

Deposit Release

Section 27 of the *Sale of Land Act 1962*

What happens to the deposit paid on a property?

The deposit paid by the purchaser is either held by the estate agent or solicitor in a trust account, as stakeholder:

1. until settlement, or
2. until the purchaser releases the deposit pursuant to Section 27 of the *Sale of Land Act 1962 (Act)*.

Section 27 of the Act establishes the procedure to allow the release of deposit prior to settlement

A vendor cannot rely absolutely on the release of deposit because a purchaser can always object to its release. However if a purchaser is willing to release the deposit, the vendor may achieve this by providing particulars of monies owed to satisfy a purchaser that even if the deposit is released the vendor can discharge all loans and hand over clear title at settlement.

A Section 27 Deposit Release Statement, containing particulars of any mortgage and any caveat, can be prepared and then served on the purchaser.

If the purchaser provides a signed release, the deposit may be released to the vendor. The purchaser will be deemed to be satisfied with the particulars provided if the purchaser does not object within 28 days.

A deposit will generally be released provided that the mortgage debt level does not exceed 80% of the purchase price.

Pre-conditions to release

Section 27 only operates where the contract is not subject to a condition enuring for the benefit of the purchaser and the purchaser has accepted title or is deemed to have accepted title. These issues can be somewhat complicated as the special conditions which will justify a refusal to release the deposit are limited. There may need to be further

investigation if there is a particular special condition in place or if there is a caveat on the property. It is more likely in these circumstances that an objection will be raised by the purchaser to the release of deposit.

Bank verification of debt level

If applicable, the vendor's lender can be contacted by the vendor's solicitor to obtain a letter confirming the debt level to provide to the purchaser by way of verification. This letter is usually required by a purchaser before the release is authorised.

At the time of the sale the vendor may be able to insert all relevant financial information in a provisional Section 27 Statement. This can be served on the purchaser as soon as possible on or after the day of sale. The selling agent may serve it on the day of sale and should have the purchaser sign the Acknowledgement of Receipt. It can also be served as soon as possible after the day of sale on the purchaser's representatives by the solicitor. This process will trigger the commencement of the 28 day period within which the purchaser may object to the release based on the particulars provided.

If all of the relevant financial information cannot be provided, a solicitor can prepare a more formal Section 27 Deposit Release Statement with all the details inserted once the information is obtained from the lender.

That information will generally only be provided to the solicitor once disclosure of that information is authorised by signing a Bank Discharge Authority. The solicitor can provide this Authority to the vendor.

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08/2021