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# Key Conveyancing Terms – A Guide

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Are you hoping to, or have already entered into, a Contract to purchase or sell a property? It can be a struggle to understand the new wave of terminology coming your way. Let us help you better understand a few of the key terms that will come up during the purchase or sale of your property.

### **Building and Pest Inspection Condition**

If the Contract is subject to this condition, the Buyer arranges for a licenced inspector to visit the property and provide a report prior to the Building and Pest Inspection Condition Date. If the report is unsatisfactory, the Buyer has a right to terminate the Contract and, generally receive a refund of any Deposit paid.

There are a few additional things to know about this condition:

- The Buyer must take all reasonable steps to obtain at least one report.
- The Buyer must use licensed inspectors and the reports must be in writing.
- The Buyer must notify the Seller in writing on or before 5:00pm on the inspection date as to whether they are or are not satisfied with the B&P reports and wish to terminate the Contract.

For what to look out for on the report, please see our tips and tricks: <http://www.jhklegal.com.au/building-inspection-reports-tips-and-tricks/>

### **Chattels**

Opposite to a fixture, a chattel is property not affixed or attached to the land. An example of a chattel is an outside water feature or curtains. If a chattel is referenced in the Contract, this means it will stay with the property post settlement.

### **Community Title Scheme**

A Community Title Scheme, commonly referred to as a “CTS” or “Body Corporate Scheme” is comprised of individually owned lots and jointly administered common property (scheme land). The community management statement (CMS) is the document that governs the administration of the CTS.

If you are purchasing or selling a unit in an apartment blocks or a townhouses etc, you are likely purchasing or selling in a CTS.

### **Default Interest**

If a Buyer is unable to settle on the Settlement Date, and wishes to extend settlement, the Seller can contractually apply default interest on top of the Purchase Price. It is interest for the late payment of the property. The rate is noted in the Contract, and if not specified, is the current rate fixed by the Queensland Law Society.

### **Easement**

An easement is a right to use and/or enter onto the property of another. For example, a shared driveway.

### **Finance Condition**

This condition is important if the Buyer is obtaining finance (eg a loan) to purchase the property.

Like the building and pest condition, if the Contract is subject to finance, the Buyer must take all reasonable steps to obtain finance approval by the Finance Date.

If you are a Buyer, this includes making a finance application shortly after the Contract Date and pursuing the application diligently.

The Buyer must notify the Seller in writing as to whether they have satisfactory finance approval on or before 5:00pm on the finance date.

If the Buyer do not obtain satisfactory finance approval from the financier specified in the Contract, the Buyer can instruct their solicitor to terminate the Contract or seek an extension of time for finance.

### **Fixtures**

A fixture is physical property that is attached to the land. Examples include ceiling fans or wall sconces. If a Seller wishes to take any of these items with them, it will need to be included as a term in the Contract of Sale.

### **Joint Tenants**

Joint Tenancy is one of the tenancy options available when two or more people are purchasing a property. The effect of joint tenancy ownership is that on the death of one owner their share in the Property passes to the surviving joint tenants despite any contrary provision in a will.

### **PEXA**

PEXA is an electronic conveyance platform. Until recently, settlements have occurred via 'paper' meaning paper transfer documents and cheques. On PEXA and other electronic conveyancing platforms, settlement occurs online. For more information, visit <https://www.pexa.com.au/>.

### **Pre- Settlement Inspection**

A Buyer is entitled (after giving reasonable notice to the Seller) to enter the Property once before Settlement for the purpose of conducting a pre-settlement inspection.

The Buyer should let their solicitor know if the Seller has made any changes to the Property after the date that the Buyer signed the Contract of Sale, as this may entitle the Buyer to terminate the Contract or claim compensation from the Seller.

Inspections are important even if you are purchasing vacant land, for example, to ensure no earthworks or construction has occurred on the Property post Contract Date.

### **Registered Plan or Survey Plan**

Two commonly used categories of property plans. The plan of a property will provide the details of the boundaries of the property, its area and any encumbrance on the property.

### **Settlement**

Settlement is the final step in the conveyancing process.

For paper settlements, documents and funds are exchanged between Buyer, Seller and their respective banks (if applicable) at a pre-determined location. It is uncommon that you will need to attend settlement as we will usually attend on your behalf.

For electronic settlements, all information and finances are organised through the platform, and then settle at a certain time of the day. Again, we will coordinate this from our office, and you will not be required to undertake settlement yourself.

### **Special Conditions**

Either party may wish to include special conditions in the Contract of Sale. This is essentially any condition other than those included as standard in the contract. An example of a special condition is if the Contract of Sale is conditional upon the Buyer selling their house (to fund the purchase).

### **Stamp Duty**

Stamp duty is a tax payable on the purchase or acquisition of certain rights and/or property. It is imposed by the state and territory governments and varies depending on the state or territory. Depending on where you are purchasing or selling your property, this tax may be called stamp duty, transfer duty or general duty. In the conveyancing sphere, stamp duty is applied to the Contract of Sale, and is payable by the purchaser. It is important to note that in most cases, Stamp Duty is payable prior to Settlement. If you are obtaining a loan to purchase your property, you should speak to your financier and/or mortgage broker about Stamp Duty to ensure that you have sufficient funds to stamp the Contract of Sale.

### **Tenants In Common**

Tenants In Common is the other tenancy option instead of joint tenants. If you purchase a property as tenants in common, then on the death of a co-owner, their share in the Property will pass in accordance with their will or with the laws of intestacy if they do not have a valid will. Tenants In Common can hold the property in such shares and interests to suit your particular circumstances. For example, one person can

hold 99% share, and the other will hold the remaining 1%. This can be of particular relevance for asset protection reasons.

### **Title Search**

A Title Search is exactly that. It is a search that will show key elements of the property including:

- Owners name
- Title Reference
- Lot and Plan Description
- Mortgage/s
- Easements
- Whether there is a paper Certificate of Title
- Other encumbrances and interests

JHK Legal's subsidiary MKP Property Lawyers can assist any potential Buyers or Sellers by reviewing, drafting and advising on Contracts of Sale. Should you have any questions about the above terms or require assistance with your next conveyance, please give MKP Property Lawyers a call on (07) 3859 4500.