

ACT Conveyancing Process Fact-Sheet

Fiona Wilkinson

December 1, 2024

ACT Conveyancing Process

This document outlines the conveyancing process for the ACT, detailing the roles and responsibilities of buyers, sellers, and their solicitors or conveyancers.

Author

Fiona Wilkinson

1. Pre-Contract Phase

Engaging Professionals

Both buyers and sellers engage a solicitor or licensed conveyancer to manage the conveyancing process. These professionals play a vital role in ensuring compliance with ACT legislation and guiding their clients through all legal, financial, and administrative requirements.

Contract Preparation (Seller)

The seller's solicitor is responsible for preparing the **Contract for Sale**, ensuring it complies with ACT-specific legislation. This contract must be complete before the property is listed for sale. Key mandatory inclusions are:

1. **Crown Lease:** Details the leasehold terms, typically for 99 years, including any restrictions or obligations tied to the property.
2. **Building and Pest Inspection Reports:** Independent reports highlighting structural conditions and the presence of any pests, such as termites. (houses and class B units only)
3. **Energy Efficiency Rating (EER) Report:** A compulsory report for all residential properties in the ACT, rating the property's energy efficiency (0–6 stars).
4. **Body Corporate Certificate (if applicable):** Required for strata properties, detailing the financial and administrative health of the strata scheme, including levies and liabilities.

-
5. **History of Strata Body Corporate Meetings (if applicable):** Records of recent strata body corporate meetings to disclose ongoing issues, disputes, or special levies.
 6. **Special Conditions:** The seller's solicitor will also include special conditions in the contract, tailored to protect their client's interests. These conditions may address specific aspects of the property, such as:
 - Arrangements for rectifying defects identified in inspections.
 - Conditions for the settlement period.
 - The inclusion or exclusion of particular fixtures or fittings.
 - Any rights or obligations that extend beyond standard terms, such as agreements about tenants or ongoing leases.

By ensuring these inclusions and tailoring the special conditions, the seller's solicitor creates a comprehensive and compliant contract that protects their client while meeting ACT legal requirements.

2. Marketing and Inspection

Property Listing

The property is marketed through real estate agents via online platforms, brochures, and open inspections. During this phase, the **Contract for Sale** is made available to prospective buyers, who are encouraged to review it with their own solicitor or conveyancer.

Buyer's Pre-Offer Actions

Buyers should undertake thorough due diligence before making an offer. This process includes:

- **Reviewing the Contract for Sale:** Buyers' solicitors analyze the contract to identify risks or areas requiring clarification. For example:
 - Recommending a strata book search for strata properties to assess strata management practices, recent meeting minutes, and potential financial or administrative issues.
 - Highlighting potential risks, such as unresolved disputes, planned special levies, or insufficient maintenance reserves.
- **Discussing Builder Quality:** If the property is newly built or recently renovated, buyers and their solicitors may evaluate the builder's reputation, past projects, and any potential defects or warranty concerns.
- **Arranging Additional Inspections:** Buyers may organize specialized inspections, such as plumbing, electrical, or roof inspections, beyond the mandatory building and pest inspections provided by the seller.
- **Confirming Finance Pre-Approval:** Buyers must ensure their financing is pre-approved and sufficient to cover the purchase price, deposit, and associated costs.

-
- **Inclusion of Special Conditions:** The buyer's solicitor may propose special conditions to be added to the contract to protect the buyer's interests. These might include:

- Provisions requiring the seller to address specific defects identified during inspections.
- Conditions related to strata, such as obtaining confirmation of no pending levies.
- Flexibility in the settlement date or clauses allowing early possession.

By addressing these steps, the buyer and their solicitor can identify and mitigate potential risks, ensuring a smoother transaction process.

Negotiation

The buyer and seller may negotiate key terms, such as:

- The purchase price.
- The settlement period.
- Additional conditions, such as repairs or specific inclusions/exclusions.

Once the terms are agreed upon, these changes are incorporated into the **Contract for Sale**, ensuring both parties understand and accept the final conditions.

Note: This is the last chance to make changes to a contract in terms of what is included and excluded.

3. Exchange of Contracts

Offer Stage

Buyers submit a formal offer to the seller, typically through the real estate agent. This offer outlines the proposed purchase price and any key conditions. However, the offer is not legally binding until contracts are exchanged.

Key Steps in the Exchange of Contracts

This is the critical stage where the transaction becomes legally binding. Key steps include:

- **Signing and Exchanging Contracts:**
 - Both the buyer and seller sign identical copies of the **Contract for Sale**.
 - The contracts are then exchanged, typically via the solicitors, with each party receiving a signed copy.
- **Payment of Deposit:**
 - The buyer pays a deposit, usually 10% of the purchase price, which is held in a trust account until settlement.

-
- In some cases, a reduced deposit of 5% may be agreed upon by all parties. However, it is important to note that if the buyer fails to complete the purchase after the exchange of contracts, they remain liable for the full 10% deposit under the terms of the contract.

- **Legal Commitment:** At this stage, both parties are legally obligated to complete the transaction, subject to any cooling-off rights or special conditions included in the contract.

The exchange of contracts formalizes the agreement, providing legal protection for both the buyer and the seller. However, buyers should carefully consider their obligations, as the financial liabilities (including the full deposit amount) remain enforceable even in cases where the settlement is not completed.

4. Cooling-Off Period

- Buyers in the ACT have a 5-business-day cooling-off period, during which they can withdraw from the contract for any reason.
 - If the buyer withdraws, they may forfeit 0.25% of the purchase price as a penalty.

Waiving the Cooling-Off Period

- Buyers can waive this right by:
 - Providing a signed waiver certificate after receiving legal advice.

Exceptions to the Cooling-Off Period

- The cooling-off period does not apply to properties purchased:
 - At auction, or
 - Within two business days after an auction.

These exceptions mean buyers entering such agreements must be fully prepared, as they forfeit the right to withdraw without penalty after the contracts are exchanged.

5. Pre-Settlement Process

Finance and Mortgage Approval (Buyer)

- Buyers finalize their loan approval with their bank or financial institution.
- A formal letter of approval must be provided to the buyer's solicitor to ensure funding is in place for settlement.

Legal Searches and Adjustments

The buyer's solicitor conducts thorough searches to ensure the property is free from legal or financial encumbrances and that adjustments are correctly calculated:

- **Title Searches:** Confirm ownership details and check for encumbrances, caveats, or restrictions on the property.
- **Land Tax and Rates:** Verify all outstanding obligations have been paid by the seller and calculate pro-rata adjustments for any payments extending beyond the settlement date.
- **Zoning and Planning:** Ensure the property complies with the buyer's intended use and identify any zoning restrictions or development opportunities.

Adjustments for rates, utilities, and fees are negotiated between the buyer and seller to ensure fair payment for charges up to the settlement date.

Transfer of Title

- The seller's solicitor prepares the **Transfer of Title**, which is signed by both parties.
- This document is essential for transferring ownership and is lodged with the relevant authority to register the property in the buyer's name.

Final Inspection

- Buyers may conduct a final inspection prior to settlement to ensure the property is in the agreed-upon condition, free from damage, and includes any negotiated inclusions.

Early Occupation (if applicable)

- Occasionally, the buyer may request early occupation of the property before settlement.
- This arrangement is negotiated between the solicitors for both parties and involves:
 - The seller granting the buyer a licence to occupy the property early.
 - Rent being agreed upon and paid by the buyer for the early occupation period.
- Property is accepted as is (final inspection prior to moving in, agreed defects to be fixed in writing before moving in).
- Both parties must formalize these terms in writing to avoid misunderstandings or disputes.

Note: The Pre-Settlement Process ensures that all financial, legal, and practical steps are completed before ownership officially transfers, allowing for a smooth transition.

6. Settlement

Preparation

- The buyer's solicitor ensures that all funds are ready for settlement, including:
 - The balance of the purchase price.
 - Adjustments for any prepayments, such as rates, taxes, or utilities.
 - Extra funds: In some cases, the buyer's solicitor may request a small additional amount to cover any last-minute adjustments or unknowns. Any unused funds are promptly refunded to the buyer after settlement.
- The seller ensures that any existing mortgage or encumbrances on the property are discharged before or on settlement day.

Settlement Day

On the day of settlement, the buyer, seller, and their solicitors (or conveyancers) finalize the transaction. This may be conducted in person or electronically. Key actions include:

1. Funds Transfer:

- The buyer pays the remaining balance of the purchase price.
- Any adjustments (e.g., for prepayments) are reconciled between the parties.

2. Document Handover:

- The seller provides the signed **Transfer of Title** and hands over keys to the buyer.

3. Registration of Ownership:

- The buyer's solicitor lodges the **Transfer of Title** with the ACT Land Titles Office to register the property in the buyer's name.

Ownership Transfer

Once the funds are exchanged and the necessary documents are lodged, ownership of the property officially transfers to the buyer.

Note: The settlement process is designed to ensure a seamless transition, with all parties meeting their legal and financial obligations before finalizing the sale.

7. Post-Settlement

Buyer Responsibilities

- **Pay Stamp Duty:** The buyer must pay stamp duty to the ACT Revenue Office (unless exempt). Deadlines typically apply, requiring payment within 28 days of settlement.

-
- **Notify Utility Providers:** The buyer arranges for utilities such as electricity, gas, and water to be transferred to their name and ensures services are connected.
 - **Collect Keys:** Buyers typically collect the keys from the real estate agent, often the day after settlement, as settlement usually occurs later in the day.

Seller Responsibilities

- **Cancel Utilities and Services:** The seller ensures utilities and other services linked to the property are canceled or transferred out of their name.
- **Vacate the Property:** The seller must vacate the property (if not already done) before the agreed settlement date, leaving it in the condition specified in the Contract for Sale.

Settlement Statement

- Both the buyer and seller receive a settlement statement from their solicitors after settlement.
- This statement provides a detailed breakdown of all costs, fees, and adjustments, including:
 - Movements in trust account funds.
 - Finalized amounts for rates, taxes, and utilities.
 - Any additional payments or refunds resulting from adjustments.

Note: The post-settlement stage ensures that all loose ends are tied up, enabling a smooth transition of ownership and occupancy.

Additional Notes

- **Electronic Conveyancing:** The ACT uses platforms like PEXA to streamline settlement, allowing for faster processing of funds and title registrations.
- **Leasehold Properties:** Buyers should understand the conditions of the Crown Lease, including restrictions on property use and lease extensions.
- **Dispute Resolution:** Disputes may arise over settlement terms, contract conditions, or property condition. Solicitors will negotiate resolutions, but serious disputes may require tribunal or court intervention.