



**Easy Legals –  
Avoiding the costly  
mistakes most people  
make when selling a  
property including  
seller’s checklist**

**Our Experience is Your Advantage**



## 1. Why is this guide important?

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Thank you for ordering this guide from Masons Lawyers. Masons Lawyers is a vibrant South East Queensland based law firm which specialises in a variety of areas of law including Conveyancing. If you are reading this guide you have either decided to or are considering entering into a transaction to sell your own home or an investment property.

For the majority of people, selling their own home is the most important transactions that they will ever enter into. Even where you are selling your first property or if you are a seasoned investor who has bought and sold multiple properties it is vital that you understand the basics of a residential conveyancing transaction before you start to negotiate with a real estate agent and before you sign a contract for the sale of your property to ensure that you understand your obligations and know your rights.

The purpose of this e-book is to give you guidance through the conveyancing process, including what it involves and why it is vital that you understand the basics on the conveyancing transaction. Given the nature and importance of each and every transaction you must understand why using a solicitor provides you with the best opportunity to ensure the transaction is completed successfully.

In our experience there are usually three criteria that people use to determine which firm to use for conveyancing these are:

- (a) Knowledge and experience to properly handling the transaction;
- (b) Certainty of Price; and
- (c) Speed of service.

Whilst each of these criteria are important you need to ensure that you appoint a solicitor to act on your behalf who has a knowledge of the complexities involved in the transaction and not simply the firm with the lowest price. Often firms will charge a lower price and then add extras onto their price for settlement agents, extensions for settlement or where complexities arise.

It is in our experience preferable to provide clients with a fixed fee for the transaction rather than been hit with those hidden extras so that you, as the client, are aware of the actual cost up front. As you can see from this example it is not simply a matter of choosing the cheapest quote that you receive. It is important that you engage a solicitor that will be upfront with you and have sufficient knowledge in the conveyancing process to act quickly.



This e-book is made up of 7 Chapters (including this one) and is set out as follows:

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If you have any question please contact one of the Masons Lawyers' Property team in either our Brisbane office on 3117 3780, our Caboolture office on 5428 1111 or on our Hotline 1300 000 LAW. Alternatively please visit our website at <http://www.masonslawyers.com.au/MasonsLawyers2163/Page/23408/Conveyancing.aspx> to submit a request for an obligation free quote for our firm to handle your conveyance.

Yours Sincerely,

**Masons Lawyers**

Per: Jeremy Streten, Director

Warning: This eBook contains general advice & information only and has been prepared without taking into account your personal goals, objectives and financial situation. Before acting on any information contained in this eBook contact us so we can ensure that it is applicable to your situation. Masons Lawyers takes no responsibility for any actions, repercussions or loss resulting from your independent actions without seeking and consulting independent advice. This guide is not legal advice but is general advice. Should you have specific questions or circumstances you should contact your lawyer to obtain specific advice.



## 2. I have heard of the Conveyancing transaction but do not know what it means?

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Most people have heard the term “conveyancing” but do not know what it means. It is a term that is used to describe the process by which the ownership of a property is transferred from a person to another person. It is a process that is complex but can be streamlined by lawyers who have experience in these transactions and an effective understanding of the law.

Conveyancing in Queensland is different to most other states in Australia but is, generally speaking, the same throughout the state. Within Queensland most of the difference involves the differences between local Council areas and their requirements for the transfer.

Whilst no two conveyances are exactly the same the process of conveyancing for sellers in Queensland is generally as follows:

- (a) The seller places their property on the market (usually through a real estate agent) for sale.
- (b) The buyer and other prospective buyers inspect the property to make a decision about whether to buy the property from the seller.
- (c) Ordinarily where the buyer wishes to purchase the property the buyer will then make an offer to buy the property from the seller. The seller then has the choice to accept the offer, reject the offer or attempt to negotiate a different deal with the buyer.
- (d) Once an agreement is reached the buyer and the seller sign a contract for the sale of land usually including all of the improvements (such as buildings) on the land.
- (e) The parties each appoint a separate lawyer to handle the conveyancing process.
- (f) The lawyer reviews the contract and explains to their client the various obligations and rights placed on their client as a result of signing the contract and also explains what must be done by the client in order to ensure that the party is able to 'settle' the transfer of the property.



- (g) The term settle is the time that the buyer actually pays the purchase price to the seller and the seller actually transfers the property to the buyer.
- (h) The lawyer liaises with banks and other parties to ensure that everything and everyone is coordinated for the day of settlement.
- (i) On the day of settlement, each party's lawyer attends the place of settlement and settles the transfer of the property.

As can be seen from this very brief outline of the steps to be taken in the conveyancing process, the process is a complicated one with a variety of different steps required to ensure that the parties comply with both the terms of the contract and the legislation governing the process. It is strongly recommended that each party to the transaction appoints a lawyer to handle the process to ensure that an experienced person is handling to transaction and nothing is missed.

**Fact: No two conveyances are exactly the same**

At Masons Lawyers we pride ourselves on our experience. Our Property Team has over 30 years conveyancing experience in acting for all parties involved in the conveyancing process and we are ready to assist you today.

If you have any question please contact one of the Masons Lawyers' Property Team in either our Brisbane office on 3117 3780, our Caboolture office on 5428 1111 or on our Hotline 1300 000 LAW. Alternatively please visit our website at <http://www.masonslawyers.com.au/MasonsLawyers2163/Page/23408/Conveyancing.aspx> to submit a request for an obligation free quote for our firm to handle your conveyance.



### 3. I have heard of the Cooling off period, what is this and what does it mean for me?

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In Queensland, the purchaser of a residential property, which is not bought at an auction, has the benefit of a 5 day cooling off period in which they have 5 business days to decide whether they wish to proceed with the purchase of the property without a substantial penalty from the seller. As the seller you need consider whether you will require the buyer to waive the cooling off period and what you will do if the buyer terminates the contract pursuant to the cooling off period.

#### 3.1 When does the cooling off period start and when does it end?

The 5 day cooling-off period starts the day the buyer receives a copy of the residential property contract signed by both the buyer and seller, if that day is a business day. If that day is not a business day, the cooling-off period commences on the next business day. The cooling-off period ends at 5pm on the final day of the cooling-off period. When the cooling-off period ends, the buyer may not terminate the contract under the cooling off period.

Fact: if the buyer terminates the contract under the cooling off period. The seller may take 0.25% of the purchase price as a termination penalty from the deposit paid by the buyer.

#### 3.2 What was the purpose of the cooling off period?

The purpose of the cooling off period is to give buyers the ability to terminate the contract if they change their mind on purchasing the property. This was introduced as a consumer protection for buyers to ensure that buyers were had the option to terminate the contract for any reason.

#### 3.3 What happens if there is a dispute between the buyer and the seller as to the commencement of the cooling off period?

In any dispute concerning the commencement of the cooling-off period, the seller must prove when the buyer received a copy of the contract.



### **3.4 Waiving or shortening the Cooling off period**

The buyer can also choose to waive or shorten the cooling-off period. Where the buyer wants to do this, the buyer must be interviewed by a lawyer and the lawyer must sign a Form 32a - Lawyer's certification, that must be signed and dated. The buyer must then provide this to the seller or the seller's agent before the buyer signs the contract.

The lawyer's certificate does not apply to residential property sold at auction.

### **3.5 What are the consequences of terminating the contract during the cooling-off period?**

Where the buyer terminates the contract under the cooling off period, the buyer must write to the seller, their solicitor or agent giving notice that the contract was been terminated under the cooling off period.

You must refund any deposit paid by the buyer within 14 days of terminating the contract, but may deduct a termination penalty equal to 0.25 per cent of the purchase price.

This means that if no deposit is held from the buyer that no termination penalty is payable to the seller.

At Masons Lawyers our Property Team has extensive experience in advising clients in relation to the obligations regarding the cooling off period and the circumstances where it should be used. Also we have experience in providing competent and timely advice to clients wishing to waive or shorten the cooling off period.

If you have any question please contact one of the Masons Lawyers' team in either our Brisbane office on 3117 3780, our Caboolture office on 5428 1111 or on our Hotline 1300 000 LAW. Alternatively please visit our website at <http://www.masonslawyers.com.au/Masonslawyers2163/Page/23408/Conveyancing.aspx> to submit a request for an obligation free quote for our firm to handle your conveyance.



## 4. You have an offer to buy your property. What now?

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Once you receive an offer to buy your property from a potential buyer there are a variety of considerations that you have to give to the contract terms so that you can ensure that the contract settles in accordance with your requirements.

Of course it is always preferable that as a seller you provide a copy of your contract to your lawyer prior to entering into the contract. However this is not always possible as it can be difficult to obtain advice from a lawyer on weekends when many contracts are signed.

The following list of considerations are standard aspects of the transaction that you must consider prior to entering into the contract:

- Purchase Price – a solicitor cannot provide you with advice on the sale price for the transaction it is important that you consider the sale price properly, not only to ensure that you are satisfied with purchase price but ensure that it will cover the mortgage that you have on the property.
- Deposit – a deposit for the purchase of property in Queensland should be no more than 10% of the Purchase Price. If it is more than there are consequences that follow that are not dealt with in this e-book. The deposit is the amount that you pay to the stakeholder (usually the agent) and can be forfeited to the seller if you default under the contract.
- Conditions – there are standard conditions as to finance and building and pest inspections that are usual in a contract. You should ensure that these are properly completed before you sign the contract so that you know when the contract will become unconditional.

**Fact: When signing a contract important considerations include:**

- Purchase Price
- Deposit
- Conditions
- Completion



- Special Conditions – depending on your circumstances, the circumstances of the buyer or the condition of the property you may require special conditions in the contract. Some agents will draft their own special conditions however it is always advisable that you check these conditions with your solicitor to ensure the effect of the clause is in accordance with your requirements.
- Completion – there are a number of factors that determine when the parties what to settle the contract. It is ordinary that you settle at least 30 days from the contract date to settle the sale of the property to ensure that your bank is ready to settle.

This brief overview of what is required before a seller enters into a contract is intended to give you the basic framework prior to entering into the contract and empower you make informed decisions about the conditions in the contract and salient details prior to entering into the contract.

At Masons Lawyers we have extensive experience in advising clients on all aspects of the contract and in drafting the special conditions required by the parties in contracts to ensure that they fulfil your requirements and protect your rights.

Contact one of our Property Law team today in either our Brisbane office on 3117 3780, our Caboolture office on 5428 1111 or on our Hotline 1300 000 LAW. Alternatively please visit our website at <http://www.masonslawyers.com.au/MasonsLawyers2163/Page/23408/Conveyancing.aspx> to submit a request for an obligation free quote for our firm to handle your conveyance. Ordinarily we do not charge more to assist clients with this aspect of the transaction and absorb our time spent into the conveyancing transaction.



## 5. What questions should you ask the real estate agent before signing the contract?

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Appointing a real estate agent to act as the agent to sell your property is one of the most important decisions that you will ever make. There are a wide variety of real estate agents in all areas of Queensland who can sell your property but you must ask a series of questions to ascertain which agent is right for your property but more importantly is right for you as a seller. Remember that a real estate agent is your agent for the sale, the agent you appoint must be a person that meets your requirements and importantly is someone you believe will sell your property the way that you want it sold.

### (a) How Long Have You Been in the Business?

The answer to this question will tell you much about the person that you are appointing. It is critical to remember that more experience does not necessarily mean that the person will sell your property faster or for more value than a younger agent. Much depends on whether they have access to competent mentors and their level of their training.

For instance newer agents tend to have more time to concentrate on you. Some agents with 20 years of experience repeat their first year over and over. Other 20-year agents learn something new every year.

### (b) What is Your Best Marketing Plan or Strategy for My Needs?

You will need to know:

- (i) Specifically, how will you sell my home?
- (ii) What is your direct mail campaign and clients?
- (iii) Where and how often do you advertise?
- (iv) Will you show me a sample flyer?
- (v) How do you market online?

### (c) Will You Please Provide References?

Everybody has references. Even new agents have references from previous employers. So ask to see references.

Ask if any of the individuals providing references are related to the agent.

Ask if you can call the references with additional questions.



- (d) What Are the Top Three Things That Separate You From Your Competition?

A good agent will not hesitate to answer this question and will be ready to fire off why they are best suited to sell your home. Everyone has their own standards, but most consumers say they are looking for agents who say they are:

- (i) Honest and trustworthy
- (ii) Assertive
- (iii) Excellent negotiators
- (iv) Available by phone or e-mail
- (v) Good communicators
- (vi) Friendly
- (vii) Analytical
- (viii) Able to maintain a good sense of humour under trying circumstances

- (e) May I Review Documents Beforehand That I Will Be Asked to Sign?

Pursuant to Queensland law they must provide you with and have you sign before they proceed with listing your property:

- (i) Agency Disclosure
- (ii) Listing Agreement

- (f) How Will You Help Me Find Other Professionals?

Let the real estate agent explain to you who they works with and why they choose particular professionals. Your agent should be able to supply you with a written list of referrals such as solicitors.

Ask for an explanation if you see the term "affiliated" because it could mean that the agent is receiving compensation from one or all of vendors, and you could be paying a premium for the service.

**Fact: Do not be afraid to ask questions of the agent to ensure that you appoint the right agent to sell your property.**



(g) How Much Do You Charge?

Do not ask if the fee is negotiable. All real estate fees are negotiable. Legislation sets a maximum commission as 5% for the first \$18,000.00 of the sale price and then 2.5% of the balance. However this amount can be negotiated.

(h) What Kind of Guarantee Do You Offer?

If you sign an agency agreement with the agent and later find that you are unhappy with the arrangement, will the agent let you cancel the agreement? Will the agent stand behind their service to you? What is their company's policy about cancelled agreements? Has anybody ever cancelled an agreement with them before?

(i) What haven't I Asked You That I Need to Know?

Pay close attention to how the real estate agent answers this question because there is always something you need to know, always. You want an agent to take their time with you -- to make sure you feel comfortable and secure their knowledge and experience.

As stated above this list of questions is not a definitive list of questions, the exact consequences of answers to these types of questions will depend on the circumstances and you should always have your lawyer verify any information provided by the agent.

If you are unsure of any aspect of the property it is strongly recommended that you seek professional advice, whether from your lawyer or another appropriate professional to ensure that all of your concerns are addressed and that you are aware of matters that may affect the property you are selling.

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## 6. You have signed the contract what do you do now?

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Congratulations, you have now signed a contract to sell your property. What do you need to do now?

### 6.1 Instruct a Solicitor.

It is important that you immediately get the contract into the hands of your lawyer to ensure that your rights are protected.

Upon receiving your instructions to act the right conveyance should immediately:

- (a) Provide you with a copy of the signed contract.
  
- (b) Give you a comprehensive letter of advice setting all of the important dates in respect of the contract. The advice from the solicitor will also advise you on all aspects of the property transaction and the contract that has been entered into between the parties. The purpose of this letter of advice is to provide you with all of the information required for the transaction.
  
- (c) Advise you in relation to any searches that you need to ensure that the property is properly described in the contract.

It is important that you have a competent solicitor review the search results to ensure that your rights are protected as the results of searches may raise concerns in relation to the property and potentially, in serious cases, give the buyer the right to terminate the contract.

**Fact: Once the contract is signed you must:**

1. Instruct a solicitor;
2. Organise finance
3. Organise building and pest inspections



The timing of the searches are important, you need to determine how long searches will take so that you can ensure that the searches are obtained with enough time prior to settlement to ensure that the result can be properly analysed. Your solicitor will make you aware of this timing and provide you with all of the necessary information to progress with the transaction.

## 6.2 Where you have a mortgage

You will need to either contact your bank or mortgage broker to arrange a release of your mortgage. You may also give your solicitor the contact details for your bank to arrange for the release of the mortgage over the property.

At Masons Lawyers our Property Team has extensive experience in advising sellers in relation to all aspects of the property conveyancing transaction.

Visit our website at

<http://www.masonslawyers.com.au/MasonsLawyers2163/Page/23408/Conveyancing.aspx> today to obtain an obligation free quote for Masons Lawyers to act on your behalf in your conveyancing transaction.



## 7. Conclusion

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As set out in this E-Book there are a number of significant factors that you must assess when selling a property.

Whilst the price charged by your solicitor handling the conveyance is not the most important consideration it is obviously one that is essential to sellers of residential property. Remember that you get what you pay for and if you want to find the right conveyancer you must ensure that you use a conveyancer with sufficient experience at a competitive price to act on your behalf.

Experience = knowledge and is a safe guard for you to ensure that you know your obligations pursuant to the contract that you sign and to ensure that your rights are protected sufficiently to ensure that you get the property for which you are paying.

At Masons Lawyers our Property Law team has extensive experience in assisting sellers of property to achieve the best result for you.

Contact one of our Property Law team today in either our Brisbane office on 3117 3780, our Caboolture office on 5428 1111 or on our Hotline 1300 000 LAW. Alternatively please visit our website at

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# Contact Us Today

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## 8. Resources

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### Seller's checklist

The following checklist should be followed before selling your property:

- Which agent do I want to appoint to sell my property?
- Has the agent answered all questions that I have and do I need anything clarified? Remember the questions are as follows:
  - (a) How Long Have You Been in the Business?
  - (b) What is Your Best Marketing Plan or Strategy for My Needs?
  - (c) Will You Please Provide References?
  - (d) What Are the Top Three Things That Separate You From Your Competition?
  - (e) May I Review Documents Beforehand That I Will Be Asked to Sign?
  - (f) How Will You Help Me Find Other Professionals?
  - (g) How Much Do You Charge?
  - (h) What Kind of Guarantee Do You Offer?
  - (i) What haven't I Asked You That I Need to Know?
- Do I want the buyer to waive the cooling off period?
- What is the Purchase Price?
- What deposit has to be paid and when does it have to be paid?
- Have I provided all of the information that I have on the property to the agent?
- When is completion? Does this suit me?
- Once the contract is signed, instruct a solicitor
- Have I contacted my bank to arrange a release of mortgage? If not tell my solicitor their details to arrange the release.