



RESIDENTIAL CONVEYANCING PROTOCOL

March 2021

CONTENTS

Part 1 - Introduction	3
Part 2 - Appointment of Real Estate Seller's Agent	3
Part 3 - Appointment of Buyer's Agent	3
Part 4 - Instruction of Solicitor	3
Part 5 - The Contract	4
Part 6 - Sales advice	4
Part 7 - Tenanted Properties	5
Part 8 - Exchange or making of the contract	5
Part 9 - Prior to Settlement	6
Part 10 - On settlement	6
Part 11 - What if settlement does not occur?	7
Part 12 - Communications	7

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.

Part 1 - Introduction

- 1.1 The Law Society of NSW (Law Society) and the Real Estate Institute of New South Wales (REINSW) recognise that solicitors, real estate seller's agents and buyer's 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 Seller's Agent

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

Part 3 - Appointment of Buyer's Agent

- 3.1 The purchaser may appoint a real estate agent (buyer's agent) to search for properties, inspect and shortlist properties, conduct research, organise due diligence, negotiate and bid at auction on the purchaser's behalf. The terms of that appointment are set out in a buyer's agency agreement.
- 3.2 Where the purchaser instructs a buyer's agent, the seller's agent must deal with the buyer's agent rather than the purchaser. The seller's agent must not contact the purchaser directly unless advised to do so by the purchaser.
- 3.3 The buyer's agent must take reasonable steps to identify the purchaser prior to accepting the appointment.

Part 4 - Instruction of Solicitor

- 4.1 Where the vendor instructs a solicitor to act, the solicitor must 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, having regard to any applicable requirements under the NSW Participation Rules or Conveyancing Rules; and
 - make all necessary applications to obtain all of the prescribed documents (other than those which the seller's agent has agreed to obtain).

Part 5 - The Contract

- 5.1 If the seller's agent obtains any of the prescribed documents, the seller's agent must immediately on receipt forward the original of that document to the solicitor for consideration and annexure to the contract.
- 5.2 The vendor's solicitor must prepare the contract as soon as practicable after the solicitor has obtained the prescribed documents and has sufficient information and instructions to do so. If the details of the buyer's agent are known, these details should be included on the front page of the contract.
- 5.3 If the solicitor has been instructed by the vendor that the sale is by auction or that the seller's agent is authorised to participate in the exchange of contracts, the solicitor must forward the contract to the seller's agent.
- 5.4 If the solicitor has not been instructed in accordance with the terms of Clause 5.3, the solicitor must send to the seller's 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 seller's agent, and the seller's agent must not request the solicitor to do so.
- 5.5 The seller's agent, buyer's agent and the solicitor must at all times uphold the copyright of the Law Society and REINSW in relation to the Contract for the sale and purchase of land. (Copyright Guidelines).

Part 6 - Sales advice

- 6.1 If the seller's agent introduces a buyer, negotiates a sale and is not authorised to participate in the exchange of contracts, the seller's agent must as soon as practicable forward a detailed sales advice to the vendor's solicitor.
- 6.2 The sales advice must, to the extent not provided in the proposed contract, as a minimum provide details in relation to the following:
 - full name, including middle name(s) and address of the vendor(s)
 - 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
 - name and contact details of the buyer's agent
 - 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.
- 6.3 As soon as practicable after receipt of the sales advice, the vendor's solicitor must obtain any necessary further instructions from the vendor and must complete the preparation of the contract and:
 - forward the contract to the purchaser's solicitor;
 - advise the seller's agent of the submission of the contract to the purchaser's solicitor; and
 - make arrangements for the vendor to execute the contract.

Part 7 - Tenanted Properties

- 7.1 If the property is tenanted and the seller's agent is the managing agent, then the seller's agent must 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.
- 7.2 If the property is tenanted (and the seller's agent is also the managing agent) but is to be sold with vacant possession, the seller's agent and solicitor must mutually co-operate to ensure that the appropriate termination notice is given to the tenant in sufficient time to comply with all other requirements of the *Residential Tenancies Act 2010* and the provisions of the contract in relation to the settlement date of the contract.

Part 8 – Exchange or making of the contract

Exchange by real estate agent in paper format

- 8.1 A real estate agent may, under section 64 (1) of the Agents Act:
- insert details of the purchaser's name, address and description, the name and address of the Australian legal practitioner acting for the purchaser, the purchase price and the date on the contract;
 - insert or delete the description of furnishings or chattels to be included in the sale of the property; and
 - participate in the exchange or making of the contract (subject to section 64(2) of the Agents Act).
- 8.2 Where practical, the agent effecting exchange should check with the vendor's solicitor prior to the exchange, to ensure that the contract is current. Additional conditions or documents must not be inserted into the contract by the seller's agent or the buyer's agent.
- 8.3 The agent effecting exchange 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*; and
 - any deletions or other alterations and additions to the contract must also be initialled.
- 8.4 On exchange the agent effecting exchange must ensure both counterparts are identical, 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 (or their agent) is present at the time of exchange the agent effecting exchange must hand to the purchaser or buyer's agent the counterpart contract executed by the vendor and must hand to the vendor or the seller's agent the counterpart contract executed by the purchaser and where applicable, the Section 66W certificate. The agent effecting exchange must promptly advise the purchaser's solicitor and the vendor's solicitor in writing:
- the date of exchange or making of the contract;
 - the amount of any deposit held by the seller's agent or buyer's agent as stakeholder; and
 - whether a cooling off period applies.
- 8.5 If the counterpart contracts have not been dealt with in accordance with Clause 8.4, immediately after exchange or the making of the contract, the agent effecting exchange must:
- cause the counterpart contract executed by the vendor to be delivered to:
 - the purchaser; or
 - where the purchaser has notified the agent effecting exchange 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 effecting exchange 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 or making of the contract by Solicitor

- 8.6 If an exchange of contract or making of the contract is effected by the vendor's solicitor without the participation of the seller's agent, the solicitor must promptly notify the seller's agent in writing of the date of the contract.
- 8.7 If the stakeholder of the deposit is the seller's agent, the solicitor must remit the deposit to the seller's agent at the same time as notification under Clause 8.6.
- 8.8 If the stakeholder of the deposit is someone other than the vendor's seller'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 seller's agent under Clause 8.6 must include confirmation in writing of the solicitor's understanding of the arrangements made by the vendor for the payment of the seller's agent's commission on settlement.

Deposit held by a seller's agent as stakeholder

- 8.9 If any part of the deposit is dishonoured or not met on presentation, the seller's agent must immediately notify the vendor's solicitor verbally and then in writing as soon as possible.
- 8.10 The seller's agent must confirm in writing to both the vendor's solicitor and the purchaser's solicitor, the amount of deposit held by the seller's agent as stakeholder as soon as possible after exchange.

Deposit held by a buyer's agent as stakeholder

- 8.11 If any part of the deposit is dishonoured or not met on presentation, the buyer's agent must immediately notify the vendor's solicitor verbally and then in writing as soon as possible.
- 8.12 The buyer's agent must confirm in writing to both the vendor's solicitor and the purchaser's solicitor, the amount of deposit held by the buyer's agent as stakeholder as soon as possible after exchange.

Part 9 - Prior to Settlement

- 9.1 The seller's agent, buyer's agent and the vendor's solicitor must use all reasonable endeavours to co-operate with each other to facilitate completion of the contract, including, but not limited to ensuring that:
- the buyer's agent and/or the purchaser are able to attend a pre-settlement inspection within the period allowed in the contract, if required;
 - vacant possession is provided at settlement (where the contract so requires);
 - they each provide sufficient information to allow the parties to make all necessary adjustments and arrangements on settlement for rent and rental bonds (where the contract so requires);
 - the buyer's agent and/or the purchaser are aware of the location of all necessary keys and security devices for the property at settlement; and
 - the deposit and any interest earned on that amount is available as soon as practicable after settlement, or at settlement where reasonably required by either the purchaser or the vendor, where the release is authorised in writing by the vendor and purchaser.

Part 10 - On settlement

- 10.1 The vendor's solicitor must as soon as possible after settlement occurs, contact the seller's agent to confirm settlement and verbally authorise the release of the keys. The seller's agent must release the keys on receipt of this authorisation. As soon as practicable after settlement, the vendor's solicitor must forward to the seller's agent a copy of the order on the seller's agent by way of confirmation.
- 10.2 The purchaser's solicitor must not send an order on the seller's agent directly to the seller's agent.
- 10.3 The seller's 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 seller's agent.
- 10.4 Within two business days of settlement the vendor's solicitor must forward to the seller's agent the original order on the seller's agent.

Part 11 – What if settlement does not occur?

- 11.1 The seller's agent, the buyer's agent, the vendor's solicitor and the purchaser's solicitor acknowledge that if the matter does not complete, the stakeholder can only deal with the deposit with the written authority of each party or court order.
- 11.2 The solicitors and the agent or agents will mutually co-operate to obtain a written authorities authorising the stakeholder to account for the deposit.
- 11.3 If the stakeholder does not receive the necessary authorities to account for the deposit , the solicitor acting for the party entitled to the deposit will advise his or her client of the possible need to obtain an order from a Court of competent jurisdiction.

Part 12 - Communications

- 12.1 Seller's agents, buyer's 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.
- 12.2 Choice of means of communication will depend on factors such as urgency, speed, accuracy, certainty of delivery, confidentiality, privacy and any legal or contractual requirement.

THE LAW SOCIETY OF NEW SOUTH WALES

170 Phillip Street, Sydney NSW 2000, DX 362 Sydney

ACN 000 000 699 ABN 98 696 304 966

lawsociety.com.au

T +61 2 9926 0333 F +61 2 9231 5809

E lawsociety@lawsociety.com.au

