

The contract of sale

The contract of sale is a legally binding agreement between the purchaser and vendor of a property. It outlines the terms and conditions of the sale and sets out important information about the property. The contract is prepared by the vendor's solicitor, and must be available prior to the sale so that potential purchasers can review it. Purchasers should engage a solicitor to review the contract before they sign it. Some details, such as the deposit, settlement period or inclusions can be negotiated through the legal representatives of each party.

Exchanging contracts

Exchanging contracts is the final step in the property purchase. Once both parties have agreed on the sale price and all other details of the contract, they both sign a separate but identical copy of the contract, and the copies are swapped or 'exchanged'. The purchaser also pays the agreed deposit at the time of exchange. This process is usually arranged by each party's legal representatives, conveyancers or the real estate agent.

The cooling-off period

- NSW has a standard five business days cooling-off period that applies to non-auction residential property sales. The cooling-off period starts as soon as the vendor and purchaser exchange contracts and ends at 5 pm on the fifth business day after exchange. During this period, the purchaser may get out of the contract as long as they give notice.
- A longer cooling-off period of 10 business days applies for properties sold off the plan, because these contracts are often large and complex.
- A cooling-off period does not apply if a purchaser buys a property at auction or exchanges contracts on the same day as the auction after it passes in.
- If the purchaser decides not to go ahead with the sale and withdraws from the contract within the cooling-off period, the purchaser will have to pay the vendor 0.25 per cent of the purchase price. This works out to be \$250 for every \$100,000.

A section 66W certificate

- The vendor may ask the purchaser to provide a '66W certificate' at the time of exchange, which waives the standard cooling-off period. It is also possible to reduce or extend the cooling-off period by written agreement with the vendor.
- It is recommended that purchasers complete all checks and have unconditional loan approval in writing before giving the vendor a 66W certificate.
- If a purchaser wants to back out of a contract after providing a 66W certificate, there is no cooling-off period. Therefore, the purchaser will be penalised as per the original contract. The penalty is generally 10 per cent of the purchase price, plus the difference between the purchaser's offer and the subsequent sale of the property.

What else do I need to know?

- Properties sold at auction do not have a cooling-off period and purchasers are legally bound to the contract once the hammer falls.
- Requests for a 66W certificate are common in a rising property market or 'sellers' market'.
- Purchasers are not required to provide a 66W certificate and they should carefully consider whether to provide one; however, it can be an attractive bargaining tool for purchasers if many buyers are competing for the same property.

Need help?

If you require any further information, please get in touch with your Smartline Adviser.

Important information

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