



THE LAW SOCIETY  
OF NEW SOUTH WALES

## Residential Conveyancing Protocol

Entered into by The Law Society of New South Wales  
and the Real Estate Institute of New South Wales on  
behalf of their respective members.



# RESIDENTIAL CONVEYANCING PROTOCOL

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## Part 1 - Introduction

- 1.1 The Law Society of NSW (Law Society) and the Real Estate Institute of New South Wales (REI) recognise that solicitors and real estate agents need to work together as professionals to ensure an efficient conveyancing process for residential property transactions, for the benefit of all parties in the transaction.
- 1.2 The parties acknowledge their intention to abide by the terms of this protocol as far as possible but agree it is not intended to give rise to legally enforceable obligations on their part or on the part of their members.

## Part 2 - Appointment of Real Estate Agent

- 2.1 The vendor appoints a real estate agent (agent) to market, promote and sell the property. The terms of that appointment are set out in an agency agreement.
- 2.2 The real estate agent shall take reasonable steps to identify the vendor.
- 2.3 A cooling-off period applies to agency agreements for the sale of residential property - Section 59 of the *Property, Stock and Business Agents Act 2002* (PSBAA).
- 2.4 If the cooling off period relating to the agency agreement has expired or is waived, the agent shall forward to the vendor's solicitor within two business days a completed Instructions to Solicitor/Conveyancer being the REI's form SAO0200.

## Part 3 - Instruction of Solicitor

- 3.1 Where the vendor instructs a solicitor to act, the solicitor shall within two business days of receipt of the documents and information referred to in Part 2:
  - use best endeavours to obtain particulars of title to the property;
  - take reasonable steps to identify the vendor; and
  - make all necessary applications to obtain all of the prescribed documents (other than those which the agent has agreed to obtain).

## Part 4 - The Contract

- 4.1 If the agent obtains any of the prescribed documents, the agent shall immediately on receipt forward the original of that document to the solicitor for consideration and annexure to the contract.
- 4.2 Unless there are compelling reasons otherwise, agents and solicitors are encouraged to obtain:
  - certificates under section 149(2) and (5) of the *Environmental Planning and Assessment Act 1979* and
  - the sewer service diagram and sewer mains diagram as provided by the responsible authority.
- 4.3 The vendor's solicitor shall prepare the contract as soon as practicable after the solicitor has obtained the prescribed documents and has sufficient information and instructions to do so.
- 4.4 If the solicitor has been instructed by the vendor that the sale is by auction or that the agent is authorised to participate in the exchange of contracts, the solicitor shall forward to the agent the contract in 2 counterparts.
- 4.5 If the solicitor has not been instructed in accordance with the terms of Clause 4.4, the solicitor shall send to the agent a complete copy of the contract for exhibition and marketing purposes ("proposed contract"). At no time is the solicitor required to send an incomplete contract to the agent, nor shall the agent request the solicitor to do so.
- 4.6 The agent and the solicitor must at all times uphold the copyright of the Law Society and REI in relation to the contract. ([Copyright Guidelines](#)).

## **Part 5 - Sales advice**

- 5.1 If the agent introduces a buyer, negotiates a sale and is not authorised to participate in the exchange of contracts, the agent shall as soon as practicable forward a detailed sales advice to the vendor's solicitor.
- 5.2 The sales advice shall, to the extent not provided in the proposed contract, as a minimum provide details in relation to the following:
- name of vendor
  - ABN/ACN of the vendor where applicable
  - address of property sold
  - full name, including middle name(s) and address of the purchaser(s)
  - ABN/ACN of the purchaser where applicable
  - name address and contact details for the purchaser's solicitor/conveyancer
  - price
  - deposit paid and the identity of the stakeholder
  - any changes to the settlement date and time
  - any inclusions in and exclusions from the sale
  - whether the sale is with vacant possession or subject to an existing tenancy
  - whether the deposit is to be invested and if so by whom (and provide tax file numbers for the vendor and purchaser)
  - information of any negotiations that requires the vendor's solicitor to draft additional conditions
- 5.3 As soon as practicable after receipt of the sales advice the vendor's solicitor shall obtain any necessary further instructions from the vendor and shall complete the preparation of the contract and shall:
- forward a counterpart contract to the purchaser's solicitor
  - advise the agent of the submission of the contract to the purchaser's solicitor
  - make timely appropriate arrangements for the vendor to execute a counterpart contract.

## **Part 6 - Tenanted Properties**

- 6.1 If the property is tenanted and the agent is the managing agent then the agent shall provide to the vendor's solicitor as quickly as possible a copy of the:
- Residential Tenancy Agreement;
  - details of the current rent; and
  - details of any rental bond or guarantee that the tenant has paid.
- 6.2 If the property is tenanted (and the agent is also the managing agent) but is to be sold with vacant possession, the agent and solicitor shall mutually co-operate to ensure that the appropriate termination notice is given to the tenant in sufficient time to comply with the requirements of the *Residential Tenancies Act 2010* and the provisions of the contract in relation to the settlement date of the contract.

## **Part 7 - Exchange**

### **Exchange by Agent**

7.1 The agent may, under section 64 (1) of the PSBAA:

- write the purchaser's name, address and description, solicitor's details, purchase price and date on the contract;
- insert or delete the description of furnishings or chattels to be included in the sale;
- participate in the exchange (subject to section 64(2) of the PSBAA).

7.2 Where practical, the agent should check with the vendor's solicitor prior to the exchange that the contract is current.

7.3 The agent must ensure that the execution pages of both counterparts of the contract, any special conditions and all annexures to the contract are executed properly. For example:

- if one of the parties is a company, the company must execute the contract in accordance with Section 127 of the *Corporations Act 2001*.

Any deletions or other alterations and additions to the contract must also be initialled.

7.4 On exchange the agent must date both counterparts of the contract and receive the agreed deposit payable under the contract and, if so instructed, a Section 66W certificate. If either the vendor or purchaser is present at the time of exchange the agent shall hand to the purchaser the counterpart contract executed by the vendor and shall hand to the vendor the counterpart contract executed by the purchaser and where applicable, the Section 66W Certificate.

7.5 If the counterpart contracts have not been dealt with in accordance with Clause 7.4, immediately after exchange but not later than two business days the agent shall:

- cause the counterpart contract executed by the vendor to be delivered to:
  - the purchaser or
  - where the purchaser has notified the agent or it is apparent from the contract that a solicitor acts for the purchaser, to the purchaser's solicitor;
- cause the counterpart contract executed by the purchaser and Section 66W certificate where applicable to be delivered to:
  - the vendor or
  - where the vendor has notified the agent or it is apparent from the contract that a solicitor acts for the vendor, to the vendor's solicitor; and
- confirm the total deposit paid and held.

### **Exchange by Solicitor**

7.6 If an exchange of contract is effected by the vendor's solicitor without the participation of the agent, the solicitor shall promptly notify the agent in writing of the date of exchange.

7.7 If the stakeholder of the deposit is the agent, the solicitor shall remit the deposit to the agent at the same time as notification under Clause 7.6.

7.8 If the stakeholder of the deposit is someone other than the vendor's agent or if a bond has been used to pay the deposit or if the deposit has been released or paid direct to the vendor on exchange, the notification to the agent under Clause 7.6 shall include confirmation in writing of the solicitor's understanding of the arrangements made by the vendor for the payment of the agent's commission on settlement.

### **Deposit held by an agent as stakeholder**

- 7.9 If any part of the deposit is dishonoured or not met on presentation, the agent shall immediately notify the vendor's solicitor verbally and then in writing as soon as possible.
- 7.10 The agent shall confirm in writing the amount of deposit held by the agent as stakeholder as soon as possible after exchange.

### **Part 8 - Prior to Settlement**

- 8.1 The agent and the vendor's solicitor shall consider the following matters and mutually co-operate to make appropriate arrangements to ensure:
- a pre-settlement inspection by the purchaser is carried out, if required;
  - that vacant possession will be available at the time of settlement (if applicable);
  - that sufficient information is available to make necessary adjustments and arrangements on settlement for rent and rental bonds (where applicable);
  - the parties are aware of the location of all necessary keys and security devices at settlement;
  - that the deposit or part of it is available, if required and authorised by the vendor and purchaser, at the necessary time to be released by the agent upon reasonable notice to be used as part of the balance of purchase price at settlement.

### **Part 9 - On settlement**

- 9.1 The vendor's solicitor shall as soon as possible after settlement occurs forward to the agent a copy of the order on the agent and authorise in writing the release of the keys and the agent shall, on receipt of this authorisation, release the keys.
- 9.2 The purchaser's solicitor shall not send an order on the agent directly to the agent.
- 9.3 The agent should not account for the deposit until receiving a direction in writing to that effect from the vendor's solicitor together with a copy of the order on the agent.
- 9.4 Within two business days of settlement the vendor's solicitor shall forward to the agent the original order on the agent.

### **Part 10 - Failed Settlement - Purchaser default**

- 10.1 The vendor's solicitor and the vendor's agent acknowledge that in the event that the deposit is held by the vendor's agent, the agent holds the deposit as stakeholder on behalf of both the vendor and purchaser and that the agent is not permitted to account for the deposit to one of the parties without the written authority of the other party or court order.
- 10.2 If the purchaser fails to complete the contract and the vendor becomes entitled to the deposit, the solicitor and agent will mutually co-operate to obtain a written authority from the purchaser or the purchaser's solicitor to account for the deposit.
- 10.3 If the agent and solicitor are unable to obtain the necessary authority to account for the deposit from the purchaser or the purchaser's solicitor, the solicitor will advise the vendor of the possible need to obtain an order from a Court of competent jurisdiction.

### **Part 11 - Communications**

- 11.1 Agents and solicitors are encouraged to utilise the most appropriate means of communication which will include telephone, mail, document exchange, facsimile and email, depending on the circumstances.
- 11.2 Choice of means of communication will depend on factors such as speed, accuracy, certainty of delivery, confidentiality and any legal or contractual requirement.

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