

# 11 MISTAKES

TO AVOID WHEN  
BUYING AND SELLING  
PROPERTY



# 11 MISTAKES TO AVOID WHEN BUYING AND SELLING YOUR HOME

- 1 Not checking what you're signing
- 2 Not being an individual
- 3 Not watching critical dates
- 4 Not paying a deposit
- 5 Inadequate searches and enquiries
- 6 The wrong person bought it
- 7 Missing the cooling-off period
- 8 Not specifying exclusions & inclusions
- 9 Missing out on a final inspection
- 10 Ineffective special conditions
- 11 Not understanding an auction contract

*Important fine print*

*This brochure is for general information only. It is not a complete guide to the area of law. Competent advice should be obtained before taking any action.*

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# NOT CHECKING WHAT YOU'RE SIGNING

## 1

With so much at stake you should never sign a contract without being sure you understand what's in it and whether it actually reflects the deal you have made.

Most property transactions will use a standard contract developed by professional associations in each state, but there are always documents and clauses for your particular property.

As soon as you've signed, you've lost your best chance to reconsider or ask for changes. Get your lawyer to give you advice first.



# NOT BEING AN INDIVIDUAL

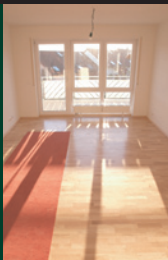
## 2

You and your home are both one of a kind. The contract also needs to be tailored to meet the particular circumstances of your transaction with special conditions.

Some common issues dealt with in special conditions are:-

- Making the deal subject to finance or other conditions.
- Occupation before settlement.
- A rent back period after settlement.
- A longer than usual period before settlement.
- Time for you to sell your current home before buying the new one.
- Unusual items that are included or excluded from the sale.
- Problems that must be fixed before settlement.

Your lawyer will tell you when special conditions might be needed.



# NOT WATCHING CRITICAL DATES

## 3

Many buyers and sellers don't understand the importance of adhering to critical dates set out in the contract or the consequences if these dates are not met.

Common conditions where time is important include:-

- **Pest and building inspections.**

The buyer only has until the date in the contract to obtain these inspections and notify the seller of the results. If they are not completed in time, the buyer cannot withdraw from the contract if there is a problem

- **Finance approval.**

If the buyer hasn't had their finance approved, and formally notified the seller by the date in the contract, then either the buyer or the seller may be able to withdraw from the contract.

Your lawyer will make sure that things are done when they need to be, or ask for an extension if more time is needed.



# NOT PAYING A DEPOSIT

## 4

Many buyers and sellers don't realise that if a deposit is not paid when the contract is signed, the seller can withdraw from the sale. The amount of the deposit is open to negotiation, but is normally 10% of the purchase price.

The agent holds the deposit in their trust account, usually until settlement, when it is available to the seller.

Ask your lawyer if you have any doubts about paying the deposit.



# INADEQUATE SEARCHES AND ENQUIRIES

## 5

After taking days or weeks to select a property, many buyers don't undertake adequate property searches and enquiries to check that the home is sound and complies with Council and other regulations.

Searches on a property should check things like:-

- Developments planned for the area, such as new roads and powerlines.
- Restrictions on the use of the land, such as covenants or easements.
- If the area is subject to flood or subsidence.
- If the land has been filled or is on the contaminated sites register.
- Whether a building complies with council regulations.

If the results show problems, you may be able to withdraw from the contract. It is important to get advice from your lawyer about which searches and enquiries you need and what conditions should go in the contract.



# THE WRONG PERSON BOUGHT IT

## 6

Often homes, and especially investment properties, are not bought by the right person or entity to achieve the best taxation and liability outcomes. For instance, it may be better for a property to be owned by a spouse, a family trust or superannuation fund.

Consult your lawyer and accountant well in advance to avoid unforeseen problems with capital gains tax, stamp duty, income tax, land tax and asset protection.



# MISSING THE COOLING-OFF PERIOD

## 7

Many buyers don't realise that they have the benefit of a cooling-off period. In NSW, for example, if you buy residential property other than at auction, you have five business days to withdraw from the contract. The agent must return your deposit less 0.25% of the purchase price.

If you want to get out of the contract during the cooling-off period you should talk to your lawyer – well before the period expires. Your lawyer can also advise you if the seller asks you to waive the cooling-off period.



# NOT SPECIFYING EXCLUSIONS & INCLUSIONS

## 8

The contract needs to make it clear what items are being sold. The general rule is that anything attached to the property or building – a fixture – is included in the sale.

However the contract can also set out exclusions – items that the seller can remove and take (e.g. a hat rack screwed onto the wall) or inclusions – items that are free-standing, but staying on the property (e.g. pot plants).

Many disputes arise over fixtures, exclusions and inclusions – your lawyer will make sure that you are protected.



# MISSING OUT ON A FINAL INSPECTION

## 9

Many buyers do not realise that it is wise to carry out a final inspection of the property on the settlement date. This is your chance to ensure that the property has been left in a proper condition, that all exclusions have been removed and inclusions left behind.

You should contact the agent to arrange a final inspection and notify your lawyer either to confirm that all is in order, or if you have concerns.



# INEFFECTIVE SPECIAL CONDITIONS

## 10

If you have asked for special conditions to be included in your contract you need to be sure they will be effective. Special conditions that are casually or carelessly drafted may have little or no effect, which leads to disputes between the buyer and seller. For example:-

- If you want to be able to terminate a contract if a special condition is not satisfied, this should be clearly stated.
- If a fence needs to be built, the special conditions should clearly state the type of fence to be constructed, who pays and what happens if it is not built in time.
- If new carpet is to be fitted, the special condition should clearly state the colour, type, quality, value and who pays.

Discuss special conditions with your lawyer so that they give you proper protection.



# NOT UNDERSTANDING AN AUCTION CONTRACT

## 11

It's easy to be carried along by the momentum of an auction sale, but many buyers don't realise that the winning bidder has to sign an unconditional contract and pay the full deposit as soon as the agent's hammer falls. Usually there is no cooling-off period, no finance approval clause and no right to terminate if a building or pest inspection reveals problems.

This makes it important to get your lawyer to advise you on the contract well before the auction so that you understand your responsibilities when you make a bid.



# ABOUT FLEMING MUNTZ

## THE FIRM

Fleming Muntz is a prominent specialist law firm in the Albury-Wodonga region, with an established reputation for integrity and consistently high-quality legal services.

The firm specialises in business law and estate and succession planning and has been serving the region for over 140 years.

## THE HISTORY

From its beginnings in 1863, the firm has developed long-standing connections with the communities of Albury-Wodonga and regional areas of Southern New South Wales and North - Eastern Victoria.

Today, Fleming Muntz lawyers act for many corporations, professionals, and business-oriented individuals providing expert, commercially realistic advice when it is needed. Other law practices often engage Fleming Muntz to provide advice on specific issues or carry out complex matters on a referral basis.

## SPECIALIST EXPERTISE

Fleming Muntz lawyers and paralegals are specialists who undertake constant professional development to remain up-to-date with both actual and likely changes to the law. This ensures that clients receive the best advice in any transaction.

## CLIENT SERVICE

Fleming Muntz professional staff pride themselves on never being responsible for delaying a transaction. The firm is absolutely committed to using technology and experienced support staff to provide rapid response times that meet or exceed the demanding expectations of busy clients.



Fleming Muntz is a member firm of Law Australasia, a national association of independent law firms, all committed to achieving best practice in legal and management matters.



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