

Fact Sheet

Exchanging Contracts (NSW)

What does it mean to exchange contracts?

The contract of sale

When you buy a property, you will have to sign a contract, which outlines the terms and conditions of the sale and valuable information about the land. The contract is prepared by the vendor's solicitor or conveyancer, and must be available prior to the sale so that potential purchasers can review it. It is highly recommended that purchasers use a solicitor to review the contract. Some details – such as the deposit, settlement period or inclusions – can be negotiated, typically through legal representatives for each party.

Exchanging Contracts

Exchanging contracts means that the vendor and purchaser are entering into a legally binding agreement. Once the vendor and purchaser have agreed on the sale price and all other details of the contract, both parties must sign a separate but identical copy of the contract. Each contract should be dated on the day agreed for exchange, and the purchaser must pay the agreed deposit at this time. Typically, the vendor's solicitor will receive the contract signed by the purchaser and the purchaser's solicitor will receive the copy signed by the vendor.

After exchange

NSW has a standard cooling off period that applies to non-auction residential property sales. This means that the buyer can choose not to go ahead with the sale within 5 business days from the date of exchange. Alternatively, the buyer can choose to sign an agreement that waives their right to a cooling off period; this is called a section 66W certificate.

The cooling off period

- At the time of exchange, the purchaser must pay 0.25% of the purchase price. If no waiver has been signed, a cooling off period applies.
- The length of the cooling off period can be extended by mutual agreement between both parties.
- If the purchaser decides not to go ahead with the sale within the cooling off period, they will forfeit the amount paid, but are not required to do anything further.
- Once the cooling off period expires, the contract of sale becomes legally binding.
- Properties sold at auction do not have a cooling off period and purchasers are legally bound to the contract once the hammer falls.

A section 66W certificate

- The vendor may ask the purchaser to provide a 66W certificate at the time of exchange, which waives the standard cooling off period, making the contract of sale legally binding immediately.
- A 66W certificate is typically asked for by the vendor to ensure the purchaser cannot back out of buying the property, and is common in a rising property market.
- Purchasers are not required to provide a 66W certificate, however if many buyers are competing for the same property, purchasers may risk losing the property without one.
- It is highly recommended that purchasers have completed all searches before signing a contract of sale with a 66W certificate (such as a getting a building and pest inspection and having a solicitor go over the contract), and that unconditional loan approval is obtained.



What are the benefits of a cooling off period?

Once the contract is exchanged, the property comes off the market. This means you still have time to complete a building and pest inspection, have the contract checked by your solicitor, confirm your loan approval and generally reassess your decision to purchase, without risking losing the property to another buyer.

What are the benefits of a 66W certificate?

It can be an attractive bargaining tool for purchasers if there are other interested parties competing for the property.

What are the risks of a 66W certificate?

The purchaser is legally bound to the contract of sale as soon as contracts are exchanged.

If the buyer wants to rescind from the sale after exchanging with a 66W certificate, they must pay 10% of the purchase price and may also be liable to pay further financial compensation to the vendor.

Need help?

For further information, please talk to your local Mortgage Adviser on (08) 9527 1800.

This sheet provides general information only and is correct as at the document date (12/04/2017). Please refer to your Mortgage Adviser for full details.