

# TAX TALKS

Australia's Tax News Podcast - The Podcast for Australian Tax Professionals

*The following information is only of a general nature and should not be taken as professional advice.*

## 159 | Cancel a Property Contract in NSW

How do you cancel a property contract in NSW for a residential property? You would think that once the contract is signed and the cooling-off period has passed, that there is no way out. But there is.

### Cancel a Property Contract in NSW

You would think that once you sign a sales contract for a residential property, you can no longer walk away. At least not after the cooling-off period has passed. You as the purchaser either go through with the purchase or lose your deposit.

Not quite. There is a huge back door for a buyer to cancel a property contract in NSW. Rani Ghanda of Turnbull Hill Lawyers in Newcastle will show you how.

Here is what we learned. But please listen to Rani Ghanda in this episode of Tax Talks. Rani explains all this much better than we ever could.

*To listen while you drive, walk or work, just access the episode through a podcast app on your mobile phone.*

### Vendor Disclosure Documents

As you can imagine there is a law about the sale and purchase of residential real estate in NSW. And this law requires a vendor to attach certain documents to their contract for sale of land. Think of title searches and drainage diagrams. Think of heritage listings and flood zones. These documents are known as vendor disclosure documents.

If the vendor fails to attach any vendor disclosure documents to the contract, the purchaser can rescind the contract. And the purchaser can rescind at any time within 14 days following the date of exchange of contracts. To rescind the contract means that the purchaser cancels the contract and the contract becomes null and void.

The emphasis is on any – as in ANY. It doesn't matter that you attached 99 of the 100 – we are exaggerating here – documents to the contract. If only one of these is missing, the purchaser can walk away. And take his or her deposit with them down to the last cent.

### Contract for Sale of Land

If you sell a residential property in NSW, you must have a contract for sale of land before you market the property. This is different for a commercial property, so let's just focus on residential properties here.

There can be a cooling off period – five days where a purchaser can walk away for a change of mind. But a vendor will often try to get the buyer to waive this right to a cooling off period in their contract.

So once you have an exchange of contract and the cooling-off period has either been waived or expired, then both parties are bound to that contract. If the purchaser then later doesn't go ahead with the purchase, the

vendor can keep the deposit and might possibly have further rights under the contract.

### When You Sell

When you sell, you don't want your purchaser to suddenly walk away. You spent thousands of dollars on marketing the property. The other interested parties have moved on. You can't just go back to square one because the buyer changed his mind.

So to avoid this from happening, make sure that your solicitor is clear about what vendor disclosure documents are needed for your residential property. What is needed can vary from property to property.

And make sure that your solicitor meticulously checks that the sales contract includes every page of every vendor disclosure document.

Just one missing page will enable your buyer to get out of the contract on a pure technicality, even after the exchange of the contract and payment of the deposit.

### When You Buy

When you want to get out of a purchase contract that has been unconditionally exchanged, all this might work in your favour.

Get your solicitor to check whether the vendor's lawyer has attached all of the required vendor disclosure documents to the contract for sale. If there is just one of the vendor disclosure documents missing or incomplete, you can get out. Given the sheer number of documents that make up the vendor disclosure documents, there is a lot of space for human error.

Once you found a small oversight – it usually is not more than a small technicality – your solicitor can serve a Notice of Rescission of Contract to the vendor's lawyer. And you are out. The notice has the effect of immediately cancelling the contract. And you get a full refund of your deposit.

The vendor would almost certainly not be a very happy chappy (to say the least!), having lost his purchaser, and his future sale proceeds, after believing he had an unconditional exchanged contract with the purchaser!

### MORE

[NSW Workers Compensation](#)

[Process Automation](#)

[Estate Planning](#)

**Disclaimer:** *Tax Talks does not provide financial or tax advice. All information on Tax Talks is of a general nature only and might no longer be up to date or correct. You should seek professional accredited tax and financial advice when considering whether the information is suitable to your or your client's circumstances.*

-----

*The information above is for general information only and should not be taken as constituting professional advice from Tax Talks. We are not a financial, legal or tax adviser. You should consider seeking independent legal, financial, taxation or other advice to check how the above information relates to your unique circumstances.*