

# Your checklist on settlement day

The big day is approaching and you're counting down the hours until you settle on your investment property. But before you get too excited, there are a few checks you need to carry out prior to completing the purchase, warns property lawyer *David Singh*



From a purchaser's point of view, settlement is the day they get the keys to the property. In reality, however, it's much more than that.

It's the day when you, the buyer, instruct your solicitor to hand over the balance of the purchase monies to the vendor's solicitor, and – on your instructions – your solicitor authorises the release of the deposit to the vendor.

The terms settlement and completion tend to be used synonymously but here, we use one: settlement. This article is based on NSW law, so purchasers of property in other states should seek specific advice in that state. Your solicitor can usually assist you in this regard.

In return, the vendor's solicitor hands over the documents and title deeds to your solicitor, thus transferring title to you, and arranges for the keys to be released to you. If you took out a loan to help with the purchase, your solicitor also hands over the title deeds to the lender's solicitor as security for your mortgage.

Issues can arise around settlement, so be aware of the following to avoid potential problems:

## 1 Confirm details

You, as the purchaser, should confirm the settlement date and time, and the venue, but normally you would not attend. In the morning that day, check the property to confirm that it is in the same condition as when you

saw it before exchange of contract. You may also take any cheques required for settlement to your solicitor, or arrange to deliver them the day before.

## 2 Settlement statement

Just prior to settlement, your solicitor should send a statement showing the funds required for settlement, for your approval. It's often difficult for your solicitor to give you this information early, because they are waiting to receive it from the vendor's solicitor who, in turn, is awaiting its arrival from the seller's lender.

## 3 Council rates

The settlement sheet normally shows the adjustment for local council rates. Rates are adjusted between the vendor and purchaser as at the date of settlement, because they are paid in full by the vendor, and the purchaser repays the vendor their share by adding it to the purchase price. Your solicitor is likely to follow the usual process of notifying the local council that the purchaser is the new owner.

## 4 Water/sewer charges

In metropolitan Sydney, Sydney Water, and in regional areas, the local council, makes a charge for water and sewer availability and water usage. The water rates usually run quarterly and are generally paid to the end of the current quarter by the vendor. These charges are also adjusted between vendor and purchaser as at the settlement date. You pay rates and charges only from the time you complete your purchase, or from the time agreed with the vendor.

## 5 Strata levies

This only applies when the property is a strata property, such as an apartment or townhouse. Usually, the strata levies run quarterly and are paid to the end of the current quarterly levy period by the vendor. After settlement, the Owners' Corporation should write to you and advise you of the strata levies payable.

Before settlement, ask your solicitor to obtain an original certificate of currency of the Owners' Corporation insurance, to confirm that the building is insured from the strata report. Sometimes, the lender requires evidence of this insurance and that their interest as mortgagee be noted.

## 6 Registration fee

Where applicable, the vendor allows you a credit for any registration fee paid to the Land Titles Office to take the vendor's mortgage or other dealings off the title. Your solicitor informs you about any dealings to be so removed.

## 7 Money required for settlement

If you have cash – usually funds in a lender account at call – not a loan, you must arrange for bank cheques for settlement, not personal ones. Alternatively, you may have cleared funds in an account out of which your lender can draw them – and has prior authority to do so. If you have a loan, your solicitor usually arranges for the lender to deliver the cheques from the proceeds of the loan to settlement.

Usually, you let your solicitor have the lender cheques on the business day before the settlement date as, if there is a spelling mistake in the name or an error in the amount of the cheque, settlement may be delayed and you could incur interest under the contract, as well as a host of additional fees and charges for settling late.

## 8 Direction for payment

The vendor can determine how the balance of the purchase price is to be paid on settlement, and this is normally done by directions for payment. For example, the vendor may ask you to provide cheques to pay the rates owing, or legal bills, or pay off a mortgage – but the money comes from the vendor's sale proceeds, not out of your pocket.

## 9 Solicitor's fees

You are likely to receive your solicitor's tax invoice in advance of the settlement date. They may also provide another one if there are any more professional fees and/or disbursements incurred as a result of additional legal services required by settlement.

## 10 Keys

The keys may be collected from the agent after settlement. We recommend you change the locks immediately.

## 11 Registration

If you have a loan, after settlement, your lender/mortgagee registers the transfer and mortgage

at the Land Titles Office. The mortgagee then retains the certificate of title as part of the security for the loan. Alternatively, your solicitor can arrange registration of your title.

## 12 Electricity and other services

It's up to you to arrange for electricity meter readings and the

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connection of other services by suppliers on the settlement date.

## 13 Final inspection

You should inspect the property just before settlement to ensure it's all in order. It should be in the same condition at the date of settlement as it was when you saw it before exchange of contracts, fair wear and tear excepted. It's best you take photographs on a camera with dated film at the final inspection – not a digital one – as digital images are easily edited and may have less credibility as evidence if a dispute arises.

Allow sufficient time for any issues you want to raise, so that they can be resolved before settlement. If it's relevant, ensure that any vendor or tenant has vacated the property.

I once acted for the purchaser at a settlement many years ago, when the vendor's removalist slammed a door into the wall, leaving a round hole in it the shape of the door handle. So, I negotiated a reduction in the price so that the vendor's funds fixed the damage. Usually, you would instruct your solicitor to negotiate only for bigger items, as it wouldn't be worth the legal bill to do it for small issues.

## 14 Defects liability period

If you buy a property off the plan, you may have a 'defects liability period' in the contract, whereby the vendor is required to fix defects in the property due to faulty workmanship and materials. If this is the case, you may require the vendor to repair any

relevant defects in the property at their expense.

Typically to get a this list of these – in addition to making one yourself – you or your solicitor would arrange for pest and building inspection reports to be done, notice of which your solicitor should give the vendor in writing prior to expiry of the defects liability period.

It's usually 90 days or three months after the date of settlement, although in some cases it may be six months depending on the contract.

## 15 Change of ownership

Usually in NSW, the Land and Property Information Office, also known as the Land Titles Office, notifies the Council and the Valuer General (and Sydney Water) of the change of ownership, based on a form lodged by your solicitor or your lender's solicitor after settlement.

## 16 Insurance

It's very important that you insure the property adequately, including contents insurance if you keep possessions or personal effects there, landlord's insurance if you lease it out, and Home Owners' Warranty insurance if you carry out any building work on it. ■

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