

CONVEYANCING TERMS EXPLAINED

TERM	EXPLANATION
<i>Adjustments</i>	Outgoings on a property such as rates, strata levies, land tax
<i>Bank cheque</i>	A cheque issued by a bank, which is guaranteed by the bank and is accepted as secure as cash, except there is a clearance period on the cheque
<i>Building Certificate</i>	Certificate obtained from the local Council authority to ensure buildings on the property comply with Environmental Planning & Assessment Act and includes compliance with certain standards.
<i>Building inspection and Building Report</i>	Inspection of property and subsequent report carried out by registered inspectors covering building issues including drainage problems, sagging rooflines, retaining walls etc usually obtained prior to entering into or exchanging Contract for Sale or during the Cooling Off period. It should also indicate structural issues.
<i>Building Insurance</i>	A contract of insurance in respect of the property being purchased. Should be arranged to take effect as at date of settlement or earlier possession.
<i>Caveat</i>	A legal notice by a person having a specific type of interest in the property which (if valid) will prevent transfer of title until the claim has been determined.
<i>Certificate of Title, Title Deed</i>	A document issued by the Land Titles Office detailing the owner, a legal description of the property and any other interests, such as easements and mortgages, in the property. Also see 'Old System Title'.
<i>Completion</i>	See 'Settlement'
<i>Contents Insurance</i>	A contract of insurance in respect of the contents of the property. Should be arranged to take effect as at date of settlement or earlier possession.
<i>Contract for Sale</i>	A written (and often quite complex) legal agreement which sets out in detail the terms and conditions of the sale, description of the property, the price, inclusions and completion date.
<i>Conveyance, Conveyancing</i>	This is the process of transferring interests or ownership of property from one party to another.



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Cooling Off Period

After exchange of contracts for residential property there is provision for a 5 day cooling-off period. This means there is a statutory right for a purchaser to withdraw from the contract within 5 business days without any limitations. If the purchaser pulls out of the contract within the 5 days, the purchaser will forfeit 0.25% of the purchase price to the vendor for giving the grace period. There is no cooling-off period if:

- (i) a s66W Certificate is signed;
- (ii) the purchaser is a successful bidder at an auction;
- (iii) the property is not residential.

Covenant

A notation on a title deed which imposes an obligation, conditions or restrictions regarding the property.

Deposit

An agreed amount (usually 10%) of the purchase price, which is paid by the purchaser at exchange of contracts and usually held by the estate agent until completion.

Deposit Bond

This is a guarantee issued by an insurance company, bank or other financial institution, that the purchaser will pay the agreed deposit when called upon to do so. There is a fee for these bonds and they are regularly used instead of money as a deposit. Conditions apply.

Disbursements

Expenses incurred by a lawyer on behalf of a vendor or a purchaser. These are in addition to any legal costs (fees) and cover costs of specific searches, certificates from Government and other authorities, survey and the like.

Discharge of Mortgage

A document which releases real estate from security for a loan.

Easement

A right by a person who is not the owner of the property, to use or have access to another person's land for a specific purpose such as a driveway or for a public utility.

Exchange, exchange of contracts

The time at which the Contract for Sale (see above) becomes binding on both parties, the agreed deposit is paid and any cooling-off period commences. After exchange the vendor is unable to sell the property to any other interested party and the purchaser is obliged to complete the contract.

Exclusions

Items which are specifically excluded from a sale and which must be identified in the contract.

First Home Owner Scheme

FHOS is a joint Australian and NSW Government initiative to help first homeowners. The grant applies to a new residential property only.



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The scheme also provides exemptions or concessions on transfer duty for people who are buying or building their first new home in NSW. This includes buying vacant land on which it is intended to build a first home. Conditions always apply and constantly change. CHECK the details of the scheme before committing to purchase.

Final Inspection

An inspection of the property by the purchaser, as close as possible to the settlement time, to determine that the property:

- (i) is in the same state and condition that it was at the date of exchange of contracts;
- (ii) that all agreed inclusions remain;
- (iii) that vacant possession is properly available (if applicable).

Final Search

A search of the title that is obtained as close as possible to the settlement time to confirm there have been no new dealings or caveats affecting the property since any previous search.

Fixtures

Items which are attached to or form part of the building or are fixed to the land. There is still argument about what constitutes a fixture so these should be detailed in depth in the contract.

Gazumping

This occurs if, prior to exchange of contracts, the vendor sells to someone else, often at a higher price.

Guarantee

A formal written assurance by a third person to (usually) a lender to maintain loan repayments in the event the borrower defaults in his/her/their/its payments. Guarantees can also extend to other issues as agreed by the parties.

Guarantor

A person who guarantees payment of a loan as fulfilment of an obligation in the event the borrower is unable to repay the loan or an obligee fails to meet the obligation.

Inclusions

Items which are included in a sale and which must be identified in the contract (eg fixed floor coverings, stove, light fittings, blinds, external TV antenna, swimming pool equipment).

Joint Tenants

Ownership of a property in equal shares, where if one owner dies his/her share passes to the surviving owner.



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<i>Land Tax</i>	A tax levied by the NSW government against some owners of property. It is based on the value of the property or aggregated values of several properties. If levied, it is a charge on the property.
<i>Listing</i>	A property which has been listed for sale with a real estate agent
<i>Mortgage</i>	Any charge on land (other than a covenant) created for securing the payment of a debt.
<i>Mortgage Insurance</i>	A contract of insurance to protect the lender in the event the borrower defaults in loan repayments. The insurer may then pursue recovery of the funds from the defaulting borrower and/or guarantor.
<i>Mortgagee</i>	A person who lends money to another which is secured by taking a mortgage over property, usually the borrower's.
<i>Mortgagor</i>	The person providing the security in a mortgage loan transaction. Usually the mortgagor and the borrower are the same person.
<i>Old System title</i>	The title system which pre-dated the Torrens system and still exists in some properties today. It can be quite complex.
<i>Pest Inspection and Pest Report</i>	Inspection of property and subsequent report carried out by registered inspectors covering wood rot and termite and borer damage, usually obtained prior to entering into or exchanging Contract for Sale or during the Cooling Off period.
<i>Positive Covenant</i>	A covenant in relation to land which imposes obligations of a positive nature, such as carrying out work or expending money on land.
<i>Professional Fees (Costs)</i>	Legal fees for acting on behalf of a vendor or a purchaser. These are in addition to any disbursements.
<i>Purchaser</i>	The person who is buying a property.
<i>Requisitions, Requisitions on Title</i>	A process by which the purchaser requests information from the vendor about the title of the property not available on a search or from the Contract. The requisitions provide the purchaser with any information from the vendor which may not have been disclosed or discovered during inspection of the property.
<i>Restrictive Covenant</i>	A covenant affecting land restricting the uses to which



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	the land may be put.
<i>Right of Way/ Right of Carriageway/ Right of Footway</i>	A right by a person who is not the owner of the property, to use or have access to another person's land for the specific purpose of a walkway, driveway or the right of traversal.
<i>Section 66W Certificate</i>	This is a certificate which waives the cooling-off right if it is signed by the purchaser's legal representative and delivered to the vendor.
<i>Sales Advice</i>	Notification sent by agent to vendor's solicitors advising of a buyer for the property including the buyer's details, solicitor and purchase price. Upon receipt of the sales advice the contract is finalised and forwarded to the purchaser's solicitor for consideration by the buying party and, if in order, for exchange.
<i>Settlement</i>	The settlement (or completion) of the sale whereby the purchaser pays the balance of the purchase money and the vendor gives ownership of the property to the purchaser by giving the title deed and the Transfer to the purchaser's solicitor to enable the property to be registered in the purchaser's name. If there is an incoming mortgagee over the property, it is normal for the title deed and transfer to be handed to it as settlement as its security.
<i>Stamp Duty</i>	A state government tax on the sale of real estate, the amount of which is determined by the sale value of the property and is paid by the purchaser unless an exemption applies. It must be paid no later than at the time of settlement.
<i>Strata Title</i>	The subdivision (by a strata plan) of a building and the land on which it is situated into lots and common property. The lots are the units or other areas owned by the owners and the common property is everything that does not form part of a lot and is owned by the owners corporation (all the owners collectively).
<i>Strata inspection and Strata Report</i>	Inspection of property records and subsequent report carried out over Owners Corporation records. The report can give indications of: <ul style="list-style-type: none">(i) Status of levies;(ii) Financial situation of the Owners Corporation;(iii) Possible or actual 'special levies';(iv) Any discord amongst residents. Usually obtained prior to entering into or exchanging



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	Contract for Sale.
<i>Strata levy</i>	A levy imposed on owners of strata property and set by the Owners Corporation to meet costs of maintaining the sections of the property for which the Owners Corporation is responsible – Owners Corporation insurance, managing agent's fees etc.
<i>Searches</i>	Enquiries undertaken of government and other instrumentalities to determine any affectations on the property to be purchased. These should not be confused with title searches.
<i>Survey, Identification Survey, Peg Survey</i>	A plan that shows the boundaries of a block of land and the positioning of any building/s on that land, location of encroachments, compliance with building alignments, compliance with relevant covenants.
<i>Tenants in Common</i>	Joint ownership of property which may be in equal or unequal shares. Each joint owner may dispose of their share in the property independently and the shares do not automatically pass to the other owners in the event of death but form part of that person's estate.
<i>Title</i>	Evidence of the legal right of ownership of property.
<i>Title Deed(s)</i>	Document(s) disclosing the legal description and ownership of a property.
<i>Torrens Title</i>	The term used to describe the system of title (or land) registration expressed in NSW in the Real Property Act. This type of title is guaranteed by the State Government, except in some cases of fraud.
<i>Transfer</i>	A document signed by the vendor and purchaser and registered with the Land Titles Office (Land & Property Information) to change the registered proprietor of the land.
<i>Vendor</i>	The person who is selling a property