

Selling Property

Introduction

Conveyancing is the legal process of transferring ownership of property. There are many parts to this process. Your Solicitor or Conveyancer will do some things and you must do some. This guide is designed to help you avoid problems that may arise when selling a property. **It is concerned with residential property only: houses, units and vacant residential land.**

Arranging a sale

When you decide to sell your property you should contact an estate agent to list the property for private sale or auction.

The vendor's statement

It is a requirement of the Sale of Land Act that a disclosure statement be given to the purchaser before they sign a contract of sale. This is known as a "vendor's statement" or a "section 32 statement". It is important that this statement is accurate and comprehensive as any omission or error, even though innocent, may result in a purchaser being entitled to withdraw from the contract before settlement.

Contract Information

When you receive and accept an offer for the purchase of your property that agreement will not usually be binding until you and the purchaser have signed a contract of sale or contract note. The usual procedure is that you as vendor and the purchaser sign separate copies of the contract of sale and these are then exchanged. It is at this point that you have an enforceable contract.

Cooling off

The Sale of Land Act provides that a purchaser may withdraw from a contract within 3 business days after signing it. Therefore you should not regard the property as having been sold until this period has expired. There is no cooling off period if the property is sold at auction, or within 3 days either side of the auction date, or if the purchaser has received independent legal advice from a solicitor prior to signing.

After exchange

Once contracts are exchanged your Solicitor or Conveyancer, in conjunction with your agent, will administer your sale through to settlement

Finance and other conditions

Contracts often contain a "subject to" condition. For example, the two most common conditions are that the Contract is conditional upon the purchaser obtaining finance or conditional upon the results of a building or pest inspection of the property.

If your sale contract includes information relating to the purchaser's finance, the purchaser may be entitled to withdraw from the contract if loan approval for the amount specified is not received by the date provided in the contract. The purchaser must make reasonable efforts to get the loan approved.

It is usually the purchaser's obligation to notify the vendor if loan approval has not been received within 2 business days after the date for approval. If no notice is received the purchaser is obliged to complete the purchase.

On the other hand, if the Contract was subject to satisfactory results being obtained from a building or pest inspection (done at the purchaser's request and expense), the purchaser would have the right, at their discretion, to withdraw from the Contract if the report indicated that there was a major structural defect in the property or a major pest or insect infestation.

If your Contract contains any "subject to" conditions, make sure you read and understand their relevance and consequences upon the sale. Your sale contract may also contain "special conditions". You must read them carefully and ensure that you have complied with them.

If you are unsure of the effect of these conditions or how they may apply to your sale contract, ask your Solicitor or Conveyancer to explain them to you.

Release of deposit

The deposit can only be released to you before settlement if:

1. The Contract is unconditional. In other words, all conditions attached to the sale contract and any requisitions on title have been met to the satisfaction of the purchaser; and
2. You have given the purchaser a notice setting out the amount required to discharge any mortgages on the property; and
3. Either the purchaser consents to the release of the deposit or 28 days elapse after you make a request for the release of the deposit without a response from the purchaser.

In order to obtain a release of the deposit you should ask your agent to provide you with a deposit release authority. If you have a loan secured against the property, you should also obtain a letter from your lender confirming the amount required to repay the loan.

Agents usually take their commission from the deposit when released because their work has been completed at that point.

Settlement

The settlement date is the date on which the balance of purchase money is payable. This will be specified in the contract. Please check to ensure that it is correct.

Condition 15 of Table A of the Transfer of Land Act provides for the option for the purchaser to inspect the property and chattels and fixtures within seven days of settlement without being deemed to have accepted title.

Should they wish to exercise this option and the vendor is not able to grant access to the property within that time frame,

settlement could be delayed. Should the vendor refuse to grant access, the purchaser would have the right to rescind the contract.

Unless otherwise agreed you will need to have vacated the property by the settlement date. Your Solicitor or Conveyancer will arrange for payment of the proceeds of sale in accordance with your directions. It will not be necessary for you to attend settlement.

The vendor's statement - required information

As mentioned, a vendor's statement must be given to a purchaser before they sign a contract of sale. Your Solicitor or Conveyancer will prepare the vendor's statement on the basis of the information you provide. When they give you the vendor's statement, please check it carefully. If it does not contain all the information required the purchaser may withdraw from the contract of sale at any time before settlement.

In addition to including a copy of the title the vendor's statement must include the following:

1. The name of the planning scheme, the authority which administers it and the zoning of the property. If the planning scheme prohibits the construction of a residence, this must be stated;
2. A description of an easements (whether registered or unregistered), covenants, caveats or other similar restrictions affecting the land and any existing failure to comply with the terms of any easements, covenants or restrictions.

If you are aware of any building, including a garage or outbuilding, having been built over an easement, you must let your Solicitor or Conveyancer know.

Covenants are often registered on the title and usually require the owner to use the land in a certain way, for example:

- Any house must be constructed of brick or brick veneer, or be of a certain minimum size;
- Units are prohibited;
- Fence heights are restricted,

If a covenant affects your title, a copy of the covenant must be included in the vendor's statement. You must also let your Solicitor or Conveyancer know of any failure to comply with the terms of the covenant;

3. The amount of any rates, state land tax or other charges affecting the land (including any arrears owing and any interest accumulated for late payment);
4. Details of any notice, order, report, recommendation agreement or proposal affecting the land. This also means any notice, order, report, recommendation, agreement or proposal issued for neighbouring land that might affect your land, for example, an application to construct units or some other development on a property near to you;
5. A statement as to whether or not electricity gas, water, sewer and telephone are connected to the land; and

6. Where there is a residence on the land, details of all building permits or approvals granted within the period of 7 years prior to the date of the contract.

If any of the particulars set out in the vendor's statement change you must let your Solicitor or Conveyancer know before a purchaser signs any contract.

Owner builders and work carried out by owners

Where you built the house yourself, or if you have carried out extensions renovations or other works, special rules may apply. Even if the work was carried out by someone else (such as for example, a garage company or other tradespersons), you may be considered an owner builder where the person who carried out the work was not a registered builder. Prior to selling, the special rules require an inspection report of the works, and insurance for the structure where the works were valued at over \$12,000.00 at the time they were built. A purchaser may withdraw from a contract if these special requirements are not met. If you have had any work carried out at the property that was not done by a registered builder, make sure you let your Solicitor or Conveyancer know.

If there were works carried out at the property prior to your purchase for which an earlier owner arranged the special structural insurance, you must supply your Solicitor or Conveyancer with a copy of the policy to be included in the vendor's statement.

Building Act

Under the Building Act, Division 1(16), a building permit is required before building commences. In some circumstances, a planning permit may be required prior to a building permit being granted.

Where any structural work including any construction or renovations have been undertaken on the property the owner should have obtained a building permit and building warranty insurance may apply.

A building permit is required under the *Building Act 1993* before any work is commenced. A building permit is written approval from a registered building surveyor (either council or private surveyor) that the planned work complies with the building regulations. In some cases a planning permit may be needed before a building permit can be issued.

Building permits are important when selling vacant land, but they may also be important where the purchaser is contemplating renovations or extensions. The purchaser should be directed to the local council for information about permits.

Domestic Building Contracts Act (VIC)

Domestic Building Contracts Act regulates domestic building contracts and work arising out of those contracts. This means it applies to residential property only, in particular to domestic building work including the construction and renovation of dwelling houses and external works, for example, paving, retaining structures, workshops, landscaping, pools, spas, fencing, garages and driveways.

Amongst other conditions, the Act requires that domestic

building work over \$5000 must be under a 'major domestic building contract' and be undertaken by a registered builder. Depending on the value and nature of the work the Act requires that the builder has private insurance against public liability, defective work and breach of warranty. While the builder (or owner) is the one who must ensure that the required insurance is obtained, the beneficiary of the insurance cover is the owner (or subsequent purchaser). Claims on the insurance can be made where the policy has not expired and the builder (or owner builder) is dead, insolvent or has disappeared.

As the value of the work for which insurance is mandatory has varied over time, it is important to check the date the new building or renovation was commenced. For building contracts entered into between 1 May 1996 and 30 June 2002 builder's warranty insurance was required for work over \$5000. The period of the insurance cover for these contracts was at least six years and six months after the date of issue of the certificate of occupancy or the certificate of final inspection, whichever was the earliest. The builder was required to have warranty insurance up to \$100,000 for, amongst other matters, defective work.

However, for building contracts entered into on or after 1 July 2002, the value of work where insurance is compulsory has increased to contracts over \$12,000. The period of the insurance cover has also changed - it decreased and was split into two categories. For structural defects (such as load bearing or external roof work) the period of cover is now a minimum of six years and for non-structural defects a minimum of two years. The value of the builder's warranty insurance increases to a maximum of \$200,000 for matters including defective work.

Where insurance is required a builder cannot contract out of liability for defects that may become apparent in the future. Under section 9 of the Act implied warranties run with the building, thereby allowing a subsequent 'owner' to claim for a breach. If a contract of sale is entered into which does not transfer this protection, the purchaser may rescind the contract at any time before settlement. Also the vendor would be liable for penalties up to \$10,000.

Details of any building approvals, insurance and guarantees must be included in the vendor's statement.

Tenant in possession

If the property has been let to a tenant and you intend to sell with vacant possession you must give the tenant notice to vacate. Please ensure that you or your agent does this once the property is sold and that settlement is not less than 60 days after that notice is served on the tenant. If the lease is current and for a fixed term the tenant cannot be required to vacate until the lease has expired. If the tenant does not vacate by the settlement date you will be unable to give vacant possession to the purchaser and the sale will be at risk. If the sale fails you may be liable to the purchaser for any loss suffered.

If you sell the property tenanted, you should ensure that written notice is given to the tenant to enable the purchaser to gain access for the final inspection. Twenty-four hours notice to the tenant is usually required.

Mortgage

If your property is mortgaged you will need to have sufficient funds from the sale proceeds or otherwise to discharge that

mortgage at settlement. Some lenders impose additional interest on the early discharge of a mortgage.

Unless you tell your Solicitor or Conveyancer otherwise, they will assume that there will be sufficient funds from the settlement to pay out the mortgage. They will make the appropriate arrangements for the discharge of the mortgage directly with the lender.

If you are selling a unit

(This includes all properties with Common Property). If your property has a body corporate (whether it is effectively operating or not) further details will need to be provided in the vendor's statement:

- (a) amounts payable to the body corporate;
- (b) the date to which such amounts have been paid;
- (c) any body corporate liabilities (including contingent liabilities arising from legal proceedings); and
- (d) any expenditure or proposed expenditure by the body corporate which may result in an increased liability in respect of the property.

The body corporate secretary should be able to help you with the above information.

Whether or not the body corporate is effectively functioning, Public Liability Insurance taken out in the name of the body corporate covering the unit and all common property must be in place before the unit is sold. You should ask your Solicitor or Conveyancer to confirm that the insurance meets the current requirements. Failure to have the proper insurance in place will allow a purchaser to withdraw from a sale.

What you must provide

If you have any of the following and you have not already done so, you should provide your Solicitor or Conveyancer with copies or originals of:

1. House insurance policy
2. Building approvals
3. Certificate of occupancy
4. Your contract for purchase of the property
5. Building Warranty insurance
6. Council and water authority rate notices and any land tax notices
7. Any lease affecting the property
8. Any notices or orders which affect the property
9. The title

If you are unable to provide any of the above documents, your Solicitor or Conveyancer may be able to obtain them on your behalf. This may result in additional costs or disbursements.

GST and real estate

This is a brief overview of the application of the Goods and Services

Does GST apply to the price of an existing residential property

GST will not generally apply to the purchase price of

residential properties that are not new (whether for investment or owner occupation), where the property is occupied as a residence, unless it currently used or has been previously used to provide a source of rental income.

Does GST apply to the price of newly constructed residential property?

GST will apply to the cost of new residential property purchased directly from a developer and it will be included in the price for the construction of a new home. The application of the "margin scheme" may significantly reduce the GST payable.

Will GST apply to the sale of vacant residential land?

GST will apply to the sale of vacant residential land notwithstanding that it may have been sold previously, if the entity selling the land is registered or required to be registered for GST, the supply is made in the course or furtherance of the entity's enterprises, the entity makes the supply for consideration and the supply is connected with Australia (s9-5 GST Act). However, the parties to the sale of the land may consider the application of the margin scheme to reduce the amount of GST payable on the sale.

Therefore, if when you sell your property it is treated as a 'taxable supply' you are liable for the amount of the GST. It is important that this issue is considered when drafting your contract of sale, so that the amount of your GST liability may be identified and passed on to the purchaser.

As noted above, only where the sale of the property is treated as a 'taxable supply' will the sale of land be subject to GST. Different taxation consequences arise when the relevant transaction is treated as an 'input taxed supply', or a 'GST-free supply'.

Generally, the sale of land will be treated as a 'taxable supply' when you are considered to be carrying on an 'enterprise' for the purposes of the GST law (e.g. your activities in respect of the property have been conducted in a business-like manner), and the property:

- (a) is a commercial property; or
- (b) Is a residential property that was not used for residential accommodation before 2 December 1998; or
- (c) Is a residential property that has not previously been sold; or
- (d) Is a residential property where the legal title to the property has changed (e.g. through subdivision or strata-titling); or
- (e) Is a residential property that has undergone 'substantial renovations'; or
- (f) Is a residential property that has been built, or contains a building that has been built, to replace demolished premises on the same land.

However, despite the general comments made above, the GST law is complex and the GST implications of every sale must be carefully considered.

Is stamp duty still payable on the purchase price of property?

Stamp duty is still payable on the purchase price of a property.

If the price of the property includes GST (such as in new residential premises) then stamp duty is payable on the GST inclusive price.

Will GST apply to the sale of the family home?

In most cases GST will not apply to the sale price of existing residential real estate, including the family home.

Will GST apply to agents fees and advertising costs incurred when selling my property?

GST will apply to agent's fees and advertising costs agreed to when entering into a Selling Agency Agreement.

Will GST apply to the sale of a residential investment property?

Generally, GST will not apply to the sale price of any existing residential property irrespective of whether it is a family home or an investment property. GST will however apply to the sale price of newly constructed homes, including investment properties, which are sold by a developer who is registered for GST.

Will an auction price include GST?

This will depend on the type of property being auctioned and whether GST is applicable to the proceeds of the sale. For the sale of private residential property there is no GST however, commercial property may attract GST and accordingly the auction price will be GST inclusive. The auctioneer will be required to announce before the sale whether the auction is being conducted on a GST inclusive or GST exclusive basis. The auctioneer will also need to announce whether the seller is registered for GST. If the margin scheme is being adopted by the seller then it is recommended that the property be auctioned on a GST inclusive basis.

Do I need to be registered for GST purposes?

Whether you must be registered for GST purposes, or whether it would be beneficial for you to be registered for GST purposes requires a careful consideration of your individual circumstances.

Registration is required where you are considered to be conducting an 'enterprise' and your historical, or projected turnover meets certain thresholds. You may wish to register (even when not required) so that you can claim the amount of GST you incur in selling your property (e.g. the GST on your agent's fees and legal costs). Generally, you would only choose to register when you were selling commercial, vacant land or newly built homes to other GST-registered persons.

How do I calculate the amount of the GST?

The GST is imposed at the rate of 10%. Accordingly you can calculate the GST included in a price by multiplying that price by 1/11. For example the GST on a GST-inclusive sale price of \$110,000 is \$10,000 (that is \$110,000 x 1/11).

The GST is generally calculated on the value of the supply made. In the case of real estate, that is the value of the property. Special rules known as the 'margin scheme' can operate to reduce the amount of GST otherwise payable.

What is the margin scheme?

The 'margin scheme' enables you to reduce the amount of GST otherwise payable in respect of the sale of property that is treated as a 'taxable supply'.

The special rule calculates the GST on an amount known as the 'margin' rather than the value of the property. The GST is calculated as 1/11 of the 'margin'.

The 'margin' is calculated as follows:

1. If you owned the property before 1 July 2000, then generally the 'margin' is the difference between the sale price and the value of the property as at the later of 1 July 2000 or the date you were registered or required to be registered for GST;
2. If you acquired the property after 1 July 2000, then generally the 'margin' is the difference between the sale price and your purchase price.

The 'margin scheme' is not available for a sale of a property where the transaction under which the property was acquired was a 'taxable supply' and the 'margin scheme' was not used in calculating the GST on that sale.

What should I do if I'm not sure of the application of GST in my circumstances?

If you are unsure of the GST implications of the proposed sale of your property, you should contact your tax agent, accountant or financial advisor.

Handy Hints when preparing your home for Sale

THE entrance

- Add interest to your doorway with some potted plants
- Pave a pathway to your front door
- Clean your front door or freshen it with a coat of paint
- If your hallway is narrow and dark, paint it a light colour and add a broad floor runner to make it seem wider
- Invest in a front door mat or replace the old worn one

THE lounge

- Use neutral colours in your living space
- Use receding colours like blues and greens to make a small space seem larger
- Make sure you have a focus in the room. If you don't have a natural focus, buy some paint and create a feature wall - it's quick and cheap
- Ensure your carpets are cleaned and marked or damaged floors are repaired or covered
- Remember to layout your living area to present that relaxed lived in look - it is a home after all!

THE kitchen

- Fix the floor by replacing old lino with new, alternatively polish the floorboards, or tile over with cheap seconds ceramic floor tiles
- Scratched, stained and damaged laminate benchtop can be rejuvenated by relaminating or tiling over with ceramic tiles
- Old cupboards can be painted and new handles will add life to a drab kitchen - don't forget to clean the ceiling fan or rangehood

- A fresh coat of paint on ceilings and walls will make a huge difference and will rejuvenate a tired old kitchen
- Remember to clear all kitchen clutter and make sure that prior to inspections the sink, taps, oven and benchtops are spotless

THE bathroom

- Your bathroom should be mould free and spotlessly clean - tiles, basin, toilet, and shower - don't forget to put the toilet seat down
- Fix or replace cracked basins, toilets or tubs, leaking taps and toilet cisterns - once again don't forget to clean the ceiling fan
- Make sure your air your bathroom thoroughly before inspections - bad smells immediately turn potential buyers off!
- Add a little ambience and luxury with fresh plump towels, handmade soaps, a plant or flowers and some boutique bath products
- If your bathroom is small maximize space by placing the towel rail behind the door if possible

THE bedroom

- Reduce the amount of furniture in small bedrooms to give a feeling of space
- Storage is important - consider adding a cheap free standing wardrobe in bedrooms without built-ins
- Add a little warmth with fresh linen, puffed pillows and extra cushions, remove personal clutter and make the bed!

THE yard outside

- Cut the lawn, weed the garden beds and define borders
- Add a focal point, whether it be a large pot, garden ornament etc
- Clean up and remove any rubbish and fix dripping garden taps
- Clean windows, replace cracked window panes and damaged fly wire screens
- Make sure exterior doors and gates open smoothly and replace broken or damaged fence pailings
- Degrease and pressure clean oil stained driveways
- Check your letterbox is empty of all junk mail and make sure the numbers are readable

THE finish

- Ensure all interior areas have been dusted, vacuumed and have had cobwebs removed and that the house has been aired prior to an inspection
- Clean finger marks off all light switches, doors and door frames and make sure all lights are working
- Disguise small windows by hanging curtains from the top of the wall rather than the top of the window
- Repair plaster or shrinkage cracks with flexible filler and repair or replace damaged sections of wall paper or paint over
- Touch up nicks and chips on painted surfaces
- Remove all pet faeces and hair, making sure pet areas are tidy and that pets are restrained or temporarily removed during an inspections
- CLEAN, CLEAN, and CLEAN SOME MORE...

