

This article is a quick overview of selling a property in New South Wales. Its focus is to highlight to vendors the steps in selling a property.



Before marketing your property, you should have a 'Contract for the sale and purchase of land' already drafted. This Contract can be prepared by your lawyer. You would need to tell your lawyer what items are to be included in the sale and other special requirements, eg late settlement, early release of deposit, disclosure of any problem with the property, etc. Further information on the 'Contract for the sale and purchase of land' are set out in this article.

### **A. TYPES OF AGENCY AGREEMENTS**

Most people engage a real estate agent to sell their property. There are several types of agencies available, including: Exclusive; Auction; Multilist; Sole; and Open. The first two of these agencies provide that only one agent has the right to sell the property. During the exclusive agency period, if you sell the property yourself or through another agent (not the exclusive one), you would still have to pay the exclusive agent their commission.

Multilist agency is where an agent signs an agency with you on behalf of a group of agents. Under this agreement, the listing agent gets a share of commission if another agent in the group sells the property.

A sole agency agreement gives sole selling rights to an agent but allows you to find a purchaser yourself without paying a commission to the agent. An open agency means that you can appoint as many agents as you like; you only pay commission to the one who sells it.

### **B. COSTS OF SELLING**

One of the costs in selling a property is the agent's commission. Normally the commission ranges from 1.5% to 3% of the sale price, depending on whether the sale is done through private treaty or through an auction. Other costs include lawyer's fees and disbursements, survey or council building certificate fees, land tax clearance, discharge of mortgage and associated bank fees, and then there is the removalist's costs.

### **C. CONTRACT FOR THE SALE AND PURCHASE OF LAND**

As you are the Vendor, you are legally required to put specific information into the Contract, known as warranties. As a minimum, a 'Contract for the sale and purchase of land' must include:

1. A copy of the Certificate of Title, which shows the ownership of the property and any dealings on the property registered at the Land and Property Information NSW.
2. Copies of any registered land dealings listed in the Certificate of Title (e.g. easements, covenants, rights of way).
3. Zoning Certificate (known as a Section 149 certificate) which is issued by the Council.
4. Drainage Diagram which shows where sewerage lines are located in your property.
5. If your property is in a strata plan (as is most apartments and some townhouses), you would need to obtain a copy of the strata plan, by-laws and a copy of the Certificates of Title for the lot and the common property owned by the strata plan.

By providing the above information in a Contract you are disclosing and making warranties that the land isn't subject to any government proposals that might affect the land ("adverse affectation"), that the sewers in your property are those shown in the drainage diagram and that the zoning certificate provides an accurate representation of the current zoning of the land. If a Contract does not comply with the Vendor Disclosure Requirements (ie. does not contain the information stated above), this could have serious consequences, including a rescission of Contract.



If you are selling a house, you may choose to obtain a Survey from a surveyor for inclusion in the Contract. It is not a legal requirement but it is common practice to include a survey in the Contract. The cost for obtaining a survey ranges from \$550 to \$1,100. You could also consider including a building certificate or a home owners warranty insurance certificate in the Contract.

The Contract will normally contain standard terms and provisions, which may be slightly amended by inserting "Special Conditions" into the Contract. It is common for negotiations on some of the provisions of the Contract to take place between the prospective Purchaser and the Vendor prior to exchange or during the cooling off period.

#### **D. EXCHANGE OF CONTRACT & SETTLEMENT**

When the Vendor and the Purchaser have signed the Contract, an "exchange of Contract" will take place, whereby the parties are legally bound to proceed in accordance with the Contract. Ten per cent (10%) of the purchase price is normally paid and deposited into the trust account of the selling agent.

Where there is a "cooling off" period, the Contract will have been exchanged but the Purchaser will have five business days to reconsider whether they wish to purchase the property. Normally 0.25% of the purchase price of the property will be forfeited by the Purchaser when they decide to pull out of the purchase. In some instances where the Purchaser has already engaged a lawyer to look through the Contract prior to exchange of the Contract, the Vendor can request that the Purchaser waive the cooling off period by providing a signed Section 66W Certificate. A sale by auction does not provide the Purchaser with a cooling off period, and the Contract will become binding upon exchange.

After an "exchange of Contract", settlement (or completion) normally takes place six (6) weeks later. It is the day when the Purchaser hands over the money for the balance of the purchase price of the property; and in return keys are handed over by the Vendor.

Before settlement, the Vendor needs to apply for an Australian Taxation Office ('ATO') Clearance Certificate if the property is being sold for a purchase price of \$750,000.00 or more. The purpose of the Clearance

Certificate is to provide the Purchaser with certainty regarding their withholding obligations (ie whether withholding tax is applicable to the transaction).

Failing to provide the Purchaser with a valid clearance certificate at least seven days prior to settlement will result in the Purchaser having to remit (pay) 12.5% of the purchase price to the ATO. The Vendor will also need to provide details to the Purchaser for them to complete and submit to ATO a [purchaser payment notification form](#) to notify ATO that an amount is required to be withheld at least five days prior to settlement.

One or two weeks prior to settlement, it would be the Vendor's responsibility to arrange the disconnection of electricity, telephone services, and gas (if any).

If you (the Vendor) have council bill, water bill and strata levy (if it is a strata unit) requiring payment within three weeks before settlement, you should consider not settling payment. The council bill, water bill and strata levy will be adjusted between the parties on settlement. Any outstanding council, water and strata bills can be paid from the sale proceeds from settlement.

Land tax (where applicable) will normally be adjusted on settlement. It is advisable to contact the Revenue NSW whether the Vendor is liable to pay land tax.

If selling a commercial property, GST will apply, unless there are exemptions. The sale of an investment property may also result in Capital Gains Tax being payable by the Vendor.

Upon receiving an authorization called "order on agent" from the Purchaser on settlement, the selling agent will account to the Vendor for the deposit monies (usually 10%) held by the agent less their commission and selling expenses. This usually takes place within three business days after settlement.

Comasters accepts instructions from clients to prepare a 'Contract for the sale and purchase of land'. After a purchaser has been identified, we ensure a smooth transaction until settlement.

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## **CONTACT US**

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