

# APT CONVEYANCING

MAY 2013 ISSUE 1

CONVEYANCING NEWSLETTER

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

## Welcome

Welcome to the first edition of APT c-news. APT c-news is an informative conveyancing publication aimed at educating consumers about conveyancing. It's an eco-friendly publication distributed electronically by licensed conveyancer's, Anderson Property Transfers.

## What Is Conveyancing?

It's prudent to start with defining what conveyancing actually is. In its simplest form, conveyancing is the transfer of interests in land from one legal party to another. The agreement to transfer this interest is detailed in a contract between the seller (vendor) and purchaser. Conveyancer's facilitate the transfer of interest in land for their clients (purchasers or sellers) through meeting the regulatory requirements contained in the Conveyancer's Act 2006.

## Are These Contracts Binding?

A contract is an agreement between two or more persons that's legally enforceable. The terms and conditions of the agreement are expressly stated within the contract itself. Before the law will regard an agreement as a contract, six elements must exist. There must be:

- An intention by the parties for their agreement to be legally enforceable.
- An offer made by one party and acceptance by another.
- Form and/or consideration. That is, a mutual promise.
- Capacity of the parties to contract. That is, the parties must be of legal age & not under any impairment.
- Genuine consent to the making of a contract.
- The purpose or object of a contract must be legal.

Your property contract of sale or purchase meets these criteria and is therefore, legally enforceable. It's always wise to be represented by a licensed conveyancer who can review these contracts and facilitate your title transfer successfully.

*“Always check to make sure that your conveyancer is licensed.”*

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## What If My Finance Is Not Approved?

Because contracts are binding by the parties, the terms and conditions contained within them are also binding. What does this mean for me? If you are purchasing a home subject to finance approval by a particular date, and you have signed the property contract verifying your commitment to do so, you must:

- Ensure that your finance is approved through your lender by this date.
- Request a finance extension through your conveyancer if your finance approval will be late.
- Ensure that you undertake either of the above or you risk being held by the vendor to those terms and conditions contained in the contract. You may also be liable for any damages incurred.

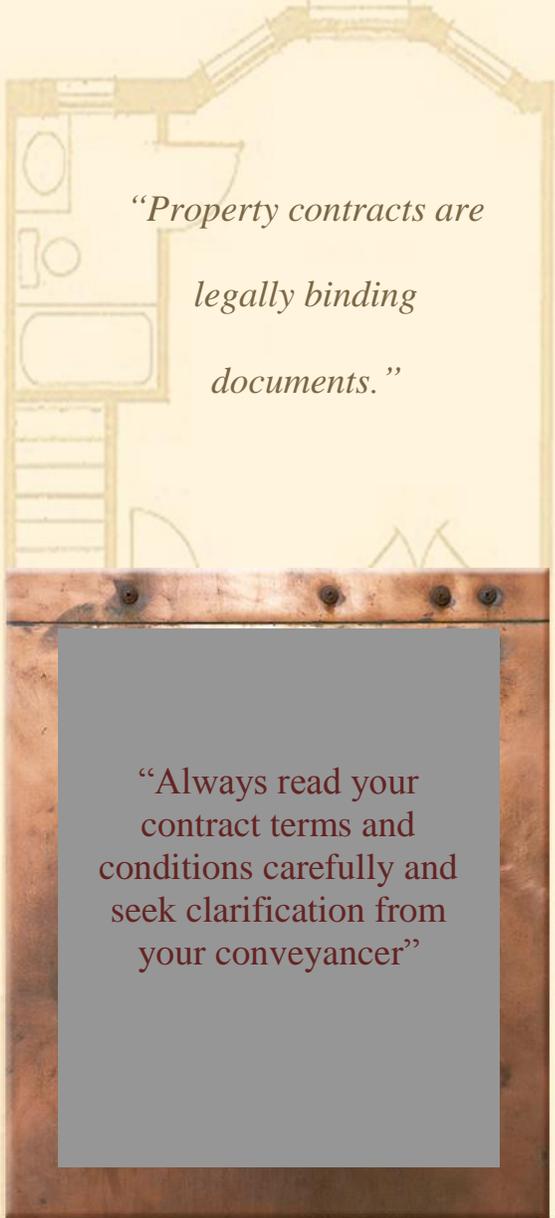
It is absolutely critical that all consumers recognize that a signed property contract is binding and they may be bound to their terms and conditions.

## What Happens When My Finance Is Approved?

After your finance has been approved by the contracted date, you will be requested to pay your deposit. Generally, the finance approval and deposit dates are the same. Therefore, it's important that consumers read and understand their contracted terms and conditions carefully. Conveyancer's liaise with their client (you), their client's lender and their client's agent to ensure their client meets their contracted terms and conditions. Conveyancer's should:

- Make sure that client finance is approved by the contracted date.
- Make sure the client's deposit is paid by the contracted date.
- Apply for finance and deposit date extension on their client's behalf.
- Negotiate finance and deposit date extension with the opposing party's conveyancer/solicitor.
- Draft up documents containing the request for finance and deposit extension.
- Ensure their client's are not locked into finance and deposit dates they can't meet.

Once your finance and deposit date arrives, the deposit must be paid and the contract becomes unconditional. That is, you are bound to take possession of the property.



*“Property contracts are  
legally binding  
documents.”*

*“Always read your  
contract terms and  
conditions carefully and  
seek clarification from  
your conveyancer”*

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## *What Is A Section 32?*

The Sale of Land Act requires those consumers selling a residential home to provide prescribed information (under the Sale of Land Act) to prospective purchasers prior to a contract of sale being signed. A seller (vendor) failing to provide the required information prior to contract signature risks the contract being void and cancelled. In this case, the purchaser may not be legally bound to the terms and conditions contained within the contract.

It's prudent to seek advice from a conveyancer prior to contract signature. The opportunities for ending the contract can be limited if the sale has already been completed.

Section 32 interpretation can be perplexing. Conveyancer's are skilled at explaining the literature contained within S32's. If in doubt, always seek the services of a reputable conveyancer for clarification.

## **What Does The Transfer of Land Involve?**

The transfer of interest in land from one party to another includes four components:

- **Title & Goods:** covers what interest is being bought or sold. It contains the land with any fixtures, improvements, fittings and goods. The title provides a description of the asset – the restrictions, encumbrances, easements & owners details.
- **Expenses & Non-Title Restrictions:** Are not contained in the title but affect the title. E.g. statutory restrictions, zoning, water, sewerage, piping, rates, taxes & other costs.
- **Contractual Documents:** covers the contract of sale and the vendor's statement, otherwise known as the section 32 statement.
- **Title Documents:** documents of direction to the registrar move from the contractual documents and allow a title to be transferred to a new owner at settlement. Documents like the withdrawal of caveat, discharge of mortgage and transfer of title are exchanged for funds at settlement. Adjustments for rates, taxes, registration fees and stamp duty are required on settlement.

It's absolutely critical that consumers are represented by conveyancer's who are skilled at facilitating title transfer under the Conveyancer's Act 2006.



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## What's In a Section 32?

Information contained in the S32 includes, but is not limited to:

- The seller (vendor) and title details.
- Building permit issues during the previous 7 years.
- Owner builder warranty insurance information for properties less than 7 years of age.
- Charges over the land and any statutory warnings.
- Owner builder condition reports, if the premises were owner built.
- Covenant and easement information.
- Any restrictions on title.
- Planning information. E.g. where zoning restricts land use.
- Information about property services and road access.
- Outgoings payable by the property's owner.
- Orders issued by authorities. E.g. fencing, sewerage, road-widening etc.
- General property information.

*“Always read your section 32 carefully and ask your conveyancer for clarification”*

## Who Prepares The Section 32?

The section 32 is prepared by a licensed conveyancer. Conveyancer's ensure that all of the prescribed conditions contained in the Sale of Land Act are included within the section 32 document. Importantly, any seller who knowingly or recklessly offers misleading information, or does not provide all of the required information within the S32 may be committing a criminal offence, and can be fined.

Once the S32 is prepared by your conveyancer, it's delivered to the client's real estate representative who makes it available to prospective purchasers. The S32 can also be provided directly to the prospective purchaser through the estate agent.

## Who Signs The Section 32?

The vendor (seller) is required to sign the S32. Once an offer has been accepted, a contract is drafted and subsequently signed by both parties.

Yours in Conveyancing,  
Nikki and Gavin Anderson

