

Choosing a Settlement Agent

Functions of a Real Estate Settlement Agent

Property settlement is the final stage in the sale of a property.

Generally, buyers and sellers of property will engage a settlement agent or solicitor to conduct settlement on their behalf, although it is possible for buyers and sellers to conduct their own settlement, assuming a professional will be engaged you should be aware that in carrying out a typical property settlement, a settlement agent or solicitor follows up the performance of general and special conditions relating to the contract of sale. Some of these tasks include:

- Searching land titles and checking any restrictions on the use or transfer of the property which are identified on the title;
- Arranging, where possible, for any restrictions on the title of the property to be lifted;
- Inquiring with the local councils and government departments about rates, taxes and water consumption so that the amounts to be paid by the seller and the buyer can be determined;
- Notifying the relevant authorities about the change of ownership;
- Preparing settlement statement and certain legal documents;
- Arranging for the payment of stamp duty and other fees on documents involved in the transaction; and
- Attending a meeting to bring about settlement and notifying the relevant authorities when settlement occurs.

During the process of arranging settlement, it is sometimes necessary for a buyer or a seller to obtain legal advice. Settlement agents are not permitted to provide legal advice and must recommend that their clients consult a solicitor when the circumstances require.

Regulation of Settlement agents

Settlement agents are governed by the Settlement Agents Act 1981 (the Act) and a Settlement Agents ` Code of Conduct (the Code of Conduct) made under that Act. The Act provides for the licensing of Real Estate and Business settlement agents and specifies the scope of legal work that can be performed by settlement agents.

The Settlement Agents Supervisory Board administers the Act and the Code of Conduct and is responsible for maintaining industry standards, to protect the public and to ensure confidence in the settlement industry, the legislation requires settlement agents to:

- Satisfy the Board that they are suitable, experienced and sufficiently qualified to hold or maintain a licence;
- Place clients' settlement money into a trust account with an authorised financial institution. The trust account is audited annually and monitored by the Board;
- Contribute to a fidelity guarantee fund and take out professional indemnity and fidelity insurance to protect the public in case of error, fraud or criminal conduct; and
- Observe rules of conduct, including acting efficiently, honestly and advancing the best interest of the client

Choosing a settlement agent

As a buyer, a good time to think about choosing a settlement agent is when you decide to start looking at properties. A settlement agent can give you advice on what to ask about when inspecting properties, and also assist you in drafting special conditions to be included in the Contract for the Sale of Land by Offer & Acceptance to meet your needs. It is important that you are aware of all relevant facts about a property you intend to buy.

It is also advisable to shop around when selecting a settlement agent, such as consulting the Yellow Pages or seeking recommendations from family and friends. Make sure the settlement agent you choose is licensed with the Settlement Agents Supervisory Board.

To check if your settlement agent is licensed, you can contact the Board's Licensing staff.

A maximum scale of fees applies to settlement services, but you may negotiate a fee, which is lower than the prescribed maximum. Settlement agents are permitted to recover disbursement costs when they are incurred in processing the settlement. Disbursement costs may include charges related to title searches, water authority accounts, local council rates, photocopying, stationary and courier costs. These charges must be on a cost recovery basis only.

Appointment of a Settlement Agent

The Appointment of a Settlement Agent form is a contract between you and your settlement agent, authorizing the settlement agent to act for you and to carry out certain functions on your behalf. Your settlement agent must give you this form.

You have the right to select a settlement agent of your choice and you may change your settlement agent at any time if you believe this is necessary. However, your first appointed settlement agent may be entitled to a fee based on any work undertaken.

When filling out the Appointment of a Settlement Agent form, it is recommended that you.

1. Personal interest in the transaction. (e.g. the settlement agent is the seller or the buyer of the property, or the settlement agent has links to the seller or the buyer of the property).
2. Business association with another person/persons involved in the transaction. (e.g. the settlement agent receives frequent referrals of business from the real estate agent, sales representative or developer who is selling the property).
3. Financial association with another person/persons involved in the transaction. (e.g. the real estate agent who sold the property or the financial institution providing the loan for the property has shares in the settlement agency).

When a personal, business or financial relationship exists, the settlement agent must provide you with a Disclosure of Interest form before you sign the Appointment of a Settlement Agent form. The Disclosure of Interest form identifies the type of interest involved and contains information about your rights when appointing a settlement agent.

Before signing the Disclosure of Interest form, consider that the relationship being disclosed could give rise to a conflict of interest, which may affect the service provided to you. You may choose to appoint another settlement agent or solicitor if you wish

A conflict of interest occurs if a settlement agent is torn between looking after your interest and:

- Upholding a personal interest; or
- Looking after the interest of a business contact who is involved in the transaction.

Where there is a business or financial relationship and a conflict of interest is likely or actually occurs, a settlement agent by law must cease to act for you