

MATTHEWS DOOLEY & GIBSON

SOLICITORS & ATTORNEYS

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IMPORTANT INFORMATION FOR VENDORS REGARDING THE SALE OF PROPERTY

BLACKTOWN

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The following information applies to vendors of **all types of properties** including houses, vacant land, units and commercial/industrial properties. We ask that you read this document carefully and should you have any queries regarding any of the contents, or do not understand any of the document, you should contact the person handling your matter **as a matter of urgency**.

PRACTICAL MATTERS

It is our experience that the time taken to complete transactions is of paramount importance to everyone. Please note:

1. You can assist by responding promptly to our requests for information and to our requests for cheques to cover disbursements.
2. If you have a loan in respect of the property, please ensure that any discharging authority that your lender requires is signed as soon as possible.
3. Please supply us with rate notices and let us know if you make any further payments of rates prior to completion.
4. You must be ready to give vacant possession on or by the date of completion. The standard Contract provides that the purchaser is entitled to vacant possession on completion.
5. Often sales are delayed by the slowest party. You may be assured that we will be doing our best to achieve a settlement on time - we refer you to our comments below concerning completion, but we advise you to aim for the date which is specified in the Contract.

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COOLING OFF PERIOD

On 1st October 1990, a new set of laws commenced to replace the "anti-gazumping" laws which have been in force since 1987. In simple terms, buyers of a house or land for residential purposes (ie. it does not affect industrial and commercial properties) have a five business day cooling off period after a Contract is exchanged. If the buyers then change their mind they can opt out of the Contract, however, they lose 0.25% of the purchase price to the vendor.



We have
ACCREDITED SPECIALISTS
in

PROPERTY LAW
PERSONAL INJURY LAW
CRIMINAL LAW

Norwest Legal Services Pty Ltd
trading as
Matthews Dooley & Gibson
ABN 31 079 872 423



Please note that this "cooling off" legislation does not allow the vendor to change his mind. **Once the Contract is exchanged the vendor is legally bound to proceed with the sale**, unless the buyer validly exercises his rights to "cool off".

The cooling off period can be avoided and an unconditional exchange of Contracts created if the buyers seek the advice of a solicitor who signs a "Section 66W" Certificate.

If your agent wishes to achieve an immediate exchange of Contracts with a buyer it will be in order for you to sign a Contract which we have prepared and given to your agent. You must, however, notify us urgently that you have signed a Contract.

If you are buying another property and wish to move house on the same day we recommend that you discuss this with us before you sign any Contract for Sale.

PRIOR TO SELLING YOUR PROPERTY

1. Residential Properties (units, houses and land under 2.5 hectares in area)

Prior to the vendor's real estate agent showing **any persons** through a property, that agent **must** have in his possession a Contract for the sale of the property containing all the documents prescribed by law. Where there is no agent, the vendor himself must have such a Contract. It is an offence for either a real estate agent or vendor to breach this law and substantial fines can be imposed.

2. Vendor Disclosure

The law requires that the Contract have annexed to it copies of the following (which either we or the Agent will obtain on your behalf):

- a. Planning Certificate
- b. Drainage Diagram (where property is connected to sewer).
- c. Copy of the Title Deed and numerous other documents relating to the Title.

The agent cannot show the property until all these documents have been obtained.

If you have undertaken any building alterations or additions in the past seven (7) years as an owner builder, you should disclose the relevant details under the Home Building Act 1989. An owner builder must not enter into a Contract for Sale unless a Certificate of Home Owners Warranty Insurance is attached to the Contract. You cannot contract out of this requirement, and failure to provide this Certificate will result in the Purchaser being able to withdraw from the Contract at any time prior to settlement.

If you have been issued with an Occupation Certificate from the local Council for any building works or alterations carried out on the property, you should provide the Solicitor acting for you with a copy of same prior to the Contract being prepared.

To protect yourself, you should disclose in the Contract to the purchaser any structures which either have not been approved by the Council or for some reason do not meet Council requirements. If you are aware of any such structure you should notify us before the Contract is sent to the agent. If you do not notify us and no provision is made in the Contract it may be possible for the **purchaser to withdraw** from the transaction **even after exchange of Contracts**.

DURATION OF THE TRANSACTION

1. **Prior to Exchange of Contracts**

When your buyers have submitted an acceptable offer, they will require time to arrange their finance and to carry out certain preliminary enquiries. Similarly, your buyers may need to simultaneously exchange Contracts on a property which they may be selling. At this point an exchange of Contracts could occur with the buyers attending to these matters within the five day cooling off period. Alternatively you could verbally agree to allow the buyer time to do this before an exchange **but** such an agreement binds neither party. The time for an exchange of Contracts in those circumstances varies but should your exchange not take place within two weeks of your buyers deciding to purchase, you should consult us for advice. You may have to decide at that stage whether to persist with your buyers or relist the property for sale.

2. **Exchange of Contracts**

Subject to cooling off rights this is the point of time when the Contract becomes binding on both you and the buyer and the buyer pays the full deposit.

3. **Date of Completion**

Matters of this type are normally completed five to eight weeks **after the date of exchange of Contracts**. This is not, however, a hard and fast rule and is merely an average time period. Contracts prepared by us provide that if completion does not take place within five to six weeks of the date of exchange either party may serve a notice requiring completion within a further two weeks. Thus, as the Contract stands, **we cannot force the buyer to complete until eight weeks** have elapsed from the date of exchange. The notice referred to is not issued automatically and you will have to specifically instruct us at the end of the initial six weeks' period should you wish the notice to be issued.

Should you wish any reduction or extension of the time period contained in the Contract please advise us **now** as after exchange it will be too late.

INSURANCE

You must maintain adequate insurance cover on the property and on any contents until we confirm to you that completion has taken place.

AFFECTATIONS, DISPUTES AND NOTICES

As you are probably aware, the buyer's solicitors conduct a number of searches and enquiries with respect to your property. Should any of these searches or inquiries reveal that your property is affected in some way the buyer may withdraw from the Contract and obtain a refund of his deposit **even after exchange of contracts**.

You should now **read the following list carefully**. If you have received any notices, or are aware of any affectations, in respect of the following you must notify us **BEFORE EXCHANGE OF CONTRACTS** so that we can make the appropriate provision in the Contract:-

- Your Local Council (other than rate notices)
- Roads & Traffic Authority
- Water Board (other than rate notices)
- Department of Education
- Electricity Commission
- Heritage Council
- Australian Gas Light Company
- Mine Subsidence Board
- Housing Commission (or Land & Housing Corporation)
- Department of Public Works
- Land Commission
- Environment Protection Authority
- State Rail Authority
- Land Tax Office
- State Planning Authority
- Department of Land & Environment
- Any other statutory authority

The State Government has recently introduced a further new law which provides that every person selling a property must disclose in full, in the Contract, the following matters. Failure to disclose them will again allow the buyer to withdraw from the transaction and obtain a refund of his deposit even after exchange of Contracts. If you have knowledge of any of the following you must notify us **immediately**:

1. Any dispute, notice or claim relating to
 - a. any boundary or boundary fence between your property and adjoining land
 - b. any encroachment over a boundary of an adjoining property by any building or structure erected on your property

- c. any encroachment onto your property by any building or structure erected on any adjoining land.
2. Any dispute with, or notice received from, the Local Council in respect of any work (including demolition) required to be carried out on your property by that Council.

You should also advise us if you believe that the land is affected by any contamination or any illegal sewer connections.

FEES

Prior to exchange of Contracts, we will give you an estimate of our fees and the disbursements necessary to complete your sale. These fees allow for all of the work normally required on a sale, however, if we have to conduct negotiations concerning the terms of the Contract either before exchange or settlement, extra fees will be payable for that work. Those fees would be charged as per our fee agreement.

We do not ask for payment of fees before completion of the sale unless the property remains unsold for three months or if you withdraw the property from sale in the meantime. We would, in that event, bill you for our work to that time in accordance with our standard hourly charges.

DISBURSEMENTS

These are expenses paid by us on your behalf. Contracts must include such items as council planning certificates, drainage diagrams and title searches and these must be available before your property can be listed with your agent. Please forward to us, without delay, \$300.00 to cover these disbursements. There will be further disbursements incurred on exchange and completion, however, these will only be payable by you when the sale has settled and all of these charges are included in our estimation.

RELEASE OF DEPOSIT

If you are intending to buy another property please advise us **now** even though you may not yet have found one. There are two reasons why we need to have this information. Firstly, we will know from the outset that we will need to organise exchange of Contracts and completion of both your sale and purchase to take place at the same time.

Secondly, in many cases we can arrange for the deposit which is paid on your sale (which is normally held by the agent until completion) to be released to you in order that you may apply those funds towards the deposit on the property you are buying.

INCLUSIONS

If you have not already done so, you should immediately advise us as to those items which are to be included in the sale (eg. carpets, curtains, light fittings, etc.) together with any fixtures which are to be specifically excluded so that we can incorporate those in the Contract.

VENDOR DUTY

Sales of property other than your main residence will attract a 2.25% duty on the sale price. This duty must be paid prior to settlement taking place. There are a number of exemptions to this duty which we list below for your information:-

1. Principal place of residence.
2. Farms.
3. Property that is sold at a loss to your original purchase price.
4. If the sale price does not exceed the original purchase price by 12%. We note that there is a sliding rate of duty for an increase between 12% to 15%.
5. It is a new or substantially new building, this is an exemption aimed at builders primarily.
6. Subdivision of your principal place of residence or farm.
7. Land sold in conjunction with a business.
8. Vacant land which has been substantially improved by you.
9. Compulsory acquisition.
10. Land sold subject to a conservation agreement.
11. Possessory application or application to bring land under the Real Property Act 1900.
12. Multiple main residences, this will apply where you are trying to sell your home after you have bought a new home, subject to certain qualifications.

Should you believe that you may qualify for one or more of these exemptions, please contact the solicitor handling your matter immediately.

LAND TAX

If you are selling a property which is **not** your principal place of residence you may be liable to pay land tax. This tax is separate and apart from income tax and Council and Water Rates.

The buyer's solicitors will carry out a search at the Land Tax Office to see if any land tax is owing on your property. If there is tax owing it could **delay completion considerably**.

If you own more than one property and are not sure about your land tax situation contact us **now** to discuss the matter.

You may be entitled to an adjustment of land tax for the current land tax year if the Contract so provides. This adjustment is similar to that made for Council and

Water rates. If you do not advise us of your land tax liability, no such adjustment can be made and you will be required to pay land tax for the full year.

CAPITAL GAINS TAX

A liability for Capital Gains Tax arises upon the sale of any property acquired after 19 September 1985. This liability does not apply in relation to any property which has continuously been your principal place of residence since the date of acquisition however exceptions to this rule include instances where a home business is in operation or where the property exceeds two hectares in area.

We are able to assist you with advice as to Capital Gains Tax generally and Tax planning and, in appropriate cases, we are able to assist in structuring your transaction to minimise Capital Gains Tax liability. We would be pleased to assist you in this area, however, if you do not seek our advice we shall assume that you are aware of your potential Capital Gains Tax Liability or have obtained advice elsewhere.

GOODS AND SERVICES TAX

If you are selling a property other than your principal place of residence then you may incur a goods and services tax (GST) liability of 10% of the sale price. If you are subject to a GST liability as a result of the sale, unless the Contract passes that liability on to the Purchaser, then you will have to pay the 10% GST liability out of the sale proceeds. It is your obligation to advise us if you think that you may have a GST liability and, if you are unsure, you should consult your Accountant or instruct this firm to supply you with an advice (for which we will be entitled to charge fees in addition to the fees payable in connection with the sale). Unless we receive your specific instructions to include in the Contract a Special Condition which passes any GST liability on to the Purchaser then there will be no such Special Condition in the Contract and any GST liability arising from the sale will have to be paid by you.

FINANCIAL AND ESTATE PLANNING

As a property owner, there may be other matters upon which we can provide assistance concerning financial planning or estate planning. There may be significant taxation or other benefits that can be gained from such advice. We are able to provide you with specialist advice concerning trusts and wills.

Yours faithfully
Matthews Dooley & Gibson

