



TOOLKIT:  
BUYING A PROPERTY  
OFF THE PLAN



Property is  
for everyone.

## Your guide to buying a property off the plan

The Morris Legal Group Team are property tragiacs and have lived the journey of buying our next home or investment, so we know that it can be overwhelming.

This Toolkit is your winner's guide to buying property off the plan and will be with you throughout the conveyancing process.

### Prepare to succeed

When the market is competitive, it pays to take steps to prepare for your purchase whether or not you have found the perfect property.

- Check in with your bank or broker to ensure you will have the funds available for settlement when construction is complete
- Calculate transfer duty on your property and factor it into your budget:
  - > [ACT Stamp Duty Calculator](#)
  - > [NSW Stamp Duty Calculator](#)
- Check out what stamp duty concessions or boosts you may be eligible to receive, including first home owner support. Start here:
  - > [ACT Stamp Duty Details](#)
  - > [NSW Conveyance Duty Details](#)

Once you have found the perfect place:

- [Get in touch with us](#) so we can review the Contract, or get an [instant quote](#)

- Think about your other life admin, including:
  - > Ensuring your finances are sorted and you can be approved once the property is built (you cannot get unconditional finance for off-the-plan property)
  - > Getting your will sorted, or having your existing will reviewed (see page 9)
  - > Whether you need a new or updated Binding Financial Agreement, especially if you're moving in with your partner for the first time (see page 9)
- Get your Pinterest or old-school scrap book and glue stick fired up and start seeing yourself in your new place!

### Settle In

Settle in for the long haul... buying a property off-the-plan property may require you to wait, but can be hugely rewarding! You'll need to be prepared to engage with the process:

- Plan your to-do list for each step of the conveyancing process (see page 3)
- Keep your conditional finance approval current but be sure to get ready to finalise and sign up once construction is complete!

- You will undertake a pre-settlement inspection, when it will be important to note any defects in the property before completion (see page 5)
- You will need to keep track of any other defects that come up after completion and let the developer know in time (see page 7)

### Welcome to your property adventure!

If you need help at any point throughout the process, just reach out to us. We're thrilled to be on the journey with you and are only too happy to help.

#### ► Want to know more?

We believe in sharing knowledge, experience and ambitions so that together we can build something bigger than ourselves and better than what came before.

**Sound good?** Let's chat.

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# WHAT TO EXPECT WHEN YOU'RE BUYING OFF THE PLAN



- Understand your budget
- Allow for stamp duty
- Are you eligible for ACT stamp duty concessions?** Go to: [revenue.act.gov.au](http://revenue.act.gov.au)
- Are you eligible for a NSW First Home Owner Grant** Go to: [revenue.nsw.gov.au](http://revenue.nsw.gov.au)

- Request a Contract from the Agent
- Send us the Contract for review and advice
- Research the Developer's reputation
- Ask when settlement is expected

- Pay holding Deposit
- Check your finance is in order
- Come and see us to:**
- Discuss the off the plan process
- Sign a Client Authorisation Form
- Verify your ID
- Pay the Deposit

**It's official!**

- You have committed to the Contract until the end, which is called "completion" or "settlement".

- Stay in touch during construction for updates
- The Developer may terminate the Contract if they don't obtain the Approvals or the Registration of the Units Plan in time.
- You may need to pay additional Deposit during construction, depending on your Contract.

**When the building is finished, we receive 14 days' notice to settle.**

- Sign your loan documents.
- We then organise your Bank to settle.**
- Arrange a removalist (or some willing friends!)
- Arrange pre-settlement inspections with the Agent
- Arrange for electricity and gas connections in time for you to move in

**Congratulations!**

- Your Bank advances money to pay the Seller to settle
- Your mortgage is established
- The Seller receives the Deposit
- All the Seller's outstanding rates, land tax and other charges are paid on settlement
- Collect the keys to your new home!

- Arrange contents insurance
- Pay Stamp Duty when your Notice of Assessment arrives
- Keep a list of defects that arise and submit it within **90 days of settlement**
- Rates, land tax and water transfer to you automatically
- We will advise the body corporate of your contact details

**!** We strongly recommend your loan application is underway at least **2 months before settlement**. Your lender will issue a conditional approval and will organise a valuation around the same time as your pre-settlement inspection. Normal bank processing times are 4-6 weeks (from lodgement of your loan application to settlement). Your mortgage broker can project manage the entire finance approval process for you.

**!** If settlement is delayed because of you or your Bank, you may be liable to pay interest to the Seller.



## WHAT IS A SECTION 17 CERTIFICATE ALL ABOUT?

When buying a property, the Buyer can agree to waive their right to a Cooling Off Period by providing the Seller with a **Section 17 Certificate** (in the ACT) or a **Section 66W Certificate** (in NSW).

This is a certificate issued by a solicitor who does not act for the Seller, after they explain to the Buyer that the certificate waives their right to the Cooling Off Period.

This has the effect of making the Contract for Sale unconditional at the time of exchange, locking the parties into the deal.

Remember, an auction contract is **ALWAYS** unconditional. Buyers **DO NOT** receive a Cooling Off Period when they are successful at auction.

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**When purchasing a property in the ACT, every Buyer is entitled to a "Cooling Off Period". A Cooling Off Period is exactly what it says on the box: a time for the Buyer to cool off and think about whether they want to (and can) proceed with the purchase of a property, once Contracts for Sale have exchanged.**

A Cooling Off Period lasts for 5 Business Days. It starts on the day that a Contract for Sale is exchanged, and ends at 5pm on the 5th Business Days following exchange.

A Buyer can get out of the Contract for Sale during the Cooling Off Period by giving the Seller a notice that the Contract is rescinded. The Buyer will forfeit a small amount of the price of the property (usually 0.25% of the purchase price) if they do this.

A Buyer can waive their right to a Cooling Off Period, by having their solicitor issue a certificate under:

- Section 17, *Civil Law (Sale of Residential Property) Act 2003* (ACT) for ACT properties; or
- Section 66W, *Conveyancing Act 1919* (NSW) for NSW properties.

If the Contract for Sale is exchanged with cooling off waived, then the Contract is deemed unconditional and both parties must proceed to settlement. There is no opportunity to further negotiate the terms of the Contract or rescind the Contract, if a Buyer changes their mind and does not want to proceed.

Once a Contract is exchanged unconditionally, there is no means of getting out of the Contract for Sale without the Buyer committing a breach and risking a claim against them, or both parties agreeing not to go ahead.

### Benefits of the Cooling Off Period:

- A Buyer may want to lock in their purchase and exchange Contracts with the Seller so that they cannot be gazumped – with both parties understanding that the Buyer has the option to get out of the Contract by paying a small fee.
- If a Buyer doesn't have much time to lock in a property or if their solicitor isn't immediately available (say the Buyer is exchanging on an off-the-plan property on the weekend), they can exchange Contracts for Sale immediately and have their solicitor provide advice on it in the coming days.
- The Cooling Off Period gives the Buyer additional time to complete due diligence on the property once the Contract is exchanged, and receive advice on the Contract.

### Reasons Why You Might Waive Your Right To Cooling Off:

- The provision of a Section 17 Certificate or a Section 66W Certificate is often highly valued by a Seller of property, because the Contract for Sale becomes unconditional and the Buyer cannot pull out. It indicates the deal is final on exchange and is a typical request from Sellers in both ACT and NSW.
- If a Buyer makes an offer which includes an unconditional exchange (that is, the Buyer's cooling off is waived), the Seller may agree to provide the Buyer with additional time to conduct due diligence, obtain legal advice and receive their unconditional finance approval on a 'good faith' basis.

# Pre-settlement

## INSPECTION CHECKLIST



This is your chance to check that the property has been constructed in accordance with the Contract.

You need to check for any, damage, particularly chips, cracks and marks. Once this list has been submitted and you move in, any damage that \*may\* have been caused by you no longer needs to be fixed by the Seller!

**Legend:** ⊖ Not applicable   ✓ Works   ✗ Faulty

### Testing time

#### Pro tips

- Use a phone charger or night light to test electrical points!
- Sometimes exhaust fans and rangehoods are quiet. Take a tissue with you and hold it against the exhaust fan when it's turned on. If it sticks, it works!
- Check the Inclusions List in your Contract, to ensure everything agreed has been provided!

Check for:	Room	Description
<b>Chips</b> in paintwork, benchtops, walls, cornices		
<b>Cracks</b> in paintwork, plastering, grout, benchtops		
<b>Paintwork</b> being generally even and no drip marks <i>(NB under Australian Standards you must stand 1m away from any wall you are inspecting)</i>		
<b>Flooring</b> generally laid flat, fixed down properly, fully grouted (if tiles)		
<b>Joinery</b> having been installed flush and there are no gaps, doors open and close easily and handles are fixed		
<b>Doors</b> opening and closing without dragging or binding, and door handles work		
<b>Windows</b> opening and closing freely (if they are designed to), no cracks in the glass, keys are present		
<b>Fixtures</b> , such as light fittings, shower screens, ceiling fans, taps, working properly		
<b>Air conditioning/heating</b> installed and operating		
<b>Stairs and Balustrade</b> installed and safe		
<b>Louvres and blinds</b> installed correctly, opening and closing freely		
<b>Variations requested in your Contract</b> such as additional power points, lighting and appliances		
<b>Other issues</b>		

Continues >



# Post-settlement

## DEFECTS LIST



**Your off-the-plan purchase will include a Defects Liability Period which will usually be a 90-day period.**

You will have the opportunity to submit one list of Defects that arise in the property during this period for rectification by the developer.

The Defects Liability Period will commence on the earlier of:

- the date of Completion of your property; and
- the date you were permitted to occupy the property.

### What are Defects?

A Defect is a material defect in the residential dwelling constructed by the builder due to faulty workmanship or materials.

Common Defects include, but are not limited to:

- Water leaks
- Faulty garage doors
- Inadequate drainage

Defects do not include:

- Blown light bulbs
- Scratches and chips to surfaces
- General wear and tear of the property

### Emergency Defects

It is usual practice that emergency defects are rectified immediately. If any arise, the defects will not form part of your one defects list to be submitted during the Defects Liability Period.

### What are Emergency Defects?

Emergency Defects are those that relate to:

- watertightness/roofing;
- electricity;
- gas;
- plumbing (including sewerage);
- the structure of the Works; or
- matters that fundamentally affect your proper use and enjoyment of the property.

Here is a helpful list for you to keep track of any defects. We recommend that you put this list up on the fridge and record any Defects you discover during your Defects Liability Period, which is usually 90 days from completion.

<b>Property Address</b>	
<b>Name of Owner(s)</b>	
<b>Contact Details</b>	M: _____ E: _____
<b>End of Defects Liability Period</b>	

Item	Description	Location	Fixed
1			<input type="radio"/>
2			<input type="radio"/>
3			<input type="radio"/>
4			<input type="radio"/>
5			<input type="radio"/>
6			<input type="radio"/>
7			<input type="radio"/>
8			<input type="radio"/>
9			<input type="radio"/>
10			<input type="radio"/>



### WHY DO WE MAKE ADJUSTMENTS?

Rates, land tax, water charges and body corporate levies are land charges that remain with the property being transferred. Adjustments are made at settlement to ensure that the Buyer and Seller are both paying their share of these charges.

This means that the parties are each fairly paying the land charges that apply to the time that they owned the property, regardless of when the account is changed or the transfer is registered on the title.

In the same way, rent that a property earns for its owner is adjusted so that the Buyer and the Seller each earn their share of the rent when the property passes.

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**Adjustments refers to the 'splitting' of the costs of certain land charges on a property, such as rates, land tax, water charges and body corporate levies. The process ensures that neither the Buyer nor Seller are paying for these charges when they did not own the property.**

#### How do we know what the charges are?

Prior to settlement, the Buyer's representative will obtain various searches for land charges including:

- *Certificate of Rates, Land Tax & Other Charges*, from the ACT Revenue Office or the relevant council;
- *Request for Charges* from Icon Water or local water provider;
- *Special Water Meter Reading* from Icon Water or local water provider; and
- *an update on payment of any body corporate levies* (if the property is a unit in a units plan).

These are provided to the Seller's representative to allow them to prepare a settlement statement.

#### How does it work?

The cost for each kind of charge is calculated for the period in which settlement will take place, and that cost shared proportionally between the Buyer and Seller so that:

- if the Seller has paid land charges for a time when the Buyer will own the property, then the Buyer will reimburse the Seller their share, by adding it to the purchase price; and
- if the Buyer needs to pay land charges for a time when the Seller owned the property, then the Seller will pay their proportional amount by taking it off the purchase price.

Usually, the parties agree to work on the basis that all outstanding bills are paid in full on settlement. This means that most adjustments are by the Buyer in favour of the Seller, and any payments that are outstanding are paid by the Seller on settlement by drawing a cheque to the council or utility provider.

#### Land tax

Land tax is usually not levied on owner occupiers and so land tax is generally not be adjusted when a Buyer intends to live in the property. However, in the ACT, if the Seller is liable for land tax a Buyer be able to request the Seller's assistance to have the ACT Revenue Office recognise that the Buyer is not liable for land tax, and reduce its costs. The rules are complex and may be changed by the Contract. Ask us if you're not sure.

#### What about gas, electricity and internet?

Gas, electricity, internet and other services are 'personal' utilities, and new owners will need to arrange connection for these services individually. Adjustments are not made on settlement.

#### Does anything else get adjusted?

If the property is tenanted, rent will be adjusted proportionally much in the same way as land charges are adjusted, so that the Buyer and Seller earn income on the property during the time they owned it.

The Seller will reimburse the Buyer for the cost of discharging any mortgage on title, which needs to be removed for the Buyer to register their name on the title.

An adjustment will also be made by the Buyer to the Seller for the Section 119 Certificate, and Building, Pest & Compliance Inspection Report, if one or both of these documents were required in the Contract.

# Adulterating

## DO I HAVE TO?

The honest answer is no, but if you don't have a will, some unspeakable relative could end up owning your little patch of paradise when you die.

*Yikes.* Let's do something about that.

Every conveyancing client is offered a complimentary estate planning consultation.

For a surprisingly affordable fixed fee, we can provide you with:

- an estate planning advice tailored to you
- custom wills for one, a couple or more complex family
- enduring powers of attorney

**No more excuses.** Let's get it sorted for you.



**Book your complimentary consultation here.**

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\*All matters are provided a fixed fee quote prior to commencement. Quote for custom wills will depend on whether the client is an individual or a couple, and on the complexity of the estate. All quotes will show you the GST-inclusive price but will exclude disbursements. Out-of-pocket expenses ('disbursements') are different for each client and are an extra cost which are passed on directly to you.



# Resources

## Helpful tools for your property adventure

### Get a quote

Need an instant quote for your upcoming conveyance? No worries!

Find them all [here](#).

### Fact sheets

We've put together some great resources on the conveyancing process, signing contracts, Crown leaseholds and settlement adjustments.

Find them all [here](#).

### Payments made easy

We've made payments easy and paperless.

You can securely pay your invoice or place money into our trust account [here](#).

### Government resources

Both the [ACT](#) and [NSW](#) Governments provide extensive information about living in each states. Check these resources for more information about housing and property.

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