

Selling Property

Property transactions without the stress



**CLINCH LONG
WOODBRIDGE**
LAWYERS



Glossary

Contract	Means a Contract for the sale and purchase of land
Conveyancing	The process of transferring ownership or a legal interest in the property to another party
Purchaser	The buyer of the property
Vendor	The seller of the property
Exchange	The exchanging and dating of signed identical copies of the Contract, creating a legally binding agreement
Deposit	A proportion of the purchase price, normally 10%, payable on exchange
Cooling off	Legal right of the Purchaser to withdraw from the contract after exchange, normally 5 business days
Settlement	Completion of the contract, payment of the purchase price and release of the keys to the Purchaser
Mortgagee	The lender, your financial institution
Vacant possession	The property must be vacated prior to settlement
Subject to Existing Tenancies	The property is being sold and you are buying with the tenants to remain in the property after completion.



Overview

Steps involved when selling a residential property

1. Preparation of Contract for the Sale of Land
2. Marketing of the Property and Acceptance of an Offer
3. Sign and Exchange the Contract
4. Prepare for Settlement
5. Settlement/Completion

Moneys involved

1. On exchange
 - a. Initial deposit paid
2. On settlement
 - a. Mortgage discharged
 - b. Adjustment of rates payable
 - c. Agent's commission payable
 - d. Our costs and disbursements payable upon completion or as otherwise agreed
 - e. Balance of Purchase Price received

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Preparation of Contract for the Sale of Land

Drafting the Contract

Before the property can be advertised for sale by either you or your agent, a Contract for the Sale of Land needs to be drafted. **A valid contract must include:**

- ▶ A description of all inclusions that are to be sold with the property;
- ▶ A title search confirming ownership of the property;
- ▶ Any dealings affecting the land, ie. restrictions, easements, covenants;
- ▶ A Deposited Plan, or Strata Plan, as applicable;
- ▶ If the property is in a strata – a copy of the relevant Strata By-Laws;
- ▶ A Section 149 zoning certificate provided by the local council;
- ▶ A sewer diagram, showing if, and or where the sewer main crosses the property;
- ▶ A service location print showing the location of the main sewer line;
- ▶ If the property has a swimming pool – a Certificate of Registration and a Certificate of Compliance or Non-Compliance;
- ▶ A land tax certificate noting whether any land tax is payable on the property and;
- ▶ Any other document that affects the property

Upon receiving your instructions and any special conditions you wish to include, we will apply for the searches and draw up the draft Contract. We will then discuss the details of the draft Contract with you. Once ready, we will forward the Contract to you and your agent so that the property can be marketed.

Prior to settlement, you are also required to provide the Purchaser with a clear Section 47 Land Tax Certificate showing that there is no land tax charge over the property. We will apply for this on your behalf and provide the Purchaser with a copy.

If the sale price of the property is \$750,000 or over you are also required to provide the Purchaser with a Foreign resident Capital Gains Withholding Tax Certification (FRCGWT). We will provide you with the information required to apply for this certificate once contracts have been exchanged. If this is not obtained by you, the purchaser will withhold 12.5% of the sale price on settlement and send it to the ATO.

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Marketing of the Property and Acceptance of an Offer

Deciding selling method

You have two means of setting the purchase price of the property, by negotiation or by auction. It is up to you to decide which method suits you best.

Inspection Reports

Before making an offer, the Purchaser may obtain inspection reports of the property. **Common inspection reports include:**

- ▶ Building inspection
- ▶ Pest inspection
- ▶ Strata report, if the property is in a strata complex.

Accepting an Offer

The Purchaser may also wish to amend some of the terms in the Contract. We will negotiate with the Purchaser's solicitor/conveyancer to ensure your interests are protected.

When you and the Purchaser have come to an agreement regarding the sale, all parties involved in the transaction are required to sign the Contract.

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Sign and Exchange the Contract

Signing the Contract

Two identical copies of the Contract are submitted, one for the Purchaser and one for the Vendor. The contracts are signed and dated by each party, the deposit is paid, then contracts are exchanged, so that each party will hold the copy signed by the other party. After this is completed, this is known as the contract date.

Before the exchange of contracts, either party can withdraw without penalty. After the contracts are exchanged, both the Purchaser and yourself are bound by the terms and conditions of the Contract. However, the Purchaser is entitled to a cooling off period after exchange, unless the property is sold at an auction.

Cooling off period

In NSW, the cooling off period is 5 business days, which starts from the date of exchange and ends at 5pm on the 5th business day. During the cooling off period, the Purchaser has the right to change his/her mind and withdraw from the Contract. If the Purchaser does exercise the cooling-off rights, he/her will pay you 0.25% of the purchase price. This amount is non-refundable should the Purchaser exercise his/her right to rescind the Contract during the cooling off period.

You will be bound by the contract at the date of exchange while the Purchaser becomes bound by the contract at the expiration of the cooling off period.

There is no cooling off period if the property is purchased at auction or the Purchaser agrees to their legal representative providing a Section 66W Certificate waiving the cooling off period. Under these circumstances both parties will be unconditionally bound to complete the Contract.

Receiving the deposit

The deposit, which is usually 10% of the purchase price, is payable by the Purchaser on exchange. It is customary that the agent hold the deposit in their trust account until settlement.

Once settlement has taken place, we will authorise the agent to release the deposit to you. We will provide the agent with an Order on the Agent, which will authorise them to deduct their commission from the deposit, prior to releasing the balance of the deposit to you and handing over the keys to the Purchaser.

Please note trust accounts do not accrue interest. If your sale has an extended settlement date, we would suggest that the deposit be invested in an interest bearing account. On settlement, any interest accrued on the deposit is usually divided equally between you and the Purchaser. This can be arranged through us or with your agent.



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Prepare for Settlement

Arranging finance

The Purchaser's solicitor/conveyancer will send through settlement adjustments for us to check. We will then obtain a payout figure from your bank, which is the amount required to discharge your Mortgage. Once the payout figure is made available to us, we will contact you to obtain your instructions in respect to how you want the balance of settlement monies drawn.

Taking care of the property

The Purchaser may arrange a final inspection just before settlement. It is your responsibility to take care of the property before settlement. You need to ensure that the property is in the same condition at settlement as at the date of exchange.

If the property is substantially damaged, the Purchaser may rescind the contract with no penalty and the deposit will be refunded. If the damage is not substantial, the Purchaser may request an adjustment of the purchase price.

A Purchaser is entitled to vacant possession of the property on settlement, unless agreed otherwise. You need to remove from the property all items which are not noted on the contract as inclusions.

Before settlement, the keys should be delivered to the agent, or if there is no agent, you will need to make other arrangements and advise us.

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Settlement/Completion

Settlement usually takes place 42 days from the date of exchange.

You do not need to attend the settlement. Our experienced agents who are provided with the necessary documentation by us will settle the matter on your behalf. We will then contact you to advise settlement has been effected.

Notifying relevant authorities

Once settlement has taken place, all documents required to transfer the property into the Purchaser's name are lodged for registration at the NSW Land Registry Services by the Purchaser or his/her bank. At this time the Local Council, the Water Authority, the Valuer General and the Revenue NSW are notified of the sale and change of ownership of the property.

It is your responsibility to notify other service providers, such as telephone, gas and electricity suppliers of the change of ownership.

Frequently Asked Questions

What are Special Conditions?

Special conditions are a set of clauses in the Contract that must be satisfied or waived before the person for whose benefit the condition was inserted can be forced to settle on the Contract.

What is NSW Land Registry Services (LRS)?

LRS is the office of the Registrar-General that holds the records of all non-government land. All transfers of land must be registered there. More information can be found on their website www.lrs.nsw.gov.au.

What is the Transfer?

The Transfer is a document signed by the Vendor and the Purchaser that, when registered at the LRS, legally transfers the ownership of the land.

What is a Certificate of Title?

A Certificate of Title/Title Deed is issued by LRS and records details in respect to specific land including, ownership, boundaries, limitations of title, restrictions, covenants, mortgages or any other dealing affecting the land. If there is a registered mortgage on the Title, the original Certificate of Title is held by the Mortgagee and will be issued to the registered proprietor once the mortgage has been discharged.

What is Title?

The title is the right to occupy and use specific land but subject to any limitations of Title set out on the Certificate of Title.

When do I end insurance and when does risk pass to the Purchaser?

Insurance risk does not pass to the Purchaser until settlement has taken place, unless the Purchaser takes occupation prior to settlement. You should ensure that the property is insured up to and including the date of settlement.

What adjusted costs are included in the settlement figure?

The settlement process almost always spans an accounting period, during which authorities and organisations charge fees to the owners of the property – such as local government rates, state government levies or taxes (for example, land tax), and body corporate or strata fees for strata properties.

A summary of the fees/adjustments that may be adjusted is as follows:

- ▶ Water rates;
- ▶ Council rates;
- ▶ Strata levies (if any);
- ▶ Land tax (if any);
- ▶ Legal fees;
- ▶ Default Interest (if any);
- ▶ Rent (if the property is tenanted); and
- ▶ Discharge of any mortgage over the property.

You are responsible for the costs related to the property until the date of settlement. At settlement the Purchaser will pay the adjusted costs from the date of settlement to the last day of the billing cycle.

Council rates are normally adjusted from 1 July to 30 June of the following year.

Water rates are normally adjusted quarterly, e.g. 1 April to 30 June.

Strata levies are also normally adjusted quarterly, which may not be the calendar year quarters.

What happens if either party cannot settle on the due date?

If before settlement, the Purchaser is aware of a delay in settlement, they may request an extension of time. Whilst extensions of time are not uncommon, they are not granted “as of right” and we will discuss with you if you consider the extension is reasonable.

If an extension is not granted, the Purchaser may be liable for interest on the unpaid purchase price or at least the cost of their own and your additional legal fees incurred as a result of the extension.

Generally, most contracts have a special condition noting that if a party does not comply with the settlement date, the party that is ready, willing and able to settle is entitled to serve on the defaulting party, what is known as a Notice to Complete. A Notice to Complete requires the defaulting party to settle within 14 days of the notice, making time of the essence of the Contract, otherwise the ready, willing and able party is entitled to terminate the contract and sue the defaulting party for breach of contract.

What happens if a party breaches the contract before settlement?

If a party finds themselves in breach of the contract, they will face a number of consequences (including but not by way of limitation) forfeiture of the deposit and being sued for damages or specific performance.

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