# Risks of buying a property before selling your existing property in NSW

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Deciding to purchase a new property before selling your existing one can be tempting, especially if you've found your dream home and don’t want to miss out. However, if the funds from your current property’s sale are needed to finance the new purchase, this can come with considerable financial and legal risks. In order to make an informed decision regarding your home and investments, these risks should be considered before making the leap to purchase without the certainty of a sale.

Please note that this is not an exhaustive list of considerations and is intended as a guide only. If you need specific advice related to your individual circumstances, feel free to speak with one of our property lawyers.

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## Uncertainty in the NSW property market

The property market can be unpredictable, and there is no guarantee that your existing home will sell quickly or for the price you expect. If the market slows down, you could face delays in selling your home, or you may have to lower your asking price to attract buyers.

No one, including a real estate agent, will know the price your existing property will sell for until a purchaser has been located and contracts exchanged.

If you have already committed to buying a new property, and you are relying on the funds from the sale of your existing property, a deadline for your sale would have been created. The urgency to sell prior to this deadline could leave you in a difficult financial position if you are unable to achieve the sale price you originally predicted. You may find yourself being forced to sell at a lower price than you had planned to avoid defaulting on the other property you have already purchased.

If you have calculated your ability to finance your purchase based on a sale price that cannot be reached for your sale, then you may struggle to meet the financing requirements of the new purchase.

**KEY RISK:** A buyer's market, sluggish or otherwise volatile property market, can compromise your ability to sell your home within the required timeframes or at the desired price, affecting your ability to finance your purchase and overall financial stability.

## Increased pressure and potential for compromises when buying before selling

Buying before selling puts you under pressure to sell your current home quickly, often forcing you into a less favourable negotiating position. You may be tempted to accept a lower offer just to avoid paying two mortgages or incurring the cost of usually very expensive bridging finance costs.

Additionally, if your property doesn't sell within the desired timeframe, you might feel forced to compromise on other terms of the sale, such as settlement dates or conditions that would not typically be acceptable to you if you were not subject to the same pressures.

If a purchaser is aware of your urgency to sell, they could use this to their advantage in their negotiations with you, which could come at your detriment.

**KEY RISK:** Pressure to sell quickly can lead to hasty decisions, reducing the funds available from your sale and impacting the overall affordability of your new property.

## Risk of defaulting on the new property purchase

Defaulting on a property purchase, which could occur if you cannot complete the purchase by the contractual completion date, can lead to significant legal and financial consequences.

This can include the Vendor issuing a Notice to Complete giving you 14 days before the Contract will be terminated and the deposit claimed. If the Vendor terminates the contract, then the deposit is typically forfeited to the Vendor, and the Vendor may also pursue legal action against you to recover further damages. This can include the costs incurred in re-listing the property and any difference between the price you agreed to purchase for and the sale price if the property sells for less in a later sale.

**KEY RISK:** Significant legal and financial consequences can arise if you fail to or are unable to complete the purchase of the property by the contractual completion date.

## The cost of bridging finance can be expensive

One of the most common ways to finance a new property purchase before selling your existing one is through bridging finance. Bridging finance is a short-term loan intended to help you “bridge” the financial gap between buying a new property and selling the existing one.

While bridging loans can be helpful, they come with higher interest rates compared to standard home loans and can also include higher fees payable to the lender to establish the loan. Additionally, you will be required to service two loans until your current property sells, which can put a significant strain on your finances, particularly if the sale is delayed.

**KEY RISK:** Prolonged reliance on bridging finance, especially if your current property takes longer to sell than expected, can create financial strain.

## Impact on loan eligibility and cash flow

If your existing property has not sold and you are still servicing that mortgage, it can impact your ability to secure a new loan for the purchase of the new property. Lenders will take into account your existing financial commitments, and having two mortgages can reduce your borrowing power.

Even if you are approved for a loan for a new property whilst still maintaining the loan on your current property, managing two mortgage repayments can put an additional strain on your finances, especially if your current home is taking longer to sell than expected.

**KEY RISK:** Having two mortgages at the same time can limit your loan options and stretch your cash flow, making it difficult to meet ongoing financial commitments.

## Tax implications if buying a new property before selling your current property

Depending on your financial situation, buying a new property before selling your current one can also lead to potential tax implications. If you own two homes, this could result in one of the homes being treated as an investment property while you wait for a buyer. This could result in capital gains tax (CGT) or land tax applying to the investment property.

**KEY RISK:** Unexpected tax liabilities can arise if the timing of your sale and purchase do not align as planned.

## How to manage or mitigate risks when juggling the sale of a current property and purchase of a new property

Buying before selling can be risky, and the stress that is caused by being subject to a deadline can be difficult to manage. If you proceed with the purchase of a new property before selling your current property, then the above risks cannot be avoided entirely. The only method of avoiding the risk entirely is to sell your current home before committing to a new property purchase (though this could create other considerations for you to manage).

The following may assist in managing or mitigating (but not entirely avoiding) the risks of buying before selling:

### Longer settlement periods for the new property purchase

Negotiating a longer settlement period on the new property may give you more time to sell your current home. You would still need to achieve the sale of the property within the longer settlement period agreed, but having that additional time may assist you in finding a purchaser. This will often require you to try to align the sale and purchase dates.

### Seek a right to terminate the purchase

It is extremely rare in NSW that a Vendor would agree to a purchaser having a right to terminate the Contract or a subject to sale clause. Depending on your negotiating power, and in very rare circumstances, such an arrangement may be agreed to offer a way out of your purchase.

### Consider your alternatives

The sale of your existing property within the required timeframe and for the amount you are seeking is usually your preferred option (your Plan A). If your sale does not proceed within the expected time and for the expected amount, you may need to consider contingency plans.

Alternative options should be considered before committing yourself to a new property purchase prior to the sale of your current property to ensure they are available to you, given your circumstances. This can include obtaining pre-approval for a bridging loan or loan on the new property or considering alternatives to finance the purchase of the new property.

### Consult a property lawyer

Seek legal advice to understand the implications of any contracts you sign.

## Get help from a property lawyer

Buying a property before selling an existing one can offer advantages in securing your desired home, but it’s essential to recognise and prepare for the associated financial and legal risks, especially if the funds from your sale are crucial for you to complete the new purchase.

While this guide provides a general overview of some risks when buying a property before selling an existing one, it should be noted that each situation is unique. Speaking with a property lawyer can help you navigate the legal and financial complexities of managing the purchase and sale.

E&A Lawyers have a dedicated and experienced property law team who can help you. 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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- Calculating all the costs when buying and selling property
- What if I accept less than 10% deposit when selling my property?
- 6 key things to consider before selling a property in NSW

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