

APT CONVEYANCING

JULY 2013 ISSUE 3

CONVEYANCING NEWSLETTER

“C-news is a conveyancing newsletter for consumers, brokers and real estate agents”

Welcome

Welcome to the third edition of APT c-news. In the first two editions we covered:

- What conveyancers do and why they are needed.
- Whether property contracts are binding.
- What occurs when purchaser finance is and is not approved.
- What is a section 32, who prepares it and what does it include.
- The first home owners grant, pensioner exemption and principle place of residency concession.

In this edition we cover some of the items prospective purchasers should focus on when procuring property.

The Cooling-Off Period!

Purchasers of property have a statutory right to bring a property contract to an end within 3 business days after signing the contract (in particular circumstances). Prospective purchasers are then entitled to a refund of the deposit less \$100 or 0.2% of the purchase price, whichever is greater. The cooling off period doesn't apply if:

- The property isn't residential.
- Legal advice has been obtained prior to contract signature.
- Both parties have entered into a similar contract for the same property.
- The purchaser is a company or estate agent.
- The contract is signed 3 days before or after a publicly advertised auction.

No contract is formed until an offer has been made by one party and that offer has been accepted by another party (in writing). Prospective purchasers are entitled to withdraw their offer without the need to pay any cooling off if the vendor has not signed the contract because legally there has been no acceptance of the offer made.

“Purchasers of property have a three business day cooling-off period”

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Should I Physically Inspect The Property?

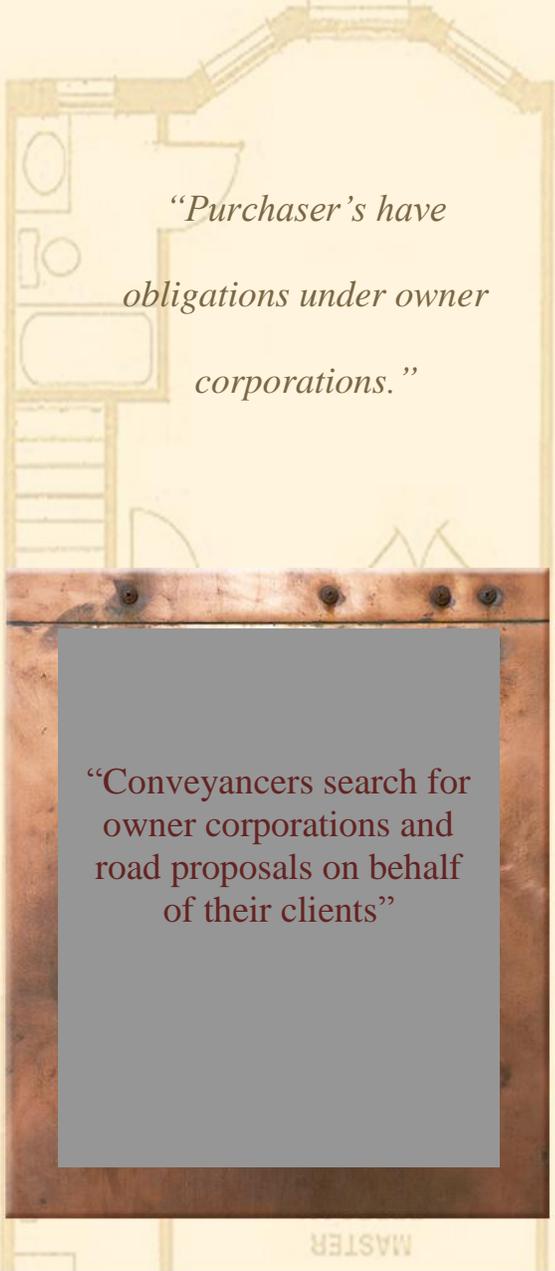
We always recommend that prospective purchasers measure the land themselves rather than relying solely on the plan measurements. Any discrepancies can be worked into the contract through an appropriate clause. You can also determine if there are any illegal structures which haven't been reported by a vendor. E.g. shed, garage etc built over an easement or a pool that's unfenced. Purchasers must detect these breaches before signing the contract so the situation can be rectified. Informal checks are a fantastic way of determining the amount of noise in the area, traffic levels or unruly neighbours. It's also wise to talk with local shop owners to determine if there are any imminent plans of a commercial nature.

Is My Property Covered By An Owners Corporation?

An owner's corporation is automatically generated when a plan of subdivision is registered with Land Victoria and this subdivision contains 'common ground'. This common ground is documented on the plan of subdivision and generally covers gardens, stairways, driveways, foyers, fences etc. If you become a lot owner where there is common ground, you are therefore an owner corporation member. Details about the owner's corporation can be found in the S32. As a general rule, if there are more than three units on a block, there will be an owner's corporation. As a prospective purchaser, you must be aware of your obligations under the owner's corporation.

Is My Property Part of a Vic Roads Proposal?

Purchasers should check for any Vic roads proposals on their land by searching the most recent version of the Melways and contacting the local council for any major main road proposals. This is important, particularly in high growth areas where development is steady or where purchasers are procuring very large land lots.



“Purchaser’s have obligations under owner corporations.”

“Conveyancers search for owner corporations and road proposals on behalf of their clients”

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What Is The Certificate of Title?

The certificate of title is a document that proves to a prospective purchaser that the person(s) claiming to have ownership of the land actually have the right to sell that land. It proves ownership of land! It is a critical component of the section 32 document because it helps to ensure that the purchaser of the land can be registered as the new owner of the land. Once the settlement takes place, a new certificate of title is issued usually within around 6 weeks and is in the name(s) of the new owner(s).

The certificate of title includes the volume and folio numbers, the registered proprietor(s), encumbrances, caveats, notices, diagram location and whether there has been any activity during the prior 125 days. It's a source of useful information about the property!

What Is An Easement?

An easement is a right held by a person or party over the land of another. It's absolutely critical that prospective purchasers check the section 32 carefully for easement details because easements can't be built on. Just about every property will have some easement.

What Is A Caveat?

A caveat is a written warning that another party has an interest in the land. Only those parties with a 'caveatable interest' can lodge a caveat on a property. Examples of parties with caveatable interest are:

- A creditor wants to prevent a vendor from disposing of the property to secure a loan.
- A prospective purchaser who has signed a contract to buy the same property as another party. This can occur when two different estate agents are selling the same home. The party registering the caveat first will have priority as the purchaser.

Prospective purchasers can incur significant amounts of time and expense in dealing with a caveator's interest if another party has lodged a caveat on the property.

*“Check The Section 32 Carefully &
Consult With Your Conveyancer.”*



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What Is A Covenant?

Restrictive covenants are private agreements between land owners. The land restricted is called the 'burdened land' and the land benefiting from the restrictions placed on the burdened land is called the benefited land. Covenants are detailed on the certificate of title & there are generally three types:

- Building covenants: ensure that works are completed within a certain timeframe & comply with predetermined requirements.
- Covenants that guide the development of the area.
- Covenants that impose rules of communal living.

It's important for prospective purchasers to scan the certificate of title carefully because new owners are bound by the covenant(s). They are cemented into the land & remain on the title. These covenants are enforced by those owners of benefited land and not by council.

*“Covenants are cemented into the land.
Purchasers should check the S32 &
consult their conveyancer”*

What Is An Encumbrance?

It's a burden, obstruction, impediment or lien (a right to keep possession of an item pending payment of a liability) on an estate or property. Encumbrances are detailed on the certificate of title and must be disclosed to prospective purchasers. Some of them can be removed and some can't be removed. They can affect the marketable value of a property which is why it's important for purchasers to check the section 32 carefully. Common encumbrances are covenants, easements, caveats, mortgages, warrants of seizure and sale, charges and unpaid taxes. Some of them are inherited when you, the purchaser, become the new owner of the land.

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Yours in Conveyancing,

Nikki and Gavin Anderson

