



PO Box 111, Rockhampton Q 4700 | 74 Victoria Parade, Rockhampton, Qld | (07) 4931 1888 | enquiries@smrlaw.com.au

ABOUT TO SIGN A CONTRACT? *Why should I get legal advice before signing?*

As a purchaser, why can't I just rely on the cooling off period?

Whether you are buying or selling real estate, it is recommended that you have any proposed contract for sale reviewed by your solicitor, prior to signing it. Once a contract is signed, you must carry out the obligations imposed on you under the contract. It can be difficult, potentially costly and cause unnecessary delay to get out of or negotiate changes to your obligations under a contract once it is signed.

Why should I get legal advice before signing a contract?

If you have your solicitor prepare or review a contract, before you sign it, they can:

- confirm that the contract records and reflects the arrangement reached (or intended to be reached) by your agent (or you), as you understand it
- help you to understand the terms and conditions of the contract, including your rights and obligations
- interpret and explain the consequences of failing to do something you are obliged to do
- assist to ensure it is practical and possible for you to meet your obligations

For instance:

- *relying on a solicitor's experience and understanding of the conveyance process, they can advise whether proposed timeframes are reasonably achievable*
- *for sellers, a solicitor can assist you to understand and fulfil your disclosure requirements under the contract because failure to comply can enable a purchaser to pull out of an arrangement*
- draft or review the drafting of any special conditions to ensure that they are effective and enforceable
- assist to negotiate special conditions or modifications to standard conditions to protect your interests.

When you sign a contract, you are accepting to be bound by its terms. Some of the terms will give you rights and others will impose obligations on you. Under a contract, there are consequences if you fail to meet your obligations. Once all parties have signed a contract, it can usually only be changed if all parties agree to the change. Attempting to negotiating changes once a contract has been signed is not always successful and will often take time and involve additional expense.

Contracts

The Real Estate Institute of Queensland (REIQ) has put together a number of standard form contracts for the most common types of property transacted (eg. House, Residential Land, Unit, Townhouse, Body Corporate Lot, Business). These REIQ standard form contracts are reviewed by the Queensland Law Society and regularly relied on by real estate agents.

Alternatively, a contract for sale of property may be a document written and prepared by a solicitor for the specific transaction. This approach is often recommended for rural land transactions, significant commercial premises or industrial sites.

Where an REIQ standard form contract is used for the sale of a property, real estate agents will often be involved in filling in the contract form. This form includes a space for special conditions to be drafted and inserted. Keep in mind, real estate agents are usually appointed to act on behalf of sellers and are not legal advisors.

We strongly recommend that a prospective purchaser:

1. to obtain independent legal advice regarding the contract BEFORE signing the contract
2. to obtain an independent valuation of the property BEFORE signing the contract.

Our experienced property team is available to review contract documents for you in a timely manner.

We understand that making the decision to buy or sell a property can be a significant and emotional one for many people. Given the significance of the decision, it makes sense to check that unnecessary risks are avoided and your interests are protected, before committing to it.

What is the “cooling-off period”?

A cooling-off period of 5 days applies to contracts for sale of residential property in Queensland, except where the property is sold by auction.

During the cooling-off period, the purchaser may terminate the contract for any reason. If the purchaser terminates the contract, the seller:

- may impose a termination penalty equivalent to 0.25% of the purchase price in the contract and
- within 14 days must return the deposit to the purchaser, less any termination penalty imposed.

Why can't I rely on the “cooling-off” period to change the contract?

The cooling-off period does not provide for renegotiating or changing the terms and conditions of a signed contract.

If you are a purchaser, dissatisfied with the contract you have signed, you can terminate the contract during this period. You may do this with a view to proposing alternative terms and conditions for a new contract, but this is not ideal, as your risks include:

1. being charged a termination penalty; and
2. the seller not agreeing to enter into a new contract with you.

It is much better to have a contract reviewed and if necessary, negotiate changes, before signing in the first place.

Require further information or advice?

For further general information about related topics, browse the range of other information sheets, tools for clients and information updates available on the 'Resources' page of our website.

If you are:

- buying or selling real estate; or
- about to sign any type of contract

Swanwick Murray Roche can provide timely tailored advice about property rights and your circumstances. Our Partners, Scott Beaumont and Terry Tummon, have extensive experience in these areas of law.

Please do not hesitate to contact us by phone on 4931 1888, email at enquiries@smrlaw.com.au, via our online enquiry form or by any of the other means detailed on our website www.smrlaw.com.au