



Exchange of Contracts

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A close-up photograph of a person's hand holding a pen, ready to sign a document. In the foreground, a small, detailed model of a house with a grey roof and white walls is visible. The background is slightly blurred, showing a wooden desk and other papers.

Exchange of Contracts

When an agent is given the authority to exchange contracts within their own office, that agent must ensure that while doing so, the contracts are exactly the same.

While this may sound like a standard procedure for any office to go through, in times of high pressure, sometimes things fall through the cracks and there are few more high pressure occasions than having purchasers and vendors keen to have exchange effected. However, this is one area where you do not want anything to go wrong as it can be costly to you and your agency - as well as your vendor.

Ensure that all pages are the same

In most cases today, a contract can be exchanged electronically, a docusign contract for example is a singular locked document that all parties sign on the same document, removing risks of last minute changes occurring on one copy. When solicitors and conveyancers exchange contracts in person, they are responsible for ensuring that everything is identical. This sounds very tedious and slightly obsessive, however, to exchange contracts that may have a

difference within them means that the parties are entering into contracts with different terms to one another. This is problematic, especially when it comes to payment of monies, settlement dates, whether the property is to be given with vacant possession. If one contract states the purchaser is to be responsible for payment of adjusted land tax for example, and the other contract does not stipulate the same, we now have some real issues for the conveyancing process and potentially some financial issues for the agent if it was them that exchanged a contract with differences within it.

Do not change anything

Another real issue when the contracts are being signed and exchanged within your office is when agents change terms and conditions within the contract. The only area an agent should alter is within the black box on the front page of the Contract. It is accepted that you are able to add the inclusions, exclusions, purchaser's details, sale price and deposit, however there are two issues that still arise.

1. The first issue is when agents alter anything outside of the black box.

Do not cross boxes for GST, Land Tax and the like that are contained after the black box and over the following page. An agent only has the legal authority to add and alter information within the black box. Outside of that black box is within the authority of the conveyancers and solicitors only.

2. The second issue is in fact within the black box - the deposit. As most agents understand, should a purchaser withdraw from the sale after the unconditional exchange occurs, they will generally forfeit their 10% deposit. This is the right of the vendor to retain that amount and even to recover amounts from the purchaser if only a 5% deposit is paid. The vendor may lose that right should the agent alter the deposit amount in the black box.

If the purchaser is paying a 5% deposit at exchange the agent should not change the black box but keep the 10%

amount on the front page and make a note to the vendor's solicitor in the sales advice that only a 5% deposit is being held. The vendor's solicitor will make a special condition to be entered into the contract that will state a 10% deposit is payable in two instalments, one at exchange and one at settlement or rescission of the contract, whichever comes first, which means the vendor can still get the other 5% if the contract is cancelled. If the contract only states 5% deposit is payable in the black box, the law will generally restrict the vendor from enforcing a penalty against the purchaser if the purchaser defaults throughout the purchase.

Remember that should you as the agent make one of these mistakes and are responsible for the exchange of contracts, it could be your commission (or even more) on the line.

[Rosy Sullivan](#)

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