



VENDOR'S GUIDE

Things every vendor should consider when selling a property

- Have you fully considered all of the matters leading to the best sale price for your property?
 - Have you checked out other houses in your area to get an idea of price?
 - Speak to several real estate agents to establish a price range.
 - Will you sell by auction or private sale?
 - Is the house presented in the best possible way?
 - Has all relevant maintenance to the property been carried out?
 - Have you obtained a certificate of final inspection for renovations carried out to the property?
 - Have you obtained insurance if you have renovated the property in the last seven years as an owner/builder?

- Have you reached an agreement with a real estate agent?
 - Have you agreed the marketing expenses?
 - Does the agent require payment of the marketing expenses up front or after the sale?
 - What happens if the property doesn't sell?
 - Are you sure which personnel will be responsible for your inspections/ the auction/negotiations?
 - How long is the agent's exclusive authority period?
 - When can you terminate the agency if you're not happy?

- Are your conveyancing documents ready if you get an offer you want to accept?
 - Have you instructed solicitors to prepare a Section 32/Vendors Statement and a Contract of Sale?
 - Do you or your bank have the original duplicate certificate of title?

- Has your section 32/Vendor's Statement been fully and properly prepared?

If the Section 32/Vendor's Statement is wrong there can be dramatic consequences. Hendersons Legal has assisted buyers to terminate Contracts of Sale after they have been signed in situations where the Section 32/Vendor's Statement was faulty. Hendersons Legal recommends that you ensure you obtain advice from qualified lawyers to ensure that this important requirement is properly met.

- What if there is a mistake in the Section 32/Vendor's Statement?
 - The buyer may be able to terminate the contract of sale at any time before settlement
 - The vendor may be required to return the full amount of the deposit
 - The vendor may be required to pay the buyer any interest earned on the deposit
 - The vendor may have to pay any legal costs incurred by the buyer
 - The vendor may have to pay your real estate agent its commission and marketing costs even though the sale has failed.

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- The vendor will have to remarket and re-sell the property and pay all additional associated costs of doing so.
- The vendor may also incur additional costs associated with their finance and furniture hire costs of a second re-sale
- The vendor will incur two lots of legal fees: one for the cancelled first sale and then a second round for the second sale.



What must the section 32/vendor's statement contain?

It is your solicitor's responsibility to prepare the section 32/Vendor's Statement which should contain the following:

- All title documents and the title plan.
- All covenants or easements which may affect the use of the property.
- All documents which show your right to sell the property.
- Notices setting out all information required by the local council and statutory authorities including the annual rates that you are paying.
- The amount of the rates, taxes and any land tax payable or liable with respect to the property.
- Information about the Planning Controls and Zoning with respect to the property.
- All heritage listings over the property.
- All relevant water, gas, electricity, telephone & sewerage connections.
- Any statutory notices concerning any contamination over the property.
- All builders warranty insurance or owner-builder insurance required to be disclosed with respect to the property.
- Owners Corporation information as set out in the prescribed notice.
- Owners Corporation fees with respect to the property.
- Any Growth Area Infrastructure Contribution (GAIC) charges.
- Any other notices received by the vendor in respect of the property.

This is a list of regularly disclosed items. However, there may be other matters depending on the specifics of your property. **SHORT CUTS ARE TAKEN BY SOME CONVEYANCING FIRMS TO SAVE COSTS AND TO UNDERQUOTE COMPETITORS. IT IS CRITICAL TO ENSURE THAT THE VENDOR'S STATEMENT IS PROPERLY PREPARED AND FULLY COMPLIANT WITH ALL RELEVANT LAWS**



Do you want to be able to bank the deposit before settlement?

- In certain circumstances, a vendor can ask their solicitor to prepare and serve a Section 27 Statement upon the purchaser to have the deposit (less the agent's costs and commission) released to the vendor before the settlement. This will require the vendor's bank to produce a statement showing certain information such as the amount owing on the vendor's mortgage.
- Once served with a section 27 Statement, the purchaser may choose to sign and return the Statement or unless otherwise challenged, the deposit can be released to the vendor after 28 days.

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Have you thought about what you will do if the purchaser can't pay you on the settlement date?

Unfortunately, from time to time, a purchaser is unable to complete the settlement by the agreed date or at all. If the purchaser fails to pay the vendor at settlement, then there are 3 possible consequences:

- settlement will need to be re-booked for another day, especially if banks are involved
- the purchaser will be liable to pay default or penalty interest to the vendor which usually equates to 10% -14% per annum calculated on a daily basis until the balance of the purchase price is paid.
- if there are constant or numerous delays in settlement, the vendor might ask their solicitors to serve a Notice of Rescission on the purchaser warning the purchaser the Contract of Sale will be cancelled if the settlement is not completed within 14 days. There are serious consequences if this occurs. For example the purchaser may lose their 10% deposit. Also, the vendor may have a finance problem if they are committed to buying another property with funds they are yet to receive from the purchase of their own property.

If something goes wrong with the settlement, the consequences can be stressful and financially harmful. By using Hendersons Legal to carry out your conveyance you will have immediate and urgent access to qualified lawyers with extensive experience in helping vendors who experience difficulties surrounding the settlement process.

What happens if the purchaser seeks access to the property before settlement?

The vendor may agree to any such request and depending on the nature of the access sought by the purchaser, the vendor may wish to charge a relevant fee for this opportunity. This can be done by a licence agreement. However, due care and legal skill is needed to draft such an agreement to ensure that the purchaser remains compelled to complete the purchase of the property in accordance with the Contract of Sale. Hendersons Legal can quickly answer any questions and provide you with the documents you need if this situation arises.

If there is any doubt or you have questions or concerns about any of these issues you should get legal advice immediately.

Selling your home or any property is a complicated legal matter than can run smoothly with the right lawyers looking after the conveyancing.

Call **HENDERSONS LEGAL** on (03)9629 2211
to speak to an experienced property lawyer.

This guide is intended to provide a summary and general overview. It does not intend to be comprehensive or specific to individual circumstances. All attempts have to been made to ensure that the contents are correct and current, but this is not guaranteed and you should seek specific legal advice from a qualified practitioner in relation to any legal issue of concern.