongly advise all clients who are buying a property to obtain a LIM and to have your purchase agreement conditional upon you obtaining a satisfactory LIM. Council are entitled to charge for the LIM and they usually cost a few hundred dollars.

7 What is a Building Inspection Report?

Any report obtained must be from a suitably qualified person. Although the new agreement for sale and purchase does not define what is said to be a qualified person it is generally accepted that it is registered builder or a person

or company which is registered as a certified building inspection company or consultant. If you are purchasing a house, a “Building Report condition” should be included in the Agreement for Sale and Purchase. We strongly recommend that unless a purchaser is buying a brand new property for which there is a Code Compliance Certificate, then a Building Report is essential. The Building Consultant will usually provide a comprehensive written report on the state of the property which includes everything from the foundations through to plumbing, electrical works, landscaping compliances, exterior buildings, e.g. garages, carports, sheds etc. The costs of obtaining a report will vary, depending on how detailed a report you will want. Obviously, the more detail you require then the higher the costs of the building report will be. If you are not sure then you should discuss this with the building consultant before undertaking the report.



8

What do I need to know about Auctions?

It is imperative that you obtain legal advice before attending an auction. The reason for this is, at an auction, if you are the successful bidder, the agreement that you sign will be an

unconditional agreement and will generally contain provision whereby you waive your rights to requisition any title errors or any other issues that may arise from the property. Therefore, if you are considering purchasing a property at auction it is important that you check all of the issues on all matters pertaining to that property before you attend the auction. As your Solicitor we can assist you with a number of these, including checking the title, obtaining and checking the LIM report from the Council; you may also wish to obtain a valuation and a building inspection report before attending the auction. There is a risk that you will have spent a considerable amount of money checking matters out on the property but you may not be the successful bidder (or the property may not reach its reserve price). That is simply the risk of buying at auction. However we believe it is important that you carefully check the property before proceeding to purchase at auction.

When you purchase a property at an auction you usually waive all of your rights in respect of any title errors or omissions and issues with a LIM report. Purchasing a property at an auction is always an unconditional contract.

We recommend that clients obtain the General Terms of Sale from the real estate agents and provide them to us so we can peruse and check the same before attending the auction. You need to be armed with as much information as you can about the property and therefore can make a more informed decision in respect of the purchase price.

9

What do I need to know about buying a residential section?

The current ADLS/REINZ form places an obligation on the vendor to point out the boundaries of the property if it is

a vacant residential section. The new REINZ agreement does not place this obligation on the vendor. Either way, if you are looking at purchasing a vacant residential section it is important that you clearly identify the boundaries. If you are not sure, a surveyor should be able to locate the boundaries for you for a small charge. If the section you are considering purchasing is part of a new subdivision or development, there may well be covenants registered on the title. These covenants are usually a list of minimum building and care standards which the developer has imposed on all the sections to ensure a certain standard is maintained in the subdivision. It is important that you consult with your lawyer and have them go through these covenants with you so that you understand what your obligations are should you proceed to purchase the section.



10 What do I do prior to settlement day?

Most agreements entitle you to inspect the property prior to settlement to satisfy yourself that everything is in order. We recommend you avail yourself of this opportunity.

What happens on settlement day?

Prior to settlement, we will inform you of the amount required from you to complete the settlement. If you are not obtaining a mortgage, you will need to arrange to have the funds transferred from your bank into our bank as cleared funds on the settlement day. If you are obtaining a mortgage, we will arrange for your bank to draw down the mortgage funds to our trust account on settlement day. Once we have all the funds required for settlement we will notify the seller's lawyers that we are ready to settle. Once they have provided us with the necessary undertakings and document releases we will transfer the funds to them; the seller's lawyer will then notify the agent that the keys to the property can be released. We will notify you that settlement has been completed and that the keys are now available to you.

REMEMBER – PLEASE HAVE YOUR SOLICITOR SIGHT ANY AGREEMENT BEFORE YOU SIGN IT. ONCE THE AGREEMENT IS SIGNED YOU HAVE A BINDING CONTRACT.



Wills & Estate Administration



Building Contracts & Construction Contracts Act 2002



Relationship Property

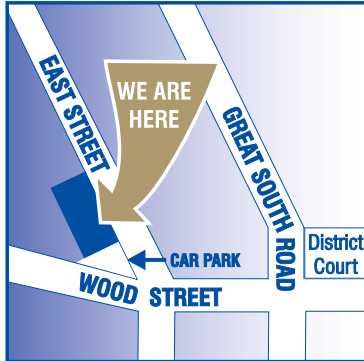


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