

Selling Real Property Tips:

1. Apart from the obvious making the property presentable, and there's plenty of advice about that elsewhere, these tips are purely relating to the legal aspects.
2. If you're appointing an agent:
 - a. Read the agency appointment,
 - b. Is it 'exclusive', 'sole' or 'open'?
 - c. What are the fees? Commission, advertising, marketing, postage, office expenses etc,
 - d. Remember all commissions and fees are negotiable, legally there is a maximum commission an agent can charge but no minimum,
 - e. What are you getting for your money?
 - i. Number & type of adds/marketing/photos/video/signs/flyers/brochures,
 - ii. Are the adds mainly featuring your property or the agency itself?
 - iii. Where/how is it marketed?
 - iv. Open houses? When and how many?
 - v. What reports and follow ups are you expecting during the appointment,
 - vi. What happens if they don't perform?
What you are expecting for your money should be fully set out.
 - f. Beware of the fine print. The 'standard' REIQ appointment terms and conditions allows:
 - i. The agent to get paid by you if the contract is terminated by mutual agreement or even if the buyer defaults, this is still the case even if you get no money at all, personally I'd change this clause,
 - ii. The agent to only notify you of what they think is worthy of telling you. This is contrary to the Real Estate Code of Conduct, again I'd change this,
 - iii. The agent to get 50% of the cooling off penalty if your buyer cools off. I'd change this; the government has legislated that a buyer can cool off and as compensation for this must pay the seller 0.25% of the purchaser price (but only out of any deposit paid); if the government wanted the agent to get ½ they could have said so, they didn't.
3. If you have a pool:
 - a. If you have a pool safety certificate have this available,
 - b. If you don't have a pool safety certificate you can simply give any buyer a certificate stating that you don't have one and then it's up to the buyer to get one after settlement,
 - c. If you happen to try and get a certificate and there's a problem with the pool or fencing, then it is likely that you will have to fix that problem. The person doing the

inspection must notify the government if the pool doesn't comply, this will start the wheels in motion, whether you sell or not.

4. If you are in a body corporate situation:
 - a. Prior to the buyer getting any contract you will need to give them a Body Corporate Disclosure Statement. This you can usually get from your body corporate secretary, for a fee.
 - b. The disclosure must be accurate at the time you give it, it doesn't matter how old it is, but generally you wouldn't waste money getting one until you have a pretty good idea that you have a good buyer. This can of course cause delays before the contract can be signed.
5. If you are aware of any dispute with neighbours or even orders against or by neighbours, then these must be disclosed to your buyer.
6. If any house construction/renovation was undertaken by an 'owner builder' you must notify the buyer and they must sign the notice prior to entering into a contract.
7. The contract must state whether you have an electrical safety switch and compliant smoke detectors. You don't have to install them if you don't, you just have to notify. It will then become the buyers problem after settlement.
8. Any encumbrance over the property needs to be disclosed to your buyer. These include easements, statutory covenants, claims, resumptions, limitations as to use, building or developers covenants etc. A failure to do so could bring very serious consequences.
 - a. Make sure that you check your title and also check your contract when you bought the property to ensure that there is nothing in there requiring you to pass any covenant onto the buyer.
9. Make sure that the person/entity who enters into/signs the contract is in fact the person/entity that owns the property.
 - a. You'd be surprised how many times people think that a property is owned by a certain person/entity only to find that it's in fact in a different name to what they thought.
10. Make sure that you are aware of what you are selling with the property.
 - a. Generally the contract provides that the following are included: all fixed items, fixed carpets, curtains, blinds & fittings, satellite dish, TV antennae, stove, hotplates, hot water system, in ground shrubs,
 - b. It possibly would not include such things as: dishwasher, microwave, sheds, pool cleaning equipment, washing machines, dryers, fridges, water features, security equipment, some air-conditioning, pot plants, statues/ornaments, wall mounted flat screens, anything not "fixed" to the property.
11. To avoid any dispute it would be better to define all the inclusions/exclusions from the start.

12. You must comply strictly with certain disclosure obligations prior to the buyer signing the contract. There are very serious consequences if you don't. Whoever is helping you with the contract must know what to do and do it properly.
13. Generally the contract is signed by the buyer first and then the seller.
14. If the seller changes anything in the contract then that amounts to a counter-offer and the buyer would then need to re-sign the contract to therefore 'accept' your counter offer. If the buyer then changes anything, the process starts again.
15. Be aware of any contract conditions and timing (e.g. subject to finance and pest and building and pool inspections and settlement date). Time is of the essence of a Qld contract, this means that when there is a date/time frame these must be complied with otherwise, without the othersides consent there can be serious adverse consequences.
16. When is the deposit being paid and how much? If not 10% of the purchase price, why not?
17. When is the settlement date:
 - a. Do you have enough time to find somewhere else to live and move to?
 - b. Is there enough time from when the contract is unconditional to when you have to find a new place and arrange to move?
 - c. You generally don't want to stitch up your new place until your sale is unconditional, but also remember there has been many an unconditional settlement not settle.
18. Once it is signed, the contract process is done, nothing can be changed without both parties consent. The contract can't be changed, or fixed', without both side agreeing.
19. The buyer or their solicitor must be given a complete copy of the signed contract to start the cooling off period.
20. You should keep the property insured right up until the settlement date.

We can assist with any aspect of the contract process and strongly suggest that a solicitor, like us, reads your contract before you sign.

Good luck.

WP Lawyers.

