



# legal chat

with Solicitor

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## HOLDING DEPOSITS WHEN PURCHASING REAL ESTATE

When you are buying or selling something often if you are not in a position to pay the full price immediately, suggestions of a holding deposit arise to secure the deal. Does this mean a Contract has been formed, as some consideration has now been paid? This issue often arises with real estate, but under the law a pre-contract deposit for land is not strictly speaking a deposit at all. Many purchasers believe that payment of a pre-contract holding deposit imposes some obligation on vendors to withdraw the property from the market, when in fact any obligation flowing from the payment of such a deposit would be a moral one only. To be enforceable, for the sale of land in New South Wales, contracts are required to be in writing. With a few exceptions, until the parties enter into a written contract either party is free to withdraw from the transaction. There is still much confusion on this issue, often leading to a great deal of stress if a buyer is subsequently gazumped. Be wary however of some developers and agents now taking advantage of the situation and building fees into holding deposits so that if a purchaser changes their mind the amount is non refundable. For this to be the case however you would have to sign something to agree first. So there is the first lesson, don't sign anything unless you know and understand what it is. While a holding deposit paid to the deposit holder, usually the real estate agent, can go towards making up the deposit to enter the contract, even if the usual full 10% is paid to the deposit holder a purchaser is entitled to get the full amount back if no contract is subsequently entered. This is even the case if

the money has already been paid to the vendor. The rationale behind this is based on the general law where despite the deposit being handed to the agent, they are taken to hold the pre-contract deposit on trust for the purchaser, therefore entitling the purchaser to obtain a refund at will. Despite that, payment of a holding deposit can still be worthwhile, being a sign of good faith often satisfying a Vendor to take the property off the market, but avoid signing anything without legal advice that might formulate a contract and see you lose your deposit.

**Give Johnston Tobin Solicitors a call if you are unsure of anything when buying real estate we have the knowledge to help you with all your queries.**



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