



# Settle Easy Seller's Guide

New South Wales



Selling property isn't something we do very often—it's a big deal. That's why we recommend you do your research before you make one of the biggest decisions of your life.

We hope this guide answers many of the questions you might have about the process. We want to make things as simple and easy as possible.

## What to do first?

When you have decided to sell your 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 should not proceed until after you see your conveyancer.

The first thing your conveyancer will do is work with you to prepare the Contract of Sale, which once completed, will be provided to your real estate agent for submission to a prospective buyer.

## Real estate agents

Before you appoint a real estate agent, it's worth doing your homework. We recommend you research:

- property values in the area
- the selling and marketing strategies of different real estate agents
- differences in property appraisals
- sales records on similar properties
- commissions, advertising and marketing fees—these are all negotiable.

Your real estate agent will need to know:

- if there are any chattels or other items that are to be excluded from the sale
- your preferred settlement date, taking into account time needed to vacate and clear the property before settlement
- whether you want to sell your property at auction or in a private sale
- the contact details of your conveyancer

## Agency agreement

This document enables a client (seller, landlord or other person) to appoint an agency to act (buy, sell, lease or manage real estate) on their behalf. Once signed, this document becomes legally binding. That's why it's really important to read this document carefully before you sign it. It contains information such as:

- the price that your real estate agent will advertise your property for
- whether your property will be sold privately or at auction
- agreed commission fees and advertising expenses
- an estimated selling price
- an agreed period for the real estate agent to list your property.

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.

- 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 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 commission to the agent who finds the buyer for your property.

Agency agreements are usually for a fixed period 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 agree 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.

## What is a Contract of Sale?

This is the most important document in the conveyancing process. It's a legally binding agreement between two parties outlining the terms of purchase or transfer of real estate.

There are certain documents that must be attached to the Contract of Sale and are prescribed by laws and regulations.

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:

- a zoning certificate (s.10.7) from council
- a 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
- other documents prescribed

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
- the land does not contain any part of a sewer main
- the zoning certificate attached to the contract specifies the true status of the land
- 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 \$20,000.00. This should be discussed with your Settle Easy conveyancer before putting the property on the market for sale.

## Insurance

Even after your property has been sold, it's still yours until settlement. That's why, for your own protection, we strongly recommend you remain fully insured right up until settlement.

You have a continuing obligation until settlement to take reasonable care of the property and if the property becomes "unfit for occupation" as a dwelling before settlement, then the buyer may have a right to withdraw from the contract.

## Pool safety

If there is a pool, spa or wading pool on your property you have an obligation to comply with pool safety regulations.

The Contract of Sale must include a registration certificate issued from the Swimming Pool Register, and one of the following:

- a valid swimming pool certificate of compliance, or
- a relevant occupation certificate issued within the last 3 years, or
- a certificate of non-compliance.

If one of the above isn't included, the buyer may terminate the contract within 14 days of exchange, unless settlement has already occurred. For more information, please visit [Pool Safety Regulations](#).

## Owner builder

Owner-Builders selling property less than 7 years and 6 months after an owner builder permit was issued are required to include a consumer warning in the contract, where the reasonable market cost of the labour and materials involved is \$20,000 or more.

The warning must state that:

- an owner-builder permit was issued in relation to the land; and
- work done under an owner-builder permit is not required to be insured (unless the work was done by a contractor to the owner-builder).

A failure to attach the certificate of insurance (or include the warning for owner-builders) makes the contract for sale 'voidable at the option of the purchaser' - meaning the buyer can walk away at any time up until completion (unless a certificate is subsequently served on them).

For more information, please visit [Owner Builder Guide](#).



## Goods and Services Tax (GST)

Most residential transactions do not attract GST. However, there are some exceptions to this. Vacant land or new residential property sold by a builder or property developer all attract GST. If you believe that the sale of your property may attract GST, please advise your Settle Easy conveyancer as soon as possible.

## Capital Gains Tax (CGT)

Most residential transactions do not attract CGT, but the sale of an investment property may have CGT consequences. We recommend you seek advice from your accountant before deciding to sell.

Foreign resident sellers must pay a capital gain withholding tax of 12.5 % on properties that sell for \$750,000 and over. If you are not a foreign resident this tax will not apply.

A clearance certificate issued by the ATO must be provided to the buyer prior to settlement whether or not you are a foreign resident. Your Settle Easy conveyancer will guide you through the process of obtaining the clearance certificate.



## Deposit

Payment of the deposit is a sign of the buyer's intention to proceed with the Contract of Sale and must be done at the time specified in the Contract of Sale. It is usually a substantial amount (but no more than 10%). If the deposit is only a nominal amount and the buyer is a company, you can instruct us to request director or other guarantees prior to the Contract of Sale being signed.

The deposit is generally held in trust by the agent or conveyancer until settlement. Following settlement, the deposit will be paid to you (usually less the agent's commission).

## Paying out your loan and discharging your mortgage

If there is a mortgage over your property, it is necessary for us to arrange for that mortgage to be discharged.

Sometimes the discharge of the mortgage can take time and we recommend you contact your lender early to arrange for the discharge in readiness for settlement.

## Final inspection

The person who buys your property is entitled to undertake a final inspection of the property in the week before settlement. The purpose of this is to ensure that the property is in the same condition as when they first saw it.

Whilst some minor deterioration to the property such as an unweeded garden bed might be expected, serious damage to the property may impact your settlement.

## e-Conveyancing

e-conveyancing allows settlement to take place online, with electronic fund transfers and registration of documents to occur in real time using an online exchange platform (currently either PEXA or Sympli). Multiple State Revenue Offices have also gone paperless, requiring duties forms used for the assessment of stamp duty on conveyancing transactions to be completed and signed electronically and submitted through the e-conveyancing platform.

Transactions completed using e-conveyancing have the transfer and mortgage documentation checked in advance by the relevant Land Registry and duty on the transfer assessed by the State Revenue Office in advance, meaning there is no potential for nasty surprises and transparency for all parties involved.

Wherever possible we will endeavour to settle your matter electronically.

We require your authority to use e-conveyancing for settlement of the transaction. That authority must be provided in the form of the Client Authorisation which your Settle Easy conveyancer will provide to you at the start of the transaction.

A Client Authorisation allows us to undertake the settlement of the transaction on your behalf (and to sign documents for you), we are required to undertake a prescribed process to verify your identity.

## Verification of Identity (VOI)

Verification of Identity (VOI) is an important safeguard in property transactions, providing certainty about the identity of parties

and aiming to prevent fraudulent dealings.

All parties involved in a conveyancing transaction must complete a VOI.

We ask our customers to have their identities verified in the early stages of their conveyancing transaction and we cannot complete the transaction until this has been completed.

## Settlement

If buying or selling property was a marathon, think of the settlement as the finish line. Settlement is the part where legal possession of land or property is transferred from one owner to another.

Settlements used to take place in a physical location, but they now happen electronically on a predetermined day and at a set time. This is when the balance of monies owed to the seller is paid.

We arrange and attend to settlement on your behalf.

## Adjustments

Adjustments refers to the 'splitting' of the costs of certain land charges on a property, such as rates, land tax, water charges and owner corporation or body corporate levies. The process ensures that neither the buyer or seller are paying for these charges when they do not own the property.

You are obliged to pay for the property charges until settlement. After this, the new owner takes over this responsibility. This is why we adjust rates and other statutory charges at settlement.

It's pretty simple— you may have already paid for council rates and other charges until the end of the year, but settlement might happen in October.

Therefore, an adjustment is made so that the buyer would pay a greater amount at settlement to compensate you for the rates and other charges paid until the end of the year (when the buyer will be the owner).

## Keys

A set of keys is usually collected by the buyer from your real estate agent after settlement. The real estate agent should only provide keys to the new owner once they have received authorisation from Settle Easy.

Any extra sets of keys, not given to the agent, can be left in the property, along with instruction manuals, remote controls, warranties and other relevant information.

## Completion

After settlement, we will provide you with an itemised account of all the details relating to the sale of your property.

It is your responsibility to arrange for final readings of electricity, gas and landline services and to arrange a forwarding address for these final accounts.

If you have repaid a mortgage at settlement, your bank or lender will also report to you after settlement.

This publication is provided as general information only and should not be considered or relied upon as legal advice. The law is complex and you should always obtain specific legal advice about your circumstances from a qualified conveyancer or lawyer.





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conveyancing  
experts**

