

A PLAIN ENGLISH GUIDE TO



>>SELLING REAL ESTATE

The sale of your home is likely to be one of the most important transactions you enter into. Not only will substantial amounts of money be involved but the event will involve a significant change in your personal affairs. We will do our best to assist you in protecting your financial concerns and doing everything to ensure that things go as smoothly as possible.

>>Marketing Your Property

Once you have made the decision to sell, your first aim will be to find a buyer at the right price.

Although you can sell your property privately, the most common and convenient means is with the help of an estate agent. The agent should be able to give you advice as to the likely value of the property and as to the type of advertising that works best in your locality. A commission will be payable to the agent and the agent will want you to sign an Agency Agreement before starting work. The Agreement will set out the terms on which the agent will work for you, the duration of the agency agreement and the amount of the agent's commission. Agency Agreements are not all the same and you should read the document carefully before you sign it. Please telephone our office before you sign the Agreement if you are in any doubt as to its effect.

>>The Contract

The Conveyancing Act provides that, before your property may be advertised for sale (whether privately or by an agent), a draft contract must be available for inspection by interested buyers. We will ensure that this contract complies with the requirements set down by the Act. For this reason, the first step towards selling your home is for us to prepare a contract on your behalf.

The form of contract that we use is approved by both the Law Society and the Real Estate Institute. However, if you have any special

requirements these should be raised with us at this stage so that we can make an appropriate provision in the contract. For the same reasons, you should also discuss with us your overall plans in relation to selling your home, so that you can be confident the contract will reflect your needs.

The Conveyancing Act requires certain documents to be incorporated in the contract. These include:

- **Title Search**

This document confirms that you are the present owner of the property. It will also show details of any other persons who have an interest in your property, and any other matters affecting your land that have been registered with the Land Titles Office. The Search will also include a copy of the plan in which your property is contained.

- **Section 149 Certificate**

This certificate is issued by your local council and will indicate the present zoning of your property. It will also give details of other plans, proposals and regulations affecting your land from the council's point of view.

- **Sewerage Diagram**

This diagram will include the location of the Water Board sewer main from which your property is serviced, as well as show the sewer connections to the property itself.

>>The Contract continued

As well as including the information contained in the above documents you are required to disclose to a purchaser certain other matters that may affect your property. These would include:

- any notices you have received in respect of the property from any public authority; and,
- any disputes with neighbours and details of any rights held by others in respect of your land, including leases.

At this stage you should also inform us if the house that you are selling secures a loan or if finance for the house is tied up with other properties. We may then make appropriate arrangements with your financial institution in anticipation of finding a purchaser.

It is important that these matters are raised with us when the contracts are being prepared.

>>Exchange of Contracts

It is important to remember that neither you or the purchaser are committed to the transaction until contracts have been formally exchanged. This will occur at some stage after the price has been agreed upon. Exchange of contracts will generally take place either with your estate agent, or through the parties' solicitors. At this time, the deposit, which will normally be ten percent (10%) of the purchase price will be paid by the purchaser. In most cases, the deposit will be held by either the agent or the Vendor's solicitors until settlement.

The purchaser of your property will normally enjoy the benefit of a "cooling off period" of five (5) business days. This will generally allow the purchaser to obtain a loan approval and make any necessary inspections of the property.

In particular circumstances, you may require that the "cooling off period" be waived so that the purchaser is fully committed to the contract as soon as contracts are exchanged. This can only be waived by the purchaser's solicitor or barrister preparing an appropriate certificate.

If there is a "cooling off period" under the contract, the purchaser will be entitled to cancel the contract during the "cooling off period" without having to provide any reason and will be entitled to recover their deposit, less an amount equal to 0.25% of the purchase price. This amount will be paid to you.

Where the agent is conducting the exchange of contracts, rather than the solicitors, you are likely to be asked by the agent to sign a copy of the contract held by him. This procedure generally ensures that the sale proceeds as quickly as possible but you should not sign the contract without consulting us where any of the following apply:

- any special arrangements have been negotiated with the purchaser;
- you are planning to purchase another property simultaneously with your sale;
- you are relying on the proceeds of the sale for some other financial commitment; or
- you are uncertain as to any aspect of your sale.

The "cooling off period" is for the purchaser's benefit only. As the vendor, you are fully committed to the sale when contracts are signed and exchanged.

>>Settlement

After contracts have been exchanged, the purchaser's solicitor would normally complete their enquiries of the various Government Departments which may have an interest in your property. Generally, the purchaser will be expected to be ready for settlement approximately 42 days after the date of exchange of contracts.

During that time, you will be required to sign a transfer which will be submitted to us by the purchaser's solicitor. It may also be necessary for you to sign an authority to discharge any mortgages on your property. The precise date for settlement will depend on a number of factors but we would normally be able to give you some indication as to a proposed settlement date when you sign the transfer.

Unless you are selling your property subject to an existing tenancy, the Contract will provide that vacant possession is to be given by you on settlement and it will be necessary for you to make arrangements for:

- removalists
- reading of electricity and gas meters
- transfer of telephone
- redirection of mail

We will notify the Valuer General's Department, the Local Council and the Water Board of the change of ownership of the property. An adjustment of rates will be made on settlement and normally you would be responsible for those rates up to the date of settlement only.

As the settlement date approaches, the purchaser may wish to inspect the property to ensure that it is in a similar state of repair to when contracts were exchanged. You should make sure that the property is clean and tidy for this inspection and on the day of settlement to avoid any disputes or delays in the settlement of your property.

On the day of settlement, we will arrange to meet the purchaser's solicitor and the representatives of any lending bodies concerned to complete the sale. Generally, the Transfer signed by you and the Certificate of Title to the property will be handed over in exchange for a cheque for the balance of purchase monies and, at the same time, any debts that you have under any mortgage will be repaid. You do not need to attend settlement.

After settlement has taken place, your agent will be authorised by the purchaser to account to you for the balance of any deposit held by them, after deduction of their commission. You should contact the agent to make arrangements for the collection of these funds. We will account to you for the balance of the net proceeds held on your behalf.

>>Fixtures

Disputes have been known to occur between vendors and purchasers when items are removed by the vendor from the property being sold. Unless the contract provides otherwise, all fixtures are automatically sold with the property.

A fixture generally includes anything attached to the property and examples include plants planted in the ground (as opposed to pot-plants) or shelves attached to the wall (as opposed to free-standing shelves).

The law relating to fixtures is quite complex and we suggest that if you wish to remove any item from your property which is fixed by means other than by its own weight, you should specifically raise this issue with us before the contracts are exchanged.

>>Insurance & Mortgage Repayments

Your property will remain your responsibility in almost every case until final settlement. It is essential that all your insurance policies and mortgage repayments be maintained until settlement.

>>Other Related Matters

The sale of your property can have an impact in other areas of the law, such as capital gains tax, succession and estate planning, income tax and social security. If these matters are relevant to you in any way, you should raise them specifically with us.



>>Strata Titles

Most home units and villas in New South Wales are held under Strata Title.

There is little difference between the procedures involved in the sale of a Strata Title unit and that of a residential home.

The vendor of a Strata Title unit is obliged to disclose to a purchaser certain body corporate matters affecting the property. These matters should be discussed with us when contracts are being prepared.

>>Other Forms of Title

The above procedures relate to a typical sale of real estate in New South Wales. Some property may be held under less common forms of Title such as Old System Title, Company Title or Lease Hold Title. If this applies to your property, special requirements apply, and should be raised with us.

>>Interpreter Services

Coleman & Greig can provide interpreter services in a range of foreign languages including:

- Arabic
- Assyrian
- Croation
- Greek
- Italian
- Samoan

>>Other Services

Coleman & Greig provides a wide range of services including:

Commercial Legal Services

- Corporate & Commercial
- Employment Law
- Occupational Health & Safety
- Franchising
- Litigation & Dispute Resolution
- Intellectual Property
- Trade Practices
- Building & Construction
- Commercial Securities
- Commercial Property
- Business Migration
- Succession Planning
- Notarial Services

Personal Legal Services

- Property and Conveyancing
- Wills and Estate Planning
- Family Law

Reprinted February 2007



For further information:

Level 9, The McNamara Centre, 100 George St, Parramatta NSW 2150
Phone: 02 9635 6422 Fax: 02 9689 3983 Email: info@colgreig.com.au
www.colemanandgreig.com.au

