

Waive Your Cooling-off Period?

Is it safe to do?



Buying a house is a monumental decision, and in New South Wales (NSW), the cooling-off period offers a safety net for buyers, giving them a final opportunity to reconsider their purchase.

However, there are situations where a buyer might choose to waive these cooling-off rights. But what does this mean, and what are the implications? Let's explore the concept in detail.

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Introduction

When purchasing a property in New South Wales, the cooling-off period offers a vital pause—a moment to reassess your decision and ensure it's the right one.

But what if you choose to waive this safety net?

Waiving your cooling-off rights is a decision that can have significant implications, so it's essential to understand what it means and what risks are involved.

2. What is the Cooling-Off Period in NSW?

The cooling-off period in NSW is a five-business-day (5) window that begins once you've signed the contract of sale for a residential property. During this period, you have the right to withdraw from the purchase.

However, should you withdraw, a small penalty will apply. Typically the penalty is 0.25% of the purchase price, unless otherwise stated in the contract.

The cooling-off period is designed to:

- protect buyers from hasty decisions
- allow time for further inspections to be completed, such as pest & building inspections or strata reports
- time to obtain formal loan approval, and
- time for the conveyancer or solicitor to review the contract, and from that information, provide advice and guidance.

3. What does it mean to waive your Cooling-Off rights?

Waiving your cooling-off rights means:

You are choosing to forgo/give up/drop/waive the five business-day period provided to you within the sale contract and immediately commit to the property purchase.

This is similar to auction conditions.

Once these rights are waived, the contract becomes legally binding. You can no longer back out without losing a lot of money (legally referred to as: facing significant legal and financial consequences).

But what if you choose to waive this safety net?

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4. Why buyers might choose to waive their Cooling-Off Rights

There are several reasons why a buyer might opt to waive their cooling-off rights:

- **Makes the offer more attractive to the seller:** *This is a big one!* In a hot market where properties are in high demand, waiving your cooling-off rights can make your offer more attractive to sellers, giving you an edge over other buyers.

- **Pressure from sellers or agents:** Sometimes, sellers or real estate agents might encourage waiving the cooling-off period to speed up the transaction, especially if the seller is trying to lock-in the purchase of their next property.
- **Certainty of purchase:** If you've done all your due diligence upfront - such as inspections, securing finance & the contract has been reviewed by your conveyancer - waiving the cooling-off period can be a logical step to finalise the deal quickly.

5. How do you waive your Cooling-Off Rights?

The process of waiving your cooling-off rights in NSW is a formal one. It requires the completion of a document known as a 66W Certificate, which can only be completed and signed by your solicitor or conveyancer.

They will only sign and issue the certificate after they have thoroughly explained it to you and they know you understand the implications of waiving your rights.

Only after this certificate is signed and provided to the seller does the waiver take effect.

6. The risks of waiving your Cooling-Off Rights

Waiving your cooling-off rights is not without its risks:

- **Financial Consequences:** If you discover an issue with the property after waiving your rights, you may be unable to withdraw from the sale without losing a significant portion of your deposit or facing other financial penalties.
- **No Recourse for Backing Out:** Once waived, the contract is legally binding, and there's no turning back if you change your mind or encounter unforeseen problems.

7. The role of Conveyancers when waiving Cooling-Off Rights

Your conveyancer plays a crucial role when you're considering waiving your cooling-off rights. They'll provide the necessary legal advice and ensure that you fully understand the risks. It's imperative to consult with your conveyancer before making this decision, as they can guide you on whether it's a wise choice in your specific situation.

8. What happens after you waive your Cooling-Off Rights?

Once your cooling-off rights are waived, the contract of sale becomes immediately binding. You are committed to purchasing the property, and there's no opportunity to withdraw without incurring significant penalties. It's a move that eliminates any remaining flexibility in the transaction, so it must be considered carefully.

9. Exceptions and Special Conditions

There are certain situations where waiving the cooling-off period may not be an option, or where special conditions apply.

- **Auctions:** when buying a property at auction, there is no cooling-off period, so there's nothing to waive.
- **Properties with land over 2.5 hectares:** Like auctions, there is no cooling-off period for properties this size or larger, as they are considered rural.

10. Cooling-Off Period waivers in different scenarios

Waiving the cooling-off period can have different implications depending on your circumstances.

When borrowing money: if the buyer requires a signed and exchanged contract in order to obtain finance approval, a 66w cannot be easily issued. Your conveyancer may be able to negotiate a finance clause if a 66w is an absolute must.

11. How to protect yourself if you waive your Cooling-Off Rights

If you decide to waive your cooling-off rights, it's essential to protect yourself by taking the following precautions:

- **Thorough Due Diligence:** Ensure all inspections and legal checks are completed before waiving your rights.
- **Secure Financing:** Make sure your mortgage or other financing is fully approved and in place.
- **Consult Your Conveyancer:** Always seek legal advice to understand the full implications of waiving your rights.

12. Alternatives to waiving your Cooling-Off Rights

As mentioned before, the cooling-off period is there for you to complete all your If you're hesitant about waiving your cooling-off rights, there are alternatives to consider:

- **Negotiation:** Instead of waiving your rights, negotiate with the seller for more favourable terms or a shorter cooling-off period.
- **Pre-Approval and Due Diligence:** Complete all necessary checks and secure financing beforehand, reducing the need to waive the cooling-off period.

13. FAQs

Can I change my mind after waiving the cooling-off period?

No, once you waive your cooling-off rights, the contract becomes legally binding, and you cannot back out without facing severe financial penalties or losing your deposit.

Is it common to waive cooling-off rights in NSW?

While it's not uncommon, waiving cooling-off rights is typically seen in highly competitive markets where buyers want to make their offer stand out. However, it's a risky move that should be carefully considered.

What should I consider before waiving my rights?

Before waiving your cooling-off rights, ensure that you've completed all inspections, secured your financing, and consulted with your conveyancer to fully understand the contract and the risks involved.

Can a seller insist on waiving the cooling-off period?

A seller cannot force you to waive your cooling-off rights, but they may prefer buyers who are willing to do so. It's important to weigh the risks and benefits before agreeing to waive these rights.

What are my options if something goes wrong after waiving?

If issues arise after you've waived your cooling-off rights, your options are very limited. You may be required to proceed with the purchase or face significant financial penalties. This is why thorough due diligence and legal advice are crucial before waiving.