



Thinking of selling your residential home or investment property?

As the sale of your home or residential investment property will often involve the sale of one of your most significant assets it's understandable that many property owners will want to ensure that they get the best sale price possible by doing any necessary repairs or beautification works to their property before putting it on the market. Whilst this is an important step to take when considering the sale of your property it is equally important to consider a number of legal matters to ensure that a smooth legal transaction occurs once a sale has been negotiated.

Choice of selling agent/selling agency agreement

Choosing a reputable Estate Agent to sell your property is a very significant step in ensuring that your property is marketed in a manner that will get you the best sale price. Of equal significance are the terms of the selling Agency agreement that you will be asked to enter into with your chosen estate agent. In most instances your agent will ask you to sign an exclusive selling agency agreement which gives your agent exclusive rights to sell your property for a defined period of time. The agency agreement will also contain provisions relating to how the agents selling commission is calculated and what other monies you are required to pay to the estate agent in addition to this commission.

At **Bateman Battersby** we have extensive experience in dealing with Real Estate Agents and can recommend to you a reputable selling agent in your area and advise you on the terms and conditions of your selling agency agreement **before** you sign it.

Preparation of Sale Contracts

It's mandatory in NSW that a Contract for Sale be prepared by your solicitor and be forwarded to your chosen selling agent **before** your agent can market your home or residential investment property for sale. Consequently, it's important that your sale contract be prepared both quickly and carefully to ensure that your property can be put on the market as soon as possible and otherwise to protect your legal interests.

As it's necessary to obtain certain documents from Government departments to attach to the sale contract it's also worthwhile giving us instructions to commence preparing a sale contract for you **before** you have chosen a Real Estate Agent.

Disclosure of defects

It's generally the case that the doctrine of "Caveat Emptor" applies to the sale of residential property. That is that any buyer "be aware" and otherwise satisfy themselves as to the state and condition of the property before committing themselves to purchasing it. Hence the reason why many prudent buyers will arrange for pest and building inspections and survey reports to be carried out on a property before fully committing to the purchase.



However, under the provisions of the current conveyancing legislation all vendors of residential property give the purchaser an implied warranty that there are no defects in the property at the date of the sale contract which would enable the local council to issue either an upgrade notice or a demolition notice.

A purchaser will often test this warranty by arranging for the local Council to inspect your property and consequently the purchaser may have rights to get out of the sale contract in the event that the council issues an upgrade or demolition notice. This may be overcome by putting an appropriate disclosure clause in your sale contract disclosing any matters about the property which may have potential to give rise to such a notice. When taking instructions from you at the outset of your sale we'll ask you whether alterations or additions have been made without the approval of the local council in order that a disclosure clause is inserted in your sale contract at the time it's prepared

Swimming Pool Compliance Certificates

If you own a home or investment property in NSW that contains a swimming pool or spa you're obligated to have your property listed on the NSW Swimming Pools Register. If you intend selling the property it's also mandatory for you to obtain a Swimming Pool Compliance Certificate and attach it to your sale contract. Failure to do so will entitle a purchaser to get out of the sale contract and also expose you to potential fines. The Compliance Certificate is valid for three years from date of issue. You can find out more about these certificates [here](#).

Tax Clearance Certificates

Since 1 July 2017, purchasers of properties where the market value is \$750,000 (inclusive of GST) or more must withhold 12.5% of the sale price and remit it to the Australian Taxation Office (ATO) **UNLESS** each vendor supplies the purchaser with a current Clearance Certificate from the ATO prior to or at settlement. Accordingly it's important that all prospective sellers of property apply to the ATO to obtain their Clearance Certificates as soon as they decide to list their property for sale. This can be done online at the ATO's website by clicking [here](#).

Taxation issues

There are three other taxation issues that you should consider when selling residential property. These are Capital Gains Tax, Land Tax and GST. In most instances when selling your own family home you will not be liable for Capital Gains Tax, Land Tax or the GST however this may vary if your property was not always occupied by you as your family home or if you have conducted other activities in it (e.g. a home/office for your business).

If you're selling residential property that you've owned as an investment then you always need to consider the impact that these forms of tax may have on your sale in particular on the net amount of your sale proceeds. We'll discuss these taxation issues with you at the time we receive your instructions to act on the sale of your property.

Smoke alarms legislation

In NSW it's compulsory for all property owners to install smoke alarms in houses and other places where people sleep. Property owners must ensure that smoke alarms have been installed in their property to the standard required under the regulations of the Environmental Planning and Assessment Act.

Accordingly it's essential that you ensure that complying smoke alarms have been installed in your property before you enter into a contract for the sale of the property. We can provide you with any further information you may require about the legislation.



Dealing with Accredited Specialists

Property Law has been a significant part of our practice for over 35 years. During that time we have acted in over 14,000 property transactions for families selling or buying their homes, for property investors, developers and builders. We have a broad experience in all matters relating to the sale or purchase of a property which we provide to our clients during the course of any property transaction. In addition, the lawyers who undertake property work in our practice, John Bateman and Michael Battersby both hold a Specialist Accreditation from the Law Society of NSW in Property Law. They are ably supported by our property support team, Debbie O'Brien and Jenni Hutchings who between them have in excess of 40 years legal experience in property transactions.

So, if you are considering the sale of your residential property or wish to discuss any of the matters addressed above, please feel free to contact John Bateman and Michael Battersby of Bateman Battersby Lawyers on (02) 4731 5899 or email to property@batemanbattersby.com.au if you require further information or assistance.