

Selling Property

information brochure



The legal process of selling and transferring the ownership of a property is called conveyancing. There are many parts to this process, the estate agent, lawyer and seller (or vendor) all have their role to play. This guide is designed to help you avoid problems that may arise when selling a property. It covers the process involved with residential property such as houses, units and vacant residential land.

The Vendor's Statement

It is a requirement of the Sale of Land Act that a disclosure statement be given to the purchaser before they sign a contract of sale. This is known as a "vendor's statement" or a "section 32 statement".

We will prepare the vendor's statement on the basis of information you provide. It is important that this information is accurate and comprehensive as any omission or error, even though innocent may result in a purchaser being entitled to withdraw from the contract at anytime before settlement.

We have the processes and means in place to provide you or your agent with a vendors statement and Contract of Sale in the shortest possible time frame. This is often necessary when there is an eager prospective buyer, Please feel free to contact us to find out how.

The vendor's statement must include a copy of the title of your property and a copy of a number of documents. In short, the documents should reveal the following information:

- The planning and zoning scheme that covers the property.
- A description of any easements, covenants or similar restrictions affecting the land, whether they are registered or not, and any existing failure to comply with the terms any such restriction.
- The amount of any rates, state land tax or other charges affecting the land, including any arrears and interest on late payments.
- Details of any notice, order, report, recommendation, agreement or proposal affecting your land or the neighbouring land that may affect your land. For example, an application to construct units or some other development on a property near to you.
- A statement as to whether or not electricity, gas, water, sewer and telephone are connected to the land.
- Details of all building permits or approvals granted within the period of 7 years prior to the date of the contract.
- Details of any house insurance policy, builders warranty insurance and certificate of occupancy.
- Details of any lease affecting the property

If you are unable to provide any of the above documents we can obtain them on your behalf.

If any of the particulars in the vendor's statement change, you must let us know before the contract is signed by a purchaser.

Owner Builders and work carried out by owners

Where you built the house yourself, or if you have carried out extensions, renovations or other works, special rules apply. Even if the work was carried out by someone else (such as a garage company or other tradesperson), you may be considered an owner builder where the person who carried out the work was not a registered builder. Prior to selling, the special rules require an inspection report of the works, and insurance for the structure where the works were valued at over \$12,000 at the time they were built.

A purchaser may withdraw from a contract if these special requirements are not met. If you have had any work carried out at the property that was not done by a registered builder, please let us know.



If there are works carried out at the property prior to your purchase for which an earlier owner arranged the special structural insurance, you must supply us with a copy of the policy to be included in the vendor's statement.

Tenant in Possession

If the property has been rented out and you intend to sell with vacant possession you must give the tenant notice to vacate. Please ensure that you or your agent does this once the property is sold and that settlement is not less than 60 days after that notice is served on the tenant. If the lease is current, and for a fixed term the tenant cannot be required to vacate until the lease has expired. If the tenant does not vacate by the settlement date you will be unable to give vacant possession to the purchaser and the sale will be at risk. If the sale fails you may be liable to the purchaser for any loss suffered.

Mortgage

If your property is mortgaged you will need to have sufficient funds from the sale proceeds or otherwise to discharge that mortgage at settlement. Please note that some lenders do impose additional interest or fees on the early discharge of a mortgage.

If You Are Selling A Unit (or any property with common property)

If your property has an Owners Corporation (whether operating or not) further details will need to be provided in the vendor's statement. This information is usually contained in the Owners Corporation certificate which is supplied by the Owners Corporation.

Whether or not the Owners Corporation is effectively functioning, public liability insurance taken out in the name of the Owners Corporation covering the unit and all common property must be in place before the unit is sold. You should contact us to confirm that the insurance meets the current requirements. Failure to have proper insurance in place will allow a purchaser to withdraw from a sale.

Contract Information

When you receive and accept an offer for the purchase of your property that agreement will not usually be binding until you and the purchaser have signed a Contract of Sale. The usual procedure is that you as vendor and the purchaser sign separate copies of the Contract of Sale and these are then exchanged. It is at this point that you have an enforceable contract.

Cooling Off

The Sale of Land Act provides that a purchaser may withdraw from a contract within 3 business days after signing it. Therefore you should not regard the property as having been sold until this period has expired. There is no cooling off period if the property is sold at auction, or within 3 days of the auction date, or if the purchaser has received independent legal advice from a solicitor prior to signing.

After Exchange

Once contracts are exchanged we will take care of the sale through to settlement.

Release of deposit

The deposit can only be released to you before settlement if:

- The contract is unconditional;
- You have given the purchaser a notice setting out the amount required to discharge any mortgages on the property. For this purpose, you will need to obtain a letter from your lender to confirming the amount required to pay out your loan; and
- Either the purchaser consents to the release of the deposit or fails to respond within 28 days of a request for the release of the deposit.

If requested, we would be happy to provide you with a deposit release authority.

Settlement

The settlement date is specified in the contract and is the date on which the balance of purchase money is payable.

Unless otherwise agreed, you will need to have vacated the property by the settlement date. We will arrange for payment of the proceeds of sale in accordance with your directions. It will not be necessary for you to attend settlement.

Conclusion

If you would like any further information or assistance, please do not hesitate to contact our friendly team at M A Legal on **1300 88 73 91** or email info@malegal.com.au

