

# A Guide For Purchasing Off The Plan Property In New South Wales

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**Property Found:** you or your buyer's agent have found a property that you are interested in buying and as it is off the plan, you will usually sign an expression of interest (EOI) form and deposit the initial sum into the sales agent's (or solicitor's) trust account. You need to make sure your legal interests are protected throughout the buying process.

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**Receiving & Checking Contract:** the Seller or the sales agent will provide a Contract to you (or to us if you have given them our details). Before you sign the Contract, lawlab will review the contract terms and confirm that all compulsory disclosures are attached to the Contract. The disclosures in off the plan contracts usually include plans of the property and the strata scheme, a list of the property finishes and inclusions, the by-laws of the strata titles scheme and other strata agreements. If you wish to make any changes to the Contract, we will negotiate with the Seller's solicitor on your behalf until mutually agreeable terms are reached.

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**Contact Lender:** if you need to borrow money to fund the purchase, we recommend you obtain written finance pre-approval from your lender prior signing the Contract. You need to be aware that the pre-approval may lapse before settlement and that most pre-approvals are conditional on a satisfactory valuation once the property is constructed.

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**Contract Date:** Once you are satisfied with the terms of the Contract, we or the real estate agent will arrange for you to sign the Contract (usually in duplicate) and then forward both copies to the Seller to sign. Once the Contract is signed by both the Buyer and Seller, it is exchanged and becomes legally binding. The Contract is normally dated by the Seller's solicitor or real estate agent on the date that it is exchanged.

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**Deposit:** A Deposit is payable which is usually 10% of the purchase price and it is to be paid to the sales agent's or the seller's solicitor's trust account. Sometimes an initial deposit needs to be paid at the time of signing the Contract (unless already paid with the EOI) and the balance deposit can be paid later (usually within 14 days).

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**Cooling-off period:** unless you have purchased the property at auction or agreed to waive or shorten your cooling off rights, you have a cooling off period of 5 business days from the day after receiving the exchanged contract. If you decide not to proceed with the purchase, you must give notice to the Seller of your intention to terminate the Contract before the expiry of the cooling off period. The Seller is entitled to charge you 0.25% of the purchase price if you terminate under the cooling off provisions.

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**Construction period:** during this period, unless there are changes affecting your property, normally, the Seller or the sales agent will communicate you directly about the progress of the building. If there are changes that affect your property, the Seller may send you further disclosures setting out the changes. If the changes are significant you may have rights to terminate the contract.

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**Sunset Date:** the period between the Contract Date and Settlement can be a couple of months or a few years depending on the development. Normally, an off the plan contract will set a Sunset Date which is the last date the Seller must register a separate title for the property and if that is not done by the Sunset Date, then either party can rescind the Contract.

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**Transfer (Stamp) duty:** in NSW, stamp duty is payable on the purchase price within 3 months of settlement or 15 months of the Contract Date (whichever comes earlier) and if you are obtaining finance you will need to pay the stamp duty by settlement. You will need to pay the stamp duty amount to your lawyer who will pay it forward to Office of State Revenue and the Contract will be marked as stamp duty paid. If you are an eligible first home buyer you may be able to apply for a stamp duty concession.

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**Building completed and registration:**

after the building is completed, the relevant authority will issue an occupation certificate and the Seller will register the plan at the land titles office. The Seller will then send a notice calling for settlement, which is usually 2 to 4 weeks from the date of the notice.

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**Informing you of settlement:**

once we are notified about the settlement, we will contact you and your lender to prepare for settlement. We will carry out various searches on the property, including a search of the land titles office to check the registered plans and by-laws are the same as was disclosed to you. We will also carry out enquiries of the council and water rates (if issued), land tax and strata levies. If there are any unfavourable replies, we will advise you immediately.

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**Preparing for settlement:** next we will prepare a settlement statement adjusting the outgoing (council and water rates, strata levies & insurance, land tax) and liaise with

your lender to provide the necessary funds to settle. If you are obtaining finance for your purchase then your lender will prepare the loan and mortgage documents for you to sign. If a guarantor is guaranteeing the loan then they will need to obtain independent legal and financial advice. Your lender will deduct their fees and any statutory charges from the loan amount and will advise us of the funds available for settlement. You should budget to have enough funds to cover the purchase price (less any deposit paid), transfer duty, legal costs and any adjustments for outgoing. If your loan amount does not cover the costs of these then you should contact your lender and provide them with authority to draw any extra funds needed from one of your bank accounts.

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**Final inspection:** before settlement, you should contact the sales agent to organise a final inspection of the property to confirm that all the measurements, finishes and inclusions are as were disclosed to you.

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If there is a problem with the finish of the property or there are defects, you should contact us as soon as possible. Most off the plan contracts have a defects liability clause that requires the Seller to repair any defects as long as you give the Seller notice of the defects within the time period in the Contract.

**Settlement date:** you do not need to attend settlement on the Settlement Date as we attend settlement on your behalf by exchanging the title documents and funds with the Seller's solicitor and lenders. Your lender will receive the transfer of title documents, attend to registration of title (into your name) and register their mortgage.

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**Settled and move-in:** once it's settled, we will advise you by phone and then you can collect the keys from the sales agent and move in (or arrange for your tenants to move in)!

**Lawlab has more than 100 years of experience, we can offer you practical, efficient and expert legal advice on your purchase. Please call 1800 529 522 or email: [conveyancing@lawlab.com.au](mailto:conveyancing@lawlab.com.au).**

Disclaimer: this information is for general understanding of the purchasing procedure for off the plan contracts in Queensland only, it does not cover all possible scenarios during the transaction. For any queries, please seek legal advice.

Phone 1800 529 522 / Email [conveyancing@lawlab.com.au](mailto:conveyancing@lawlab.com.au) / [www.lawlab.com.au](http://www.lawlab.com.au)

Level 6, 3 Spring Street, Sydney, NSW, 2000  
28b St Edmonds Road, Prahran, VIC, 3181

Level 10, 15 Green Square Close, Fortitude Valley, Brisbane, QLD, 4006  
Suite 3, Level 1, 40 Parap Rd, Parap NT 0820

