



FIRST AVENUE LEGAL

ABN 15 604 743 419

Suite 4, 9 Ormond Boulevard

BUNDOORA VIC 3083

T **03 9466 7462** F 03 9436 9992 M 0418 135 895

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 sales of land and property – this involves:

- (a) Preparation 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 of you with respect to the documents that need to be ordered on your behalf with respect to preparing the section 32 and contract.

The cost associated with ordering certificates to be included in the section 32 are included in the fixed fee pricing – these are council rates, water rates and land tax.

If your property is affected by an Owners Corporation, then we do not include the cost of ordering the Owners Corporation Certificate in our fixed fee. This is normally an additional \$180

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

- (i) Verifying your identity and preparing the transfer of land;
- (ii) Assisting you in discharging your mortgage;

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;

- (iv) Preparation of the electronic workspace in PEXA (Property Exchange Australia) and liaising with your mortgagee to ensure that:
 - You have sufficient funds available at settlement to discharge the mortgage;
 - That the title is in the correct format (electronic) to settle – note that if the title is not in an electronic format, then we will charge a fee to convert it;
 - That the bank has an authority to discharge the mortgage
 - We will arrange for the settlement funds to be credited to you.
- (v) We will make an application on your behalf in order to apply for early release of funds pursuant to Section 27 of the *Sale of Land Act*.
- (vi) We will check the Statement of Adjustments on your behalf, to adjust the sale price on the pro-rata adjustment of costs associated with the property such as Council rates, water rates and land tax. This means that you may receive additional funds from the purchaser to reimburse you for expenses that you have already paid in relation to the property.
- (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 we will advise you about your obligations to deliver the property in the same condition as at the Day of Sale, with the exception of fair wear and tear; 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 also confirm the amounts that you will receive at settlement – whether that is from the remainder of the deposit, and from the settlement workspace.
- (ix) We will prepare a Notice of Disposition to advise the Owners Corporation (if applicable), Water Authorities and Council that you have sold 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 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, changing names, deadline extensions, post-contractual negotiations;

Anything which is not “conveyancing work” - Conveyancing work is defined under section 4 of the *Conveyancing 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 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 purchaser after settlement for a period of time, or a licence agreement so that the purchaser 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 there may be work associated with gaining the approval from the purchaser. 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.

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 purchaser, 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.

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.

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 – this may seem unduly harsh to say, but 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.