



Information every Vendor must know before signing any document relating to a sale of land in Victoria

Vendor's Statements

Under the *Sale of Land Act* a vendor is required to give to a purchaser, before a purchaser signs a contract or contract note, a statement setting out prescribed matters. That statement is called either a Vendor's Statement or a Section 32 Statement. The matters which are to be included in a Vendor's Statement are as follows:

Easements, Covenants and Restrictions

A description of any easement covenant or other similar restriction affecting the property (whether registered or unregistered) and particulars of any existing failure to comply with their terms.

Town Planning

The name of the governing planning instrument, the name of the relevant responsible authority, the relevant zoning of the property and, if it is reserved under the planning instrument, the purpose for which it is reserved. If the property is outside the Melbourne metropolitan area and the planning instrument prohibits the construction of a dwelling, a statement to that effect.

A Vendor's Statement must also include a notice to the purchaser to check with the relevant authorities, before signing the contract, regarding consents and permits required relating to the purchaser's intended use of the property.

Road Access

If there is no road access to the property, a statement to that effect.

Outgoings, including Rates and Statutory Charges

The amount of any rates taxes, charges or other similar outgoings (including body corporate levies) relating to the property and any interest payable on them for which the purchaser may become liable and of which the vendor might reasonably be expected to have knowledge **OR** a statement that the total amount of those rates etc and interest does not exceed the sum set out by the vendor in the Vendor's Statement. Also, particulars of any registered or unregistered charge on the land imposed under any Act to secure amounts owed under that Act and details of the moneys owing must be stated (eg. charges for unpaid rates or taxes).

Notices, Orders, Declaration, Reports, Recommendations

Particulars of any notice, order, declaration, report or recommendation of a public authority or government department or approved proposal affecting the property of which the vendor might reasonably be expected to have knowledge, including:

- ⊕ notice of intention to acquire the property under Section 6 of the *Land Acquisition and Compensation Act 1986*
- ⊕ quarantine of stock order imposed under the *Stock Diseases Act 1968* (whether or not the order is still in force)

- ⊕ any notice affecting any body corporate and any liabilities of the body corporate contingent, proposed or otherwise and any notice relating to the undertaking of repairs to the property. (These particulars are only required where the property is in a subdivision containing a body corporate).

Title

There must be attached to the Vendor's Statement copies of relevant title documents, including plans of subdivision or proposed plans of subdivision, and if the vendor is not the registered proprietor of the property, evidence of the vendor's right or power to sell the property.

Services

A statement as to whether or not electricity, gas, water, sewerage and telephone are connected to the property and if so, the relevant authority is to be named. A warning is also to be included that the purchaser should check with the relevant authorities as to the availability and cost of connection of services not connected to the property.

"Connected" in relation to services means that the service can be used without further payment of money or application being made to a service authority (eg. electricity or gas can be turned on and used).

Building Permit

If the property includes a residence (house, flat or unit), particulars of any building approval/permit granted in the 7 years preceding the date of the contract and which building approval/permit relates to any building being part of the property sold and if the residence was built by an owner builder in the preceding 7 years, details of the insurance taken out under the *House Contracts Guarantee Act* or under the *Building Act*.

Insurances

If the contract states that the property is to be at the risk of the purchaser until settlement, particulars of any policy of insurance taken out by the vendor in relation to damage or destruction of buildings on the property.

Term Sales

Where the contract provides that the purchaser is to make two or more payments to the vendor after the contract is signed and before the purchaser is entitled transfer or title, or where the purchaser is allowed to take possession before becoming entitled to transfer of title, the Vendor's statement must include details of the price, deposit, total interest payable, repayments required, interest rate and charges for late payment.

Mortgages

Particulars of any mortgage (whether registered or unregistered) over the land which is not to be discharged before settlement (or the date the purchaser becomes entitled to possession or rents). The particulars required include the amount secured by the mortgage, particulars of any unremedied defaults, details of interest and principal repayments payable and details of any further advances.

Leases and Planning Permits

Often the most difficult part of the Vendor's Statement relates to providing details of easements, covenants and similar restrictions. One way to approach this problem is to consider what matters or circumstances exist which may affect a purchaser's ability to use or enjoy the property in any way.

We therefore recommend that the following forms of restriction be revealed in Vendor's Statements:

- ⊕ All leases of the property;
- ⊕ All occupation licences or the like;
- ⊕ All rights granted to any person to use in any way or to resort to any part of the property at any time;
- ⊕ All planning permits issued in relation to the Property (especially those that contain "limiting" conditions), or any issued in relation to nearby properties which may result in a use or development of a neighbouring property which will have an effect on a purchaser's use or enjoyment of the property.

This list is by no means exhaustive.

How long does a Vendor's Statement last?

We are often asked "How long does a Vendor's Statement last?". To answer simply is that the information in a Vendor's Statement must be correct on the day the Vendor's Statement is handed to a purchaser. As soon as there is a change in any of the information in the Vendor's Statement (eg. change in rates, change in tenancy or if a service is disconnected) the Vendor's Statement must be updated.

What if a Vendor's Statement is not given?

If a vendor does not give the required Vendor's Statement, or knowingly or recklessly gives false information in a Vendor's Statement, the purchaser may be able to bring the contract to an end and sue the vendor for damages, and the vendor will be guilty of an offence and liable to a fine. If the purchaser validly brings the contract to an end, the deposit money must be given back to the purchaser. Additionally, the vendor will probably be liable for the vendor's agents' commission on that sale and will also have to pay other expenses the vendor has incurred in connection with the sale.

Preparing Vendor's Statements

As you can see, the information required to be included in the Vendor's Statement is both comprehensive and, in many cases, complex. It is now more important than ever that a Vendor's Statement be prepared by a solicitor and that sufficient time or information is given so that a Vendor's Statement can be properly prepared.

In many cases the information to be included in a Vendor's Statement will be given by attaching certificates received from relevant authorities. As the vendor must make sure that the information in the Vendor's Statement is correct on the date it is handed to a purchaser, total reliance cannot be placed on any certificate attached. Circumstances may have changed after the date any such certificate was issued, and if the vendor is aware of any changes, he must reveal those changes in the Vendor's Statement.

Condition of Chattels and Improvements at Settlement

Most contracts for the sale of real estate in the State of Victoria now state that the improvements (buildings) and chattels being sold with the land are to be delivered to the purchaser by the vendor on the settlement date in their state of repair (fair wear and tear excepted) as at the date of the contract. These contracts also state that failure to so deliver the chattels (and only the chattels) will give the purchaser a right to compensation only.

A vendor who has sold land with improvements on it under a contract which contains such a condition (and most contracts will contain such a condition) must make sure that all the improvements (buildings) sold with the land are insured from the day of sale to the date of settlement against damage or destruction for full reinstatement value so that if damage or destruction occurs to those improvements before settlement, the vendor will suffer as little loss and damage as possible.

Purchaser's Right to Inspect Prior to Settlement

Most contracts for the sale of real estate in Victoria will now provide that "the purchaser may inspect the condition of the property and the chattels at any reasonable time during the period of seven (7) days preceding the settlement date".

It will therefore be wise for vendors to make sure that before that period starts, any damage

that has occurred to improvements and chattels since the day of sale is repaired and made good.

Vendors who have sold a property before the completion of construction of buildings on the property would, by virtue of the above provision, be best served if they make sure that construction works are fully completed before that period commences.

Cooling Off

The Sale of Land Act provides for a "cooling off" period in the case of contracts of sale of land and chattels, unless the contract is for the sale of land used primarily for industrial or commercial purposes or for the sale of land which is more than 20Ha in area and is used for farming.

The "cooling off" period is 3 clear business days from the date the purchaser signs a contract note (or contract) and if within that period the purchaser notifies the vendor that he terminates the contract, the sale is at an end and all moneys paid are to be refunded except \$100 or 0.2% of the purchase price, whichever is the greater.

The Act exempts from the "cooling off" period a sale made by publicly advertised auction and sales made within 3 clear business days before or after the day on which a publicly advertised auction is or was to be held. The cooling off period also does not apply where the purchaser is an estate agent or corporate body (company) or where the purchaser has sought and received independent legal advice from a solicitor before signing the contract.

The Act states that contracts must contain conspicuous notice advising purchasers of these "cooling off" rights.

NOTICE

This pamphlet does not contain comprehensive advices, nor should it be considered to be advice given in relation to a particular transaction or be relied on in substitution for any other advices we may give. The matters set out in this pamphlet should be regarded only as a general guide to the subjects referred to. It is always preferable that you consult us in respect of each transaction affected by the subjects referred to in this pamphlet, as each transaction may involve unique or special circumstances which may be affected by considerations not covered or referred to in this pamphlet.