

# Information Bulletin No 21

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## Changes to Conveyancing Laws from 1 October 1990

### Introduction

Important changes have been made to the law governing buying and selling residential property in New South Wales.

The new laws operate from 1 October 1990 and are contained in the Conveyancing (Sale of Land) Amendment Act 1990 and related Acts and Regulations. They change the procedures introduced in 1988 by the 'Anti-Gazumping Legislation'.

### Residential property

The new requirements only apply to residential property. This includes a house on land up to 2.5 hectares in area, vacant land for residential purposes up to 2.5 hectares in area, vacant land for residential purposes up to 2.5 hectares in area, home units, town houses and the like.

### Preliminary Agreements abolished

Preliminary Agreements (introduced by the 'Anti-Gazumping Legislation' in June 1988) have been abolished.

### Contract required before property offered for sale

A Contract of Sale must be prepared and be available for inspection when residential property is offered for sale. This is simply a continuation of the requirement introduced in 1988 and it is an offence not to comply. (Maximum penalty: \$1000)

Where an estate agent is used, the agent must hold a copy of the contract prior to offering the property for sale.

### Statement of purchaser's right

A statement of the purchaser's rights (in the prescribed form) must be attached to every contract for the sale of residential property.

If that settlement is not attached, the purchaser can rescind (that is, withdraw from) the contract at any time up to settlement.

### Cooling off period

Purchasers of residential property will have a 5 business day cooling off period after exchange of contracts in which to rescind the contract.

The cooling off period **starts** when the contract is made (that usually means exchange of contracts) and **ends** at pm (Sydney time) on the fifth business day after the day on which the contract was made.

'Business day' means any day except Saturday, Sunday or a day that is a public holiday throughout NSW. A seller does not have a cooling off period.

## Forfeiture

Purchasers who exercise their cooling off rights and rescind the contract during the cooling off period will forfeit to the seller 0.25% of the purchase price of the property. That amounts to \$250 for every \$100,000 of purchase price. This amount will be deducted from the 10% deposit usually paid by a purchaser on exchange of contracts. The balance of the deposit is refundable to the purchaser.

## When no cooling off period applies

There is no cooling off period:

- a) if the purchaser gives to the seller (or the seller's solicitor or agent) at or before exchange of contracts, a certificate by a solicitor or barrister stating that the contract has been explained to the purchaser;
- b) if the property is sold by public auction;
- c) if contracts are exchanged on the same day as the property was offered for sale by public auction but was passed in; or
- d) if the contract arises from the exercise of a valid option.

## Estate agents able to fill up and exchange contracts

Estate agents will now be able to fill up contracts for the sale of residential property. This means agents will be allowed to fill in, on an already prepared contract, details of the purchaser's name, address and description, the purchaser's solicitor's name and address, the purchase price and the date.

However, estate agents are NOT permitted to actually prepare contracts.

Estate agents will also be able to exchange but will not be able to charge a fee for filling up or exchanging contracts.

## Options

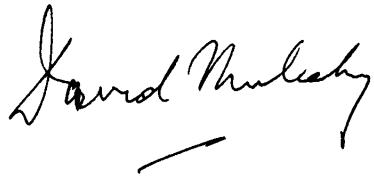
The law relating to options has been substantially changed. These changes include:

- options must be prepared in duplicate and must be signed by both purchaser and seller,
- purchasers will have a 5 business day cooling off period after the option is granted in which to rescind the option, subject to forfeiting 0.25% of the purchase price of the property,
- a full copy of the proposed contract must be attached to the option, and
- a statement of the purchaser's cooling off rights (in the prescribed form) must be attached to the option.

## Further information

Inquiries regarding the new legislation may be made to Land and Property Information on telephone 9228 6726.

However, if you are in any doubt as to your rights and obligations you should **seek advice** from your solicitor.

A handwritten signature in black ink, reading "David Mulcahy". The signature is written in a cursive style with a horizontal line underneath.

David Mulcahy  
**Registrar General**

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