

- You may have time to make inquiries and obtain reports before exchanging contracts. This means that you will be able to find out whether there are any problems with the property before you exchange. If you decide not to exchange you will lose the money spent on advice, in queries and reports but you will not lose the 0.25% that you would forfeit if you withdrew after exchange and within the cooling off period.

Disadvantages for Buyer

- By waiting you may be gazumped. Until exchange of contracts the seller is free to sell to anyone else. You may lose the property as well as any money spent on advice, inquiries, reports and loan fees.

SELLER OPTIONS

Exchanging Contract *WITH COOLING OFF*

Advantages for Seller

- Faster. Immediately have date for completion
- Most buyers are unlikely to rescind the contract during the 5 business day cooling off period unless a major property problem arises.

Disadvantages for Seller

- Buyer may rescind under Cooling Off within the 5 business days
- If you are simultaneously purchasing or trying to find a property to purchase you may find you have a later date for completion of your purchase and nowhere to live.
- If you are simultaneously purchasing with cooling off you will have to rescind on your purchase and forfeit 0.25% and any expenses to that point.

Exchanging Contract *WITHOUT COOLING OFF* -

Advantages for Seller

- If you are buying at the same time or intend to quickly find a property to purchase a simultaneous settlement date can be achieved.

- If you are buying at the same time, sufficient time will be permitted to obtain pre-purchase pest, building, survey, Council Building Certificates and formal loan approval.

- You will receive legal advice on the terms of the contract before proceeding to an exchange of contracts.

Disadvantages

- The buyer may take 2 – 3 weeks to effect a binding exchange of contracts while they obtain legal advice, pre-purchase reports and loan approval
- The buyer may decide not to proceed after a period of time and you will incur legal fees for the work incurred with that buyer. The property will also need to be re-marketed.



GENERAL INFORMATION

Contract Required Before Property Offered For Sale

A contract for sale must be available for inspection when residential property is offered for sale. The contract must contain a title search, zoning certificate sewer diagram.

What is Gazumping?

Occurs when a buyer, relying on a verbal agreement by a seller to sell a property at an agreed price, spends money getting advice, reports and making necessary enquiries, only to find that the seller has accepted a higher offer from someone else. The buyer loses the property and the money spent on the advice reports and inquiries and is said to have been "gazumped".

Cooling Off period for Buyers

A buyer may exchange a contract immediately with a 5 business day cooling off period by signing the contract and paying a 0.25% (of the purchase price) deposit. The buyer may withdraw from the contract by formal written notice before the end of the 5 business days after exchange. The cooling off period may be excluded, shortened or extended in certain circumstances.

A seller does not have a cooling off period

Cooling off only applies to residential property being houses, land, town houses, home units, villas and other property up to 2.5 hectares.

Forfeiture

Buyers may elect to cool off and withdraw from the contract during the 5 business day cooling off period;

they then forfeit to the seller 0.25% of the purchase price. They buyer will also be liable for legal/search/report fees incurred.

There is NO COOLING OFF PERIOD IF-

- At exchange of contracts, the buyer gives to the seller' solicitor or conveyancer a certificate (S66W certificate) signed by a solicitor or licensed conveyancer which waives the cooling off period.

- The property is sold by public auction;

- The above are the main instances when there will be no cooling off. There are other instances where cooling off legislation may not apply.

Estate Agents Able to Fill up and Exchange Contracts with Cooling Off

Estate agents are permitted to fill in details of the buyer's solicitor's name and address, details of inclusions in the property, and the purchase price on the contracts prepared by the seller which they must hold.

Estate agents are also able to exchange contracts but are not able to charge a fee for inserting details in the contract or exchanging contracts.

BUYER OPTIONS

Exchanging Contract WITH COOLING OFF

Advantages for Buyer

- Faster. Can happen on the same day you decide you wish to purchase and often on weekends.
- The property is secured for the 5 business days. The seller cannot sell to anyone else during this time.
- You can obtain the necessary pre-purchase reports (eg. pest report, building report) safe in the

knowledge that those expenses will not be wasted because the seller has sold to someone else.

- You are not locked into the contract. You can withdraw from the contract at anytime within the 5 business day cooling off period. Of course, you will forfeit 0.25% of the purchase price. You can withdraw for any reason.
- You will know your completion date.

Disadvantages for Buyer

- There may be onerous conditions which after your obtain your legal advice may not be favourable to the purchase. In some instances, you will have no choice but to withdraw from the contract.
- You will forfeit 0.25% deposit paid if you withdraw during the cooling off period even if there is something wrong with the property (eg. pest report discloses white ant infestation).
- Once the cooling off period expires you are bound to proceed with the purchase. You can then only get out of the contract by forfeiting the full 10% deposit or if the seller has breached the contract.
- You only have 5 business days in which to get advice, arrange finance and complete all necessary investigations. In some cases this may be insufficient time. Be prompt, order your reports, arrange you loan and see your solicitor straight away.

Exchanging Contract WITHOUT COOLING OFF -

Advantages for Buyer

- If you choose to wait and see a solicitor or licensed conveyancer they will check the contract to see if there are any onerous or unfavourable conditions. If there are, you can negotiate with the seller who may agree to change them before exchange.