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Terms of Our Engagement – Conveyancing

The purpose of this document is to provide further information to you about what Conveyancing entails, and what you have engaged us to undertake as part of our retainer.

Like any professional engaged to undertake work, we have a scope of work for conveyancing transactions which we undertake for a fixed fee arrangement.

For purchases of land and property – this involves:

- (a) Review of the section 32 and contract of sale, advice relating to that contract and section 32. We will prepare Special Conditions to accommodate your circumstances and make enquiries on behalf of the other legal representative to find out further information about the property or any issues arising in the section 32 and contract.

Note that we will review contracts of sale/section 32 documents for you at no charge.

- (b) Representing you in the purchase by undertaking the following work:

- (i) Preparing the transfer of land and checking any verification of identity paperwork and completing compulsory anti-money laundering checks;

Note that the verification of identity check and anti-money laundering checks, if undertaken by a third party provider such as Infotrack, will incur additional costs. You can expect to pay approximately \$110 per person on title for these checks to be undertaken, which will be billed as part of the settlement.

- (ii) Assisting with any enquiries raised by your bank in the preparation of loan documents.

Note that if your bank requests additional documentation that requires a cost, such as ordering a company search or undertaking further searches which would not be normally undertaken, this fee is charged to you.

- (iii) Preparation of State Revenue Office documentation via Duties online – this includes the application of concessions such as a First Home Owner Duty Reduction or Principal Place of Residence Concession.

We will then advise you of the amount which will be charged to you at settlement for stamp duty and other registration and government charges (such as Lodgement fees)

Note that if you have a non-standard concession, such as a Low-income or Pensioner Concession, or a transfer on the basis of love and affection or a transfer due to a change in beneficial holding, then a fee will be charged for this work.

- (iv) Preparation of the electronic workspace in PEXA (Property Exchange Australia) and liaising with your mortgagee or broker to ensure that:
- You have enough funds to be able to settle on time;
 - That the title is in the correct format (electronic) to settle;
 - That the bank has an authority to debit one of your accounts to debit shortfall funds OR that there is a deposit form set up via a PEXA Source account to allow you to deposit funds.
- (v) We will provide you with legal advice associated with the risks of releasing funds to the vendor pursuant to a Section 27 request under the *Sale of Land Act*, if a request is made for these funds to be released prior to settlement.
- (vi) We will prepare a Statement of Adjustments on your behalf, to adjust the purchase price on the pro-rata adjustment of costs associated with the property such as Council rates, water rates and land tax. The cost associated with updated certificates for Council rates, water rates and land tax are built into our fee, and you will not incur any cost for these certificates (unless the water rates are relating to a regional property outside of the metropolitan area of Melbourne).

Note – if there is an Owners Corporation affecting your property and we are unable to obtain a verbal update in relation to the charges associated with the property OR the OC Certificate provided in the section 32 statement is more than 3 months old, we will need to order a new Certificate and the cost of this Certificate will be passed onto you.

- (vii) We will provide you with some guidance in relation to what happens at the final inspection of the property, which is conducted 7 days prior to settlement; and
- (viii) We will monitor the Settlement workspace on Settlement day and call you after settlement has taken place to advise you that it has been successful. We will provide you with information as to how you can collect the keys from the Real Estate Agent.
- (ix) We will prepare a Notice of Acquisition to advise the Owners Corporation, Water Authorities and Council about your new ownership of the property.

What things are excluded from Fixed Fee Conveyancing?

We are able to provide you with a quote for a Fixed fee, as we know what is required in a conveyancing transaction, and we can estimate the time and resources required to effectively complete a standard conveyancing matter in normal circumstances.

Our estimate is based on the following assumptions:

- The contract of sale remains unaltered between the Day of Sale and the Day of Settlement;
- Any loan or other conditions have been satisfied in the Contract of Sale by the due date;
- The Contract of Sale proceeds without any breach from any party involved in the transaction.

Additional costs may be charged whenever there are departures from the normal conveyancing process. Such departures can occur if:

Contract variations – Variations are made to the contract after it has been signed. This may include changing the settlement date, nominating additional or substitute purchasers, changing names, deadline extensions, post-contractual negotiations;

Anything which is not “conveyancing work” - Conveyancing work is defined under section 4 of the *Conveyancers Act 2006*. It means legal work carried out in connection with any transaction that creates a legal interest in a property.

Note that “Conveyancing work” does not include commencing or maintaining legal proceedings, applying for a grant of probate or letters, reviewing legal documents that are served upon you after the contract is signed that pertain to the use and development of the land.

Requests for other work to be undertaken or non-standard requests – You might require a lease to be prepared so that you can rent the property to the vendor after settlement for a period of time, or a licence agreement so that you can gain access to the property a few

days before settlement. There may be a legal document provided regarding your use of the land, such as a Resale Deed, and this is required to be reviewed by a lawyer prior to your signing. These requests are not part of the fixed fee service that we offer and you will be charged according to the time taken to prepare the document (if it is an unusual request) or according to a schedule of fees set for that particular document. Please enquire with us as to the cost associated with the document that you require.

Mistakes – if there is a mistake which is made by another party, then there may be additional work to be performed to rectify the situation. Some examples of mistakes could be errors on sale documents by real estate agents, incorrect payout figures provided by banks, banks failing to be ready for settlement, clients providing incorrect documentation to banks which require the documents to be “rectified”.

Note that if any mistake is made by us, there will not be any charge to you if we have to undertake additional work.

Unforeseen situations – this could involve:

- (a) A party to the contract has died, become insolvent or bankrupt;
- (b) There is dispute in relation to the condition of the property at settlement and monies are to be withheld by you pursuant to the contract;
- (c) The other party is unable or unwilling to settle; or
- (d) Another issue has arisen which impacts the transaction and results in additional work to be undertaken – this might involve trying to remove a caveat by a third party to ensure that the property is able to be transferred at settlement.

Searches requested by other people that you have engaged – for example, your bank might request that we undertake a company search to substantiate that the person who signed the contract of sale is actually authorised to sign the contract on behalf of the vendor, or an updated title search to show that a mortgage has been discharged, that a caveat has been removed or that the ownership on the property has been transferred pursuant to a probate application. You will be charged for the cost associated with these searches undertaken at the bank's request.

We do not cover the cost associated with obtaining an updated Owners Corporation Certificate (which is normally around \$180).

We use discretion as to whether additional fees will be charged – and if the additional work does not significantly impact upon our time, then we may choose to waive that cost.

We will send you an email whenever there are additional costs charged so that you are aware of this, and to provide you with an opportunity to discuss prior to settlement.

If additional costs are charged, then they will be fully itemised on your invoice.

The guide for charging of additional costs is the Legal Profession Uniform Law Application Act 2014 Practitioner Remuneration Order – which sets out the schedule of tasks and their applicable costs. We use the [Practitioner Remuneration Order](#) applicable for that calendar year in order to calculate the additional costs to apply to your matter.

Commonly Asked Questions about Additional Fees

Why do you charge additional fees if it is a fixed fee service?

As stated above, there are a lot of different circumstances involved in a conveyancing transaction, and it is not possible to provide you with a single fixed-fee to cover all eventualities. Some people have a smooth conveyancing experience and therefore all work is covered by the quoted amount. Other people may hit a number of roadblocks and require much more time to be spent on their file. It is inequitable to charge everyone the same fee if they are receiving different levels of service.

Will I be informed about any additional fees?

We will advise you as soon as it is practicable about the additional charges incurred on your file – this is generally before the work has been undertaken but if the work looks as if it is going to take substantially longer to undertake, or if the nature of the work requires us to act urgently and decisively to protect your interests, then we may not be able to advise you before undertaking the work.

For example, if we become aware that the vendor is involved in a business dispute or marital separation, we may decide to lodge a caveat over the property to protect your interests as a purchaser. If we are not able to contact you to confirm this, we may decide to proceed as it is in your best interests to safeguard your interest in the property as you have paid a deposit to secure the property.

In most cases, we will assume that you are aware that any instructions that you provide to us will generate additional costs, and that you expect to be invoiced. This assumption is based upon the Costs Disclosure that you are provided at the beginning of the transaction, which you have chosen to accept by engaging our services. It is also based upon our policy of directing you to the relevant sections of our website.

We also will email you to advise you of any additional costs incurred throughout your matter.

Will I be charged additional fees if the issue is not caused by something I have done?

Yes – unfortunately we cannot charge costs according to which party or other is to blame for problems that result in additional costs. This is because you have contracted us to provide the legal services that you require to complete your conveyancing transaction, and all the services that we provide to you are under your instruction and at your cost.

However, if the fault arising from poor service from your bank, then it may be possible to take action against your bank to recover any losses incurred such as default interest for missed settlement.

If someone on the other side of the transaction is responsible, then you may be able to either negotiate an agreement or claim damages from them for breach of contract. To be able to recover these costs, you must be in a position to demonstrate that the other party was contractually responsible for the loss and that their breach of contract led to the losses that you suffered and you are entitled to cover these losses under the contract.

Is there anything that I can do to avoid being charged additional costs?

Yes, there are many things that you can do to avoid additional costs being charged to your file.

- Avoid unnecessary telephone calls to us – if the matter is not urgent, or requires a considered response, then it is best to send us an email at amanda.bradford@firstavenuelegal.com.au so that we can provide you with a proper update in relation to your file, or answer your questions in a detailed manner;
- We may not be able to immediately respond to your email, given that we triage our emails and the responses;
- We are often involved in time critical work, and telephone calls to “check in” or “asking a couple of questions” can be disruptive to us.

However, we are more than happy to respond to you via telephone if you have an urgent matter and need an immediate response.