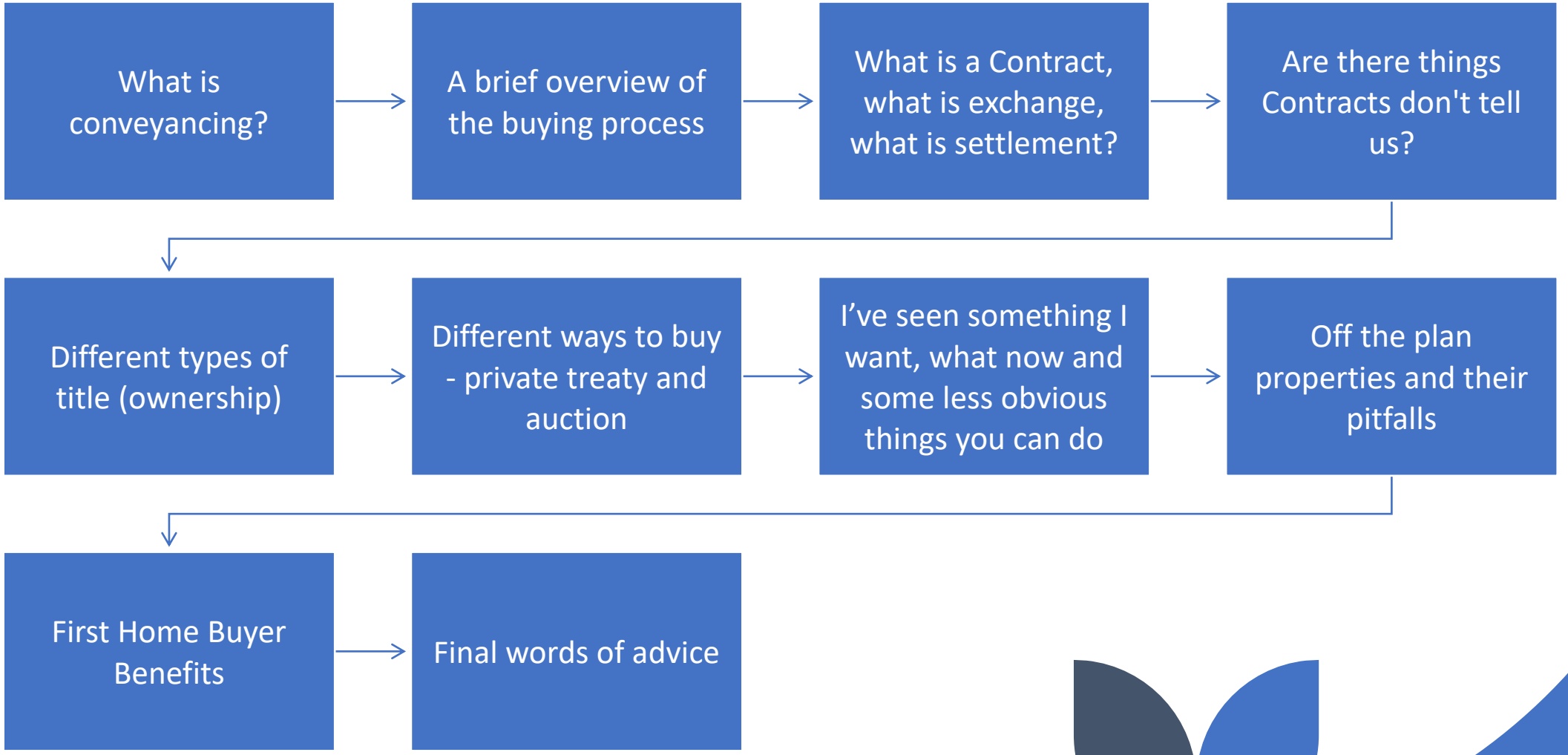
RN LEGAL

Conveyancing

The basics you need to know

Topics


What is conveyancing?
A brief overview of the buying process
What is a Contract, what is exchange, what is settlement?
Are there things Contracts don't tell us?
Different types of title (ownership)
Different ways to buy - private treaty and auction
I've seen something I want, what now and some less obvious things you can do
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What is conveyancing?

Conveyancing is the transfer of the legal ownership of a property from one person to another

The ownership

It also relates to the granting of an encumbrance (a right over the property) such as mortgage

A right over property

It can be the result of a sale or purchase

Sale or Purchase

Other events

It can be the result of other events, such as death, relationship breakup, reshuffling of family holdings etc

Jurisdiction

It’s not the same in every State

Brief overview of the buying process

A typical conveyancing transaction has two major parts

1. Pre exchange including:

- Negotiation
- Quality checks
- Finance arrangements
- Contract review and negotiating amendments

And then ***exchange*** of ***contracts***

2. Post exchange including:

- Investigation of title, Government checks
- Finalizing stamp duty and/or any applicable Grants
- Finalizing mortgage arrangements
- Calculating final figures and adjustments, final inspection

And then final payments or ***completion*** (also called ***settlement***)

What is a Contract

The Contract is the legal document which sets out information about the property you are buying and also sets out the terms on which the seller is prepared to sell the property to you.

For example:

- The legal description of the property
- The price you have to pay
- How much deposit the seller will accept

What is Exchange

In NSW Contracts are prepared in duplicate. One copy is signed by the buyer and one by the seller.

- ***Exchange*** happens when both copies of the Contract are brought together, either in person or digitally, checked to make sure they are identical, then “exchanged” (ie. Swapped so that each party has the document signed by the other).
- They are immediately dated and the deadlines under the Contract start running from that day.
- The agreed deposit paid must be paid at the time of exchange or beforehand.

At this point they are legally binding.

What is Settlement?

- ***Completion*** (usually referred to as ***settlement***) is the final step in the conveyancing process. This is when all the investigations are done, the loan has been finalized and the full balance of the payment owing to the seller is made.

- This is the moment you become the new legal owner of the property and your name goes on the title deed (ownership document).

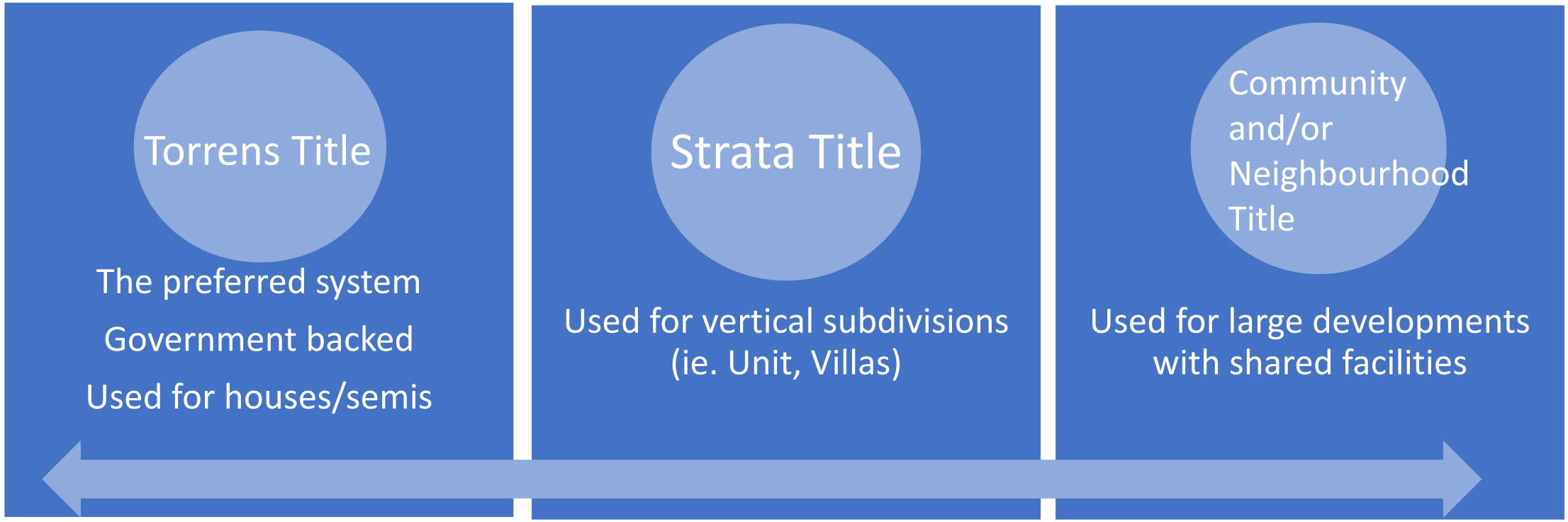
Are there things Contracts don't tell us?

- The Contract gives us a lot of information about the legal title to the property but does **not** tell us anything about the quality of what you are buying or what is happening with properties nearby.

- This is why it is so important that you have carried our all your inspections and done your background checks prior to signing the Contract

- **In other words – buyer beware!**

Different types of Title (ownership)



Other types of title

- Properties under the Torrens Title system are now the most common, however, there are still other forms of title out there, such as:
  - Old System Title
  - Qualified Title
  - Limited Title
  - Company Title
  - Leasehold
- These are much more difficult to investigate and require you to proceed with great caution
- **How can I tell what it is?**
  - Look at the middle section of the front page of the Contract in the box headed “Land”.

Vendor's ☒ solicitor ☐ conveyancer	Name Address and DX	Phone Fax Ref
Depositholder	Vendor's agent	Invest deposit ☐ NO ☐ Yes (clause 3)
Completion date		day after the contract date (clause 15)
Property	The land, the improvements, all fixtures and the inclusions, but not the exclusions	
Land Address		
Plan	Registered plan: Lot Section Plan (copy attached) Unregistered plan: Lot in an unregistered plan (copy attached) (clause 28) which is part of Lot Section Plan (copy attached)	
Title	Folio Book No. ☐ TORRENS ☐ strata ☐ community ☐ qualified ☐ limited ☐ old system ☐ FEE SIMPLE - ownership ☐ purchase from Crown ☐ lease from Crown ☐ other	
Improvements	☐ HOUSE ☐ garage ☐ carport ☐ factory ☐ flats ☐ home unit ☐ carspace ☐ none ☐ other:	
Inclusions	These marked items inspected by the purchaser (some may be fixtures) - ☐ blinds ☐ curtains ☐ insect screens ☐ stove	

Different ways to buy

- **Method 1 – Private Treaty**
- With private treaty you negotiate either directly with the seller or through an agent. You make an offer to buy and when you have agreed on a price, and you are ready, Contracts are exchanged and the deal is legally binding.

- **Method 2 - Auction**
- With auction, you are one of many buyers bidding (making an offer) for a property. When the hammer falls on your bid, you are the legal buyer and you are required by law to continue with the purchase, you cannot change your mind at this points.

Private treaty

- Offer accepted
- Change of mind
- Holding deposit
- Gazumping

After my offer has been accepted…

- You can still change your mind even if your offer has been accepted – but so can the seller.
- You may be asked to pay a ***holding deposit*** before exchanging Contracts.
  - A holding deposit is only a sign of good faith on your part to show that you are genuinely interested in the property. It is a way of "putting your money where your mouth is".
  - It is fully refundable if you do not go ahead with the purchase.
  - It has no actual legal value

A seller can still negotiate with other buyers even if you have paid a holding deposit.
In other words, you can still be gazumped (**miss out**)

Private Treaty – cooling off

- **A private treaty purchase can be with or without *cooling off*** period
- ***Cooling off*** is a right the buyer has to exchange Contracts and have 5 business days to make enquiries and/or arrange finance and to then change their mind. The buyer can withdraw from the Contract (this period can sometimes be changed by agreement) up to the end of this period.
- **With cooling off:**
- If you withdraw during the cooling off period, you will lose 0.25% of the price of the property (this is basically a penalty paid to the Vendor). Any extra deposit on top of the 0.25% you have paid is fully refundable.
- The 0.25% is lost no matter the reason you are withdrawing from the Contract.

Private Treaty – cooling off

- **Without cooling off:**
- You may be asked to waive (give up) your cooling off right, that is, to be locked into the Contract and not be able to change your mind. This is particularly common in areas of high demand real estate. To do this you will be asked to hand over a ***Section 66W Certificate*** which is a Certificate signed by your Conveyancer to confirm you waive that right.
- **In both cases:**
- Whether you keep your cooling off right or not, it is critical that you are completely informed about the Contract, the quality of what you are buying and that your finances are in place before being fully committed to the purchase.

Auction

- When the hammer falls on your bid, you are legally the buyer of the property.
- You will be required to sign and exchange Contracts and pay your deposit immediately.
- All negotiations regarding terms must be finalized beforehand.

Note: There is no cooling off period when you buy at auction. Once you are the successful bidder, that's it.

I've seen something I want, what now?

- Make an offer and negotiate a price.
  - Remember these negotiations are not legally binding yet.
- Obtain a copy of the Contract.
  - Have me check this on your behalf. Do this first.
- Arrange your inspections.
- Contact your broker at OneSite.
- Have your loan ready.
- Have your deposit ready.
  - It is not a given that the seller will accept less than 10% deposit. Make sure this has been negotiated.

Off the plan properties and their pitfalls

- Off the plan Contract properties are usually understood to be properties that are marketed before building work is completed or has even started.
- They can be very attractive for First Home Buyers due to the "new" home benefits and the perception that you buy at today's price somethings that may go up in value by settlement.
- However, it is very difficult to ensure you buy what you are expecting when it's not actually built. Off the plan Contracts are very skewed in favor of the developer and can have very little protection for any defects
- **In other words – talk to me first!**

First Home – stamp duty

- Stamp duty
- General eligibility requirements
  - You must be over 18 and buying in your own name, not as a company or trust
  - You must be an Australian Citizen or Permanent Resident (or at least 1 of you must be)
  - You must never have owned a home before or have applied for an exemption before.
  - You must move into the house within 12 months of buying the property; and
  - You must live in it for a minimum of 6 continuous months.
- <u>All existing homes</u>
- No stamp duty payable on Contract up to $650,000.00
- Reduced stamp duty on Contract up to $800,000.00
- <u>Land to be built on</u>
- No stamp duty payable on Contract up to $350,000.00
- Reduced stamp duty payable on Contract up to $450,000.00

First Home - grant

- **The $10,000 ‘new’ homes Grant**
- General eligibility requirements
  - You must be over 18 and buying in your own name, not as a company or trust
  - You must be an Australian Citizen or Permanent Resident (or at least 1 of you must be)
  - You must never have owned a home before or have applied for a grant before.
  - You must move into the house within 12 months of buying the property; and
  - You must live in it for a minimum of 6 continuous months.
- You must either be buying:
  - A newly constructed property that has never been lived in before for not more than $600,000.00 or
  - A house and land package for a house to be built on the land OR land on which you are going to build a house for a total value of not more than $750,000.00

Final words of advice

- Remember: it is up to you, the buyer, to do as much homework as possible about the quality of what you are buying.
- That homework also often involves a lot of legwork!
- And finally…
- Don’t sign anything until you have had it checked and you are sure.
- Good luck and enjoy the journey!

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Thank you