



Selling your property

A residential property cannot be advertised for sale until a contract of sale has been prepared.

The contract must contain a copy of the title documents, drainage diagram and a current Zoning Certificate (section 10.7) issued by the local council.

If the property for sale has a swimming or spa pool, one of the following must also be attached to the contract from 29 April 2016:

- a copy of a valid certificate of compliance, or
- a valid occupation certificate (issued in the past 3 years) and evidence that the pool has been registered, or
- a valid certificate of non-compliance.

This requirement does not apply:

- to a lot in strata or community schemes that have more than two lots, or
- for any off-the-plan contract.

If you fail to attach one of these documents to the sales contract, the purchaser may be entitled to rescind the sales contract within 14 days of exchange, unless settlement has already occurred. To check if the property with a swimming/spa pool has a valid certificate of compliance, visit the NSW Swimming Pool Register website.

Property exclusions must also be included, and a statement of the buyer's cooling-off rights must be attached.

There are two main ways of selling a residential property: by private treaty and by auction.

Private Treaty

When you sell your home by private treaty, you set a price and the property is listed for sale at that price.

Benefits of a private treaty sale:

- greater control over the sale
- time to consider offers by potential purchasers
- the ability to extend the time for which your home is for sale indefinitely
- potential purchasers must make offers for your property 'blind', without knowing what other buyers think it is worth.

Risks of a private treaty sale that should be considered:

- if the price you set is too high, your property may not sell
- if the price you set is too low, you may miss out on maximising the selling price.

You should also be aware that when a property is sold by private treaty, the buyer has a five-day cooling-off period during where they can withdraw from the sale.

Auction

To sell through an auction process, the amount you want for the property is generally not revealed to potential buyers who are encouraged to attend the auction and bid for the property against other potential buyers.

Auctions have become an increasingly popular way to sell or buy residential property, but before you decide to go down that path, do your homework and familiarise yourself with the process and what it involves.

Setting a reserve price

The reserve price is the lowest amount you are willing to accept for your property. Before bidding begins, advise your agent what you nominate as the reserve price. This is usually not told to the prospective buyers.

If the highest bid is below the reserve price, the property will be 'passed in'. You will then either try and negotiate a price with interested bidders or put the property back on the market.

If the bidding continues beyond the reserve price, the property is sold at the fall of the auctioneer's hammer.

Successful bids

The successful bidder must sign the sale contract and pay you a deposit on the spot (usually 10 per cent). There is no cooling-off period for anyone who buys a property at auction. If the property is passed in at auction but contracts are exchanged on that same day, the cooling-off period still does not apply.

Contract exchange

Exchanging sale contracts is the legal part of selling a home. There will be two copies of the sale contract: one for you and one for the buyer. You each sign one copy before they are swapped or 'exchanged'. This can be done by hand or

post and is usually arranged by your solicitor, conveyancer or the agent. At the time of the exchange, the buyer will be required to pay a deposit, usually 0.25% of the purchase price.

The contract exchange is a critical point in the sale process for several reasons:

- The buyer or seller is not legally bound until signed copies of the contract are exchanged.
- Buyers of residential property usually have a cooling off period of five working days following the exchange of contracts during which they can withdraw from the sale.
- If the agent arranges exchange of contracts, the agent must give copies of the signed contract to each party or their solicitor or conveyancer within two business days.
- The cooling off period can be waived, reduced or extended by negotiation.
- There is no cooling off period for sellers. Once contracts have been exchanged, sellers are generally bound to complete the agreement.
- There is no cooling off period when purchasing at auction.

Settlement

Settlement is the conclusion of the sale transaction and usually takes place six weeks after contracts are exchanged.

Using an Agent

A key to successfully selling your home is choosing the right agent.

- make sure they have a valid licence
- get a list of all their fees
- ensure they are covered by a professional indemnity insurance policy
- find out if they have a good knowledge of your area
- ask if they adhere to a code of ethics
- get quotes from them regarding their commission, fees and charges
- ask them what their fees, charges and services cover - these usually cover the time they spend promoting and selling your home, advertising and promotion costs and administrative costs
- ask them how they plan to promote your home – Internet advertising newspaper advertisements, letterbox drops, open houses etc.

There must be a written contract between the seller and the agent, called an agency agreement.

For the sale of residential property

If you decide to sell your property with an agent, you enter a legally binding contract.

Choosing a real estate agent

To find the right agent for your needs,

- make sure they have a valid licence
- get a list of all their fees
- find out if they have a good knowledge of your area
- ask if they adhere to a code of ethics.

Signing up with an agent

Before the agent can market your property, they must sign a contract with you, called an agency agreement. An agency agreement is a legally binding contract and it is important that you read and understand it. If you are not sure about the agreement terms you should get legal advice.

What is in the agency agreement

The agency agreement must state:

- the services the agent will provide for you
- the amounts of any fees or commission you agree to pay for those services
- the circumstances in which the agent is entitled to payment – for example, commission is usually payable only when the property is sold
- how and when payment is to be made – for example, whether the agent can deduct their commission from the deposit money paid by the buyer
- warnings about circumstances in which you might have to pay commission to more than one agent
- from 1 March 2015 inclusive, a warning about the commission if the agreement includes a term that a commission is payable even if the sale of the property is not completed

- the extent of the agent's authority to act for you – for example, whether the agent is permitted to exchange a sale contract on your behalf or make changes to the sale contract
- the agent's estimated selling price for the property. The price may be a single price or a price range. Note: If a price range is used the highest price cannot exceed the lowest price by more than 10%. An agent is required to amend their estimated selling price if it is no longer reasonable, notify you in writing and amend the agency agreement. Your consent is not required to amend the agreement with the revised estimated selling price. The agent must provide you with evidence of the reasonableness of their estimated selling prices.

You have the right to negotiate the terms and conditions of the agreement and to ask for any legally permitted changes to be made. Alterations made to the agreement need to be signed by all parties, except if the agent revises their estimated selling price for your property.

Commission, fees and expenses

You can negotiate with the agent about the amounts of any commissions, fees or other expenses that you may be required to pay. Before signing an agreement.

Disclosure of rebates and discounts

The agent can ask you to pay for advertising, auctioneer's fee, cleaning, decorating or landscaping, if it's set out in the agreement.

The agency agreement must state the amounts or estimated amounts of any such commissions or discounts on these services. You can negotiate with the agent about whether you should pay the full amount.

Ending the agreement

The agency agreement can either be open ended or for a specified period (a 'fixed term').

The length of any fixed term is negotiated between you and the agent, there is no minimum or maximum set term. The fixed term will depend on how long you and the agent think it will take to sell the property.

If you wish to end the agreement, you must give written notice. Check your agreement to see how much notice you need to give.

If you are not happy with an agent's services, it is important to properly end your agreement with them before signing up with another agent. Otherwise both agents may charge you commission when the property is sold.

Exclusive agency agreements

Exclusive agency agreements are commonly used for the sale of residential property. In this kind of agreement, you give exclusive rights to one agent to sell your property. This may entitle the agent to be paid commission if the property is sold during the fixed term of the agreement, even if the property is sold by you or by another agent. The agent may also be entitled to commission if the property later sells to a person who started negotiating for the property with the original agent.

Auction Agency Agreements

This is effectively an exclusive agency agreement where the property is listed for auction.

The Contract of Sale

A residential property cannot be advertised for sale until a contract of sale has been prepared. The contract must contain a copy of the title documents, drainage diagram and the Planning Certificate (s 10.7) issued by the local council. Property exclusions must also be included and a statement of the buyer's cooling off rights must be attached.

If you are selling a residential property that has a swimming pool or spa, ensure it is compliant with the *Swimming Pools Act 1992*.

The draft contract must be available for inspection at the agent's office. It is important that you hire a solicitor or conveyancer to help prepare the contract.

The Contract of Sale

The contract exchange is a critical point in the sale process. Be aware of the following important conditions in the exchange of contracts:

- The buyer or seller is not legally bound until signed copies of the contract are exchanged.
- Buyers of residential property usually have a cooling-off period of 5 working days following the exchange of contracts during which they can withdraw from the sale.
- If the agent arranges exchange of contracts, the agent must give copies of the signed contract to each party or their solicitor or conveyancer within 2 business days.
- The cooling-off period can be waived, reduced or extended by negotiation.
- There is no cooling-off period for sellers. Once contracts have been exchanged, sellers are generally bound to complete the agreement.
- There is no cooling-off period when purchasing at auction.

More Information

There is a lot of information that you will likely need to maximise the results in selling your home, a respected agency will take the guess work out of the process.

You will want to know the best way to present your home for marketing, who you should use for the conveyancing process, how the negotiating process works, will your home sell quickly.

Email kerry@macquarierealtors.com.au for your free consultation.

