



Real Estate in the A.C.T. Tips for Sellers & Buyers

The legal position with respect to buying and selling real estate in the ACT has undergone significant changes since 1 July 2004 when the ACT Government introduced new legislation requiring Contracts for Sale to contain various so-called 'disclosure' documents.

This new legislation has important practical implications for both Buyers and Sellers of real estate in the ACT.

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Tips for Sellers – Before the Sale

In the case of a typical freestanding house, before a property may be sold or marketed for sale, a Seller must ensure that the following documents are obtained for inclusion in the Contract for Sale:

- ▶ **A Building Report** – which typically provides a report on structural and maintenance issues in relation to the property.
- ▶ **A Pest Report** – which reports on any actual or potential pest problems with respect to the property.
- ▶ **A Compliance Report** – which, in effect, indicates whether the property contains any ‘unapproved’ structures.
- ▶ **An Energy Efficiency Rating (EER).**

As a practical matter, these documents-

- ▶ are usually prepared by the same Building Consultant;
- ▶ can be organised by your Agent; and
- ▶ are best organised well ahead of the anticipated commencement of the marketing campaign.

As the cost of the Building, Compliance and Pest Reports are reimbursed to you on Settlement of the sale, it is **important that you retain a copy of the paid invoice or account** – a copy is usually included in the Contract for Sale.

In addition to the Building, Compliance and Pest Reports and the EER, Sellers must also ensure that the Contract for Sale contains the following documents:

- ▶ A Title Search
- ▶ A copy of the Crown Lease
- ▶ A copy of the Deposited Plan
- ▶ A Lease Conveyancing Enquiry

These documents can be easily, and commonly are, obtained by your Solicitor through on-line searches.

Once all relevant documents have been provided, your Solicitor will prepare the draft Contract for Sale and make it available either to you personally or, more usually, direct to your Agent so that copies may be made available to prospective Buyers.

It is important to note that other Contract documents may be required, or may be unnecessary, depending on whether the property is, for example-

- ▶ A Unit or a Townhouse
- ▶ Vacant land
- ▶ A new or previously unoccupied house



Your Solicitor will be able to advise you on the specific requirements that relate to your particular property.

From a Seller's perspective, it is important that the following matters (among others) be discussed with your Agent at the time the property is marketed for sale:

- ▶ Your preferred Settlement timeframe.
- ▶ The 'goods' to be included in the sale – typically, these include fixed floor coverings, light fittings, window treatments and dishwasher. It is most important to advise your Agent at this stage if there are any particular items which you intend to either specifically include in, or exclude from, the sale or whether there are any items which require particular consideration such as back to base alarm systems, satellite television dishes etc.
- ▶ Whether you have any plans to move interstate or overseas prior to Settlement.
- ▶ Whether you will be vacating the property at any time prior to the actual Settlement date.
- ▶ Whether, if asked, you would permit the Buyers to occupy the property before Settlement and, if so, on what terms.

Tips for Sellers –

After the agreement is reached on the Sale

Once agreement has been reached with the Buyer on all aspects of the sale (such as price, Settlement date, goods, etc.), your Agent will prepare a Sales Report or Sales Advice which sets out all the terms of the sale. This is provided both to the Seller's Solicitor and the Buyer's Solicitor.

The Seller's Solicitor uses the information in the Sales Report/Advice to prepare the final version of the Contract for Sale, so it is important that you liaise with your Agent to confirm all the details to be included.

Once the Contract has been prepared, it is usual for your Solicitor to contact you to arrange a suitable time for you to sign the Contract and to provide any instructions in addition to those contained in the Sales Report/Advice itself:

- ▶ Importantly, your Solicitor will, at this stage, seek your advice concerning any information you may have with respect to the existence of asbestos in the property.

Once signed, your Solicitor will contact the Buyer's Solicitor to arrange a time to 'exchange Contracts'.

At exchange, the Seller's Solicitor and the Buyer's Solicitor ensure that all details contained in the Seller's and Buyer's 'counterparts' of the Contract are identical. The counterparts are then dated and the Buyer's Solicitor provides the Deposit (for example, by way of cheque or 'Deposit Bond' or 'Bank Guarantee'). If the Deposit is provided by cheque, the cheque is forwarded to your Agent to be banked into the Agent's Trust Account pending Settlement.

On exchange of Contracts, both the Buyer and the Seller are legally bound to complete the Contract in accordance with its terms and conditions.



The new ACT legislation provides for a 'cooling off' period of 5 business days in which a Buyer may decide not proceed with the purchase after exchange of Contracts. However, as a practical matter, the Seller's Solicitor normally requires the Buyer's Solicitor to provide a certificate at exchange the effect of which is to waive this cooling off period so that the Contract becomes 'unconditional' at exchange.

It is important to note that-

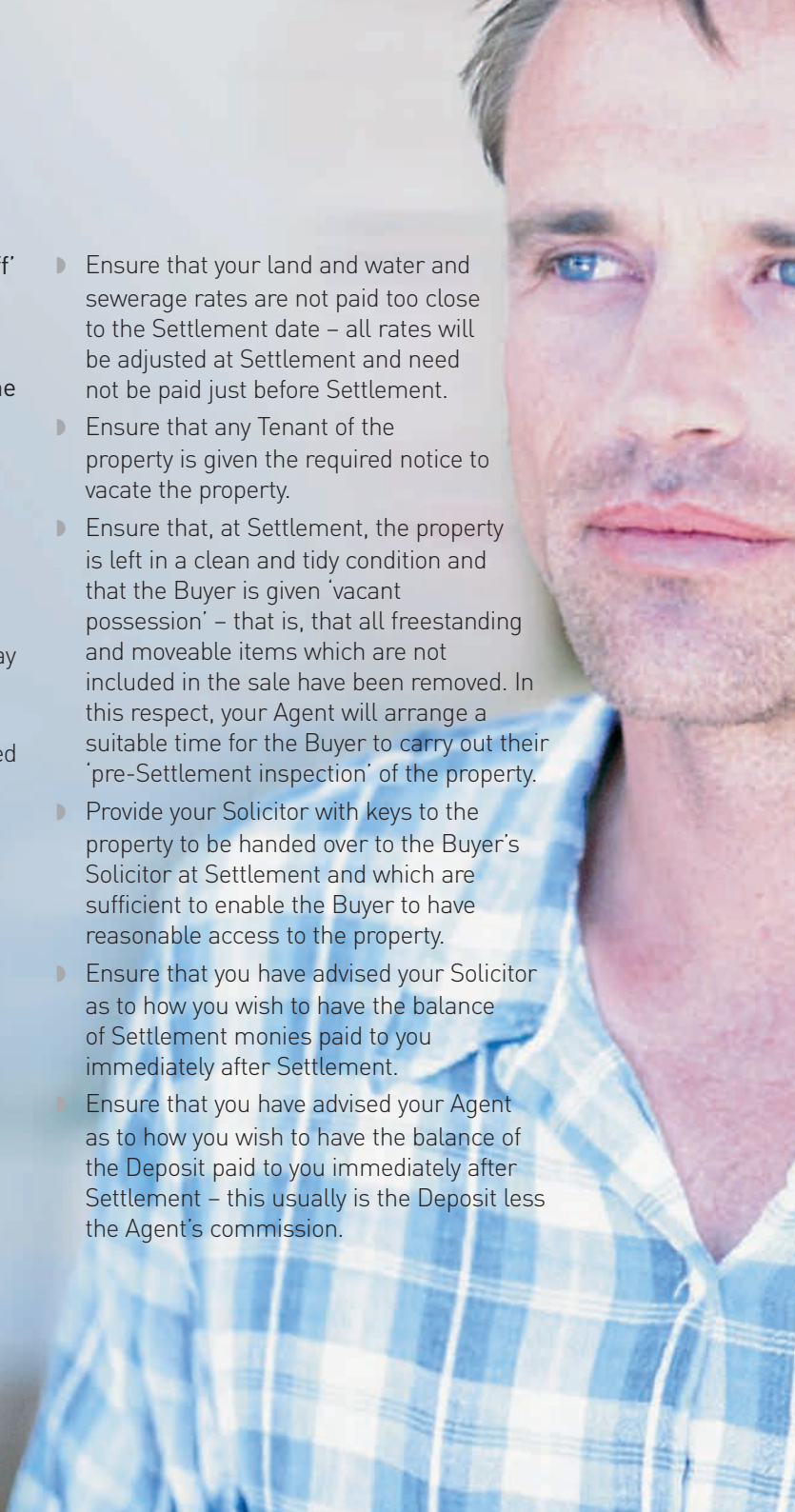
- ▶ Until Contracts have been formally and unconditionally exchanged, neither party is bound to proceed with the sale - either party may withdraw from the sale at any stage and for any reason; and
- ▶ It is extremely rare for Contracts to be exchanged 'conditionally', that is, subject to, for example, unconditional finance approval.

Tips for Sellers – Between Exchange and Settlement

In summary, the most important issues for Sellers to address between exchange of Contracts and Settlement are as follows:

- ▶ Arrange with your Bank or other lender for the discharge of any Mortgage on the property. In this respect, it is essential that-
 - ▶ You make contact with your Bank or lender at the earliest opportunity to ensure that the discharge is actioned quickly – lack of notice may cause Settlement delays; and
 - ▶ You advise your Solicitor when you have made contact with your Bank or lender.

- ▶ Ensure that your land and water and sewerage rates are not paid too close to the Settlement date – all rates will be adjusted at Settlement and need not be paid just before Settlement.
- ▶ Ensure that any Tenant of the property is given the required notice to vacate the property.
- ▶ Ensure that, at Settlement, the property is left in a clean and tidy condition and that the Buyer is given 'vacant possession' – that is, that all freestanding and moveable items which are not included in the sale have been removed. In this respect, your Agent will arrange a suitable time for the Buyer to carry out their 'pre-Settlement inspection' of the property.
- ▶ Provide your Solicitor with keys to the property to be handed over to the Buyer's Solicitor at Settlement and which are sufficient to enable the Buyer to have reasonable access to the property.
- ▶ Ensure that you have advised your Solicitor as to how you wish to have the balance of Settlement monies paid to you immediately after Settlement.
- ▶ Ensure that you have advised your Agent as to how you wish to have the balance of the Deposit paid to you immediately after Settlement – this usually is the Deposit less the Agent's commission.



Tips for Buyers –

Before the Purchase

As a practical matter, a copy of the Contract for Sale must be made available to each prospective Buyer at the time a property is marketed for sale.

At the time of negotiating the purchase of the property or making an offer, the Buyer should ensure the following:

- ▶ That they have secured 'in principle' finance approval from their Bank or other lender. This will normally require providing to the Bank/lender such information as pay slips, tax returns or other proof of income and details of assets and liabilities.
- ▶ That they have funds sufficient to provide a Deposit on exchange of Contracts (or, alternatively, a 'Deposit Bond' or 'Bank Guarantee').
- ▶ That they have examined the Contract for Sale and are aware what the Contract provides in the way of, for example-

- ▶ the goods included in the sale;
- ▶ any Settlement date specified in the Contract;
- ▶ any unapproved structures disclosed in the 'Compliance Report' attached to the Contract;
- ▶ whether the Building or Pest Reports disclose any adverse matters with respect to the property; and
- ▶ any penalties for delayed Settlement.

The Buyer's Solicitor will be able to provide advice on any matters arising from the Contract – the Solicitor may need to be consulted to provide advice even on a draft version of the Contract.

Tips for Buyers –

After Agreement is reached on the Sale

Generally speaking, the issues discussed under the heading 'Tips for Sellers – After Agreement is Reached on the Sale' apply equally to the Buyer.

At the appointment with the Buyer's Solicitor to sign the Contract for Sale, the Buyer should ensure the following (It is advisable for the Buyer to contact their Solicitor before the meeting to confirm these matters):

- ▶ That they have the Deposit (in whatever form it is agreed to be provided).

- ▶ That they have received a formal and unconditional finance approval from their Bank or other lender (or, at least, that they are aware of the timeframe within which the approval will be given).
- ▶ That they are familiar with the matters contained in the Agent's Sales Report/Advice with respect to such matters as the Settlement date, the goods included in the sale etc.).



Tips for Buyers – Between Exchange & Settlement

In summary, the most important issues for Buyers to address between exchange of Contracts and Settlement are as follows:

- ▶ That they sign all mortgage and other security documents with their Bank or other lender (as a general rule, lenders will not authorise the draw down of the funds required for Settlement without these documents being executed).
- ▶ That they pay the Stamp Duty on the Contract (your Solicitor will advise you on the amount to be paid and the timing of its payment).
- ▶ That they complete and lodge all documents necessary to secure the First Home Owners Grant or Stamp Duty concession (if applicable).
- ▶ That they take out building insurance on the property. (This should be organised on and from the date of exchange of Contracts).
- ▶ That they have sufficient funds to pay the balance of the Purchase Price at Settlement and that these funds are readily accessible.
- ▶ That they have organised a 'pre-Settlement' inspection of the property with the Agent no later than 24-48 hours before the Settlement date.

Summary

The key to a successful and trouble-free home sale or purchase is organisation and being aware of the conveyancing process and the steps involved in that process.

Your Agent and/or Solicitor is well able to discuss with you any issues arising from this Guide on which you may wish to seek additional advice.



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