

Legal Q&A

Your legal questions answered

Gerri Forsaith explains whether it is legal and ethical for a conveyancer to be working on behalf of both parties in a property deal

Q My wife and I recently decided to buy a property in Sydney's inner west. It's our third property purchase and we're using the conveyancer we always use, who is a friend of ours.

By a stroke of chance, we recently found out that he is also acting for the vendor. Well, this baffled us to say the least, since we didn't expect this from him at all. Isn't this illegal?

The way I see it, there's no way he can represent our best interests when he's also representing the vendor. If it is illegal, what should we do about it?

A Buying and selling a home is possibly one of the biggest financial decisions you and most people will make in their lifetimes. It is difficult enough as it is trying to ensure your interests are protected, and this makes proper legal representation paramount.

What you've got to ask yourself is how a licensed conveyancer/solicitor can be truly independent if they are acting for both parties in a transaction? Put another way, consider this: if an issue were to arise during the transaction, how will your legal representative advise both parties without taking sides?

A conflict of interest can arise broadly where your licensed conveyancer/solicitor acts for both vendor and purchaser in a sale or purchase. This means that the conflict involves a breach of a fiduciary duty to you, the client. The four elements of a fiduciary duty are:

- The duty of loyalty to the client
- The duty of confidentiality
- The duty to disclose to the client or put at the client's disposal all information within their knowledge that is relevant in order to act in the client's best interests
- The duty not to put their own or anyone else's interests before those of the client

The Conveyancers Rules NSW issued by the Australian Institute of Conveyancers (NSW Division) recommends licensed conveyancers do not act for more than one party.

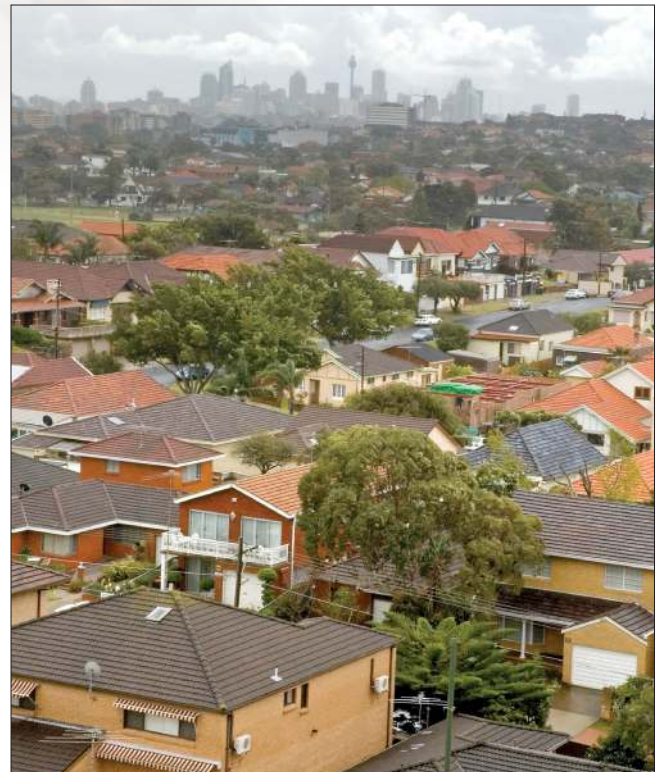
Legal expert



Gerri Forsaith

Gerri Forsaith is the founder of Sydney Property Conveyancing and has over 15 years' conveyancing experience. Visit www.sydneypropertyconveyancing.com.au or call 1300 367 176 for more information

NSW licensed conveyancers may be deterred from this practice because their professional indemnity insurance excess doubles for claims in such circumstances.



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Licensed conveyancers and solicitors are required to act in the best interest of their client. By acting for both parties there becomes the lack of distinction as to which party you are acting for as a conflict of interest and potential lack of disclosures in contractual obligations can arise.

It is vital that licensed conveyancers/solicitors meet high ethical standards, that they are aware of their professional responsibilities, and that their office systems and methods be such that conflicts of interest are avoided.

Whatever the rules may be, if you are buying, selling or otherwise dealing in property – the warnings remain the same: Don't use the same licensed conveyancer/solicitor as the other party. It may seem like a cost saving or a quicker alternative. It could even seem more convenient, but it is an extremely unwise, high-risk practice for licensed conveyancer/solicitors and their clients. It should be prohibited by law.

If you want more information visit www.lawsociety.com.au or www.aicnsw.com.au

Disclaimer: The information in this article is of a general nature only and should not be relied upon as legal advice. You should seek advice for your particular circumstances before entering into any transaction.