



Find Your Lawyer



I Want to Sell My Home

FAST FACTS

GETTING STARTED

Selling a home can be the largest financial transactions you'll ever make. It's a time consuming and complex process and finding a lawyer at an early stage can assist you in ensuring all documentation is legally correct.

FINDING AN ESTATE AGENT

Most properties are sold by estate agents on behalf of the vendor (the seller). As the vendor, your lawyer will assist you to fully understand all contracts and agreements including the basis on which an estate agent is retained and the terms of any agreements.

Estate agents are bound by law and professional conduct regulations to always act in the best interests of you the vendor. They are required by law to:

- Advise you that commissions and outgoings, such as advertising costs, are negotiable
- Communicate all offers on the property to you
- Give an estimated selling price to you before the agency agreement is signed
- Disclose any vendor bids at auction (if vendor bids are allowed).

These obligations must be communicated in writing to you before an estate agent obtains an authority to act.

Generally, unless stated otherwise, an estate agent's agreement continues up to 30 days after a sale at auction and 60 days in other cases. If an estate agent is acting within their authority, statements they make can be legally binding on you.

You can also expect your estate agent to:

- Advertise the property and develop a marketing plan for the sale
- Advise you on the best method of sale
- Attract prospective buyers and organise house inspections; and
- Organise and conduct an auction if this is the chosen method of sale.

You can make changes to the estate agent's agreement after the authority has been signed. Make sure you always make any changes in writing on the authority to sell. You and the estate agent must initial the changes.

WHAT IS CONVEYANCING?

Conveyancing is the transfer of real estate ownership from one party to another. It is a complex area of law, and unfortunately, small mistakes during conveyancing can lead to larger problems down the track. The best way to avoid any problems is to work with a qualified and experienced property lawyer. Unlike other service providers in this area, property lawyers are up to date on all state, local and federal requirements and are best placed to support you to understand the complexities for the purchase and sale of property.

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Before you engage the services of a property lawyer, you need to be sure you are working with someone experienced and qualified in this specific area of the law. You may like to ask:

- How long have you worked in this area of law?
- Are you an Accredited Specialist in Property Law?
- How will we communicate when we work together?
- How recently have you been updated on the laws and regulations?
- Can you provide references?
- How do you plan to help me with my case?

YOUR RIGHTS AND OBLIGATIONS. WHAT YOU NEED TO KNOW

Your lawyer will assist you in understanding your rights and obligations in relation to a range of issues including:

- Estate agents
- Obtaining finance
- Planning and zoning restrictions
- Certificate of Title
- Vendor's Statement
- Contract of Sale
- Cooling-off provisions
- Builders' warranties
- Owners corporations
- Taxation
- Insurance
- Settlement.

INFORMATION ABOUT YOUR PROPERTY

Give your estate agent precise instructions about the condition of your property:

- A comprehensive list of all belongings which will be taken with you, or
- Be specific about what items are included in the sale.

It is illegal to misrepresent your property in any way when promoting the property verbally, in writing or with photographs.

A buyer may be able to take legal action against you if they can show the property was misrepresented.

THE VENDOR'S STATEMENT

A vendor's statement (also called a Section 32) should be prepared by your lawyer as it is a legal document and must be factually correct.

- Must be supplied to the buyer before the buyer signs a contract and contains information about the land.
- Does not contain any information about the condition of buildings and fittings.
- A contract of sale can be withdrawn if the statement is incorrect or contains insufficient information.

THE CONTRACT OF SALE

Property purchases need to be by written contract. There are two sorts of written contracts commonly used: a contract of sale, and an auction contract. You need to be sure you understand all clauses in your contracts so it is important to discuss them with your lawyer before they are signed.

The Contract of Sale will include:

- details of the parties
- the terms of purchase
- a description of the property and chattels
- the date of the sale and settlement
- additional terms as agreed between you and the buyer

When both parties sign the contract you and the buyer are then bound by the contract.

SELLING AT AUCTION

There are strict rules around the conduct of auctions to protect the interests of potential buyers and you, the vendor.

Vendor bid is a bid made on behalf of the vendor and must be announced by the auctioneer. Where permitted, they must be negotiated between the vendor and the estate agent and disclosed to potential bidders before the auction starts.

Dummy bidding is used to force the bidding price up by making or accepting a false bid at auction. A vendor bid made by anyone other than an auctioneer is considered a dummy bid and is illegal with substantial penalties applying.

RENOVATIONS COMPLETED AS AN OWNER BUILDER

Where you have completed renovations on your home as an owner/builder and are considering selling within six and a half years of its construction you must obtain an inspection report. This report, subject to any defects listed, will guarantee the property for defects in workmanship for the remainder of the period. You may also be required to provide particular warranties about the quality of building work carried out, the quality of the materials used, and the compliance with laws and requirements in carrying out the building work.

OWNERS CORPORATION MEMBERS

If your property forms part of an owners corporation, you must provide a certificate in relation to owners corporation agreements.

SOLD!

The deposit: The deposit will be paid to your estate agent who retains it as stakeholder for both seller and buyer.

Rates: All rates and other recurrent outgoings relating to the property are adjusted between the buyer and seller.

Settlement: Settlement is the final process where title documents and the purchase funds are exchanged between the parties. At settlement the balance of the purchase money is paid in exchange for the transfer documents and the certificate of title.

Notification: When change of ownership takes place your lawyer will notify all authorities on your behalf.

The cooling-off period: Cooling-off provisions may apply with a residential property or a rural property of less than 20 hectares.

Please note the above information is not intended to, and does not encompass all aspects of the law on this subject matter. Further professional advice should be sought before action is taken based on matters outlined on this page. January 2013.



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