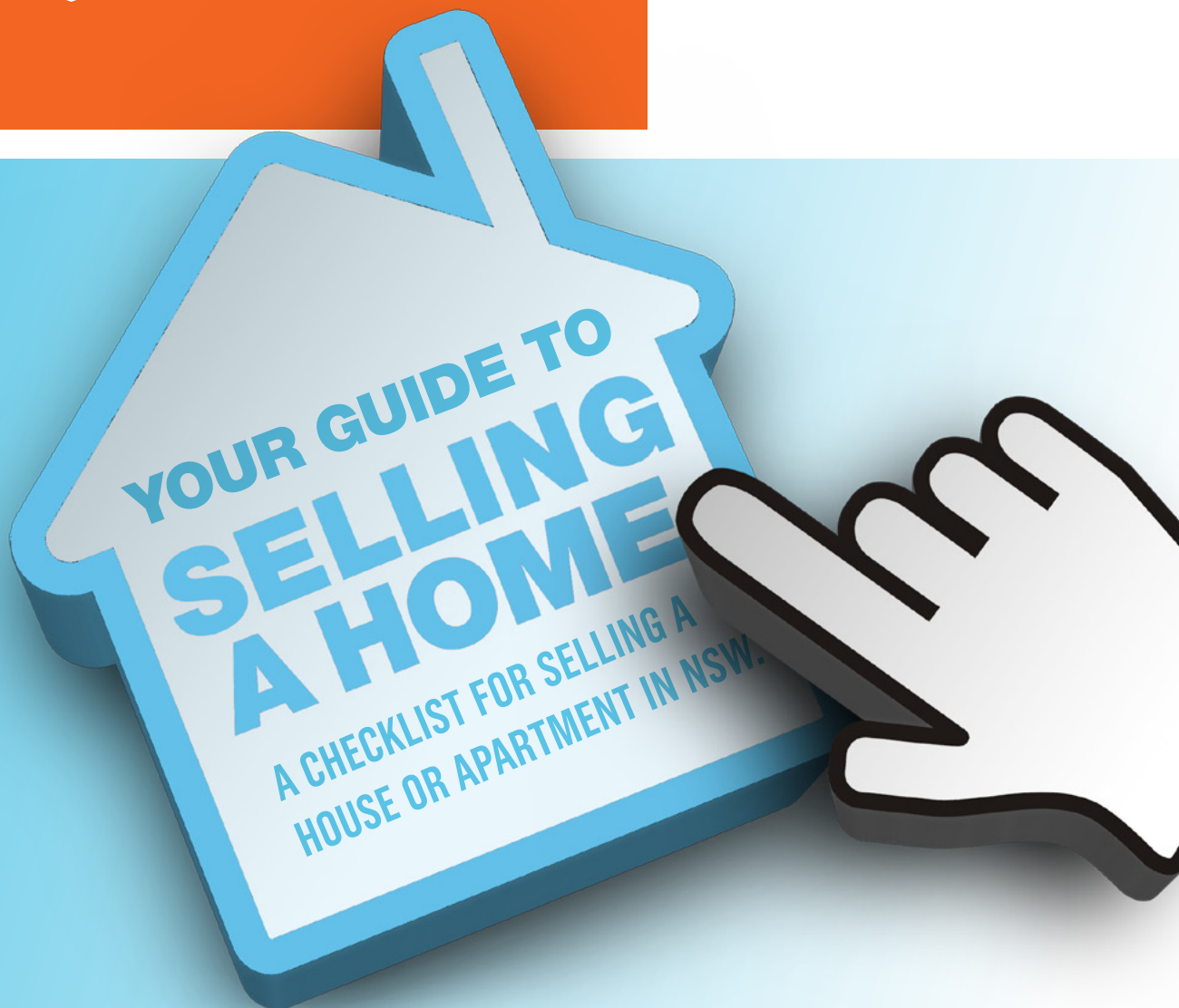




THE LAW SOCIETY
OF NEW SOUTH WALES



‘Do I really need a solicitor to sell my house’?

Our home is usually our most important asset. Making a mistake or misunderstanding your legal obligations could have a significant impact on your finances and lifestyle.

A solicitor has the expertise and education that will help make sure your sale goes the way you intend.

Once an offer is made, it’s likely that any buyer will want to negotiate terms and conditions before they agree to buy. When that happens it’s also important you have someone advising you on what’s in your best interests.

This checklist answers common questions about the process for selling a home in NSW and how your solicitor will guide you through each step. It includes important topics like:

- preparing the contract for sale
- what laws you’ll need to comply with
- how the conveyancing process works.

CONTENTS

▶ BEFORE YOU SELL	3
▶ The contract for sale	3
▶ What do you need to include in the contract for sale?	3
▶ If you’re selling a strata title property	3
▶ What warranties are you deemed to have made about the property?	4
▶ What happens if the contract doesn’t comply?	4
▶ Standard or tailored terms?	4
▶ Selling by private treaty v selling by auction	5
▶ What’s included in the sale?	5
▶ Agent’s fees	5
▶ EXCHANGING CONTRACTS	6
▶ What is exchange?	6
▶ The deposit	6
▶ Stamp Duty, GST and CGT	6
▶ What happens if a buyer wants to get in early?	6
▶ FINALISING THE SALE	7
▶ What happens at settlement	7
▶ Do you need to be present at settlement?	7
▶ Get in touch with a solicitor	7

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THE LAW SOCIETY
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YOUR GUIDE TO SELLING A HOME.

A checklist for selling a house or apartment in New South Wales

BEFORE YOU SELL

The contract for sale

The first thing you need to do if you're selling your house or apartment is to prepare a contract for sale. Putting your house on the market without having a proper contract is an offence under NSW law and could lead to you being fined.

What do you need to include in the contract for sale?

The law says that all sellers must include certain information in the contract for sale and must also make certain promises (known legally as 'warranties') about the property they're selling. These obligations are known as the **Vendor Disclosure Requirements**.

The most common documents you may need to include with the contract are:

- a **zoning certificate**. Often known as a 'section 149 certificate' this is issued by local council and shows planning controls and other things which may affect the property, such as any proposed road widening
- a **drainage diagram**. This shows the location of any sewer lines
- a copy of the **certificate of title** confirming that you own the property
- copies of any documents creating **easements, rights of way, restrictions or covenants**.

You should also talk to your solicitor about whether you should include:

- an identification survey
- a building certificate, and
- a home owners warranty insurance certificate.

If you're selling a strata title property

Most apartments in NSW are strata title. If you're selling a strata title property, you'll also need to include:

- a copy of the **property certificate for the lot and common property**
- a copy of the **strata plan** showing the lot
- a copy of any change of **by-law** affecting the use of common property.



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BEFORE YOU SELL CONTINUED

What warranties are you deemed to have made about the property?

Unless the contract for sale includes specific information that says otherwise, by putting your property on the market you're deemed to have made a number of promises about it. These include:

- that the land isn't subject to any 'adverse affectation' (essentially government proposals that might affect the land)
- that there's no sewer on the land that isn't shown in the drainage diagram
- that the zoning certificate gives an accurate picture of the zoning of the land at the date of the contract.

What happens if the contract doesn't comply?

If you don't comply with these Vendor Disclosure Requirements and there turns out to be a problem with the property, the buyer may be able to cancel the contract for sale, in which case you'll also have to return their deposit. This could be very serious if you've already bought a new home.

Standard or tailored terms?

Many of the terms in any contract for sale will be 'standard', which means that they've been in use for a long time and are generally considered to be fair to both the seller and the buyer. You don't necessarily have to include all of these standard terms in your contract, especially if they don't reflect your needs or the property you're selling.

Your solicitor will make sure that the contract for sale doesn't only meet the legal requirements, but that it's also in your best interests.

That said, it's likely any buyer will want to negotiate some of the terms on which they're buying. For instance, if they're also selling a home, they may want a longer or shorter settlement period than normal. Alternatively, they may want to make sure certain items, such as the blinds, are included as 'fixtures'.

Your solicitor will continue to negotiate with the buyer's solicitor to make sure that you still sell on your terms. This will include working out a time to 'settle' the sale, which is when you'll be paid the balance owing.



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BEFORE YOU SELL CONTINUED

HOW DOES A 'COOLING OFF' PERIOD WORK?

A cooling off period gives a buyer the chance to consider whether they really want to enter the contract once the emotion of making an offer has subsided (it also gives them the chance to carry out any building and pest inspections before the contract is final).

Potential buyers will usually only forfeit 0.25% of the purchase price if they pull out during the cooling off period.

In some circumstances you can ask the buyer to waive the cooling off period, especially if they have a solicitor acting for them and have done their searches and inspections.

Selling by private treaty v selling by auction

Most properties in NSW are sold by private treaty. This is where you advertise the amount you'd like to achieve for your property and then negotiate the final price with any prospective buyers.

If you choose to sell by auction, the contract won't include a 'cooling off' period. Instead, if the property is 'on the market' (ie your reserve has been met) and the hammer comes down, the winning bidder is bound to go through with their purchase (unless, of course, there is a serious problem with the contract for sale).

What's included in the sale?

Unless the contract specifically says otherwise the property is sold 'in the state it's found'. That also means any 'fixtures' are automatically included.

A fixture is anything that can't easily be taken away without doing damage to the property. For instance, stoves are usually fixtures because they're wired in, whereas fridges aren't because they only need to be unplugged. Sometimes you may be able to exclude a fixture from the contract for sale. At other times, what constitutes a fixture isn't so clear cut (eg removable floor coverings or an above-ground pool) and this can lead to a dispute between you and the buyer.

Where anything is in doubt, it should be expressly included in the contract for sale.

Agent's fees

One cost you should factor in to the sale is the agent's commission. It's usually a good idea to shop around and compare commission rates of various agents as well as the services being provided. Agents are required by law to give you a written guide to their fees, commissions and expenses before you sign an agreement with them.

You should have your solicitor review the agent's agreement before you sign it.



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EXCHANGING CONTRACTS

What is exchange?

A contract to sell a property becomes binding when the buyer and seller sign their copy of the contract for sale and then 'exchange' them. At exchange, the buyer also usually hands over a deposit (usually 10%).

At an auction, exchange happens immediately after the winning bid is accepted. Your solicitor or agent will usually effect contract exchange by delivering your signed contract to the buyer and collecting the buyer's signed copy as well as the deposit. However, it's not unusual to exchange contracts by mail.

The deposit

Often after exchange your real estate agent will invest the deposit in an interest bearing account until settlement (your solicitor may do this if you don't have an agent). When the sale is finalised any interest earned on the deposit will then usually be split equally between you and the buyer.

Stamp Duty, GST and CGT

In NSW only buyers have to pay stamp duty on the sale of a property. However, there may be other taxes you'll need to pay, particularly if you're selling an investment property.

GST doesn't generally apply to the sale of residential property. But you will be liable for GST if the property you're selling has a commercial use (and in some other limited circumstances).

Unless you purchased the property before 1985, the sale of an investment property will usually attract Capital Gains Tax (CGT). However, you don't usually have to pay CGT on the sale of your own home.

That said, the law surrounding CGT is complex so you should see your solicitor if you're in any doubt about whether or not you'll need to pay CGT.

What happens if a buyer wants to get in early?

Sometimes a buyer will want to occupy the property before settlement, especially if they've already sold their home. The standard contract for sale has a clause governing this scenario. It says that the buyer will have to pay you an occupation fee, creating a licence which runs until settlement date. It also says that the buyer must take out insurance and cannot make structural changes. Any adjustments to utility bills, taxes, etc should also take into account the date of occupation.

Because risk ultimately rests with the seller, you should never let a potential buyer take possession of your house before settlement until you've consulted your solicitor. An alternative to early occupation may be to bring the settlement date forward.



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FINALISING THE SALE

BUYING AND SELLING AT THE SAME TIME

Chances are you may be looking to buy a new house at the same time as you're selling your current one. In that case, it's important that you try to make sure the settlement date in both contracts is the same.

If the settlement date on the contract for the house you're buying falls before the settlement date on the contract for the house you're selling, you may need to take out expensive 'bridging finance'. If it's the other way around you may be forced to live with friends or family until you can move in.

What happens at settlement

When you sign the contract you'll usually agree to a settlement day. Most commonly this will be six weeks after the date of exchange.

At settlement the buyer pays you everything they owe you to 'settle' the purchase. This amount will take into account any utility bills you've already paid as well as any tax calculations that your solicitor makes.

If the buyer can't settle by the date stipulated in the contract for sale, you're often entitled to charge interest. In some limited circumstances, you may even be able to cancel the sale.

If you owe money on the home you're selling, your solicitor will talk to your bank or building society to work out exactly how much you need to pay to 'discharge' the mortgage. They'll let the buyer know this amount so that they can make out a bank cheque to your lender.

They'll also tell the buyer who you'd like the balance to be paid to.

Do you need to be present at settlement?

You don't usually need to attend settlement in person.

Instead, your solicitor and the buyer's solicitor will meet to make sure they have everything they need for the sale to go ahead. If you have a mortgage over the property you're selling, a representative of your bank or building society will also attend settlement to receive any money owing on your loan.

Get in touch with a solicitor

If you're thinking about selling a home, you should get in touch with your solicitor as soon as possible. They'll help talk you through the process and will be able to give you great advice.

If you don't yet have a solicitor, don't worry. We've made it easy to find one near you through our online '[Find a solicitor](#)' service.



Also available:

**YOUR GUIDE TO
BUYING A HOME**



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