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Ardent Lawyers

	Full name	Address	Mobile	Email
Purchaser 1				
Purchaser 2				
Purchaser 3				
Purchaser 4				

Collectively referred to as "*the purchasers*".

TERMS OF ENGAGEMENT - PURCHASER

CONGRATULATIONS on your decision to purchase a new property!

These are very exciting times and we're looking forward to guiding you through the conveyancing process.

This document sets out our engagement terms and cost agreement for conveyancing matters.

We confirm that you have instructed us to act in the purchase of the following property:

Fixed fee quotation

We offer fixed pricing for local conveyancing matters (house or land only). Our fixed fee is \$1,980 incl GST and includes the disbursements we may require to complete your transaction.

Disbursements are items that Ardent Lawyers has to pay for in order to facilitate the conveyance. For example, we may be required to pay for:

1. Title searches;
2. Dealing searches on title;
3. Conduct searches in relation to nearby authorities and their interest in the property;
4. Rates enquiries;
5. Postage and printing;

Our fixed pricing does not include the cost for stamp duty, PEXA usage fee (\$132.66), pest and building inspections or surveys. Please ensure you have sufficient funds to pay the stamp duty applicable on settlement

Mail to:
Suite 9-10, The Pavilion
274 Green Street, ULLADULLA NSW 2539

2/134 Island Point Road
ST GEORGES BASIN NSW 2540

Email: contact@ardentlawyers.com.au
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Website: www.ardentlawyers.com.au

Ardent Lawyers Pty Limited
ABN: 23 621 090 800

Liability Limited by a scheme approved under Professional Standards Legislation

What we need from you

So that we can commence working on this matter, we require the following:

1. Each purchaser to provide a copy of their drivers licence/photo ID and passport. We will need to sight your ID in person or by video call in due course;
2. Signed engagement terms and PEXA authority (see below);
3. Replies to our initial queries; and
4. A deposit into our trust account.

Trust account deposit

Please deposit the sum of \$500.00 into the following account:

Account name: Ardent Lawyers Law Practice Trust Account
Bank: National Australia Bank
BSB: 082-356
Account: 9028 69741
Reference: Your Surname

Once you have processed the payment, please provide our office with a copy of a payment receipt so that we can commence working on the file immediately.

Authorities

The purchasers hereby authorise Ardent Lawyers to:

1. Act on their behalf with respect to the purchase of the property referred to above;
2. Receive money into their trust account;
3. Pay their professional costs and disbursements from monies received into the trust account; and
4. Sign documents on their behalf to facilitate the purchase including but not limited to signing a transfer or using electronic signing technology as provided by the PEXA interface.

We, the purchasers have read this document and understand its contents. We have been afforded the opportunity to ask Ardent Lawyers any questions in relation to these engagement terms and accept the contents therein:

Purchaser's name	Signature	Date

For our clients: By agreeing to allow Ardent Lawyers to act for you, you have opted in to receive marketing communication from us via text, phone and email. Please reply to this notification to opt out any marketing communication.

CLIENT AUTHORISATION

Version 7

When this form is signed, the Representative is authorised to act for the Client in a Conveyancing Transaction(s)

Privacy Collection Statement: The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes and for the other purposes set out in clause 4.1 of this form.

Representative Reference: _____

CLIENT DETAILS

	CLIENT 1	CLIENT 2
NAME	_____	_____
ACN/ABN	_____	_____
ADDRESS	_____	_____

TRANSACTION DETAILS

AUTHORITY TYPE	<input type="checkbox"/> SPECIFIC AUTHORITY (set out conveyancing transaction details below)	<input type="checkbox"/> STANDING AUTHORITY ends on revocation or expiration date: ____/____/____ (tick relevant conveyancing transaction(s) below)	<input type="checkbox"/> BATCH AUTHORITY (attach details of conveyancing transaction(s))
	CONVEYANCING TRANSACTION(S) 1	CONVEYANCING TRANSACTION(S) 2	
PROPERTY ADDRESS	_____		
LAND TITLE REFERENCE(S) (and/or property description)	_____		
CONVEYANCING TRANSACTION(S)	<input type="checkbox"/> TRANSFER <input type="checkbox"/> PRIORITY NOTICE <input type="checkbox"/> OTHER (set out below or attach details)	<input type="checkbox"/> MORTGAGE <input type="checkbox"/> DISCHARGE/ RELEASE OF MORTGAGE <input type="checkbox"/> CAVEAT <input type="checkbox"/> WITHDRAWAL OF CAVEAT <input type="checkbox"/> OTHER (set out below or attach details)	<input type="checkbox"/> TRANSFER <input type="checkbox"/> PRIORITY NOTICE <input type="checkbox"/> MORTGAGE <input type="checkbox"/> DISCHARGE/ RELEASE OF MORTGAGE <input type="checkbox"/> CAVEAT <input type="checkbox"/> WITHDRAWAL OF CAVEAT <input type="checkbox"/> OTHER (set out below or attach details)
ADDITIONAL INSTRUCTIONS	_____		

CLIENT AUTHORISATION AND SIGNING

	CLIENT 1 / CLIENT AGENT 1	CLIENT 2 / CLIENT AGENT 2
	I CERTIFY that:	
	(a) I am the Client or Client Agent; and	
	(b) I have the legal authority to instruct the Representative in relation to the Conveyancing Transaction(s); and	
	(c) if I am acting as a Client Agent that I have no notice of the revocation of my authority to act on behalf of the Client.	
	I AUTHORISE the Representative to act on my behalf, or where I am a Client Agent to act on behalf of the Client, in accordance with the terms of this Client Authorisation and any Participation Rules and any Prescribed Requirement to:	
	(a) sign documents on my behalf as required for the Conveyancing Transaction(s); and	
	(b) submit or authorise submission of documents for lodgment with the relevant Land Registry; and	
	(c) authorise any financial settlement involved in the Conveyancing Transaction(s); and	
	(d) do anything else necessary to complete the Conveyancing Transaction(s).	
	DATE / /	SIGN HERE
CLIENT/CLIENT AGENT NAME	_____	CLIENT/CLIENT AGENT NAME
CAPACITY	_____	CAPACITY
If applicable AUSTRALIAN CONSULAR OFFICE WITNESS or IDENTITY AGENT (if not a Representative Agent)		If applicable AUSTRALIAN CONSULAR OFFICE WITNESS or IDENTITY AGENT (if not a Representative Agent)
NAME	DATE	NAME
		DATE

REPRESENTATIVE DETAILS AND SIGNING

	REPRESENTATIVE	REPRESENTATIVE AGENT (if applicable)
NAME	_____	_____
ACN/ABN	_____	_____
ADDRESS	_____	_____
I/We CERTIFY that reasonable steps have been taken to ensure that this Client Authorisation was signed by each of the persons named above as Client or Client Agent.		
SIGNATURE OF REPRESENTATIVE OR REPRESENTATIVE AGENT IF APPLICABLE:		
	SIGN HERE	SIGN HERE
SIGNATORY NAME:	DATE / /	SIGNATORY NAME:
CAPACITY:		CAPACITY:

Terms of this Client Authorisation

1 What is Authorised

The Client authorises the Representative to act on behalf of the Client in accordance with the terms of this Client Authorisation and any Participation Rules and any Prescribed Requirement to:

- (a) sign documents on the Client's behalf as required for the Conveyancing Transaction(s); and
- (b) submit or authorise submission of documents for lodgment with the relevant Land Registry; and
- (c) authorise any financial settlement involved in the Conveyancing Transaction(s); and
- (d) do anything else necessary to complete the Conveyancing Transaction(s).

The Client acknowledges that the Client is bound by any documents required in connection with a Conveyancing Transaction that the Representative signs on the Client's behalf in accordance with this Client Authorisation.

2 Mortgagees

Where:

- (a) the Representative represents the Client in the Client's capacity as mortgagee; and
- (b) the Client represents to the Representative that the Client has taken reasonable steps to verify the identity of the mortgagor,

the Client indemnifies the Representative for any loss resulting from the Client's failure to take reasonable steps to verify the identity of the mortgagor.

3 Revocation

This Client Authorisation may be revoked by either the Client or the Representative giving notice in writing to the other that they wish to end this Client Authorisation.

4 Privacy and Client information

- 4.1 The Client acknowledges that information relating to the Client that is required to complete or process the Conveyancing Transaction(s), including the Client's Personal Information, may be collected, stored and used by, and disclosed to, stored and used by:

- (a) the Duty Authority;
- (b) ELNOs;
- (c) the Land Registry;
- (d) the Registrar;
- (e) the Representative;
- (f) Subscribers; and
- (g) third parties (who may be located overseas),

involved in the completion or processing of the Conveyancing Transaction(s), for the purpose of completing and processing the Conveyancing Transaction(s) or as required by law, including for the purpose of a Compliance Examination.

4.2 The Client consents to the collection, disclosure, storage and use of information relating to the Client as acknowledged under clause 4.1.

4.3 For further information about the collection, disclosure, storage and use of your Personal Information, refer to the privacy policy of the persons listed in clause 4.1(a) to (g).

5 **Applicable law**

This Client Authorisation is governed by the law in force in the Jurisdiction in which the Property is situated. The Client and the Representative submit to the non-exclusive jurisdiction of the courts of that place.

6 **Meaning of words used in this Client Authorisation**

In this Client Authorisation, capitalised terms have the meaning set out below:

Australian Consular Office Witness means a person listed in section 3 of the *Consular Fees Act 1955* (Cth).

Batch Authority means an authority for the Representative to act for the Client in a batch of Conveyancing Transactions details of which are attached to this Client Authorisation.

Capacity means the role of the signatory (for example an attorney or a director of a company).

Client means the person or persons named in this Client Authorisation.

Client Agent means a person authorised to act as the Client's agent but does not include the Representative acting solely in this role.

Compliance Examination has the meaning given to it in the ECNL.

Conveyancing Transaction has the meaning given to it in the ECNL.

Duty Authority means the State Revenue Office of the Jurisdiction in which the property is situated.

ECNL means the Electronic Conveyancing National Law as adopted or implemented in a Jurisdiction by the application law, as amended from time to time.

ELNO means Electronic Lodgment Network Operator.

Identity Agent means a person appointed in writing by either a Representative, or a mortgagee represented by a Representative, to act as the agent of the Representative or mortgagee, and who:

- (a) the Representative or mortgagee reasonably believes is reputable, competent and appropriately insured; and
- (b) is authorised by the Representative or mortgagee to conduct verification of identity on behalf of the Representative or mortgagee in accordance with the Verification of Identity Standard.

Jurisdiction means an Australian State or Territory.

Land Registry means the agency of a State or Territory responsible for maintaining the Jurisdiction's titles register and, where the responsibility has been delegated, it includes the delegate.

Participation Rules means the rules relating to use of the electronic lodgment network determined by the Registrar from time to time.

Personal Information has the meaning given to it in the *Privacy Act 1988* (Cth).

Prescribed Requirement means any published requirement of the Registrar that Representatives are required to comply with.

Registrar means the Recorder of Titles in Tasmania; the Registrar-General in Australian Capital Territory, New South Wales, Northern Territory and South Australia; and the Registrar of Titles in Queensland, Victoria and Western Australia.

Representative is the Australian legal practitioner, law practice or licensed conveyancer named in this Client Authorisation who acts on behalf of the Client and under the relevant legislation of the Jurisdiction in which the property is situated can conduct a Conveyancing Transaction.

Representative Agent means a person appointed in writing by a Representative to act as the agent of the Representative including to sign the Client Authorisation. For the avoidance of doubt this can include an Identity Agent if so authorised.

Specific Authority means an authority for the Representative to act for the Client in completing the Conveyancing Transactions described in this Client Authorisation.

Standing Authority means an authority for the Representative to act for the Client as described in this Client Authorisation for the period of time set out in this Client Authorisation.

Subscriber has the meaning given to it in the ECNL.

Our role: we will see to the transfer of ownership to you and make sure that you get a good title to the property. We will make or recommend all necessary enquiries about the property and generally advise you and look after your interests.

The following is a brief over of points of interest.

Contract

This is the document that gives effect to the transaction which even-handedly protects the interests of both parties.

Please note that the contract provides that you cannot rely upon any representation made to you which is not in the contract so let us know if any such representations were made to you.

The contract also includes a warranty by you that you were not introduced to the property by any agent other than the one shown on the front page of the contract. In you were, please let us know as otherwise you may be liable for an additional agent's commission.

The contract also provides for interest to be paid by you if you do not settle on the due date, which is normally 42 days after exchange. Also a procedure is established to force settlement if it is not effected on the due day. A notice to complete, usually within 14 days, is served on the defaulting party and if settlement does not take place in that time the contract can be terminated resulting in damages or actions for specific performance against the vendor or the loss of the deposit and damages against the purchaser.

Contracts are not binding on the parties until exchanged. The process of exchange is the swapping of a contract signed by you for one signed by the vendor. There are occasionally exceptional circumstances when part performance might constitute a contract but this is a rare event not warranting further comment here.

In an endeavour to avoid purchasers of residential properties missing out during this time and at a time when the market was very active and gazumping was commonplace the state government introduced anti-gazumping legislation. It still applies although it has never found much acceptance in the marketplace. Its object is to allow purchasers to exchange contracts immediately and have a cooling off period to make their arrangements after which they can either proceed or get out of the contract losing only 0.25% of the price. Purchasers can waive this cooling off period and most vendors require the purchaser to do so.

On exchange a 10% deposit is usually required and is held by the agent or vendor's solicitor as stakeholder. If it is a significant sum, or if settlement is well in the future, then it may be invested and the interest earned shared. Normally this is not done as the amount is small and the administration expenses do not justify it. If this is to be done then we will need your tax file numbers to avoid the maximum rate of tax being deducted from the interest by the institution with whom it is invested.

If it is difficult for you to pay the whole of the deposit, it is not uncommon for vendors to agree to a 5% deposit.

As an alternative a deposit bond can be brought at a cost of about 1% of the price. This is an insurance policy, which provides that if you default the vendor can call upon the insurer to pay the deposit. The insurer is then entitled to recover the deposit from you.

On occasions the vendor seeks the release of the deposit. If it is an integral part of the transaction then so be it. However whilst the risk of trouble is small it is not considered to be wise to do so as in the event of default it may be difficult to recover it from the vendor.

Pest and building reports

We will ensure that there are no adverse issues with the title to the property. You need to be sure that you are informed and happy with the condition and state of repair of the buildings. After exchange of contracts there is no recourse, except in exceptional circumstances, if the buildings are defective in some way.

Hence the need for pest and building reports, which we strongly recommend.

Please tell us whether or not you wish us to arrange a building and pest inspection. Even though we often arrange such reports with reputable contractors we must stress that we in no way accept responsibility for the content of any report. The only comment we can make about the competency of those we recommend is that other clients have been happy with their work. If you have any doubts then you must instruct a contractor directly.

Identifying the property

It is important that the property that is the subject of the contract is the one intended to be brought. This sounds obvious but in reality purchasers have been known to buy the wrong property. Care

needs to be taken to identify the property, for instance, in a strip subdivision of featureless land when an agent can readily number the lots differently from the lot numbers in the deposited plan.

Surveys solve this problem. They are often not required but on occasions should be obtained. They also serve other purposes, which may be important in that they identify any encroachments by or upon the property and can certify whether buildings comply with covenants and restrictions as to user.

Inclusions and exclusions

Fixtures are part of the land so that items such as built-in pantries are included without further mention. Please check the inclusions and exclusions shown on the contract and let us know if the lists are deficient in any way.

Statutory warranties for residential property

Under the Conveyancing Act and the Home Building Act some protection is afforded to purchasers of residential property in relation to faulty buildings. However we suggest that there is a little comfort to be found in a right to sue for breach of warranty and it is best to thoroughly check the property and get pest and building reports before contracting.

The warranty under the Conveyancing Act, among other things, provides that there is no matter in relation to any building or structure on the land that would justify the making of any upgrading or demolition order. The only remedy is rescission of the contract before completion and return of the deposit.

The Home Building Act, amongst other things, provides a warranty that the building work was performed in a proper and workmanlike manner and in accordance with the plans and specifications, that all materials supplied were good and suitable for the purpose for which they were used and were new and that the construction complied with the law, and the dwelling is reasonably fit for occupation. The remedy is an action against the builder commenced within 6 years of completion of the building. The original or any subsequent owner can bring the action. If the builder has either disappeared, died or is insolvent then an action lies against the insurance company that issued the compulsory warranty insurance.

Council matters

Zoning certificates are attached to all contracts. These disclose the uses that are permitted without consent, those permitted with consent and those prohibited. They also disclose whether the property is affected by or subject to policies relating to flooding, tidal inundation, contamination, bush fire, mine subsidence, tree preservation, road widening, conservation, critical habitat, coastal protection, land slip, land fill, acid sulphate soils and other risk. In most cases the answer is no to all of these possibilities. If the property is affected in some way then further investigations need to be undertaken. If you are considering any further development of the property then you need to discuss those plans with us and you will need to investigate council's requirements.

As a major shortcoming of the council certificate required to be attached to all contracts is the lack of information on approvals relating to the construction and use of the property. Not only does the construction of the buildings need approval but their use following construction also needs approval. If, as is usually the case, the vendor does not have a building or occupation certificate from council, then there is no way of knowing from the contract whether the buildings were built with approval and passed for occupation for their intended use. Inspection of the council file will normally provide the information that is necessary to assess the compliance of the building. However in some instances it may be necessary to obtain a council building information certificate. A current survey must accompany an application for such a certificate.

If the property is vacant land upon which a building is to be constructed then there are many constraints to do with such matters as set backs, water catchment, bush fire, environmental impact, and energy saving imposed by council. A visit to or discussion with council is usually warranted. Most of this information is not available on the contract or the documents attached to it.

Enquiries

As a standard practice, enquires are made of a number of government authorities to ensure that there are no affectations or proposals that affect the property. If there are adverse affectations then remedies are available. Council notices for work to be done or financial contributions to be made, issued before the exchange of contracts, are the responsibility of the vendor. Those issued after exchange of contracts are the responsibility of the purchaser.

Rural property

There are many more considerations with rural property that need discussion such as share farming or agistment agreements, pipelines, soil conservation or timber harvesting, water licences or rights, access roads or tracks, enclosure permits, stock diseases, chemical pollution or noxious weeds, native title, Aboriginal land rights, threatened species, native vegetation conservation, national parks and wildlife and crown leases.

Commercial and industrial property

The important consideration when purchasing retail, commercial or industrial properties is their permitted use. Generally speaking, the building requirements relating to commercial and industrial premises differ to those for residential premises. For example parking requirements are far more onerous. An example of a unique consideration is found in the regulation by the Retail Leases Act of the use of premises for retail purposes and it is important to know the responsibilities of the owners of these premises. Another example is the strict health and safety regulation of restaurant kitchens or disposal of industrial waste. It is important to establish council's requirements attaching to the property and compliance with them.

Title

We will explain to you the nature of title, which might be either Torrens or old system. Regardless we will ensure you get a good title to the property. There may be easements, covenants and restrictions as to user affecting the title, which will also be explained ensuring they do not constitute a problem.

The easements and restrictions that commonly occur are those relating to the buildings on the land or access to them by right of way. Commonly subdividers seek to establish a standard of housing to be constructed within a subdivision by stipulating that houses of a certain size and using certain materials are the only ones that can be constructed. This might well set a standard but also might restrict your plans. For example if want to build two storeys, but buildings are confined to one storey. Access by right of way is common and can cause trouble when it comes to maintenance and repair. The usual position is that the properties benefited by the right of way are equally responsible for its repair. However getting neighbours to pay their appropriated share can cause difficulties.

Strata title

Land in a strata scheme is divided into lots and common property. A lot is comprised of the cubic space delineated by the inner surfaces of the walls, ceilings and floor. The walls, ceilings and the floor, which are the boundaries of the lot and the rest of the building and all other improvements and the land, form the common property which vests in the owners corporation. Title to a lot in a strata scheme confers legal title to the lot and an interest in the common property as tenant in common with the other lot owners. You can sell, mortgage, lease or otherwise deal with your lots as you wish. You automatically become a member of the owners corporation on settlement and you are bound by its by-laws regulating such matters as the keeping of animals.

The owners corporation establishes an administrative fund, to pay regular outgoings and ongoing maintenance, and a capital works fund, to provide for long-term work such as repainting. Your contribution to these funds is determined by the unit entitlement of your lot, as is the value of your vote at meetings as is your interest as tenant in common in the common property. Unit entitlements are calculated on the value of each lot on completion of construction. The total of all lot entitlements becomes the aggregate and each lot is part of that aggregate. So a more expensive penthouse will contribute more to the funds, have a greater voting power and have a greater interest in the common property than a ground floor bed-sitter.

You cannot alter your lot without the consent of the owners corporation.

Joint tenancy or tenancy in common

When two or more parties buy, they must elect to buy as joint tenants or tenants in common. On the death of a joint tenant the survivor by law automatically receives the deceased share regardless of the provisions in a will. This is the way spouses usually buy their home. There is however a trap. In this age of blended families often one partner of both have children from a previous relationship. If both are killed in a car accident at the same time then the law provides that the youngest survives the eldest and in that moment of time, joint tenancy property passes to the youngest. If they do not have wills dealing with the situation then the home would pass to the children of the youngest, leaving the children of the eldest with no share in the home.

Tenancy in common is usually the way that unrelated parties who want their families to inherit their share hold property. The share in the property can be any size from 1% to 99%. Separate title deeds can issue for each share, which can, in theory although difficult in practice, be separately sold and mortgaged.

Insurance

Cover is required from settlement or the date of possession if earlier. The mortgagee needs to be noted on the policy. The mortgagee's title need to be accurate as most mortgagees reject policies that do not show their correct legal title. The cover should be for replacement value. Contents cover is optional. Public risk and domestic workers compensation are normal extensions to these policies.

Fences

The adjoining property owners who must contributed equally to their repair maintenance and replacement usually own the fences build on the boundaries jointly.

Subsoil conditions

A sewer diagram is one of the documents that the vendor must attach to the contract. If a sewer or water main runs through the property then the responsible authority has a statutory right to have it there and a right and obligation to maintain it. They can enter for this purpose. They can refuse consent to build over the line or impose conditions if there is no alternative. All services running through adjoining privately owned land need easements over that adjoining land to ensure their continuance.

If the property is not sewered then ensure that any septic system is situated within the property boundaries.

If the purchase is of vacant land then ensure that the council will allow the sewerage system proposed, as this is a significant issue in relation to areas for absorption and nearby creeks. It is also important to plan for the disposal of storm water, which cannot be into the sewer and cannot be across neighbouring land without an easement.

If there is doubt as to the soil conditions, the builder or council may well require a geotechnical report to be carried out for the purpose of the design of the subfloor of any building to be constructed on vacant land. This can be expensive if the soil is particularly unstable.

Subdivision

Frequently the subject of the sale is a lot or unit that is yet to be subdivided or built and completion of the purchase is subject to this taking place. A plan of the proposed subdivision is attached to the contract and provisions included that the vendor will diligently do the things necessary to complete the works and have it registered.

The contract usually allows six months or other agreed sunset time for the vendor to complete the subdivision and register the plan, failing which either party can walk away. Completion cannot take place until the title for the lot issues following registration. In a normal market both the vendor and purchaser want completion to take place within the sunset period. However, if the market turns for the worse and property values drop a purchaser may well want to get out of the contract as the price is now too high. If the market surges forward than the vendor may want to delay past the sunset period so that the property can be sold to another buyer for a better price. An insoluble problem and the best that can be done is to agree to a sensible time frame.

With new lots in a subdivision, it is important to ensure that all services that are expected to be provided are actually being provided. Normally this includes water, gas, electricity, telephone and sewerage.

With new units or houses the important matters are the layout and position of the dwelling and the fixtures, fittings and finishes being installed.

Finance

Sensibly finance is approved before contracts are exchanged, even if completion is well into the future. This avoids the risk of defaulting and losing the deposit and perhaps sued for damages.

It is not easy to have a vendor agree to make a contract subject to finance because from the vendor's viewpoint it is a sale that is not certain.

Funds coming from sale

Frequently purchasers move from one house to another and rely upon the proceeds of their sale to pay for the purchase. It needs to be born in mind that if the sale falls through then there will be no funds to complete the purchase. In theory one default balances the other and the loss of the deposit on the purchase is offset by the keeping of the deposit on the sale. In practice this is not necessarily the case particularly as in both cases actions lie for damages as well as loss of the deposit. If possible have an alternative source of funding arranged, such as bridging finance to enable completion of the purchase whilst reselling.

Completion

Normally the forty-second day after exchange is agreed as the time to settle by handing over the money and taking possession of the property. This time can be any time that the parties agree to suit their arrangements for moving and arranging their affairs. The time required to complete the legal work involved, assuming the usual requirements of mortgagees, can be reduced to about two weeks if necessary.

The contract normally includes a special condition that interest at about 10% will be payable by the purchaser on the balance purchase money if settlement is delayed.

All rates and taxes are adjusted on the day of completion. On settlement a notice of sale notifying the council and valuer general is lodged at the titles office with the transfer and mortgage. The title is updated to include the purchaser's name noting the mortgage.

The purchaser arranges for the phone, electricity and gas to be put into their name. This is done by phone sometimes with follow up documentation.

Possession

Arguments occur fairly frequently as to the condition of the property when the purchaser takes possession. Usually just prior to completion the purchaser makes a final inspection. However, completion cannot be delayed for minor matters of tidiness or cleanliness. For any remedy to be available the condition of the property would have to either prevent the purchaser from being able to use it or it would have changed the property significantly.

Sometimes purchasers move into premises before completion in which event they must insure from the date you take possession and rate adjustments are made from that date. It is not wise to spend much on improving the property before completion as if for any reason completion doesn't eventuate then the cost of the improvements cannot be recovered from the vendor.

Subject to tenancies

Many properties are bought as investments and are bought subject to the existing tenancies. Full details of the tenancies will be attached to the contract. By virtue of the law on completion of the purchase you automatically step into the shoes of the vendor and the lease becomes enforceable by you. Prudently a discussion with tenants before exchange will reveal any issues that might exist that would otherwise remain undisclosed. The fact that a tenant is a poor performer will not entitle you to terminate the contract after exchange.

Rate adjustments

The vendor pays the rates until the day of completion after which the purchaser pays them. Usually the rates for the current quarter are paid from the vendor's money at settlement. As an adjustment at settlement the purchaser then pays the vendor that part of the rates for the quarter that apply for the period following settlement.

Sometimes vendors seek a land tax adjustment if they pay land tax on the property. This tax is calculated on the unimproved value of the property. An adjustment is appropriate if the property is commercial or industrial because both the purchaser and vendor will be liable for the tax. Adjustment should be confirmed by the value of the subject property on its own and not include other property owned by the vendor thereby ensuring that you get the benefit of the threshold of \$822,000 before tax is payable. This tax also applies to residential properties that are rented but not to principal places of residence. It is unreasonable for a vendor to seek a land tax adjustment when the purchaser is buying the home to live in and therefore will not be liable to the tax.

Default

If settlement does not occur on the date agreed then a process begins of enforcing the contract. This might see a small delay or in the worst case scenario end in litigation taking months or years to resolve. Fortunately it is an infrequent occurrence, but it has to be understood that there are no contract police who force defaulting parties to comply with the contract. Default ultimately results in slow and expensive court cases to be avoided at all costs.

The result of default by a purchaser is a termination by the vendor who then is entitled to keep the deposit and sue for the shortfall if any between the price at which the property was sold and the price achieved in subsequent sale. As stated above, unless a negotiated compromise is reached, this can involve costly litigation.

Taxes

If the property is not to be your principal place of residence then on resale there will be taxable profit or deductible loss either under normal income tax rules or under the capital gains tax rules. If you are a developer then the sale will probably produce a tax result under the usual rules relating to income.

If you are not a developer, the only matter to be decided at the time of purchase is the entity through which to buy. The main provision to bear in mind is that the 50% discount on capital gains does not apply to companies. Nevertheless, there may be losses in a company to offset or other good reasons to use a company.

GST does not apply to residential property unless new or vacant land. It does apply to commercial and industrial property. There are a number of possibilities that might apply to the purchase. Essentially, we will advise you whether you are paying GST and if so whether it is in the price or additional to the price and whether you are entitled to get it back as an input tax credit.

Capital gains withholding payments

Where the sale price is \$750,000 or more then the foreign resident capital gains withholding payments provisions of the Taxation Administration Act 1953 apply.

If the provisions apply to this transaction we will need to discuss this with you further.

The vendor must establish that they are not a foreign resident failing which the purchaser must remit up to 12.5% of the sale price to the Australian Taxation Office.

GST withholding payments

Where the property is taxable new residential property or land the GST withholding provisions of the Taxation Administration Act 1953 apply.

If the provisions apply to this transaction we will need to discuss this with you further.

If GST is payable on the purchase, the purchaser must remit up to 1/11th of the sale price to the Australian Taxation Office.

Transfer duty

Transfer duty is payable on the transfer of land and is a significant expense when buying a property (unless you are a first home buyer). By way of example on a price of \$600,000.00 the duty payable is \$22,090.00.

Transfer duty is payable on or before 3 months from the exchange of contracts. If stamp duty is not paid within this time, interest will attract at a rate of 9% per annum calculated daily.

As a first home buyer in NSW, you may be eligible for a full or partial exemption on transfer duty (previously known as stamp duty) under the First Home Buyers Assistance Scheme.

You can use the [residential property buyer tool](#) to find out the taxes and duties you may need to pay, as well as exemptions and grants that you are entitled to receive.

Premium property duty is payable on dutiable transactions for residential land where the dutiable value exceeds \$3 million.

Surcharge purchaser duty

Surcharge purchaser duty is payable on the purchase of residential real estate by foreign persons. The surcharge is in addition to the duty payable on the purchase.

Permanent residents, including New Zealand citizens holding a Special Category visa (subclass 444), are exempt from the surcharge when purchasing a principal place of residence, so long as you occupy the home for a continuous period of 200 days within 12 months of purchase.

The rate of surcharge purchaser duty 8%.

Government grants and transfer duty concessions

We will discuss with you any grants or concessions applicable to your purchase and guide you through application procedures.

INITIAL QUERIES:

1. Will you be ordering a pest and building inspection? If not, why not?

Please Note: When you are buying the property, it is your responsibility to ensure you are aware of all defects and issues with the property. You buy the property "as is", meaning that if you find a defect or issue with the property after exchange, you cannot rescind the contract on that basis. It is very important to undertake a pest and building inspection on a property so you are aware of any defects/pest infestations or damage to the property that may not be noticeable from a visual inspection. If you decide not to do so, you do so **at your own risk**.

2. Will you be ordering a boundary survey? If not, why not?

Please Note: When you are buying the property, it is your responsibility to ensure you are aware of any and all defects and issues with the property with respect to its boundary line. Properties can be bought and sold assuming that the boundary fences are in the right place, only to find out later that they have been incorrectly installed. Future claims by neighbours in respect of boundary lines which may be incorrect and must be rectified cannot be claimed against a previous owner who has not disclosed this issue in the contract. The previous owner may not know about the boundary issue. You buy the property "as is", meaning that if you find a defect or issue with the boundary line after exchange, you cannot rescind the contract on that basis. It is very important to undertake a survey on a property so you are aware of any defects to the property boundary. If you decide not to do so, you do so **at your own risk**.

3. How will you be purchasing the property? Circle the correct option.
 - a. Company.
 - b. Single purchaser.
 - c. Joint tenants. (if one of you die, the property will automatically pass to the other)
 - d. Tenants in common in equal shares. (if one of you die, their share will be passed in accordance to the terms of their will)
 - e. Tenants in common in unequal shares. Please confirm the share each purchaser is taking.

Buying a home

