

Procedures

Agreement for Sale

Execution of an Agreement for Sale is a vital part of the legal process of “conveyance” i.e. transferring the ownership of property. It constitutes the terms and conditions of a promise of transfer of ownership in the future.

Object & Use

Agreement for Sale is an indispensable part of any legal property transfer. It is generally executed in situations where an outright transfer of property is not possible or desirable i.e. in cases where the consideration is partly paid or deferred. Agreement for Sale can be executed between two or more individuals, builder/purchaser, family members, body of individuals etc.



An agreement for sale precedes a sale deed and is generally the document with all relevant details of a transfer.

The agreement for sale is the legal basis to enforce rights between two parties entering into any property transfer arrangement. Even if parties are known to each other as friends or family members, this agreement is necessary to give legal recognition to any transfer.



Essentials

Should be printed on applicable denomination of non-judicial stamp paper(s).



Some states require a stamp duty to be paid for agreement for sale (which is normally only to be paid for a sale deed) therefore local stamp acts must be checked to ascertain whether a stamp duty is to be paid.

Property plans, if any, should be miniaturized to A4 size and enclosed as annexures.



Should specify the time period within which actual transfer is to fructify.



Should have a copy of the Power of Attorney* attached, if applicable.

Every page should be signed by the parties and should be stamped and attested by the sub-registrar.

**A power of attorney is a legal document authorising one person to act on behalf of the other.*

Best Practices

There are many technical terms you will encounter while executing an agreement for sale. Some of these to look out for and ensure that they form a part of your agreement are:

The **PREAMBLE** which is the introduction to the agreement will carry the name of agreement, date of execution, details of parties involved (name, father's name, age, profession, nationality, residential address, PAN Card No. etc.), type of entity/organisation. A descriptive noun such as "Buyer" or "Purchaser" is assigned to the parties for the purpose of convenience.

Nature of property can either be **FREEHOLD** or **LEASEHOLD**. A freehold property is one which is in complete ownership of the owner including the land it is built on, while a leasehold property is one where the land on which the property is built is leased to the owner for certain time period.

The **RECITALS** form the body of the agreement and carry the background of the Agreement containing statements of fact, circumstances, relevant details of the property, transfer of title etc.

The **DEFINITIONS** will be the section detailing the precise explanation of contract terms and specific meanings for ambiguous terms.

Best Practices

The **INTERPRETATION CLAUSES** stipulate which parts of the Agreement are legally binding and which are not.

The **OPERATIVE PROVISIONS** contain the mutually agreed terms detailing aspects such as consideration (amount), contract terms, liability etc. and other provisions governing the rights and obligations of the parties.

The **DEFAULT CLAUSE** provides for steps to be taken if there is default on part of either the buyer or seller.

The **BOILERPLATE PROVISIONS** which are incorporated towards the end should contain important provisions relating to dispute resolution, enforcement and the law governing the agreement

The **SCHEDULES** are annexures adding detail to the operative provisions such as property maps.

FAQs

1) Is Agreement for Sale and Sale Deed the same thing?

A) No. Agreement for Sale is a precursor to Sale Deed. The transfer of title is granted only on the execution of Sale Deed. A Sale Deed can also be executed without an Agreement for Sale.

Agreement for Sale	Sale Deed
It is a promise for a future transfer.	It is the actual transfer of property.
It is signed and executed by a seller and buyer on a non-judicial stamp paper.	Buyer has to pay stamp duty (a tax levied by the government) and registration fee to execute a sale deed.
It enlists the terms and conditions and sets the transfer process in motion, binding the parties.	It is the final document transferring ownership.

FAQs

2) What happens in case of default of an agreement for sale?

A) In case of default, provisions of the agreement such as the default clause will come into force. Although only sale deeds are mandatory to be registered, in order to ensure greater enforceability, an agreement for sale can also be registered before a sub-registrar.