

LICENSING, REGULATION AND ALCOHOL STRATEGY

Buying a Property

Buying a property is one of the biggest decisions and financial commitments you can make. This fact sheet provides a guide to choosing and buying a property.

Before Making an Offer

A prospective buyer should visit a property several times before deciding to buy it, if possible. On the first visit, you will gain an initial impression and assess whether the property meets your basic requirements such as location, size, style, age and condition. The design of the home, how it functions and how it complements your lifestyle should be a major decision-making factor when buying a property. You should also assess whether the property is easy to maintain, efficient to run and whether it will suit your lifestyle as your needs change.

On subsequent visits you should look for signs of potential structural problems, defective or incomplete work and assess the functionality of the plumbing, electrical items and other items such as security and garden reticulation systems.

As well as inspecting the property you should have all legal aspects relating to the land and title checked thoroughly before making an offer. As the seller is not required by law to make these disclosures, the buyer should have his or her conveyancer or solicitor obtain necessary reports such as building and pest reports and title search certificate and conduct checks to determine whether there are any issues that have not been brought to your attention, such as future developments in the area or proposed rezoning.

Making an Offer

The decision on how much to offer can be difficult to make. You need to decide whether to make your best offer upfront or offer a lower price with the view to negotiating further. Note that in the case of multiple offers, the seller may decide to accept another offer without giving you the opportunity to increase your offer. Any offer to buy a property should be made through the seller's agent, if one has been appointed. The agent must communicate the offer to the seller. Whilst an offer can be made orally, it is advisable to put the offer in writing.

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In most cases the written offer will be prepared by the agent and take the form of an “offer to purchase” or a “contract of sale”. An offer to purchase is not binding provided it is made subject to the consequent signing and exchange of a contract of sale. It is possible to proceed straight to a contract of sale without first completing an offer to purchase.

On formalising an offer, the agent may require the buyer to provide a holding deposit. The deposit will be returned if the offer is not accepted.

If the seller does not accept the offer, the agent may negotiate with the buyer to make another offer. When there is more than one offer, through a process of offers and counteroffers, the agent will negotiate between the parties to achieve the best price for the seller.

The buyer should ensure that any offer to purchase provides for a date that the offer will lapse. This way you will be notified in a timely manner as to the acceptance or refusal of your offer.

Conditional Offers

The buyer can negotiate with the seller to have the sale subject to certain conditions. For example, the sale may be subject to:

- finance needed to complete the purchase;
- the sale of the buyer’s existing property or an investment property;
- receipt of satisfactory building and pest reports.

If the offer is made subject to any special conditions you should consult with your conveyancer or solicitor concerning the need for, and the wording of, the special conditions. The specific wording of any special condition will vary depending on the particular facts relating to a particular contract. A special condition should contain details of what has to happen, who has to do it, when it has to be done by and to what standard, what happens in the event of default, whether the condition may be waived, and if so, by whom.

The Contract for Sale of Land

The *Agents Licensing Act* requires a contract for sale of land used by a licensed agent to be in a form approved by the Registrar or Law Society of the Northern Territory.

The contract is a legal and binding document that outlines the terms and conditions of the sale and is usually prepared by a conveyancer or solicitor or completed by the real estate agent. It will provide for the following details:

- the name and address of the seller;
- the name and address of the seller’s conveyancer or solicitor;
- the name and address of the buyer;
- the name and address of the buyer’s conveyancer or solicitor;
- particulars of the property sold;
- improvements included in the sale;
- furnishings or chattels included in the sale;

- the purchase price;
- amount of deposit and where held in trust;
- settlement date;
- any tenancy that will continue after settlement;
- any registered interests in the property;
- any fee that may apply for early possession;
- default interest;
- finance needed to complete the purchase;
- any special conditions.

Getting Ready To Sign a Contract

Before you sign the contract of sale, you should make sure that all items to be included in the sale are actually included in the contract. The standard terms of the contract will provide for all fixtures and fittings (that is, any item that is screwed, bolted, joined, nailed, glued or plumbed into a property) to be sold with the property unless otherwise recorded that it is excluded in the sale.

When you are ready to sign a contract, take a copy and discuss it with your conveyancer or solicitor, especially if your offer is subject to certain conditions such as finance or the sale of another property.

Don't be pressured into signing a contract unless you understand it fully or it has been checked for you by your conveyancer or solicitor.

Make sure that all alterations made during negotiations are initialled and that any special conditions can be met within the timeframes.

Exchanging Contracts

The contract exchange is a critical point in the sale process. Two copies of the contract of sale are drawn up, signed and exchanged. Each party receives a copy of the contract. The contract is not binding until the copies are exchanged.

The 'Cooling Off' Period

Contracts used by a licensed agent in respect of the sale of property not sold by auction must provide the buyer with a 'cooling-off' period of three business days. The 'cooling-off period' starts the day that the contract is last signed by either of the parties and exchanged.

The buyer can rescind the contract within this time without penalty and without any explanation.

The cooling-off period may be waived, reduced or extended by negotiation and agreement.

Settlement

Settlement is the date on which the title of the property is transferred to the buyer and the remainder of the purchase price is paid to the seller. The seller generally sets the settlement date in the contract. The settlement period is usually between 30 and 90 days. A buyer can, however, negotiate an alternative settlement date with the seller prior to signing the contract.

On settlement day you can obtain the keys to the property and take possession of the property, unless otherwise arranged. If you wish to access the property prior to taking possession, you may be able to negotiate this with the seller and you should formalise any arrangement.

The final payment is an official process conducted between the buyer's and seller's legal and financial representatives at the Land Titles Office.

At settlement, all outgoings such as rates and other charges will be adjusted between the seller and the buyer.

If Something Goes Wrong

If you have signed a contract to buy a property and the cooling-off period has passed, it may be a costly exercise to withdraw from the contract. If you wish to get out of the contract, you may be liable to pay default costs and compensation to the seller. The amount will depend on the loss suffered by the seller and the contract terms. You should read your contract carefully to be aware of the consequences of defaulting on the contract.

On default, you will also be liable for costs for the services of your own conveyancer or solicitor and for any costs for inspections or reports commissioned on your behalf.

If an issue arises during the sale process that you are unhappy with, check your copy of the agreement you have with the real estate agent and/or conveyancing agent to clarify your rights and obligations. Try to sort out the problem by talking to your agent.

If you give any instructions you should ensure that they are in writing and keep a copy.