



**THE 10 MOST COMMON  
MISTAKES MADE BY  
PURCHASERS WHEN  
BUYING A PROPERTY  
(and how to avoid them)**

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# The 10 most common mistakes made by purchasers when buying a property

Congratulations, you have decided to purchase a property. Whether it is your first home or an investment, buying a property is an exciting time. It can also be one of the most worrying times especially if things don't go the way they are supposed to.

To avoid some of that worry, we have prepared this report. We will show you the most common mistakes made by purchasers so you can learn from their mistakes.

In addition, at the end of this report you will find your special **BONUS GIFT**.

There are two critical stages in the conveyancing process that you need to understand. We will refer to these stages throughout the report.

- Exchange - the seller's legal representative will prepare two identical contracts, one to be signed by the seller and one to be signed by you. Exchange is where the contracts are swapped over or "exchanged", dated and then each party holds the contract signed by the other. This is when you have a legally binding contract.
- Settlement – This occurs after exchange once all the paperwork and searches are complete. This is when you pay the balance of the purchase price and the property officially becomes yours.

## Mistake No. 1

### Assuming that paying a holding deposit, you have secured the property

Once you have decided to buy a particular property, you may be required to pay a holding deposit to the real estate agent or the vendor (if it is a private sale). This does not mean that the seller is legally obliged to sell you the property or that you are legally obliged to buy the property. Both the buyer and the seller may withdraw from the sale at any time before contracts are exchanged, without any penalties.

Gazumping is the term used to describe the situation where after an initial deposit is paid to the seller (and before contracts are exchanged), the seller receives and accepts a higher price for the property. In such a circumstance, the first buyer is entitled to receive a refund on the holding deposit, however is not entitled to be compensated for any money spent on legal advice, inspection reports, etc.

***To prevent from being gazumped, the buyer may wish to exchange contracts quickly and use their cooling off rights to pull out of the contract if a problem arises. The cooling off period is only for the benefit of the buyer and not the seller.***



The cooling off period ends 5.00 pm on the fifth business day after the day on which the contracts are exchanged. If the buyer decides to pull out during the cooling off period, then they would forfeit to the seller 0.25% of the purchase price. This equates to \$250.00 for every \$100,00.00. For example, if the purchase price was \$300,000.00 then the amount forfeited would be \$750.00.

There is no cooling off period if:

- The buyer has agreed to waive their cooling off rights;
- The property is sold by public auction;
- The contract is made on the same day as when the property was offered for sale by public auction but passed in;
- The contract is made in consequence of the exercise of an option to purchase the property.
- The property is not a residential property as defined in the Conveyancing Act. For example, land or a lot that is used wholly for non-residential purposes or land that is more than 2.5 hectares in area are not residential properties.

It is extremely important to let us know as soon as possible if you have exchanged contracts at the real estate agent's office. If the agent is slow in delivering the contract to our office, valuable time may be lost.

## Mistake No. 2

### Not understanding what is included in the Purchase?

**It is essential that you take the time to check that all inclusions and improvements are listed on the front page of the Contract.**

We have extracted a copy of the front page of the standard Contract for Sale below. You will see there are specific sections in the Contract for "Improvements and Inclusions". In those sections, there are boxes to mark if any of those listed improvements or inclusions are included in the sale.

You will notice that there is also a box marked as "other" where items not already listed can be noted. Here are examples of items you should look out for to include:

Ceiling fans, remote control for garages, air conditioners, garden features, heaters, garden sheds, certain items of furniture.

If nothing is mentioned in the contract as to whether an item is included or excluded and a dispute arises, then the general principle is that anything that is attached to the land becomes part of the land. Such items are called fixtures. Items that are not attached to the land are called chattels and may be removed, unless they are marked as an inclusion.

# Contract for the sale and purchase of land 2019 edition

| TERM  | MEANING OF TERM | NSW DAN: [ ]                     |
|---|-----------------|----------------------------------|
| vendor's agent  |                 | Phone:<br>Fax:<br>Ref:           |
| co-agent  |                 |                                  |
| vendor  |                 |                                  |
| vendor's solicitor  |                 | Phone:<br>Email:<br>Fax:<br>Ref: |
| date for completion<br>land (address,<br>plan details and<br>title reference) |                 |                                  |

improvements  VACANT POSSESSION  subject to existing tenancies

HOUSE  garage  carport  home unit  carspace  storage space

none  other: [ ]

attached copies  documents in the List of Documents as marked or as numbered: [ ]

other documents: [ ]

**A real estate agent is permitted by legislation to fill up the items in this box in a sale of residential property.**

|                             |   |  |   |  |
|-----------------------------|---|--|---|--|
| inclusions                  | <input type="checkbox"/> blinds             | <input type="checkbox"/> dishwasher            | <input type="checkbox"/> light fittings | <input type="checkbox"/> stove                   |
|                             | <input type="checkbox"/> built-in wardrobes | <input type="checkbox"/> fixed floor coverings | <input type="checkbox"/> range hood     | <input type="checkbox"/> pool equipment          |
|                             | <input type="checkbox"/> clothes line       | <input type="checkbox"/> insect screens        | <input type="checkbox"/> solar panels   | <input type="checkbox"/> TV antenna              |
|                             | <input type="checkbox"/> curtains           | <input type="checkbox"/> other: [ ]            |   |  |
| exclusions                  |   |  |   |  |
| purchaser                   |   |  |   |  |
| purchaser's solicitor       |   |  | Phone:<br>Email:<br>Fax:<br>Ref:        |  |
| price<br>deposit<br>balance |   |  |   | (10% of the price, unless otherwise stated)      |
| contract date               | [ ]   |  |   | (if not stated, the date this contract was made) |
| buyer's agent               | [ ]   |  |   |  |

|           |  |         |
|-----------|--|---------|
| vendor    | <b>GST AMOUNT (optional)</b><br>The price includes<br>GST of \$ [ ]  | witness |
| purchaser | <input type="checkbox"/> JOINT TENANTS <input type="checkbox"/> tenants in common <input type="checkbox"/> in unequal shares | witness |

The courts have said that if an item is embedded in the soil or is attached to any building or permanent erection thereon by cement, mortar, solder, bolts, screws, nails, spikes or other permanent fastening, it is prima facie a fixture, that is to say, it will be considered to be a fixture unless it has been agreed between the parties, or can be inferred from the circumstances, that it was not to be a fixture.

An item that is not further attached to the premises than by its own weight is prima facie not a fixture.

Courts will examine:

- Whether the item has been affixed permanently or merely for some temporary purpose;
- Whether it was affixed to enable the land to be used or enjoyed better, or merely to steady the chattel;
- How securely or permanently it has been affixed; and
- The damage that would be caused to the premises or to the chattel by its removal.

Therefore to avoid wasting time and money at settlement arguing whether an item is included or not (especially after it may have already been removed), make sure all items are listed on the front page prior to exchange or during the cooling off period.

## **Mistake No. 3**

### **Not obtaining reports**

Some of the reports you may consider obtaining before exchange or during the cooling off period include:

**Pest Report** - is the property free from termites and other destructive pests? It only takes a matter of months for house to suffer serious damage from termites. Even homes with steel frames can suffer from termite damage.

**Building Report** – are there any defects in the building itself? No house is ever perfect but you want to make sure that you are aware of any repairs that are going to be required.

Many times purchasers have said that they won't require a building report because the house has only just been built. Just because the house is new, doesn't mean it doesn't have defects.

Some may say that any costs for the rectification of defects would be covered by insurance. Well that may be correct, but insurance doesn't cover your time or the inconvenience caused to you as a result of defective work.

You may also consider specialist reports from a plumber or an electrician.

**Survey Report** – is the property that you inspected the same as that noted on the contract? The contract might state you are buying Lot 5 in a certain plan. Unfortunately the house you inspected doesn't refer to a Lot 5. It will only have a house number.

A survey report is like an aerial diagram of the property showing the exact location of the boundaries and any structures on the property. Therefore you can ensure that the contract refers to the right lot or lots. Many times we have seen a contract to the property being sold as one lot, when in fact the property consists of more than one lot.

A survey report may also show:

- If any of the structures encroach onto neighbouring property or vice versa;
- Compliance with council regulations as far as minimum distances for structures from boundaries;
- Whether the fences have been located on the boundaries;
- Compliance with any covenants that the developer or some other government authority may have imposed on the property; and
- Locations of easements or sewers that pass through the property.

When ordering any type of report, it is worthwhile making sure that the inspector carries professional indemnity insurance. This insurance covers you against any error or omission that the inspector may make.

***If you don't get the proper reports now, you may not discover a problem until when you go to sell the property. How much will it cost you then?***

## Mistake No. 4

### Not getting written confirmation of promises made by the seller or agent

Sometimes in the negotiation process, the seller or the agent (on behalf of the seller), make certain promises.

One example may be that the seller has agreed to do some repair work on the house. Another example could be that the seller has agreed to rent the house back after settlement.

Unless the promises form part of the contract, you may have great difficulties in enforcing the promise.

The agent may make a statement that is not a promise, but an inducement to buy. An example could be that the property would rent for a certain amount. If the statement is important, then check it out. Get an independent opinion to see if the statement is reasonable. If you would not buy the property unless the statement is true, then it may be that you have to go one step further and have it as part of the contract.

***Therefore, the simple solution is: if you want it done, put it in the contract.***



## Mistake No. 5

### Not waiting for formal approval of finance



When buying a property, it is important that you arrange finance as soon as possible. People often miss out on a property because the vendor has sold to another purchaser due to their finance not being approved fast enough or even at all.

When going for a loan, the lender will require certain financial information from you regarding your current income and a statement of assets and liabilities. This will enable them to calculate how much they will lend to you.

At this stage, you will be pre-approved or if you have found a property, they may say the loan has been "approved in principle". Please note at this stage, you have not crossed the line.



The lender may still require a valuation on the property. If you were unable to repay the loan, the lender will be entitled to sell the home. The lenders may therefore require a valuation to confirm that the property is worth an amount that will cover the loan if it is to be sold.

Even if you meet the lender's criteria and the valuation is acceptable, you can still have the loan application rejected.

When you borrow more than 80% of the value of the property, most lenders require lender's mortgage insurance (LMI). LMI protects the lender in the event that you default on your loan and the outstanding value of your loan is greater than what they receive from selling the property.

The companies that provide this insurance have their own criteria that must be met and may be stricter than the actual lender.



**If you are borrowing money to buy a property, make sure you get a formal approval of finance in writing before exchange or before the cooling off period expires.**

## Mistake No. 6

### Not understanding Lender's Mortgage Insurance

Even though you pay for LMI, it is not for your benefit. If you default on the loan the lender has the right to sell the property. If there is a shortfall between the amount owed and amount received from the sale, then the lender can make a claim on the insurance policy. It is then the mortgage insurance company that comes after you for repayment as opposed to the lender.

Some buyers think that LMI is to protect them if they lose their job or suffer an injury so that they can't work. Wrong. That insurance is mortgage protection insurance and that is different to LMI.

Another error that buyers often make is that sometimes the cost of mortgage insurance comes out of the loan as opposed to being added to it. This is especially the case when you are borrowing 90% or 95% of the value. The cost of mortgage insurance can be thousands of dollars.

**Make sure you ask your lender how much money will be available at settlement after mortgage insurance is taken out.**

If you don't, you could end up trying to find money at settlement that you hadn't allowed for. This could result in a delay in settlement and end up costing you more money.

## Mistake No. 7

### Paying the Deposit after Exchange

Most contracts for the sale of land require the buyer to pay a deposit. The amount of the deposit is usually 10% of the purchase price and is paid to the real estate agent or other nominated party. Upon settlement the deposit forms part of the purchase price.

The purpose of a deposit is that it acts as a form of security that the buyer will complete their purchase. If the buyer fails to complete, then the deposit will be forfeited to the seller.

If the buyer has not paid the required deposit on exchange or the buyer's cheque is dishonoured, the seller may elect to immediately terminate the contract. The buyer may then lose any deposit monies that had been paid and the seller could re-sell the property to another buyer.

The deposit MUST be paid at or prior to the contracts being exchanged.

Some buyers may not have the required 10% deposit. For example the buyer may also be selling and their money is tied up in the sale of their home. Another example may be that the buyer is buying the property as an investment property and is borrowing the full purchase price from the lender.

To overcome this practical difficulty, several financial institutions and insurance companies provide deposit guarantees or bonds, to secure the deposit in case of subsequent default without actual payment when the contract is entered into.

Many buyers who are purchasing "off the plan" (this means land, units or dwellings not yet in existence or completed and may not be so for quite some time) use deposit bonds so that their money is not tied up for that period of time.

In the event of the buyer borrowing 95% of the purchase price, then the seller may be prepared to accept a 5% deposit but is not obliged to accept.

## Mistake No. 8

### Not doing a final inspection

The standard contract states that you are entitled to do a final inspection on the property before settlement.

Our recommendation is to do a final inspection on the day of settlement. There are several purposes of a final inspection:-

- To make sure that all of the inclusions have remained;
- All the exclusions have been removed;
- There has been no damage to the property since exchange;
- There is no rubbish left in the house or on the property;
- If you are buying a property with vacant possession that the owner or tenant has moved out.

If a problem is discovered at a final inspection, then your options include;

- Delaying settlement until the problem has been rectified;
- Making a claim for money off the purchase price;
- Settling with money retained so that if the seller does not fix the problem within a specified time, then the retained monies go to the buyer.

The seller may be under pressure to settle (especially time pressure) and hence more agreeable to one of the above options.

If you settle without a final inspection, you have already given the seller your money and hence you may have removed some of your bargaining power. In that situation your only remedy would be to take legal action for breach of contract. This could be a lengthy and costly exercise.



## **Try to arrange a final inspection as close as possible to the time of settlement allowing enough time to resolve any issues that may arise.**

If you are buying a property with vacant possession, the seller is not under any legal obligation to leave the property spotless or reasonably clean. For instance, the seller is not required to have carpets professionally cleaned. The seller is not however, entitled to leave large amounts of rubbish at the premises. Courts have ruled that by leaving rubbish, sellers have converted part of the land into a rubbish dump and that does not constitute vacant possession.

## **Mistake No. 9**

### **Nominating the wrong purchaser**

When buying a property or business, it is important to take time to consider who should buy the property as it could save you thousands of dollars.

Joint tenants - is the where two or more people own the property as a whole and if one of them passes away, the property is transferred to the survivor(s). This is often the form of ownership chosen by couples.

Tenants in common - is where two or more people have individual shares in the property. These shares do not have to be even and can be sold. e.g Beth owns 70% share, James own 29% share and Bob a 1% share. If one of the owners passed away, their share would go to whomever they nominated in their Will.

Holding property as individuals or jointly can have advantages, especially when dealing with your principal place of residence. When you sell your principal place of residence, it is exempt from Capital Gains Tax. Land tax is not applicable to a principal place of residence.

If you are a couple and one of you is in business (who we refer to as the "risk taker"), then it may be prudent to have the property go in the other's name (who we refer to as the "risk averter") or consider going 99% share to the risk averter and 1% share risk taker.

The same could be said if you require a relative to assist in the purchase. Your lender may require them to also be an owner. If that is the case, it may be prudent that the relative have only a small share. There may be a time when you no longer require the relative to be an owner and you want to transfer the title. If the relative has only a small share, then you could save thousands on stamp duty.

When buying an investment property, consideration should go into whether the property should be purchased in the name of an individual, company or trust. There are taxation implications for both the short and long term. Again, the right structure could save many thousands of dollars in tax and stamp duty.

When buying an investment property, consideration should go into whether the property should be purchased in the name of an individual, company or trust. There are taxation implications for both the short and long term. Again, the right structure could save many thousands of dollars in tax and stamp duty.

Trusts are becoming more popular as income can be distributed to various beneficiaries (depending on what type of trust and number of beneficiaries). For example a Discretionary Trust may be able to distribute income to a wife who wasn't working due to being on maternity leave hence taking advantage of lower marginal tax rates.

It has been said that NSW is currently the second most litigious state in the world on per capita basis. Unfortunately, in this day and age, you don't have to do anything wrong to be sued. This means that asset protection is critical in any decision regarding the purchase of assets.

You can protect your assets by carefully choosing the person or entity you want as the purchaser of a property.

## Mistake No. 10

### Not choosing the right legal representation

Here is some information that you MUST know before you call any lawyer: **They are not all the same.** In fact, the lawyer you choose can GREATLY affect your outcome. You need to find someone that:

- understands you;
- treats you with priority; and
- gets results.

The difference with Tranter Lawyers is this: We care about our clients. We walk with you every step of the way – always giving you extra advice at the appropriate time. Everything is explained in PLAIN English...and we keep you up to date.





**Matthew Tranter**  
**Director**



**Sarah Ekert**  
**Solicitor**

# 20 YEARS IN BUSINESS

## **Here are 7 compelling reasons why you should deal with us before ANYONE ELSE:**

- You'll be in experienced, capable hands – we're a firm that specialises in property and business transactions.
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- Everything will be dealt with in a highly confidential manner – so you can feel at ease over any detail we discuss.

## What do our clients say about us??

**Visit our testimonial page on our website to hear from our satisfied clients.**

Hi, we wanted to write and extend our sincere thanks and appreciation for the personal and professional way in which you managed the recent sale of our Bolwarra Heights property. We have been customers of Tranter Lawyers for some years now and have always been delighted with the quality of service we have received, so we thought that it was about time we put our appreciation in writing.

Not only do you provide a professional legal service that is second to none, you manage to do so without compromising the quality of your customer service. When dealing with a member of the Tranter team, (whether it be in person, over the phone, or via written correspondence), we always feel as though the person with whom we are communicating has a genuine interest in what is best for us. On every occasion that we have contacted your office, without exception, a friendly, efficient staff member with a “nothing is too much trouble” attitude has greeted us. This level of customer service, which is almost extinct in modern society, is something that we have learned to expect in our dealing with Tranter Lawyers.

Taking this into account I am not surprised to have read in the newspaper recently that Tranter Lawyers was recipient of several business awards – you truly do deserve the accolade. In a modern economy where old-fashioned values such as honesty, sincerity and a commitment to quality customer service are sacrificed in a search for the almighty dollar, many businesses would do well to take a leaf out of your book. If they only realised, as you obviously do, that a happy customer is by far the most valuable asset to any business, then they too may gain recognition as one of the fastest growing businesses around.

Congratulations on your winning formula and thank you again. As always, it has been a pleasure.

**Phillip Cliff and Belinda James-Cliff**

No fuss, no drama and nothing was a bother. You made my property purchase safe and easy.

**Gary Wood, Beresfield**

Quick service in getting back to us. Completely problem free, we didn't have to worry about anything. Selling two properties, buying one at the same time was a breeze. We have been with Tranters for 13 years. Wills, properties, personal enquiries, Always Tranters! Thanks Matthew and Julie.

**Mick & Bernadette Ayton, Harrington**

The staff are very helpful and highly professional. We recently sold two properties and the staff kept us up to date and informed at all times. Will definitely use Tranter Lawyers again and would recommend to family and friends.

**Mick & Jenny Lawrence, Rutherford**

As communication is key to me I was more than impressed by the constant updates we received. The sale became more complicated than necessary due to the bank hold ups but even when we were on holidays we were kept informed.

Trantera took control, dealt with difficult banking needs, kept us fully informed and most of all did everything possible to minimize our risks when we naively just wanted to trust everyone. Trantera are a perfect blend of professionalism and depth of knowledge but still manage the friendliness and ease of vocabulary (not legal jargon) to make you trust them instinctively because you understand the situation. Jezara gave 100%. A great asset to an already strong team.

**Ross Osland, Aberglasslyn**



## Your special bonus gift

As a special bonus gift for you, we have attached a coupon that entitles you to a FREE PROPERTY PURCHASE CONSULTATION worth \$165.00.

All you need to do is call our office on 4934 2600 to arrange a convenient time for you to see one of our experienced property lawyers prior to the expiry date mentioned on the coupon. Then just bring the attached coupon to the consultation. It is that easy.

At the consultation we will guide you through the whole purchase process and provide you with additional invaluable information such as:

- When to insure the property
- How council and water rates are adjusted
- Stamp Duty and exemptions
- Penalty provisions in contracts
- Tax implications

By the end of this free consultation you will know exactly what is needed to achieve **YOUR GOAL**.

Buying a property is one of the biggest investments you will ever make so it is important to get it right. Avoiding the mistakes mentioned in this report will take you a long way towards that aim.

We hope that this report has helped you. All the best in finding your dream home.

Yours in property,

Tranter Lawyers

**P.S. Don't forget to ring our office NOW to take up the opportunity of the Free Property Purchase Consultation.**





## FREE PROPERTY PURCHASE CONSULTATION

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