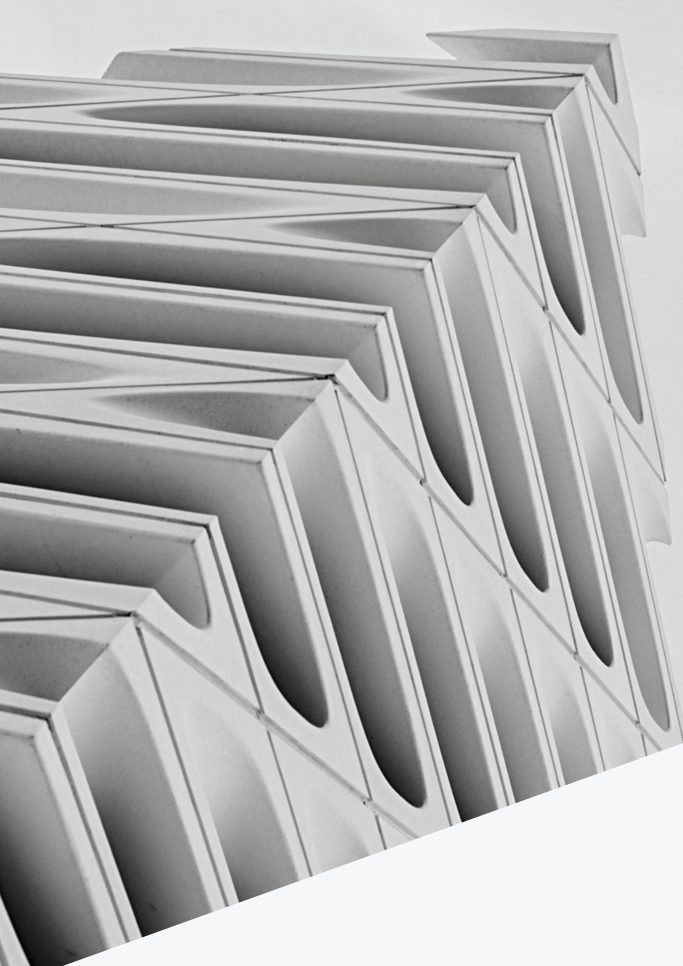




PURCHASING A
HOME IN 2022

THE NEXT STEPS

FORTY FOUR DEGREES LAWYERS AND
CONSULTANTS



OVERVIEW

Pre-contract

LET'S GET CHATTING



CONTRACT
REVIEW

INSTRUCTIONS

NEGOTIATIONS

Contract

SIGN HERE



COSTS
AGREEMENT

COPY OF
TITLE AND
PLAN

INITIAL
ADVICE

Instructions

THE NITTY GRITTY



SUBJECT TO
FINANCE?

INSPECTIONS?

DOCUMENT
PREP

VOI

DUTIES
ONLINE

STAMP DUTY

Settlement

READY READY



BANK
READY TO
SETTLE

SHORTFALL

ADJUSTMENTS

INVOICING

Post-contract

HAPPILY EVER AFTER



BREAKDOWN
OF COSTS

NOTIFYING
PARTIES

POST
SETTLEMENT
REVIEW



FORTY FOUR DEGREES
Lawyers and Consultants

Firstly, we would like to thank you for engaging our firm to assist you in your conveyancing transaction. Forty Four Degrees Lawyers and Consultants prides itself on the level of service provided and looks forward to assisting you throughout this transaction. We encourage you to contact our office with any queries you may have in relation to your purchase.

In an effort to reduce the amount of paper we use we endeavour, where possible, to communicate with you via either email or telephone. We invite you, where possible, to do likewise.

Your main contacts will be:

Nicola Drakeford

Mobile: 0422 411 388

Email: nicola@fortyfourdegrees.com.au

Leila Chalk

Mobile: 0423 495 217

Email: leila@fortyfourdegrees.com.au

Level 2, Suite 3, 50 Market Street

Melbourne VIC 3000

+61 423 495 217

+61 3 9225 5266

info@fortyfourdegrees.com.au

www.fortyfourdegrees.com.au

The Contract of Sale

The contract of sale is the most important document in the conveyancing process. The contract records the terms of your agreement with the vendor regarding the purchase of the property. The contract is a legally binding document, and breaches of contracts of sale can have potentially devastating legal consequences. As such, we assist you to make sure that you comply with your contractual obligations. As the contract is designed to record your whole agreement with the vendor anything which was agreed orally does not form part of the contract and you should not rely on any such agreements. If you are concerned, that aspects of your agreement with the vendor are not in the contract of sale, then you should advise our office.

A statutory right to 'cool-off' or change your mind in relation to the purchase may exist for a very limited time after signing the contract. Please contact us immediately if this is relevant to you.

Implied is a condition that prior to entering into the contract you were handed a properly executed vendor's statement.

Joint purchasers will be equally liable for performance of the contract.

Release of Deposit

Purchasers usually pay a 10% deposit at the time the contract is signed and this amount must be held by a stakeholder (agent or solicitor) until settlement. It is possible for the deposit to be released prior to settlement, but the purchaser is entitled to have full details of any amounts owed in relation to the property. If that information is provided, it is usual for the purchaser to consent to release of the deposit.

If there is no mortgage over the property the vendor is entitled to release of the deposit 28 days after the date of the contract.

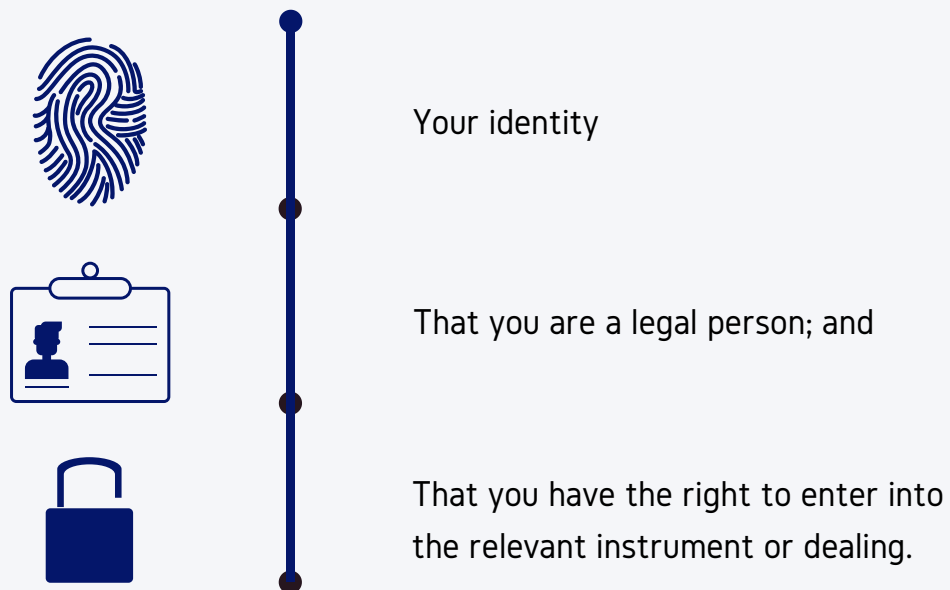
The agent is entitled to take the commission from the deposit once it is released, which might help to explain why agents are so keen for the deposit to be released.

Caveat

You have the right to lodge a caveat against the title, to protect your interest in the property as purchaser. This gives notice to any intending mortgagee or caveator of your interest in the property. It also means that if there is a delay in stamping the transfer and lodging the same for registration, notification will be sent by the registrar if anyone else tries to lodge a document in respect to the title. We will not lodge a caveat unless instructed by you.

Verification of Identity

As a result of changes in the legislation surrounding conveyancing, we need to comply with new verification of identity requirements. This means we are obliged to verify:



This means for any purchaser that you will need to attend our office for a meeting with one of our solicitors. You will need to bring to this meeting ID meeting the criteria of ONE of the categories in the table on the next page.

Alternatively, if you are unable to attend our office we will provide you with a verification of identity document for Australia Post. With this document and the required ID you can attend one of Australia Posts branches to have the verification of identity done. Please note however not every branch can provide this service, so please call ahead to ensure the verification of identity can be done.

FOR PERSONS WHO ARE AUSTRALIAN CITIZENS OR RESIDENTS	
Category	Minimum document requirements
<input type="checkbox"/> Category 1	Australian or foreign passport AND Australian drivers licence OR Photo card AND if name has changed Marriage certificate OR Change of name certificate
<input type="checkbox"/> Category 2	Australian or foreign passport AND Full birth certificate OR Citizenship certificate OR Descent certificate AND Medicare card OR Centrelink card OR Dept. Veterans' Affairs card AND if name has changed Marriage certificate OR Change of name certificate
<input type="checkbox"/> Category 3	Australian drivers licence OR Photo card AND Full birth certificate OR Citizenship certificate OR Descent certificate AND Medicare card OR Centrelink card OR Dept. Veterans' Affairs card AND if name has changed Marriage certificate OR Change of name certificate
<input type="checkbox"/> Category 4(a)	Australian or foreign passport AND Another form of government issued photographic identity document AND if name has changed Marriage certificate OR Change of name certificate
<input type="checkbox"/> Category 4(b)	Australian or foreign passport AND Full birth certificate AND Another form of government issued identity document AND if name has changed Marriage certificate OR Change of name certificate
<input type="checkbox"/> Category 5(a)	Identifier Declaration AND Full birth certificate OR Citizenship certificate OR Descent certificate AND Medicare card OR Centrelink card OR Dept. Veterans' Affairs card AND if name has changed Marriage certificate OR Change of name certificate
<input type="checkbox"/> Category 5(b)	Identifier Declaration by a person specified in Verification of Identity Standard paragraph 4.4(e) AND Medicare card OR Centrelink card OR Dept. Veterans' Affairs card AND if name has changed Marriage certificate OR Change of name certificate
FOR PERSONS WHO ARE NOT AUSTRALIAN CITIZENS OR RESIDENTS	
<input type="checkbox"/> Category 6(a)	Foreign passport AND Another form of government issued photographic identity document AND if name has changed Marriage certificate OR Change of name certificate
<input type="checkbox"/> Category 6(b)	Foreign passport AND Full birth certificate AND Another form of government issued identity document AND if name has changed Marriage certificate OR Change of name certificate

About the Property

Services

Electricity, gas, water, sewerage, and telephone services are set out in the vendor's statement. You will have to arrange for connection of services in your names as from the date of settlement, and you will have to pay any relevant connection fees. If for some reason you discover that services are not available for connection, you need to advise us as this may constitute a false representation by the vendors. We therefore suggest that you contact the utility providers regarding connection in your names a reasonable time before settlement.

Building Works

If it appears that any works at all have been carried out at the property during the past 7 years, you need to tell us because this could mean that these works were unauthorised. If unauthorised works were carried out, you could have the option of withdrawing from the purchase and/or compel the vendors to obtain the necessary permits, inspections and warranty insurance, if applicable.

If you have not already done so, we recommend that you consider obtaining a building inspection report from an authorised building inspector. Of course this will largely depend upon the vendors agreeing to grant access to the property. However, even if you cannot obtain an inspection before settlement, a report will enable you to plan the future maintenance OR repair of the property and/or if any action may lie against the vendors later for any deliberate concealment or misrepresentation.

If you intend to carry out any works at the property once you settle, and you do not intend using a registered builder, please ask us about your owner-builder obligations – particularly in regard to any future sale.

If there is a swimming pool at the property relevant fencing standards must be complied with. Also, there are now requirements regarding smoke alarms. This means that you will be liable from the date of settlement, and must contact the council to ascertain the exact requirements. Failure to comply may result in fines, and could affect your insurance protection.



Planning

Check the zoning of the property. We recommend that you make enquiries with the planning authority and the council to ascertain permitted and prohibited uses under these restrictions, particularly if you intend redeveloping the property in the future.

Rates and Outgoings

We will check the information provided in the vendor's statement and make any necessary monetary adjustments. You need to arrange a week or so before settlement for a special meter reading to be undertaken by the water provider on the day of settlement and for transfer of the account into your name.

Sewerage and Drainage

Registered easements are shown on the plan attached to the title. Further information in relation to sewerage and drainage is available from the responsible authorities.

Notices and Orders

The vendor's statement provides that the vendors are not aware of any notices or orders affecting the property – other than current rates notices. If a notice or order is issued in respect to the property, generally you will be responsible to comply with it from the date of the contract.

We will undertake normal checks in relation to these matters and the property generally. If there are any unusual matters or you have any particular concerns, please contact our office to discuss further possible inquiries.

Measurements

The contract should contain a plan of the land and a title. If not we will provide these to you.

We recommend that you immediately check the occupational measurements of the property against title measurements for any discrepancy, including the connecting distance to the next street, because you need to ensure that the property is of the right dimensions and that the location is correct. You must check that any fences on the property are situated exactly on the boundaries.

You also need to check that nothing has been built over any easement shown on the plan.

Please tell us immediately if the measurements are incorrect or something has been built over an easement. Any objection has to be made to the vendors within 21 days of the date of the contract. An objection may possibly justify a claim for compensation and we will advise you further if necessary.

Easements

If you wished to build something of a permanent nature over an easement at some later time, you must first seek the written consent of the water authority.

You also need to be aware that easements may also be 'implied' for the purposes of sewerage, gas, electricity and telephone lines. Please inform us if there appear to be any such easements evident from your inspection of the property.

Recommended Council Enquiries

You should check with the council that the property is not in a special area designated for things such as flooding, bush fire prone, significant snowfalls. The local council will be able to provide you with maps designating these areas. You should also check with the council that there are no matters which will otherwise impact on the property such as land fill etc.

What you will be asking the council, in plain terms, is if there are any town planning permits allowing anyone in the area to do something which is not strictly in line with the zoning of the property you are buying; or if anyone has a private section 173 agreement with the council which allows/imposes certain requirements on the property or any properties in the area, which you would not normally be able to discover by just looking around the area.

You should also check:

1

Whether there are any additional site-specific controls or particular local planning schemes which are not necessarily referred to in the planning certificate i.e. council 'rules' relating to the type of pets which may be kept within the municipality. These will all impact on your proposed future use and/or enjoyment of the property;

2

Whether there are any proposed freeway plans for the general area; and

3

Whether the property or the area in which it is included is of site or heritage or archaeological significance.

Track my Settlement

Stay informed with SettleMe



SettleMe is a free app powered by PEXA that keeps you informed throughout your settlement process. It's available exclusively to buyers and sellers represented by PEXA-registered lawyers and conveyancers.

SettleMe helps you stay organised with a customised checklist. It also sends instant alerts via SMS or email about the status of your settlement.

Joint Tenancy or Tenancy in Common

When two or more parties buy they must elect to buy as joint tenants or tenants in common. On the death of a joint tenant the survivor by law automatically receives the deceased share regardless of the provisions in a will. This is the way spouses usually buy their home. There is however a trap. In this age of blended families often one or both have children from a previous relationship. If both are killed in a car accident at the same time then the law provides that the youngest survives the eldest and in that moment of time, joint tenancy property passes to the youngest. If they do not have wills dealing with the situation then the home would pass to the children of the youngest, leaving the children of the eldest with no share in the home.

Tenancy in common is usually the way that unrelated parties who want their families to inherit their share hold property. The share in the property can be any size from 1% to 99%.

Separate title deeds can issue for each share, which can, in theory although difficult in practice, be separately sold and mortgaged.

Insurance

Whilst the standard contract does provide that the property remains at the risk of the vendor we nevertheless recommend that purchasers insure the property against loss and damage as well as occupiers liability, as you have an insurable interest from the date of the contract. Also, if the property were substantially damaged you may want to have the option of proceeding, relying on your insurance to reinstate the improvements.

A lender will require a certificate of currency of insurance or policy document showing the purchasers and the incoming mortgagee, for a minimum insurance value the lender will specify.

Financing your purchase

Given the large sums of money required to purchase properties, the vast majority of purchasers obtain finance from a bank or financial institution to help fund the purchase. Ensuring that your finance is approved and the relevant loan documents signed well in advance of the settlement date is therefore critical.

If you are needing to borrow to finance your purchase, it may be best to use an experienced broker or lender, or speak to the relationship manager at your local bank.

No matter the path you take, between vendor and purchaser, you are responsible for ensuring you have enough money to settle. Make sure you discuss with your broker, mobile lenders and home finance managers all the steps to ensure that finance is obtained in a timely manner and that mortgage documents are prepared and executed correctly.





Without correctly signed mortgage documents your bank will not advance the money you need to settle your purchase. This can lead to delays in settlement and unnecessary cost to you in the form of penalty interest and additional legal fees. Ultimately it is your responsibility to make sure your loan is in order in time for settlement.

We recommend that mortgage documents are signed **AT LEAST TWO WEEKS** prior to the due date for settlement. This takes into account that inadvertent mistakes can be made and ensures there is time to attend to these errors without the danger of going past the settlement date. We urge our clients to routinely follow up their lender throughout the transaction to make sure that everything proceeds on a realistic timeframe.

Signing Documents

During the conveyancing process there will be a number of documents you will have to sign. It is important that you use the **SAME SIGNATURE** when signing all documents as financiers are most pedantic in relation to signatures.

Many of these documents will also have to be witnessed as evidence that you are in fact the person who signs the document. Some documents can be witnessed by any adult person but documents known as statutory declarations must be witnessed by authorised witnesses who actually see the person signing the document. In order to avoid complications we normally recommend that our clients attend our office at one time to sign all the documents, this is often done at the same time as the verification of identity to streamline the process.

If you decide not to attend out office for the signing of documents you must make sure when signing these documents that you do so in accordance with the appropriate procedures. If a document is returned to our office not witnessed or incorrectly witnessed, we will have to send it back to you to be re-signed. This wastes your time and our time and can lead to delays in settlement. Furthermore, incorrectly signed statutory declarations can attract fines and other punishments, as they are governed by Victorian legislation.

If you receive a document and are unsure of how it is to be signed you should always contact our office rather than simply guessing and sending the document back.

Vacant Possession

If the contract provides for it, the property must be vacant at the time of settlement. In reality, it may be that the vendors could still be loading their removal truck at the time -- we suggest that if you plan to move in immediately, you contact the real estate agent to discuss timing. The actual time of settlement will not be confirmed until shortly prior to settlement, however many settlements are scheduled for around 2PM.

Please confirm that you will be occupying the property as your principal place of residence, as we must include this information in a notice we send to the State Revenue Office, council and water authorities. If you occupy the property as your principal place of residence, you may also be eligible for a stamp duty concession.

Subject to Tenancy

Many properties are bought as investments and are bought subject to the existing tenancies. Full details of the tenancies will be attached to the contract. By virtue of the law on completion of the purchase you automatically step into the shoes of the vendor and the lease becomes enforceable by you. Prudently a discussion with tenants before exchange will reveal any issues that might exist that would otherwise remain undisclosed. The fact that a tenant is a poor performer will not entitle you to terminate the contract after exchange.



Taxes

If the property is not to be your principal place of residence, then on resale there will be a taxable profit or deductible loss either under normal income tax rules or under the capital gains tax rules. If you are a developer, then the sale will probably produce a tax result under the usual rules relating to income.

If the property is not to be your principal place of residence, then on resale there will be a taxable profit or deductible loss either under normal income tax rules or under the capital gains tax rules. If you are a developer, then the sale will probably produce a tax result under the usual rules relating to income.

GST does not apply to residential property unless new or vacant land. It does apply to commercial and industrial property. There are a number of possibilities that might apply to the purchase, whether or not you are paying GST and if so whether it is in the price or additional to the price and whether you are entitled to get it back as an input tax credit.

Further advice on your tax position may be necessary.

Capital Gains Withholding Payments

If the foreign resident capital gains withholding payments provisions apply to this transaction we will need to discuss this with you further.

Where the sale price is \$2 million or more then the foreign resident capital gains withholding payments provisions of the Taxation Administration Act 1953 apply from 1 July 2016.

If the foreign resident capital gains withholding payments provisions apply to this transaction we will need to discuss this with you further.

The vendor must establish that they are not a foreign resident failing which the purchaser must remit up to 10% of the sale price to the Australian Taxation Office.

Stamp Duty and Related Fees

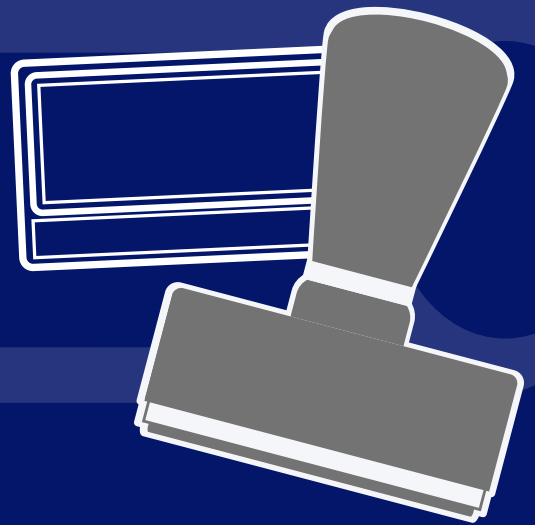
All property purchases in Victoria attract stamp duty. Stamp duty is a state government tax levied against a purchaser when they purchase a property. Generally speaking, the amount of duty payable depends on the value of the property, with more duty being levied the more expensive a property is.

The state government, through the Land Titles Office, also charges a fee to have a title registered into the name of a new purchaser. This fee is generally much less than stamp duty, between \$500 and \$1,500, depending on the value of the property.

Where you borrow money from a financial institution to fund your purchase, that financial institution will be responsible for paying the stamp duty and titles office fees on your behalf. These fees, together with any fees charged by the financial institution for their services, will generally be DEDUCTED from the amount the bank lends you. For example, if you borrow \$300,000 and your stamp duty, titles office fees and other fees total \$15,000, the bank will only provide \$285,000 at the settlement. If more money is required for the settlement we will then need to obtain it from you.



Too often we find that brokers fail to factor these fees into their calculations for purchasers, and when we advise the purchasers of the additional funds required for settlement they are not in a position to provide them. Regardless of who may be to blame for this oversight, it will be the purchaser who ends up suffering the most, and it is therefore in your interest to ensure that ALL EXPENSES are taken into account when ascertaining how much you need to borrow.



Various exemptions and concessions are available, such as the principal place of residence concession (up to \$550,000), pensioner exemption and off the plan concession. We are able to assist you in applying for these concessions and full details are available at www.sro.vic.gov.au.

Unfortunately, many agents and brokers do not understand the off-the-plan concession and often over-estimate the savings. The earlier in the construction process that you buy, the greater the duty saving, however duty is calculated on the FULL PRICE less the value of building work AFTER contract. It is NOT calculated on the value of the land on the contract date and any information in the contract relating to that value is often misleading.

Duty can only be calculated when the builder provides a statutory declaration relating to the cost of works after contract. This is governed by a strict formula and the declaration required to calculate the concession will not be available until all works have been completed.

Accordingly, the builder cannot provide this declaration until very late in the conveyancing process and this often leads to uncertainty, because the financier will want to be sure that sufficient funds are available to pay duty at the FULL rate if the builder's declaration does not support a reduction. Unfortunately, the process is flawed and we simply need to do the best we can to achieve the best possible outcome for you.

Settlement

Settlement is the time when purchasers (and their lenders) pay the balance of purchase price to the vendor. Purchasers must provide us with funds required for settlement by BANK cheque or direct deposit. These funds need to be to our office TWO clear days before settlement is due.

Settlement takes place online through an e-conveyancing system, called PEXA. As we have access to PEXA, we will attend to the settlement and you do not need to attend. At settlement, the purchaser's representatives hand over the money due to the vendor and in exchange the vendor's representatives hand over the relevant documents to enable the purchaser to become registered as the owner of the property. This process normally takes between five and twenty minutes, depending on the complexity of the transaction.

If you do not settle on time, then the vendors have the right to demand payment of penalty interest and perhaps additional losses. The vendors would also have the option to issue a rescission notice and then to retain the deposit and re-sell the property, suing you for any deficiency in price.

Rate Adjustment

The vendor is obliged to pay the rates on the property until settlement and the purchaser thereafter. Therefore rates are adjusted at settlement to ensure that this happens. This is done by deducting from the money paid to the vendor any amount outstanding for rates, and then adjusting those rates as paid, so that the purchaser pays back to the vendor the rates paid by the vendor for the period after settlement. A cheque is then forwarded to the rating authority for any amount owing and rates are therefore paid until the end of the rating year. We also notify the rating authorities of the change in ownership.

Keys

Keys are usually collected by the purchaser from the agent after settlement. The agent will only hand over keys upon receipt of written authorisation from the vendor, which will be emailed or faxed to the agent after settlement has taken place. Other keys will normally be left in the property, along with instruction books and household information.

Completion

We will provide you with full financial details relating to the settlement and we will also advise the local council, water authority and Land Tax department of your purchase. It is your responsibility to arrange for connection of electricity, gas and telephone services and steps should be taken in advance of settlement as there are sometimes waiting periods. If you have borrowed money to assist you with the purchase, your financier will also report to you after settlement.

Registration

When the title is handed over at settlement it is still in the vendor's name. If you are not borrowing from a lender, we will attend to payment of stamp duty and registration of your ownership and the transfer will usually be registered within a week.

When a purchaser borrows money from a financier the title will be handed over to that financier's agent. The agent will then take the title to the State Revenue Office to pay the stamp duty and then to the Land Titles Office for registration.

Given that most financial institutions have thousands of clients and hundreds of settlements every day, the lodging process can take anywhere between one and eight weeks, depending on the workload of the institution at the time. The institution will write to you following settlement and registration to confirm that the title is in your name and to set out the relevant information regarding settlement.

**SETTLEMENTS AND
ADDITIONAL COSTS**

PRICE LIST

**CONVEYANCING FEE
\$1500 + GST**

**PROPERTY CERTIFICATES
~\$200-400**

**PAPER SETTLEMENTS
\$300**

**RESETTLEMENTS
\$300**

**PEST + BUILDING
INSPECTION BOOKINGS
\$200**

Ask us about our referral discounts

**ANY FURTHER
ENQUIRIES?**

CONTACTS

**DROP US A CALL OR
EMAIL**

**1300 892 237
HELLO@FORTYFOUR
DEGREES.COM.AU**