

# Quick Guide: Before you buy

If you're getting ready to buy a property, we have gathered our top 10 tips and the most helpful resources for you on how the process works, common pitfalls, and what to do next.

Once you're ready to take the plunge, make sure to send us the contract of sale and section 32 vendor's statement for a free review (conditions apply – see 'Our related services' below). We're committed to making your purchase easy and stress-free!

## Introduction

Whether it's your first home or your tenth development site, buying a property is always a big decision with numerous potential risks.

Our top 10 tips for navigating the transaction successfully are:

1. Research the market: look for recent sales of similar properties in the area.
2. Inspect the property properly, and do your due diligence.
3. Have your financing ready, and understand the loan document.
4. Budget for all the transactional costs: stamp duty, GST, conveyancing, financing applications, insurance, etc.
5. Get a lawyer or conveyancer to review the contract of sale and vendor's statement **before** you sign.
6. Consider the most practical and tax effective way to hold the property: whether in your name, in a family trust, or some other structure.
7. If you are buying an apartment or unit, understand the owner's

corporation fees, rules and arrangements.

8. Make sure you physically and legally can do what you want to do with the land.
9. If attending auction, understand the auction rules and common practices.
10. If you make an offer in a private sale, always set a deadline by which the vendor has to accept your offer.

We have also compiled for you here the best resources on the web, to give you a smooth ride through the whole process.

## Research the market

Once you decide which area(s) you want to buy in, familiarise yourself with property value there. We recommend:

- Attending inspections and auctions of similar properties in the area.
- Checking the weekly REIV auction and private sale results for your area – <http://www.reiv.com.au/Property-Research/Auction-Results> (select your suburb towards the bottom of the page).

- For older sales, check the free websites at  
<http://www.realestate.com.au/sold>;  
<http://house.ksou.cn/>;  
<http://www.getsoldprice.com.au/>.
- You can also pay for a comprehensive property report, or ask the real estate agent for a free report.

Consumer Affairs Victoria also has a helpful guide about property prices at <http://www.consumer.vic.gov.au/housing-and-accommodation/buying-and-selling-property/buying-property/understanding-property-prices>.

## Do your due diligence

It is hard to back out of a property sale contract after you've signed it, so make sure you check it properly before you sign!

The mandatory due diligence checklist given at inspections (<http://www.consumer.vic.gov.au/duediligencechecklist>) is a great starting point for questions you should be asking, to make sure you understand exactly what you are buying.

For a property that you plan on living in, seriously consider getting a professional, independent building inspection done before making an offer, or bidding.

Consumer Affairs Victoria has further tips on inspecting property at <http://www.consumer.vic.gov.au/housing-and-accommodation/buying-and-selling-property/buying-property/inspect-properties-before-you-buy>.

## Get your financing

In other words, know your budget. You shouldn't ever make an offer or a bid unless you know that you can afford it, and that you will have the funds ready in time for settlement (which can be two very different things!)

The Fitzroy Legal Service has a good overview of financing options for property purchases at <http://www.lawhandbook.org.au/handbook/ch14s01s04.php>. See also the Australian government's MoneySmart website - <https://www.moneysmart.gov.au/life-events-and-you/life-events/buying-a-home>.

## Understand your loan documents

If a lender is financing part of your loan, these tend to be long-term arrangements that will have a significant impact on your financial life over many years, so read the documents and fully understand your obligations!

In our experience, Australian banks are increasingly outsourcing the drafting of these agreements overseas, and there are often errors in the loan documents that you or your lawyer need to raise and get fixed.

For the basics of home loans, see the Australian Government's MoneySmart website: <https://www.moneysmart.gov.au/borrowing-and-credit/home-loans>.

If you are still unsure about the loan documents, your lawyer or financial planner should be able to help.

## Know the transactional costs

Beyond the purchase price, there are many additional costs:

- stamp duty: see the State Revenue Office website at <http://www.sro.vic.gov.au/SRO/SROCalcs.nsf/transfer?OpenForm>. Stamp duty laws can be complex, so speak to your lawyer to find out whether you are entitled to any concessions, reductions or exemptions;
- GST is payable on most commercial properties: speak to your lawyer or accountant to find out whether GST is payable and whether you can claim it back;
- loan application and other borrowing costs: speak to your bank or broker;
- land title transfer fee (currently up to \$1,366) and mortgage registration fee (currently \$111);
- Council rates, land tax, other rates and utility charges, body corporate fees, etc: most of these will be disclosed on the section 32 vendor's statement;
- legal or conveyancing costs: speak to your lawyer or conveyancer;
- moving costs;
- building inspection fees;

- the cost of any repairs or renovations that will need to be done before or when you move in;
- rates and utility connections fees;
- ongoing mortgage repayments; and
- home and contents insurance.

## Get a lawyer or conveyancer

Get a lawyer or conveyancer involved once you are seriously considering purchasing a property.

The special conditions on contracts of sale are often complicated and are drafted to benefit of the vendor. Off-the-plan contracts can be hundreds of pages long. **Make sure you get advice before signing anything!**

Some real estate agents might pressure you into signing an offer without getting legal advice first, telling you that you can always use your cooling-off rights.

You should never sign something you don't really understand, and hope that you can get out of it later. In any case, cooling off can cost you thousands of dollars (0.2% of the purchase price, and at least \$100), and those rights can be easily lost if you are careless. **Also, there are no cooling off rights when you buy at an auction, or within three clear business days before or after one.**

Some lawyers and conveyancers, including us, offer to review most contracts of sale and vendor's disclosure statements for free. There's little reason not to take advantage of the offer.

As for retaining a lawyer or a conveyancer, the main difference is that

lawyers can advise and act on broader issues like the most tax effective ways of making the purchase, how to jointly buy, and related legal disputes, like recovering damages if a party cancels the sales contract or fails to settle. See Consumer Affairs Victoria for more details: <http://www.consumer.vic.gov.au/housing-and-accommodation/buying-and-selling-property/buying-property/seek-expert-advice-on-property>.

## Decide how to hold the property

This step is often skipped, when a little thought and planning could have led to income tax savings each year, or avoiding or reducing a large stamp duty or capital gains tax liability later on.

There are a variety of ways for a typical family purchasing a property to hold it, including:

- in one of their names only;
- in their names jointly, as joint tenants;
- in their names jointly, as tenants in common;
- in a family trust or unit trust; or
- in a family company.

Each option has different income tax, stamp duty, family law, estate planning and practical differences for now and in the future. We strongly recommend at least having a short chat with your lawyer or accountant about your circumstances, future plans with the property, and which of these (or other) options would work best for you.

## Owner's Corporation rules

If you're buying an apartment, unit or townhouse, there is likely to be some shared areas or facilities that are managed by an owner's corporation.

The rules in an owner's corporation can be quite restrictive and even intrusive. The fees can be quite high. Make sure they are acceptable to you.

Consumer Affairs Victoria has a useful checklist of things to consider when buying these sorts of properties: <http://www.consumer.vic.gov.au/housing-and-accommodation/buying-and-selling-property/checklists/buying-an-apartment-or-unit>.

## Know the planning rules

If you plan on making any changes to the property, from a minor renovation to a full rebuild, make sure the land is such that it is physically possible, and that you are legally allowed to do so.

The vendor's statement gives you some idea of restrictions like the zoning of the property and planning overlays (such as a heritage overlay) which apply.

Calling the local council is usually a good way to find out more for smaller projects.

For major changes, you may need legal advice from a lawyer and advice from an architect, town planner or other experts.

## Understand the auction rules

If you are buying at auction, make sure you know the rules first. Consumer Affairs Victoria has a good practical guide to how auctions work:

<http://www.consumer.vic.gov.au/housing-and-accommodation/buying-and-selling-property/buying-property/buying-property-at-auction>.

If you have never attended a property auction before, we recommend attending a few before yours, to get a practical feel of the process.

Finally, the most important things at an auction are:

- doing all your due diligence and checking of the contract of sale before attending: there is no cooling off for auctions!
- having a firm figure for the highest amount you are willing to bid, and sticking to it;
- if you need a loan to complete the purchase, getting written pre-approval from your lender (very rarely will vendors at auction accept a financing condition); and
- having the funds ready to pay a 10% deposit on the day.

## Negotiate everything in private sales

Many properties are still sold by private sale in Victoria. Without much of the urgency and competition of an auction, there is much greater scope to negotiate

price, terms and conditions, and the settlement date.

We recommend Consumer Affairs Victoria's guide to private sales to understand the basics:

<http://www.consumer.vic.gov.au/housing-and-accommodation/buying-and-selling-property/buying-property/buying-property-by-private-sale>.

## Find out more

Call us on (03) 9041 7733 if you would like to find out more.

The Fitzroy Legal Centre's law handbook is a good reference for the legal aspects of a real estate transaction -

<http://www.lawhandbook.org.au/handbook/ch14s01.php>.

There are many helpful resources on the web to help property buyers. Always check when they were written, as the law and industry practices change frequently, and many articles are outdated.

Finally, do as much research as you can for such an important purchase!

## About the author



Growing up in a family of property developers, property is in Lucy's blood. It's that experience and her time at her previous commercial and property law practice that allows

Lucy to cut to the chase, identify the real issues, give you practical advice alongside the legal, and help you with

anything from the smallest purchase to your next major development project.

Lucy can also draw from her years of experience at the Australian Tax Office and Victorian State Revenue Office to help you structure your property transactions in the most tax-effective way.

## About Kai Legal

Kai Legal is a modern commercial law practice based in the Melbourne CBD.

Our focus areas are:

- property law, in particular property development and planning;
- state and federal taxes, in particular Victorian stamp duty and other property-related taxes;
- competition and consumer law; and
- general commercial law.

We aim to give you peace of mind over all of your legal matters.

## About this publication

Kai Legal fact sheets provide general information, and are not legal or financial advice. These are not complete summaries of the law, and only touch on select points and scenarios that may be relevant to our readers.

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