



DURAL LEGAL
CENTRE

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SELLING YOUR HOME

HOW DO I PREPARE TO SELL MY HOME?

Someone preparing to buy a house or home unit obviously saves up and looks at properties and enquires about loans. Buying a home is one of the biggest decisions most people will ever make, and it is therefore a decision that is usually made with great care and with legal advice and following professional pest and building inspections.

However a person intending to sell a “residential property” also needs advice. In the past it was possible to market your home with very little formality, and to prepare a Contract only after a buyer had been found. Today however the law requires a seller to prepare paperwork in order to start the process, and before you can sell your property you must have a Contract for Sale with all of the necessary attachments available for inspection by any intending buyer. The Contract must comply strictly with the requirements of the law about Vendor Disclosure and there is a penalty for failure to comply with this requirement.

What is “residential property”?

Residential property is defined as :-

- (a) Land on which there are not more than two places of residence; or
- (b) Vacant land on which the construction of a single residence is not prohibited by law; or
- (c) A lot or lots under Strata Schemes legislation comprising not more than one place of residence.

What is not “residential property”?

Residential property does not include:-

- (a) Land or a strata Lot which is used wholly for non-residential purposes; or
- (b) Land which is more than 2.5 hectares in area

Why was the law changed?

This rule was introduced for two reasons. The first is that the contract is an important document, and from the start of negotiations buyers should be aware of the conditions upon which the vendor is prepared to sell. Anyone intending to buy residential property should ask to inspect a copy of the contract and if possible seek legal advice before signing it. The second reason was to reduce gazumping.

What is Gazumping?

Gazumping is an unsatisfactory practice whereby after agreeing to a price with one buyer, the vendor sells instead to a second buyer at a higher price.

As the law in NSW requires that a Contract for Sale of land must be in writing, the first verbal agreement is not enforceable. The changes to the law reduce the incidence of gazumping by enabling a Contract in writing to be exchanged immediately. The buyer then has the benefit of the “Cooling-off Period” but the Vendor is bound by the Contract and cannot sell to a higher bidder.

What is an “Exchange of Contracts”?

The contract prepared by the seller's solicitor is usually in the form approved and held under joint copyright by the Law Society and the Real Estate Institute. Normally contracts become binding when the seller signs the original and the buyer signs an exact copy of it, and those contracts are dated and exchanged so that each party or their lawyer holds the contract signed by the other.

What must the Contract contain?

The Contract must contain an accurate description of the property and the terms on which it is being sold. In addition, the Vendor Disclosure Regulations require the seller of any house or land **(whether “residential property” or not)** to attach a number of documents to the contract and to give certain warranties. If the documents are not attached the buyer may cancel the contract within 14 days of signing it, and will receive a full refund of the deposit paid.

The most common attachments include:

- ✓ A zoning certificate from the local Council
- ✓ A drainage diagram
- ✓ A copy of the title search from Land Property Information Service
- ✓ A copy of the deposited plan
- ✓ Copies of all documents creating covenants, easements or rights of way

What Warranties does the Seller give?

Unless the Contract discloses anything to the contrary, the seller is conclusively deemed to promise to the buyer that: -

- ✓ The land is not subject to any adverse affectation
- ✓ It does not contain any part of a sewer belonging to a recognised sewerage authority
- ✓ The Zoning certificate attached to the Contract specifies the true status of the land in relation to the Environmental Planning and Assessment Regulation. Obviously the more recent the Certificate is, the safer it is for a vendor to rely on it.



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5/500 Old Northern Road, Round Corner, NSW

Phone: (02) 9653 9666