



Settle Easy Seller's Guide

Queensland



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 we recommend they don't proceed until after you see your conveyancer.

The first thing your conveyancer will do is work with you and the agent (if applicable) 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.

You can enter into different types of appointment which will affect:

- who can try to sell your property for you;
- who is entitled to commission when the property sells.

Types of agency agreements:

- **Exclusive Agency:** The agent is given exclusive selling rights to the sale of the property. The agent will be entitled to commission if a sale is secured within the exclusive agency period, even if you sell the property yourself or through another agent. The appointment can only be for a period up to 60 calendar days. It can only be renewed if you want it to be and then only within the last 14 days of the appointment.
- **Sole Agency:** The agent is given the sole right to sell the property but if you introduce the buyer to the property and it is sold to that buyer, the agent does not get the commission. The appointment can only be for a period up to 60 calendar days. It can only be renewed if you want it to be and then only within the last 14 days of the appointment.
- **Multi-list Agreement:** This is also a type of exclusive agency. Under the agreement one agent is appointed who works with other agents to sell the property. The commission is split between the selling agent and the agent who introduces the buyer. They work it out between themselves. You pay the listing agent.
- **Auction:** This is also an exclusive agency but one where a marketing plan is instituted in the lead up to the auction (an auction is where potential buyers gather together and make offers to you to buy the property by making public bids and the person making the highest bid buys the property if you are happy with that price) to maximise the exposure of the property.

The appointment can be for a maximum of 60 days.

Read the agreement carefully particularly in relation to the costs of the marketing plan and the auction costs. You will pay commission to the listing agent if the property sells before the auction, at the auction or in an agreed period after the auction.

- **Open Listing:** You list the property with several agents. The agents can work individually or with other agents. Only the agent that sells the property will receive a commission. Sometimes this is not a good idea. What you want, at least initially, is for the agent to focus on your property rather than be one of a number of open listings. The REIQ research shows that open-listed properties generally take longer to sell depending, of course, on the quality of the 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 60 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 and disclosures that must be attached to the Contract of Sale and are prescribed by laws and regulations.

For example, you may need to disclose information about the following:

- Environmental Protection Act 1994 (Qld): if the land is recorded on the Environmental Management Register or the Contaminated Land Register, you must disclose that the particulars have been recorded in the register and, if the land is subject to a site management plan, the details of the plan;
- Electrical Safety Regulation 2013 (Qld): you must disclose whether a safety switch is installed in the property;
- Fire and Emergency Services Act (Qld): you must disclose whether there are compliant smoke alarms installed in the property;
- Queensland Building and Construction Commission Act 1991 (Qld): if any building works were carried out by an unlicensed builder and if the property is sold within six years of completion of the work, you must give notice detailing the work carried out along with the relevant warning under the legislation;
- Neighbourhood Disputes (Dividing Fences and Trees) Act 2011: you must disclose if there are any applications to, or orders made by, QCAT in relation to trees affecting the property.
- Body Corporate and Community Management Act 1997: If you're selling a lot within a community title scheme it is important to note that as a seller, there are additional disclosure obligations you must comply with.

- Some of these additional disclosure obligations are very prescriptive and require careful adherence to various pieces of legislation.

Your Settle Easy conveyancer will guide you through the disclosure and contract preparation process.

Insurance

The property is generally at the buyer's risk from 5pm on the first business day after the Contract date. Despite this, we strongly recommend that you maintain your insurance policy until we have confirmed that settlement has taken place. There are many circumstances in which the risk will pass back to you without notice (even after the Contract is unconditional) and failure to maintain adequate insurance could result in significant loss to you.

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.

You can sell your property with or without a pool safety certificate.

If selling with a certificate, you must give the buyer a copy. You can access a copy of the certificate on the pool register. As a pool owner, you are responsible for ensuring the barrier is always compliant with the pool safety standard, even after providing/receiving the Form 26. Failing to do so may result in penalties.

If you are not providing a certificate, you must give the buyer a Form 36-notice of no pool safety certificate prior to entering a Contract of Sale and send a completed copy of the form to QBCC (poolssafety@qbcc.qld.gov.au) before settlement of the property.

It is important to note that even if you are giving a form 36-notice of no certificate, your pool must be compliant. If your pool is not compliant, giving a form 36 does not prevent your local government from taking enforcement action against you in relation to the non-compliance.



The buyer must get a pool safety certificate within 90 days of settlement (if there was no certificate on the date of settlement).

For recently built pools, a Final Inspection Certificate (Form 17) or Certificate of Classification issued by the building certifier can be used as a pool safety certificate. The certificate must confirm that the pool meets the standard and be lodged by the building certifier with the QBCC at poolssafety@qbcc.qld.gov.au.

Either of these certificates replaces a pool safety certificate and becomes valid for one year from its date of issue for shared pools and two years for non-shared pools.

For more information, please visit Pool Safety Regulations.

Owner builder

If:

- building work has been carried out on the property by a person who is not licensed to carry out that building work; and
- the property is offered for sale within six years after the building work is completed,

then before a Contract of Sale is signed, you must give the buyer a notice which contains details of the building work and states that the work has been carried out under an owner-builder permit by the person named in the notice. The notice must also include the warning required by the Queensland Building and Construction Commission Regulation 2003 (Qld). The buyer must sign one copy of the notice and return it to you on or before signing the Contract of Sale.

If a required notice and warning are not given as set out above, then you will be taken to have given the buyer a contractual warranty that the building work was properly carried out. Consequently, if the work turns out not to have been properly carried out then the buyer may have a right to claim compensation from you.

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 you 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).

After settlement government authorities are notified of the change in property ownership and future rates and other property notices will be issued to the buyer as the new 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**

