



WHAT IS A SECTION 17 CERTIFICATE ALL ABOUT?

When buying a property, the Buyer can agree to waive their right to a Cooling Off Period by providing the Seller with a **Section 17 Certificate** (in the ACT) or a **Section 66W Certificate** (in NSW).

This is a certificate issued by a solicitor who does not act for the Seller, after they explain to the Buyer that the certificate waives their right to the Cooling Off Period.

This has the effect of making the Contract for Sale unconditional at the time of exchange, locking the parties into the deal.

Remember, an auction contract is **ALWAYS** unconditional. Buyers **DO NOT** receive a Cooling Off Period when they are successful at auction.

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When purchasing a property in the ACT, every Buyer is entitled to a "Cooling Off Period". A Cooling Off Period is exactly what it says on the box: a time for the Buyer to cool off and think about whether they want to (and can) proceed with the purchase of a property, once Contracts for Sale have exchanged.

A Cooling Off Period lasts for 5 Business Days. It starts on the day that a Contract for Sale is exchanged, and ends at 5pm on the 5th Business Days following exchange.

A Buyer can get out of the Contract for Sale during the Cooling Off Period by giving the Seller a notice that the Contract is rescinded. The Buyer will forfeit a small amount of the price of the property (usually 0.25% of the purchase price) if they do this.

A Buyer can waive their right to a Cooling Off Period, by having their solicitor issue a certificate under:

- Section 17, *Civil Law (Sale of Residential Property) Act 2003* (ACT) for ACT properties; or
- Section 66W, *Conveyancing Act 1919* (NSW) for NSW properties.

If the Contract for Sale is exchanged with cooling off waived, then the Contract is deemed unconditional and both parties must proceed to settlement. There is no opportunity to further negotiate the terms of the Contract or rescind the Contract, if a Buyer changes their mind and does not want to proceed.

Once a Contract is exchanged unconditionally, there is no means of getting out of the Contract for Sale without the Buyer committing a breach and risking a claim against them, or both parties agreeing not to go ahead.

Benefits of the Cooling Off Period:

- A Buyer may want to lock in their purchase and exchange Contracts with the Seller so that they cannot be gazumped – with both parties understanding that the Buyer has the option to get out of the Contract by paying a small fee.
- If a Buyer doesn't have much time to lock in a property or if their solicitor isn't immediately available (say the Buyer is exchanging on an off-the-plan property on the weekend), they can exchange Contracts for Sale immediately and have their solicitor provide advice on it in the coming days.
- The Cooling Off Period gives the Buyer additional time to complete due diligence on the property once the Contract is exchanged, and receive advice on the Contract.

Reasons Why You Might Waive Your Right To Cooling Off:

- The provision of a Section 17 Certificate or a Section 66W Certificate is often highly valued by a Seller of property, because the Contract for Sale becomes unconditional and the Buyer cannot pull out. It indicates the deal is final on exchange and is a typical request from Sellers in both ACT and NSW.
- If a Buyer makes an offer which includes an unconditional exchange (that is, the Buyer's cooling off is waived), the Seller may agree to provide the Buyer with additional time to conduct due diligence, obtain legal advice and receive their unconditional finance approval on a 'good faith' basis.