

Australian Institute of Conveyancers NSW Division

Seller's Guide

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Australian Institute of Conveyancers NSW Division

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Selling Property

Want to sell – what do I do first?

When you have decided to sell any residential property the first thing you should do is consult your conveyancer. You may have been contacted by a Real Estate Agent or you may have one in mind to use, but they cannot proceed until after you see your conveyancer.



The Law provides that before anyone, estate agent or owner, can place a property on the market they must have a proposed contract prepared so that a prospective buyer can inspect the contract. There are hefty fines imposed on anyone caught promoting the sale of a property in anyway whatsoever before a contract is prepared.

Your conveyancer will prepare the contract for you so that you can instruct your estate agent to proceed with the sale of the property.

CONTRACT FOR SALE OF LAND

The Contract details the ownership, title details and the conditions of the sale together with what is included in the sale. It is prepared with all details leaving blank the buyers details and the sale price.

There are certain documents that must be attached to the contract and are specified in law.

These documents are called "Prescribed Documents", without these documents attached a buyer has 14 days from the date of exchange of contracts wherein they can pull out of the contract with no penalty.

These documents are:

- zoning certificate (S.149) from council.
- Sewer diagram showing the location of the authority's sewer main.
- A full title search obtained from the Land Titles Office.
- Where a building is situated on the land - a statement that the building has smoke alarms installed in compliance with the laws relating to smoke alarms (from 1 November 2006)

There are certain warranties that the seller must give as prescribed in law. These warranties are called "Prescribed Warranties" and they are:

that as the date of the contract:

- the land is not subject to any adverse affectation, and
- the land does not contain any part of a sewer main, and
- the zoning certificate attached to the contract specifies the true status of the land, and
- There is no matter in relation to any building that would justify on upgrading or demolition order, unless specified otherwise in the contract.

There must also be attached to the contract evidence of owner builder warranty insurance if any building work has been done in the previous six years, the value of which exceeded \$12,000.00. This should be discussed with your conveyancer before putting the property on the market for sale.

ESTATE AGENTS AND AGENCY AGREEMENTS

An Estate Agent must have an agency agreement signed before he can list your property for sale. If you are not sure of the terms of the agency agreement you should have your conveyancer explain it to you.

There are several types of agency agreements: Exclusive agency agreement is most commonly used to sell residential real estate, you are giving the agent the exclusive right to sell your property. While the exclusive agency agreement is current and someone else sells the property (including yourself) the agent is entitled to be paid the agreed commission. Sole agency agreement is very similar to the exclusive agency except that it gives you the right to sell the property yourself without being liable to the agent for a commission. Multiple listing agreement allows the agent who may be part of a network of agents working together to sell the property. You only pay a commission to the agent who

you have signed the listing agreement with. Auction agency agreement is used when the property is to be sold by auction. It is similar to an exclusive agency in that you give exclusive right to the agent to sell the property by auction. Open agency agreement will allow you to list with any number of agents you wish. You only pay a commission to the agent who finds the buyer for your property.

Agency agreements are usually for a fixed period of time and cannot be ended prior to the end of that period unless both seller and agent agree. The period of the agreements is negotiated with the agent; it is usually 90 days but can be for any period agreed to. Make sure you only have one agreement at a time and do not commit yourself to payment of a commission to more than one agent. Make sure any agreement is properly ended before entering into another agreement with another agent.



EXCHANGE OF CONTRACTS

Contracts are signed by all parties involved in the transaction and when the seller and buyer have both agreed on a price and the conditions of the sale the contracts are exchanged and dated and the deposit paid by the buyer.

Contracts are drawn up in duplicate and one copy is signed by the seller and one copy is signed by the buyer. The exchange of contracts is the exchanging of copies so that each party ends up holding the copy signed by the other party.

The contract can be exchanged in one of two ways:

1. By the estate agent. In this case the contracts are signed and exchanged shortly after the sale price has been agreed to. The agent will send the appropriate copy of the contract to the party's conveyancer and the buyer will have a 5 working day cooling off period in which to get any reports, finance approval and have the contract explained by their conveyancer. The seller does not have the benefit of the cooling off period.
2. By the Conveyancer. In this case it would be normal for the buyer to have all reports done, financial approval and the contract explained by their conveyancer before the contracts are exchanged. It is usual practice for the buyer to waive their cooling off rights so that the contract is binding on both parties as and from the date of the exchange taking place.

Until such time as the contracts are exchanged either party can withdraw from the transaction, it is only once contracts are exchanged that the parties are bound to proceed, and in the case of the buyer having a cooling off period the buyer is not bound until the cooling off period expires.

COOLING OFF PERIOD

Every contract for the sale of residential property (less than 2.5 hectares) has a cooling off period of five working days (the cooling off period ends at 5.00pm on the fifth working day). This means that after entering into the contract the purchaser has five working days in which to "cool off". The seller is locked into the contract and cannot withdraw from the sale. If the purchaser finds that for any reason he or she does not want to proceed with the purchase they can rescind the contract within the five day period. If they do rescind the contract they forfeit to the vendor 0.25% of the sale price. The contract is then at an end and neither party has any further claim against the other.

The purchaser can waive the cooling off period by having the contract explained by a conveyancer or solicitor and a certificate signed by that conveyancer or solicitor and the certificate handed to the seller's conveyancer. The certificate is drawn under Section 66W of the Conveyancing Act and is commonly called a "Section 66W certificate"

The cooling off period can be shortened by the use of the S66W certificate whereby it will be stated that the purchaser has agreed to shorten the period to whatever number of days has been agreed.

There is no cooling off period if the property is sold at public auction or on the same day as the property was listed for auction sale.

DISCHARGE OF ANY MORTGAGE

If you owe money to a lender who has a mortgage registered then you will need to have the mortgage discharged at settlement. Your conveyancer will communicate with your mortgagee requesting they have a discharge of mortgage

prepared in readiness for settlement, however most lenders will not do anything until they have your written authority to prepare the discharge, this authority also authorises the lender to communicate with your conveyancer, in particular regarding the amount required to payout your loan.

Your conveyancer will try and organise your lender to send their authority form to you but as this can sometimes take time and hold up final settlement you are advised to contact your lender to organise this yourself.



The fixed payout figure will be given to your conveyancer and the loan will be paid out from the proceeds of your sale.

BUILDING INSURANCE

All buildings on the property are at the sellers risk until settlement. It is therefore essential that all building insurances be maintained and not allowed to lapse before settlement.

If the buildings are damaged by fire or flood or some other catastrophe the buyer is not bound by the contract to proceed with the purchase. Depending on the amount of damage a buyer may proceed with the purchase after negotiating the price down to cover the cost of repairs but it is in the seller's best interest to keep the buildings insured.

If your policy is due before settlement you are advised to renew the policy and then claim a rebate where possible, after settlement. It is better to be sure than sorry.

SOLD WITH VACANT POSSESSION BUT TENANT IN POSSESSION

A tenant is not bound to move out of the property until the term of the lease has expired and a notice to vacate has been served.

If selling a property that is tenanted you should be sure that the term of the lease has or will expire before the settlement is due.

You must give 30 days notice to vacate to the tenant and as the settlement date is normally 42 days after exchange of contracts you must arrange with your conveyancer and your managing agent to give the notice immediately contract are exchanged.

It is either you as the landlord or your managing estate agent who must give the notice to the tenant. Your conveyancer cannot give the notice but should check to see the notice has been served.

COUNCIL, WATER RATES AND STRATA LEVIES

Council Rates

The Contract provides that council rates be adjusted between the vendor and purchaser as at the settlement date.

Council rates are levied for the financial year. They will be adjusted so that the vendor pays the rates up until the day of settlement and the purchaser will be liable from then until the end of the rating period, in this case the 30 June. They are adjusted as if the rates are paid in full regardless of whether they are in fact paid or not. Any outstanding rates are paid from the sale proceeds (being the vendor's money).

Council rates may be paid by instalments but are an annual levy and hence it is normal practice to adjust the rates for the next full year not according to what instalment may be due next.

The rates are a charge on the land and any outstanding rates become the liability of the purchaser, so it is essential that they are paid up to date at settlement. One of the inquiry certificates the purchaser's conveyancer will obtain is from council and sets out the amount of the annual rates, what payments have been made and what is outstanding.

Water Rates

In some country areas the water rates are paid to council and may be incorporated within the council rates. In other areas where a separate water authority supplies the water and or sewer an adjustment of these rates must be made at settlement.

Water rates are usually quarterly rates and the adjustment made will only be for the current quarter. The same principals apply to water rates as they do for council rates.

A water usage charge may have to be paid by the vendor. To assess whether a charge is payable or not can be done in one of two ways.

1.) A meter reading can be organised, this will cost whoever organises it whatever the authority charges for a meter reading.

2.) An estimate can be done, by using the last quarter's water usage charge.

It is usual to use the estimate system to calculate the usage charge because quite often the cost of having the meter read is more than the charge itself. The seller will make an allowance to the purchaser for the usage charge so that when the actual bill for water usage is received the whole bill becomes the purchaser's responsibility.

Strata Levies – Unit, Townhouse, Villa

If you are purchasing a lot in a strata scheme the quarterly strata levy will need to be adjusted. This levy is adjusted in the same manner as council rates except that they are adjusted on the quarterly not annual rate. The quarter for strata levies may begin at any time, they are not necessarily the quarters of the calendar year. Because the levies commenced on a date determined at the first annual general meeting held by the Owners Corporation the quarterly levies can commence at any date but for convenience it is usually but not necessarily from the beginning of a month.

There may also be special levies to take into consideration. A special levy is struck when and if there are not enough funds held by the owner's corporation to cover either the normal running expenses or a special job has to be carried out and there are not enough funds held to cover the cost of that job.

Normally a special levy struck before the date of the contract has to be paid in full by the seller. Some times the special levy may be paid by instalments, if this is the case all instalments must be paid by the seller. If however a special levy is struck after the date of the contract then that levy is adjusted between seller and buyer.

SETTLEMENT

If the property is sold with vacant possession then you need to make arrangements to vacate the premises prior to or by the time of settlement.

The property should be left in a clean and tidy condition and all possessions moved from the property.

It is not always easy to arrange for removalists etc. to have you moved out before the settlement time but you should be advised that the buyer does not have to settle if you have not left the property vacant by the settlement time. If need be, and you are able, you might consider moving out the day before settlement but remember that you are still liable for insurance and the safety of the premises until such time as settlement takes place.

If you are selling and buying simultaneously you may have to arrange to have left the sale property and to be en-route to the property you are buying while the settlement takes place. If this is the case make sure you are available in case something goes wrong or there is a hold up in the settlement.

SOLD WITH AN EXISTING TENANT

If there is a tenant in the property who is staying after settlement, an adjustment of the rents will be made at settlement.

If the rent is paid in advance then you will make an allowance in the settlement figures to credit the new owner with that part of the rent that applies after the settlement date. If the rents are in arrears no adjustment in your favour is made as the new owner is not expected to take over a debt that is owed to you.



Quite often the managing agent may be holding rent in trust as they may collect rent weekly but account to the owner monthly. If this is the case the adjustment of rent will be made by the managing agent. Your conveyancer will determine how and what adjustments are to be made.



AFTER SETTLEMENT

When settlement has been completed your conveyancer will account to you for any of the proceeds of sale that are to be paid to you after all adjustments are made and any loan repaid. You may have to make special arrangements for collection of any cheques from the conveyancer depending on where you have moved to etc.

Quite often the sale proceeds are not available until the next working day as the settlement normally is not done at the conveyancer's office but at the office of your discharging lender and cheques may not be delivered to your conveyancer until the next working day.

The change of ownership details will be notified to Council, Water Authority and Valuer General when documents are lodged for registration at the Land Titles Office following settlement. This may not happen for a couple of weeks depending on the transaction and if you receive either council or water assessments for the property you should redirect them back to the new owners or to your conveyancer to deal with. Please do not throw them away as the new owner may then have interest to pay on late payments of rates they never received.

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