

Calculating rates and other expenses when buying or selling property

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When buying or selling property, we ensure that certain rates and expenses relating to the property are apportioned appropriately between the vendor and purchaser on settlement. In this article, we outline how the balance to be paid by a purchaser on completion of a property conveyance, is calculated when considering these rates and expenses. These calculations are also commonly referred to as settlement figures or rate adjustments.

What is the procedure to calculate the balance due at settlement?

The standard conveyancing procedure is for the purchaser's representative to do the calculations and give them to the vendor's representative for checking.

This is because it is the purchaser's representative who does all the rate enquiries on the property. This includes enquiries as to how much will be payable for council rates, water rates, strata levies, etc.

Once the vendor's representative is satisfied with the accuracy of the figures, they will provide details to the purchaser's representative as to how the amount due at settlement is to be paid. This is referred to as a direction to pay.

Types of adjustments at settlement

Various adjustments and allowances are made depending on the nature of the property. The general principle is that the vendor is liable for all rates and levies up to the day of settlement and the purchaser is liable for those expenses after the date of settlement.

Similarly, any money received for the property (e.g. rent), is for the benefit of the vendor up to the date of settlement and for the benefit of the purchaser after the date of settlement.

As a general rule, rates and levies will be considered as paid either to the end of the next quarter or to the end of the year, even if they have not, in fact, been paid. As a guideline, rates and levies are usually adjusted as follows:

Council rates are calculated on a financial year basis. They may be adjusted as being paid to the end of the next quarter or, in some cases, the end of the financial year.

Water rates are usually adjusted to the end of the current quarter.

Strata levies (if applicable) are usually adjusted to the end of the current quarter.

Combined council &water rates - For properties outside the Sydney metropolitan area, council and water rates are often combined and will be adjusted in the same method as council rates in the Sydney area.

Water usage - Sydney Water (or the relevant water authority) provides us with a figure to allow us to calculate the average daily water usage of the property. The vendor will make an allowance in favour of the purchaser for the water usage in the quarter up to the date of settlement.

Land tax is calculated on a calendar year basis. If the vendor is liable for land tax on the property for the year, this land tax must be cleared at settlement.

Where the property is commercial real estate or residential real estate purchased from a developer, then land tax is usually adjusted in the same way as rates but on a calendar year basis.

Rent - The amount of rent paid or in arrears at settlement is provided by the vendor. Any rents collected for a period spanning the settlement date will be considered so that the vendor allows for reimbursement to the purchaser, any amount of rent paid (in advance) for the period after settlement.

Sometimes a rent adjustment will not be included in the adjustment as the managing agent for the property may adjust the rent internally between the vendor and purchaser.

Registration fee for discharge of mortgage – Where the vendor has a mortgage over the title to the property, they will be required to pay out that mortgage at settlement, usually from the proceeds of the sale.

The purchaser is the one liable for the discharge of mortgage fee when they are registered onto the title at NSW Land Registry Services as the registered proprietor, which is why the discharge of

mortgage is included in the adjustments as an allowance from the vendor back in the purchaser's favour.

Important note:

As noted above, all rates and levies are treated as being paid by the vendor for the basis of these calculations, even if the vendor has, in fact, not actually paid for the period in question. If the rates or levies have not been paid, then payment will be made at settlement from the balance of the proceeds due to the vendor.

Calculating the balance then due on settlement

The commencing point for the statement of settlement is the sale price of the property. This amount is checked against what is actually stated in the contract.

The amount of the deposit shown on the statement of settlement is also checked against the contract and other records to ensure that the correct amount has been allowed in the calculation of the balance of the purchase price.

If a deposit guarantee bond was used for the deposit at exchange of contracts, then there was no payment of a deposit at that time. Accordingly, the full purchase price must be paid at settlement.

The balance due to the vendor, shown in the statement of settlement, is then the balance of purchase price due at settlement after deducting from the sale price the amount of the deposit (if any) paid on entering into the contract and allowing for the adjustments as provided for in the statement of adjustments.

Funds drawn at settlement

Once the statement of settlement has been submitted to the vendor's representative and has been approved by them, the vendor's representative will submit their requirements to the purchaser's representative as to how the funds are to be paid at settlement.

The vendor may nominate the number of payments (and what they're for), the payee and the amount of each sum to be paid. These should all add up to the total balance due to the vendor as shown in the statement of settlement.

Consequently, there may be a variety of payments made, for example:

- the vendor may be paying out a mortgage;
- the vendor may wish to pay their legal fees or agent's fees from the proceeds of sale;
- the vendor may be purchasing another property and funds may be directed towards that transaction.

Providing that the amount of all funds handed over at settlement are in accordance with the direction supplied by the vendor, and it all adds up to the balance due to the vendor as shown in the statement of settlement, there is no need for concern by the purchaser

as to the payee of any of the funds.

Get help from a property lawyer

It's important to have expert advice and assistance, either from a lawyer or experienced conveyancer, when selling or buying property. This will ensure all calculations are properly accounted for and settlement can proceed smoothly on the day. Any problems, due to miscalculations, can be costly to either party.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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