

The Cooling Off Period - What does it mean?

Within a 5 day cooling off the vendor can't pull out of the sale which gives the buyer some peace of mind but it gives the buyer time to get their finance approved and also any pest/building inspections done.

The following information is written with specific reference to NSW residential conveyances. If you are in any other state or territory you should consult a local solicitor or conveyancer for guidance. It is also important to note at the outset that cooling off periods do not apply to properties purchased at auction or under auction conditions in NSW.

The cooling off period is a crucial part of the conveyancing process in NSW. This is a period of 5 business days which is automatically granted in a NSW contract*. The days are counted from the day immediately after both parties have signed the contract; the vendor signs one contract; the purchaser signs an identical copy and both contracts are dated the same day. This process is called 'exchange'. At this point the purchaser must pay a 0.25% non-refundable deposit to the vendor, which is usually held by the real estate agent in his or her trust account. Time is now of the essence.

The cooling off period is designed to allow the purchaser time to secure unconditional finance and undertake any searches and investigations that they feel are necessary, for example (but not limited to) building, pest or strata reports. The purchaser may also have enquiries that they wish to make at council. The purchaser should confirm that their loan approval is unconditional during this time. It is not recommended that anyone proceeds past cooling off if they do not have either written unconditional loan approval from their lender or access to the cash to pay for the property outright.

It is strongly recommended that if the purchaser has not had the contract reviewed by a solicitor or conveyancer then they should have this review carried out during the cooling off period. The solicitor or conveyancer will negotiate with the vendors' solicitor for any required amendments to the contract during this time.

At the end of the cooling off period the purchaser must pay the balance of the deposit e.g. 9.75% if you are paying a 10% deposit. It is essential that any purchaser in a cooling off period remain in close contact with their solicitor or conveyancer during this period. If the purchaser fails to provide the solicitor or conveyancer with their instructions as to whether or not they wish to proceed past cooling off there can be serious implications.

It is worth pointing out that cooling off periods can be extended but only if the vendor agrees, it is not guaranteed that the vendor will allow it.

*It is common for a vendor to request that a 66W certificate be provided at the point of exchange when there is great interest in the property. The 66W certificate waives the purchaser's right to the cooling off period. The 66W can only be signed by the purchaser's solicitor or conveyancer, after the solicitor or conveyancer have satisfied themselves that the purchaser is fully aware of the implications of waiving their rights.

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