

## Welcome to another bumper issue of Conveyancing Solutions Focus!

The year 2006 is moving at breakneck speed, and it only feels like a short time has passed since we issued our last newsletter six months ago!

This issue of Conveyancing Solutions Focus is jam-packed full of the latest news relating to conveyancing, interesting

facts about buying and selling, tips on how to win at an auction and an insight into title insurance.

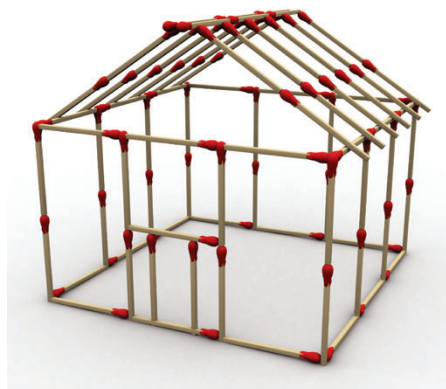
We trust you'll find this issue to be helpful as you explore the world of conveyancing and home ownership for yourself!

## News

### New Smoke Alarm Regulations

Chances are if you already own property, you are aware of new legislation relating to smoke alarms which became effective on 1 May 2006. These new regulations are set to have a significant impact on residential property owners, so here is the summary, just in case you missed it:

- In compliance with the Building Legislation Amendment (Smoke Alarms) 2005, it is compulsory that all existing homes and other buildings where people sleep (residential dwellings) be fitted with either a battery-operated or hard-wired smoke alarm installed on or before 1 November 2006.
- New legislation applying to the Conveyancing Act 1919 requires vendors selling residential properties to disclose that



smoke alarms are installed in the property.

- Changes to the Residential Tenancies Act now makes it compulsory for all landlords to ensure smoke alarms are installed, in accordance with the new section 146A of the Environmental Planning and Assessment Act relating to residential accommodation.
- The legislation also states that maintenance of the smoke alarms is essential, and in the case of rented dwellings, this is the responsibility of the tenant.

- On or after 1 November 2006, all contracts relating to land on which a residential building is situated will require a statement from the vendor which indicates that the building complies with the compulsory requirement that it is fitted with smoke alarms or heat alarms. This must be attached to the contract of sale.

### The Full 10% Deposit

A recent case from the High Court of Appeal has highlighted the need to take care when accepting less than a 10% deposit on contracts of sale for land. In this particular case, the vendor was not able to claim the full 10% deposit on the purchaser's default, and as a result, the contract for sale of the land was not completed. This shows that it is not good practice to show anything other than the full 10% deposit on the front page of the contract. In the event that the purchaser wishes to pay less than 10% deposit, this can be accommodated by a special condition allowing the deposit to be paid in instalments.

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# Buying and Selling Facts You May Not Know

## When you are buying:

- For capital gains purposes, the date of purchase is the date you enter into the contract, not the settlement date;
- In most cases, the names you enter on the purchase contract determine who must declare income and claim expenses; and
- When you sell the property, costs

associated with buying the property may be tax deductible or included in the capital gains tax 'cost base' (cost of ownership).

## When you are selling:

- Your capital gain is the difference between your 'cost base' (costs of ownership) and your 'capital proceeds'

(what you receive when you sell);

- Just by transferring the property into somebody else's name could mean you have to pay capital gains tax;
- You may be liable for capital gains tax when you dispose of your property; and
- You may be able to reduce your capital gain by the 50% discount if you have owned your property for more than 12 months.

## Tips to Help You Win the Auction

You've found the property you want, and it's up for auction. Sure, the thought of participating in an auction can be daunting, so we've put together a few tips to help you win at auction:

- **Familiarise yourself with auctions:** Go to as many auctions as you can as a spectator, just to see how it all works. The auction will be subject to a reserve price, which is the minimum the vendor will accept. Do all of your homework beforehand and know that you must not bid beyond your upper limit.
- **Prepare for buying:** Get organised before the day of the auction and make sure you have organised your finance, have your conveyancer check the sale contract, arrange a condition report including pest inspection of the property and set your bid limit.

- **Arrive at the auction early:** By arriving early, you give yourself time to determine who the real bidders will be.
- **Check the contract of sale:** Check the contract of sale again with the agent before the auction begins, to make sure there have been no changes.
- **Bid firmly once the property is on the market:** Once the property is on the market, bid firmly. A confident, quick approach is good, because it may give rivals the impression that they won't win. Make sure you bid quickly after the previous bid, and if the auction is moving in \$5000 increments, you can increase your bid by \$10,000 increments if you wish. Remember to keep to your budget.

- **Stop once you have reached your limit:** The important point is to stop bidding once you have reached your limit. This is absolutely critical!

If you are successful at the auction, you will be required to sign a contract on the spot and pay a deposit, which is usually 10 per cent. It is also important to know that with auctions, there is no cooling off period. If you are the successful purchaser, you are committed to the sale.

In the event that the property is passed in at auction, you can make an offer to buy it by private treaty, and it may be possible to negotiate changes to the contract. If purchasing this way, you will have a cooling off period, however if you sign a contract on the day of the auction, the contract would normally be under auction conditions.

## Title Insurance under the Microscope

### What exactly is title insurance?

Title insurance protects your ownership of a property and its use, by guarding it against unknown and hidden risks that may cause you loss or affect your ownership.

### What sort of risks does this insurance protect me from?

The risks that you as a property owner are exposed to and which title insurance can protect you from include:

- Outstanding rates and taxes incurred by a previous owner which you are now liable for as the current owner;
- Forced removal or relocation of a structure because it encroaches on to the neighbour's property;

- Any issues that come to light in an up-to-date survey report;
- Somebody else claiming ownership to a part or all of your land by adverse possession;
- Forced removal by Council of an illegal structure because a previous owner built it without council approval; or
- Fraudulent sale of your property to an innocent third party who may be entitled to ownership of your property under law.

### How much protection will title insurance provide me?

You will be protected for losses up to the purchase price of the property. This includes 200% inflation cover allowing for increases in the value of your property over time.

### Is title insurance different from other forms of insurance?

#### Yes and here's how:

- Cover may be provided for known defects without any additional premium;
- The premium gives you protection forever;
- The no fault claim process means you do not have to prove fault or negligence. You only need to prove that you have suffered loss based upon the cover provided by the policy;
- No excess is payable on claims; and
- There is no cap on cover up to the policy amount.

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