

**CONVEYANCING (SALE OF LAND) AMENDMENT ACT
1987 No. 192.**

NEW SOUTH WALES



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CONVEYANCING (SALE OF LAND) AMENDMENT ACT 1987
No. 192

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Act No. 192, 1987

An Act to amend the Conveyancing Act 1919 in relation to the practice known as gazumping. [Assented to 4 December 1987]

See also Auctioneers and Agents (Sale of Land) Amendment Act 1987; Stamp Duties (Sale of Land) Amendment Act 1987; Land Sales (Amendment) Act 1987.

Conveyancing (Sale of Land) Amendment 1987

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Conveyancing (Sale of Land) Amendment Act 1987.

Commencement

2. This Act shall commence on a day to be appointed by proclamation.

Amendment of Act No. 6, 1919

3. The Conveyancing Act 1919 is amended by inserting after Division 7 of Part IV the following Division:

Division 8—Sale of residential property

Definitions

66P. In this Division—

“appointed day” means the day on which this Division commences;

“business day” means any day except Saturday or Sunday or a day that is a public or bank holiday throughout the State;

“deposit” means an amount paid or payable on account of the purchase price of residential property;

“earlier period”, in relation to a preliminary agreement, means the period that—

(a) begins when the vendor enters into the agreement; and

(b) ends at the expiration of 5 business days, or the prescribed number of days, later or at a later time agreed to by the purchaser at the request of the vendor;

“later period”, in relation to a preliminary agreement, means the period that—

(a) begins when the purchaser is served with a proposed contract as referred to in the preliminary agreement; and

(b) ends at the expiration of 5 business days, or the prescribed number of days, later or at a later time agreed to by the vendor at the request of the purchaser.

“preliminary agreement” means the preliminary agreement required by section 66Q to be entered into by a vendor of residential property;

“preliminary deposit” means an amount of deposit calculated in accordance with the regulations;

“purchaser” includes a prospective purchaser;

“residential property” means—

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- (a) premises (including outbuildings and appurtenances) used, or designed for use, principally as a place of residence, whether completed or in the course of construction; or
- (b) a parcel of vacant land that is not more than 2.5 hectares in area and is not prohibited by law from being used as a site for premises referred to in paragraph (a),

and includes a perpetual lease of, or a prescribed leasehold estate in, any such premises or parcel;

“vendor” includes a prospective vendor.

Preliminary agreement required

66Q. Before entering into a contract for the sale of residential property, the vendor must enter into a preliminary agreement with the purchaser that—

- (a) is in the prescribed form; and
- (b) has annexed to it a copy of the proposed contract as referred to in the preliminary agreement.

Rescission of contract by purchaser

66R. (1) If a vendor enters into a contract for the sale of residential property without first entering into a preliminary agreement relating to the contract, the purchaser may rescind the contract at any time before its completion.

(2) If a vendor enters into a preliminary agreement on any day and, before the end of the next 2 business days after that day, enters into a contract with the purchaser for the sale of the property referred to in the preliminary agreement, the purchaser may rescind the contract before the end of the earlier period.

(3) A purchaser who rescinds a contract under subsection (1) or (2) has the same rights (including rights to a refund of the amount of the preliminary deposit and any other deposit and damages) that the purchaser would have had if the rescission had resulted from a failure by the vendor to complete the contract.

(4) Without affecting any other manner of rescinding a contract, a rescission under this section may be effected by serving written notice of the rescission on the vendor at the address of the vendor shown in the contract.

Breach of preliminary agreement by vendor

66S. If the vendor breaches a preliminary agreement, an action for specific performance or damages may then be brought by the purchaser as if it were a contract—

- (a) that provides for the sale by the vendor to the purchaser specified in the agreement, at the price so specified, of the property described in the form of contract annexed to the agreement;

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- (b) that includes the terms and conditions of that form of contract other than a term or condition requiring the payment of a deposit greater than that paid under the preliminary agreement; and
- (c) that has been signed by the vendor and delivered to the purchaser.

Excess deposit

66T. (1) If a vendor of residential property—

- (a) enters into a preliminary agreement on or after accepting any amount of deposit greater than, or additional to, the preliminary deposit; or
- (b) after entering into a preliminary agreement on any day and before the end of the next 2 business days after that day— accepts any amount of deposit greater than, or additional to, the preliminary deposit,

no part of the deposit paid under the preliminary agreement or otherwise is liable to forfeiture.

(2) Subsection (1) has effect despite any provision of the preliminary agreement or of any contract of sale or other agreement or arrangement.

Options

66U. An option granted on or after the appointed day for the purchase of residential property is void if it is exercisable within 30 days after it is granted or, if a different period is prescribed, within that period.

General

66V. (1) A preliminary agreement and its annexed form of contract do not constitute—

- (a) an option to purchase the property; or
- (b) except for the purposes of section 66S, a contract for the sale of the property.

(2) Section 54A applies to a preliminary agreement in the same way as it applies to a contract for the sale of land.

(3) A contract does not cease to be in the form—

- (a) annexed to the preliminary agreement; or
- (b) served as referred to in the preliminary agreement,

if it includes variations from that form that have been agreed to by the vendor and the purchaser.

(4) On the vendor entering into a preliminary agreement, the purchaser has, if the property comprises land under the provisions of the Real Property Act 1900, an estate or interest in the land sufficient to support a caveat to protect it.

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Form of preliminary agreement

66w. (1) The form of preliminary agreement prescribed must include provisions to the effect that—

- (a) the preliminary deposit must have been paid by the purchaser before, or be paid by the purchaser when, the vendor enters into the agreement;
- (b) the preliminary deposit is recoverable by the purchaser if, before entering into the agreement, the vendor is served with written notice that the purchaser has withdrawn from the agreement;
- (c) the preliminary deposit is part of the deposit that would be payable under the proposed contract for the sale of the property;
- (d) the vendor must, before the end of the earlier period, serve on the purchaser as agreed, or at an address specified in the agreement for the purpose, a copy of the annexed form of contract to which has been added particulars of the purchaser and purchase price specified in the agreement;
- (e) the preliminary deposit is forfeited to the vendor if, after the earlier period begins and before the later period ends, the purchaser fails, otherwise than because of an act or omission of the vendor, to enter into a contract for the purchase of the property that is in the form served as referred to in paragraph (d);
- (f) the vendor is released from all obligations under the preliminary agreement if the purchaser fails as referred to in paragraph (e);
- (g) if, before the end of the later period, the purchaser offers to enter into a contract in the form served as referred to in paragraph (d), the vendor must do so not later than on the next business day after the end of that period or on a subsequent specified day agreed to by the purchaser before that period expires; and
- (h) before the expiration of the later period, the vendor must not enter into a preliminary agreement with a different purchaser and must not agree to sell, or sell, the property to a different purchaser.

(2) This section does not limit the matters for which provision may be made in the prescribed form for a preliminary agreement.

Operation of Division 8

66x. (1) This Division applies to residential property, including residential property under the provisions of the Real Property Act 1900, the Western Lands Act 1901, the Crown Lands Consolidation Act 1913 or any other Act, whether or not it deals with the conveyance or transfer of land.

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(2) For the purposes of this Division, a vendor enters into a preliminary agreement when the purchaser is served with a copy of the agreement signed by the vendor.

(3) This Division does not apply to a sale of residential property—

(a) that is effected pursuant to an agency agreement entered into under the Auctioneers and Agents Act 1941 before the appointed day in which the property is individually identified; or

(b) that results from the exercise of an option that is not void under section 66U,

or to any offer that relates to such a sale.

(4) The provisions of this Division relating to a preliminary agreement do not apply to a sale of residential property that is effected by acceptance of a bid at auction or by acceptance of a tender.

(5) This Division, or a prescribed provision of this Division, does not apply to—

(a) a prescribed vendor, a prescribed contract or prescribed land; or

(b) a prescribed kind of vendor, contract or land.

(6) A provision of a contract of sale, preliminary agreement or any other agreement or arrangement is void if it would, but for this subsection, have the effect of excluding, modifying or restricting the operation of this Division.

(7) This Division does not affect any right or remedy available otherwise than under this Division.

(8) This Division binds the Crown.

Preparation of proposed contract of sale

66Y. (1) A vendor who, by a written or broadcast advertisement, invites an offer to purchase, or offers to sell, residential property is guilty of an offence unless subsection (2) is complied with.

Penalty: 10 penalty units.

(2) This subsection is complied with only if at each place, and at all times, at which the advertisement states or implies that an offer to purchase may be made, there is available for inspection by a purchaser—

(a) a copy of the terms and conditions (other than particulars of the purchaser and purchase price) of the proposed contract for the sale of the property; and

(b) the documents that would be required by section 52A to be attached to the contract before signature by the purchaser.

(3) Proceedings for an offence under this section may be brought before a Local Court constituted by a Magistrate.

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(4) An information for an offence under subsection (1) alleged to have been committed within 12 months after the appointed day may not be laid without the consent of the Minister (which shall be presumed to have been given unless the contrary is proved).