



First State
Conveyancing

You First,
then the rest.

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Selling Property Guide



Selling Property

What Happens

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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. A Real Estate Agent may have contacted you, or you may have one in mind to use, but the agent cannot commence marketing your property until you have engaged a Conveyancer.

The Law provides that before anyone 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 fines imposed on anyone caught promoting the sale of a property in any way 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 marketing and eventual sale of the property.



Contract for sale of land

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The Contract contains plenty of information for prospective purchasers. It includes the ownership details, the title details, the conditions of the sale together with exactly what items are included in the sale. The marketing Contract is then provided to your agent so that they can commence marketing your property.

There are certain documents that must be attached to the contract as required in law. These documents are referred to as 'Prescribed Documents' and include:

- Zoning Certificate (S149) from Council
- Sewer diagram showing the location of the sewer main, as well as an Internal House diagram if available
- 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

If these documents are missing from the Contract, or are inaccurate, the purchaser may have rights to cancel the Contract without penalty.

There are certain warranties that the vendor must provide as prescribed in law. These warranties are called "Prescribed Warranties" and include assurance that:

- The land is not subject to any adverse affectation, for example a planning proposal such as a mine or a road
- The zoning certificate attached to the contract specifies the true planning status of the land; and
- There is no matter in relation to any building that would justify an upgrading or demolition order, unless otherwise specified in the Contract.

Estate agents and agency agreements

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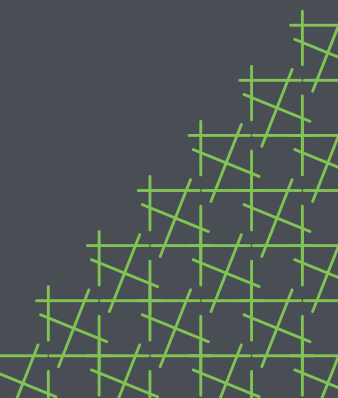
A Real Estate Agent must have an Agency Agreement signed before they can commence marketing your property for sale. If you are not sure of the terms of the Agency Agreement you should have your Conveyancer explain it to you.

There are several types of Agency Agreement:

- An **Exclusive Agency Agreement** is most commonly used to sell residential Real Estate and guarantees that 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.
- A **Sole Agency Agreement** is very similar to the Exclusive Agency Agreement except that it gives you the right to sell the property yourself without being liable to the agent for a commission.
- A **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.

- An **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 the exclusive right to the agent to sell the property at auction.
- An **Open Agency Agreement** will allow you to list with any number of Agents. 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 you and the agent agree. The period of the agreement is usually negotiated with the agent but is commonly for a period of 90 days. As a matter of course, it is important that you do not unwittingly commit yourself to payment of a commission to more than one agent.



Exchange of contracts

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Once your agent has negotiated a sale and the terms of the sale have been finalised, the exchange of Contracts will take place.

Contracts are prepared in duplicate. The vendor signs one copy and the purchaser signs the other copy.

The contract can be exchanged by one of two ways:

- 1. BY THE ESTATE AGENT:** in this instance the contracts are signed and exchanged shortly after the sale price has been agreed upon between the parties. The agent will attend to the exchange of Contracts and send the appropriate signed contract to the respective Conveyancer. The buyer will usually have a 5 business day cooling off period in which to obtain any pest, building survey or other recommended reports. They will also secure finance approval and have the contract explained to them by their Conveyancer. The Vendor 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, finance 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 and from the date of 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 fully committed to the Contract until the cooling off period expires.

Cooling off period

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Every contract for sale of residential property less than 2.5 hectares has a cooling off period of five business days. Unlike the purchaser, 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 the purchaser does rescind the contract, they forfeit to the vendor 0.25% of the sale price. This equates to \$250.00 in every \$100,000.00. 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 their Conveyancer, a Section 66W certificate signed by that Conveyancer or Solicitor and the certificate handed to the seller's Conveyancer.

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

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It is a common scenario that you may owe money to a lender who has a mortgage registered on the title to the property. This mortgage is registered on the title to ensure that the debt owed to your lender is repaid from the proceeds of the sale of your property. Part of the Conveyancing process therefore is to have the mortgage discharged at settlement. Your Conveyancer will communicate with your lender 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 arrange for you to sign this authority.

The final payout figure on your mortgage will be given to your Conveyancer and the loan will be paid out from the proceeds of your sale, together with any other costs payable to your lender.

Building insurance

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The risk of damage to the property, and any improvements erected on the property, remain with the Vendor's until settlement. It is therefore essential that all building insurances be maintained until after settlement.

If the buildings are substantially damaged by fire or flood or some other catastrophe between exchange of Contracts and settlement, the buyer may have rights to rescind or cancel the Contract. Depending on the amount of damage, a buyer may proceed with the purchase after negotiating the price to cover the cost of repairs.



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Where you are selling your investment property, proper regard must be given to the rights of your tenant under their lease. In the event that your purchaser intends to move into the property following settlement, you will need to arrange for your tenant to vacate the property prior to settlement. Your tenant is not obliged however to move out of the property until the term of the lease has expired and a notice to vacate has been served.

Where the lease has expired, you must give your tenant 30 days notice to vacate. The timing of this notice is crucial, requiring communication between your Conveyancer and your managing agent.

Where the tenant will remain in the property following settlement, the property manager will make an adjustment of the rents at settlement.

If the rent is paid in advance then you will make an allowance to credit the new owner with that part of the rent that has been paid beyond the settlement date.

Selling Your Investment Property



Council, water rates and strata levies

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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 that date until the end of the rating period.

Council rates can be adjusted either on an annual or quarterly basis.

Water Rates

In some 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 sewer services, an adjustment of these rates must be made at settlement.

Water rates are usually charged quarterly with adjustments made in a similar manner as they are for council rates.

A water usage charge is also often payable by the vendor. This can be assessed in one of two ways:

- A meter reading can be organised
- An estimate can be calculated, by using the details supplied for water usage charges

Strata Levies: Unit, Townhouse, Villa

If you are selling a lot in a strata scheme, strata levies will need to be adjusted. This levy is adjusted in the same manner as council rates generally on a quarterly basis.

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.

Settlement with vacant possession

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Settlement can often be a very stressful time, as not only will you be arranging to vacate the premises prior to settlement, you may also be charged with the task of cleaning the premises for the new buyer.

The property should be left in a clean and tidy condition and all items not included in the sale should be removed from the property. Sellers should be mindful to leave the property in the same condition they would expect to find it in if they were the excited homebuyers ready to move in.

You will be asked to provide your bank account details to your Conveyancer so that they can deposit your funds following settlement. You should also provide these details to our agent so that they can deposit any monies held by them into your account.

Your purchaser will generally do a final inspection of the property on the day before settlement to ensure that the property is in the same condition as when they entered into the Contract.



Settlement with an existing tenant **11**

The day of settlement is normally 28-42 days after exchange of contracts. It is possible for settlement to take place on an earlier or later date if both parties agree.

Contracts normally have a condition that if settlement is delayed through no fault of the vendor, the purchaser will pay interest to the vendor to compensate the Vendor for the delay in settlement.

It should be discussed with your conveyancer if, when signing the contract, the proposed settlement date is inconvenient.

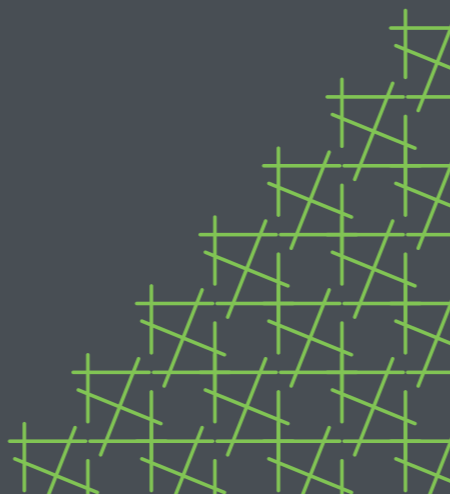
Nowadays, only a handful of matters are paper based and settled manually. The vast majority of settlements are conducted electronically. First State Conveyancing is an Industry Leader in Electronic settlements, having been recognized as the first legal firm in the entire country to achieve 500 electronic settlements.

Your Conveyancer will pay out any loans owing on the property and, with any luck, there will be money left over for you, which will be either deposited into your account or applied toward an ongoing purchase.

With the increasing use of electronic settlements, titles are transferred into the purchasers name instantaneously and settlement funds will be immediately cleared into your bank account.

The change of ownership details will be notified to Council, Water Authority and Valuer General following settlement.

Your agent will be authorised to release the keys to the purchaser and will also be authorised to release the deposit held by them, less any sales commission that you have agreed to pay them.



After settlement

Following settlement, you should cancel your insurance and request a refund of any unused premiums.

Your Conveyancer will send you details of the sale and the manner in which settlement proceeds were distributed. It is important to retain these to provide to other service providers, such as your accountants where necessary.

You should notify your friends and family as to your change of address, as well as the various government departments that you interact with, together with sporting organisations, registered clubs and other contacts.

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