



# 6 key things to consider before selling a property in NSW

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If the time has come for you to [sell your property](#), there are a number of things to consider in order to help you prepare for the sale. This blog will outline 6 primary considerations that you should carefully consider and plan ahead for to ensure the property transaction runs as smoothly as possible.

Please note that this is not an exhaustive list of considerations and is intended as a guide only.

## 1. Engaging a real estate agent

Engaging a real estate agent is typically one of the first steps undertaken when considering the sale of a property. Should you require, we can provide the details of real estate agents local to you who may be able to assist you with your property sale.

## 2. Contract for Sale

One of the most critical documents in the sale of property is the Contract for Sale. A real estate agent cannot commence marketing a residential property for sale in NSW until a Contract for Sale has been prepared. After deciding to proceed with the sale, [the sooner you speak to your lawyer](#), the more time that may be available to address any potential issues with the property or obtain any documentation for the property that may be missing.

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### Key particulars to consider when preparing the draft Contract for Sale

- **Inclusions and exclusions for the sale:** Items that will be included and required to remain in the property on completion or items to be excluded and required to be removed from the property.
- **Deposit amount:** This is [typically 10% of the sale price](#), but many purchasers will request a 5% deposit on exchange.
- **Timing of settlement:** The usual settlement period is 42 days from the date of the Contract (i.e. the date of exchange). However, the settlement timing is often a matter of negotiation. Should you require a longer or shorter period of time, or a particular settlement (for example, if you are already agreed on a settlement date for a purchase that you require a simultaneous settlement for) you may wish to nominate this from the outset.
- **Possession at completion:** When selling your property, you can choose to do so with vacant possession or subject to tenancy. Vacant possession requires you to leave the property empty, untenanted and free from any right of occupancy, ready for the purchaser to move in. If you decide to sell subject to tenancy, then you will need to provide details as to the current tenancy.

### 3. Disclosure requirements when selling property

In NSW, sellers are required to disclose certain information about the property. Failure to do so can lead to legal complications, including a purchaser potentially having a right to rescind the Contract or claims of misrepresentation.

Several of the key disclosure documents (that your solicitor will assist in ordering), such as title searches, zoning certificates (section 10.7 certificates) and sewerage diagrams are documents that are required to be attached to the Contract prior to exchange.

Other disclosure documents that may need to be considered or disclosed appropriately to prospective purchasers include:

- **Special arrangements with neighbours:** This can include an intention to update a dividing fence or some other agreement to use part of your property or their property in a way that is not recorded on title.
- **Encroachments:** This includes where your structure crosses the boundary onto a neighbouring property or when a neighbour's structure crosses the boundary onto your property.
- **Home owner warranty insurance:** If the property is a residential property and home building works were done to the property in the past 6 years prior to the sale for a value exceeding \$20,000, then a Home Owner Warranty Insurance Certificate or an owner builder disclosure may need to be attached to the Contract.
- **Occupation Certificates or Building Information Certificates:** If works were done to the property that required council approval, then an occupation certificate or building information certificate would provide a purchaser confirmation that the works were completed in accordance with the terms of approvals.
- **Swimming Pool Certificates:** Properties that have an outdoor spa or swimming pool require a registration certificate and either a compliance or non-compliance certificate or recent occupation certificate.
- **Surveys:** A survey provides confirmation of the location of the structures relative to the boundaries of the property.

### 4. Review existing mortgages and encumbrances on the property

Before proceeding with the sale, it is crucial to review any existing mortgages or encumbrances on the property.

- **Mortgage:** Any mortgage will need to be discharged by settlement. Your solicitor will usually assist in communicating and coordinating the discharge of mortgage with your bank. If you are falling behind on mortgage payments, speaking to your mortgagee first may assist in outlining your options prior to selling. If you instead intend to retain the mortgage and substitute, then this may need to be coordinated.
- **Caveats:** Identifying and addressing any caveats that may affect the sale. These will also need to be removed by settlement.

## 5. Ensuring compliance with legislation

NSW property transactions are governed by several laws and regulations. Key legislative requirements include:

- **Orders or Notices from Government authorities, Councils or water authorities:** These may include notices requiring that you carry out any particular work on your property, refrain from doing something, or requiring you to expend money.
- **Unapproved works:** This may include if you have done any works to the property that required council approval or strata approval, but no such approval was obtained before proceeding with the works.
- **On-site sewer management systems:** If the property is not connected to the sewer mains, then some type of on-site sewer management system would need to be present on the property to store, treat and dispose of waste water, which would also usually require council's approval.
- **Building over or near sewer main:** If the home or other structure is built very near or is built over the sewer main then the sewer authority would usually have had to have provided authorisation to build that structure. A 'Building Over Sewer' letter will usually confirm whether or not such approval was obtained.
- **Smoke alarms:** There are specific requirements for smoke alarms to be installed on residential properties that should be addressed before selling.

## 6. Tax implications when selling property in NSW

The tax implications of selling a property should be considered prior to selling as it may affect the timing or decision to sell. The vendor's tax residency may also require consideration. Key tax considerations when selling property include:

- **Capital Gains Tax (CGT):** Assessing whether the sale is subject to CGT and calculating the liability. When selling a property for an amount exceeding \$750,000, then clearance certificates may also be required in the sale process.
- **Goods and Services Tax (GST):** Determining if the sale is a taxable supply for GST purposes.
- **Land Tax:** If you have paid land tax in any given year, then you may need to consider whether you require a land tax adjustment on settlement. You may find our earlier blog, ["Who pays land tax and how is it calculated?"](#) helpful.

## Conclusion

Whilst these considerations are not the only factors to think about when selling your property, they are the key considerations which apply to all property sales and are a good starting point when looking at selling your property.

# Get help from a property lawyer

E&A Lawyers have a dedicated and experienced property law team who can help you through your property sale from start to finish.

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

## Contacting E&A Lawyers

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