

Conveyancing in Queensland



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&
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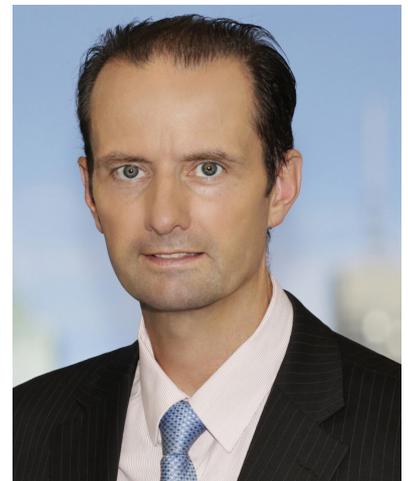
Our Conveyancing Team

The Quinn & Scattini Conveyancing Team deals with residential sales and purchases which include houses, units, duplexes and vacant land. Each member of the Conveyancing Team is either a solicitor or an experienced conveyancing paralegal.

The Quinn & Scattini Conveyancing Team is distinct from the Quinn & Scattini Property Team which deals with all matters relating to property law that do not relate to everyday house and unit sales and purchases. In the main the Property Law team handles property development (be it broad acre subdivision or strata title) and commercial property.

The Conveyancing Team is led by Duncan Murdoch who has over 20 years experience in property law matters.

- Conveyancing in Queensland** - p. 3
- Conveyancing in New South Wales** - p. 4
- Off The Plan Contracts** - p. 5
- Broad Acre Flat Land Divisions & Lot Sales** - p. 6
- Strata Title & Management Rights** - p. 7
- Commercial Property Agreements** - p. 8
- Other Property Services** - p. 9



Duncan Murdoch
Director



Conveyancing in Queensland

What is Conveyancing?

Conveyancing is the legal process of buying and selling land (with or without a building on the land).

The legal process varies between States. The Queensland system is such where buyers are encouraged to enter into a contract (often subject to conditions) as soon as possible. Such conditions often include the contract being subject to finance and a building and pest inspection but can be subject to other conditions depending on the circumstances of the transaction.

Both sellers and buyers should not regard a contract as being “standard” as one person’s circumstances differ from another and we encourage both sellers and buyers to consult us before signing the contract so that we can check that all necessary conditions have been covered in the contract.

Once the contract is signed then it may be difficult, costly or impossible to amend the contract and so you should ensure that it is correct from the outset.

What we do for the Buyer:

- Obtain FIRB approval (if required)
- Undertake property searches to ensure that the title is in order
- Provide the Buyer with a copy of the survey plan for identification purposes and to enable the Buyer to check for possible errors, misdescriptions or encroachments
- Advise the Buyer on special conditions
- Prepare the transfer documents and ensure that they are capable of registration in the titles office
- Prepare stamp duty declarations and attend to the payment of Queensland Transfer Duty
- Adjust the rates and any other outgoings
- Arrange and attend settlement of the purchase on the Buyer’s behalf
- Ensure that the Buyer gets what he/she bargained for, namely, good title to the property

What we do for the Seller:

- Advise the Seller in relation to any special conditions
- When the standard REIQ contract is not used, we advise the extent of the variations and how they affect the Seller
- Follow up any special conditions in the contract and let the Seller know when they are satisfied
- Arrange for the release of any mortgages over the property
- Check the transfer documents are correct before the Seller signs them
- Adjust the rates and any other outgoings
- Arrange and attend settlement on the Seller’s behalf
- Ensure that the sale settles on time and the Seller receives payment in full

Conveyancing in New South Wales

We are also able to act for sellers and buyers of property in New South Wales.

The conveyancing process in New South Wales is different to the conveyancing process in Queensland. In New South Wales the seller's solicitor prepares the contract (not the seller's real estate agent). It is a requirement of New South Wales law that certain documents are attached to and form part of the contract. These include certain title documents and certain council documents which are designed to disclose certain information about the property before the buyer signs the contract.

There is no standard finance clause in a New South Wales contract and so buyers who need finance need to consider having a special condition prepared.

When both parties are happy with the contract and the buyer has completed his/her searches and enquiries then contracts are exchanged. This is the point at which the contract becomes binding. Thereafter the parties proceed to completion (known as settlement in Queensland).

This is only a basic overview of the New South Wales process. Fran Cramp or Duncan Murdoch can be contacted if you wish to know more about the New South Wales system.



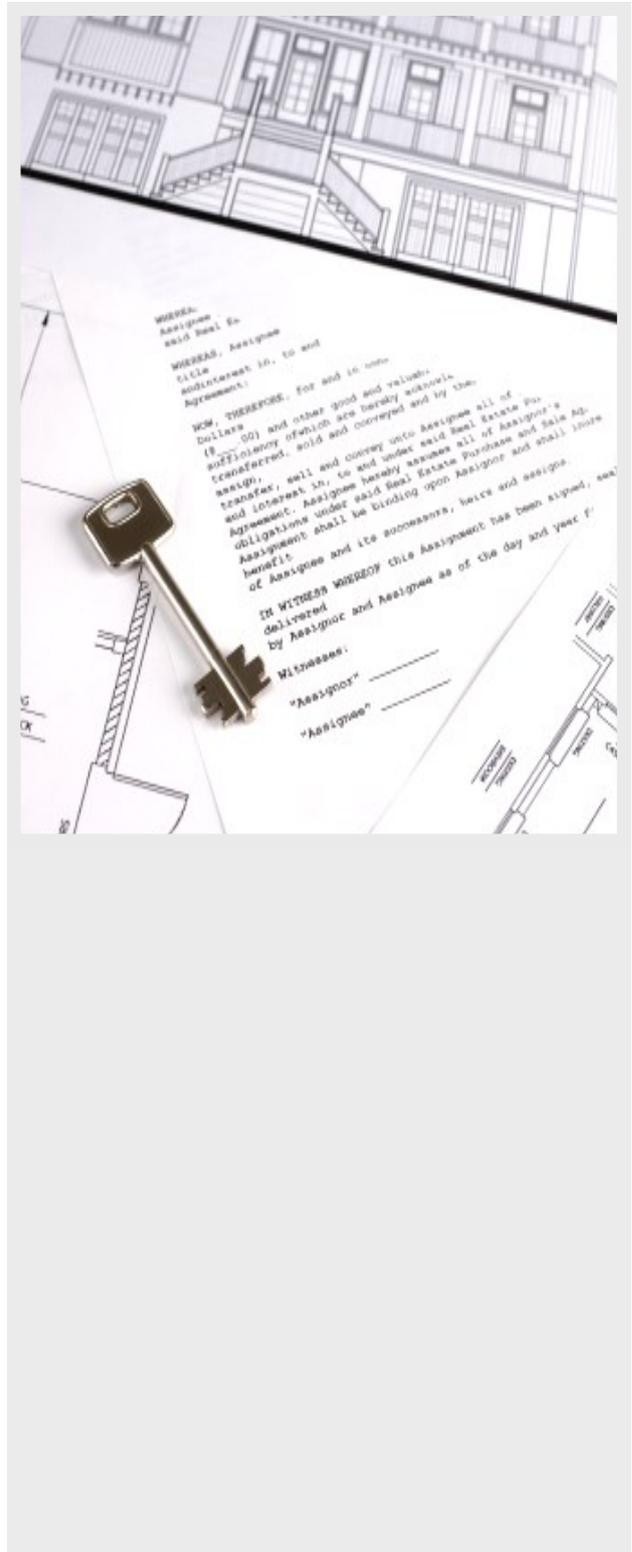
Off The Plan Contracts

Whether a developer is wishing to undertake a flat land subdivision or create a strata title scheme, the likelihood is that prior to construction starting the developer will have to secure a number of pre-sales. These pre-sales take the form of off the plan contracts.

An off the plan contract is a contract for the sale and purchase of a block of land or a unit for which a separate title has not yet been created. The buyer is buying the block or unit by reference to a plan as opposed to being able to physically inspect the block or unit.

One of the drawbacks in buying off the plan is that in many instances you cannot see what you are buying. This is particularly the case for unit blocks where presales are required before construction can start.

There are complex issues for a buyer to be aware of when buying off the plan. We strongly recommend that you instruct one of our solicitors to advise you on the contract, its terms and the potential pitfalls when buying off the plan.



Broad Acre or Flat Land Subdivision

What is broad acre or flat land subdivision?

Broad acre or flat land subdivision involves the subdivision of a large block of land into smaller lots.

We have acted for land owners selling land to developers for subdivision, developers wishing to acquire land for subdivision and thereafter selling lots following subdivision as well as for individuals buying from developers.

It is extremely important for the contract for the sale and purchase of the lot to be carefully drafted as it will form the contractual relationship between the parties for the duration of the transaction.

Often the contracts have conditions that flow on from the development approval and/or have building covenants. All of these issues need thorough investigation.



Lot Sales

The Property Law Team is set up to assist developers from the purchase of the development site right through to the sale of the subdivided lots or units.

For this reason, all developer lot sales are handled within the Property Law Team under the supervision of Director Duncan Murdoch.

Getting the sale proceeds into the bank will be the top priority of any developer and is also our top priority. We ensure that all things are done to ensure that settlements take place on time and that monies are banked on time.

Strata Title & Management Rights

What are Strata Title or Community Title Schemes?

Strata title or community title schemes are a way of dealing with shared ownership of property. It can be utilized in a wide range of developments such as:-

- High rise unit blocks
- Smaller unit blocks such as “six packs”
- Duplexes
- Townhouses
- Flat land residential communities
- Staged developments

Strata title or community title schemes have often been favoured by developers as it can provide for certain by-laws that can be important in community living which can be set out in the community management statement. This is binding on both current owners and future owners. Examples of matters covered in these by-laws would include:-

- Ownership of pets
- Maintenance of property
- Appearance of property
- Noise control
- Use of common areas

All registered lot or unit owners are members of the body corporate. The body corporate appoints a committee to run the strata scheme often with the assistance of a professional body corporate manager who looks after the administration issues. Lot or unit owners can apply to become members of the committee.

Strata title schemes are funded by the levies that the

body corporate issues to the lot or unit owners. These comprise an administration fund levy (which goes towards paying the annual expenses) and a sinking fund levy which is a cash fund built up to cover large or unanticipated expenditure. The body corporate will prepare a budget each year which will normally be presented to lot or unit owners to vote on at each year's annual general meeting.

Disputes between lot owners and the body corporate can be dealt with under statutory procedures.

The law relating to strata title schemes is complex and is ever changing. We can assist in guiding you through the issues affecting such schemes.

What are Management Rights?

Management rights are the business of running the caretaking duties on behalf of the body corporate and the letting of units on behalf of the unit owners in a community titles scheme.

Not all strata title schemes have an on site manager and/or letting manager. Often the larger schemes and resort style schemes will have an on site manager and/or letting manager.

The caretaker's remuneration is usually paid out of the administrative levies that each lot owner pays. The on site letting manager's remuneration normally comes from a commission on the leasing of the units that the letting manager arranges and/or manages.

Our Property Team can advise on the sale and purchase, and other issues relating to management rights.

Commercial Property Agreements

While commercial properties are handled by our Property Team, we mention that commercial properties by their nature are more complex than your average residential properties. Therefore, the preparation and entering into of a contract for the sale and purchase of a commercial property needs careful consideration.

What matters should be considered?

- The purchasing entity
- Due diligence
- Commercial leases and tenancies
- Service contracts
- Contamination
- Asbestos
- Physical inspection of the property and its services e.g. air conditioning, lifts and fire equipment
- Planning compliance
- Valuation
- Finance

As with any property transaction, the contract is the document that binds the parties and will be relied upon in the event of a dispute. It is vital that the contract correctly reflects the intentions of the parties. We can assist with contract preparation and negotiation, due diligence investigations and the completion of the transaction.

GST on Property Transactions

Unless the property that is being sold is a second hand residential property then there is likely to be a GST issue with the property transaction that needs to be considered and covered in the contract. This includes brand new residential property and vacant land.

Essentially the contract will need to stipulate

- The purchase price is inclusive of GST
- The purchase price is exclusive of GST
- The margin scheme applies
- The sale is the supply of a going concern
- The farm land exemption applies

GST on property transactions is a complex area and needs to be dealt with properly from the outset. We can assist, collaborating with your accountant where necessary.



Other Property Services

We can also assist with the following:

- Commercial Property Contracts
- Commercial Leases
- Rural Contracts
- Survey Plan Registrations
- Easements
- Surrenders
- Covenants
- Caveats
- Option Agreements
- Joint Venture Agreements
- Resumptions
- Leases
- Management Rights
- Loan Agreements
- Mortgages



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This is general advice only. You should seek specific advice for your particular circumstances.**