

Vendor

ADVICE
GUIDE



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WE ARE HERE TO HELP

Feel free to contact us if you have any queries in relation to your sale.

We are here to assist you before, during and after the sale of your property.

THE PURPOSE OF THIS GUIDE

The purpose of this Guide is to provide clients or prospective clients of Beck Legal with an outline of what is involved in a conveyancing transaction as well as to make some recommendations for what you can do to ensure the process is a smooth one both for yourself and for us.

We understand that selling a property is a significant financial and emotional event and aim to make the process as simple and clear as possible for you. At the same time, we encourage you to take an active role in the process, as this ensures that you stay informed about what is happening and minimises the possibility for communication breakdowns.

This guide is not intended to constitute legal advice. We recommend you contact us to obtain advice specific to your circumstances.

MOVING OUT CHECKLIST

- Book removalist – be mindful of the settlement time
- Notify Electoral Office/VicRoads of your new address
- Arrange to have your mail held or redirected to your new address
- Transfer or set up new connections at your new property for gas, electricity, and telephone
- Contact all relevant authorities and notify them of your new address
- If the house will be empty for a while inform police and neighbours
- Prepare an action plan for moving day
- Arrange for a vacate clean to be completed or ensure the property is thoroughly cleaned for the new owners
- Once settled make sure you have all keys and relevant instructions to your new property

COSTS – PAYABLE AT SETTLEMENT

When you sell a property there will be out of pocket costs payable at settlement. These costs will include:

- a. Legal costs
- b. Titles Office costs
(if there is a mortgage registered on title)

- c. Bank's fees (if applicable)
- d. Agent's commission (if applicable)

Many factors will determine these costs. We recommend you contact our office to discuss these costs in more detail.

THE STARTING POINT – THE VENDOR'S STATEMENT (SECTION 32)

Before you can enter into a Contract to sell your property you must provide the purchaser with a Section 32.

This statement records details of the property rates, charges, easements affecting the land and planning restrictions and requirements.

Often, an agent will encourage you to have a Section 32 available on file to provide to any prospective purchaser. We would also recommend this as it can take between 3 and 10 days to gather all the required information from multiple third parties for a Section 32.

It is critical that all information in a Section 32 is current. The reason for this is, if the statement contains any false information,

this will give a purchaser an opportunity to avoid the Contract. Please also note, a Section 32 is only valid for 6 months.

In addition, vendors or their agents must now disclose material facts about the property to any prospective purchaser prior to accepting an offer. Material facts include things such as building defects, illegal activity and neighbourhood disputes. To assist vendors, we have developed a Material Facts Checklist which we can provide you when you are ready to sell your property. This Checklist is also available at our website at

<https://becklegal.com.au/wp-content/uploads/2020/11/2020069-Beck-Legal-Building-Checklist-with-check-boxes-October-2020-Editable.pdf>.

THE CONTRACT OF SALE (CONTRACT)

The Contract records the terms of your agreement with the purchaser to sell your property.

The Contract is a legally binding document and breaches of Contracts can have potentially devastating legal consequences. We are here to assist you in avoiding anything like that happening.

As the Contract is designed to record your whole agreement with the purchaser,

anything which was agreed verbally with the agent or purchaser directly does not form part of the Contract and as such you should not rely on any verbal representations made to you. If you are concerned that aspects of your agreement with the purchaser are not in the Contract, then you should advise our office before signing the Contract.

DEPOSIT

Most Contracts will specify that a purchaser is required to pay a deposit amount (generally 10% of the sale price) at the time the purchaser signs the Contract or by a specified due date. The deposit must

be paid to your real estate agent or our office to be held on your behalf pending settlement unless it has been agreed to by the purchaser to release the deposit to you prior to settlement.

RELEASE OF THE DEPOSIT

In Victoria, you may request the deposit be released from the agent or our office before settlement, to be used however you wish. The document required to release the deposit to you is known as a Section 27 Statement. For this to occur, you will be required to provide the purchaser with full details of any amounts owed by you

in relation to the property (eg. if you owe money to a bank who has a mortgage over the property). Usually, provided the balance of the sale price (sale price less deposit) exceeds any amounts owed by you in relation to the property, a purchaser will consent to release of the deposit. A purchaser has 28 days to consider this request.

SETTLEMENT

Settlement is the time when purchasers (and their lenders) pay the balance of the purchase price to you.

Settlement takes place electronically through PEXA or at a location selected by you or, if you have a mortgage, your bank. If settlement is not electronic and your bank nominates a location outside of Bendigo

or Swan Hill, we will appoint a settlement agent to attend settlement on our behalf.

The settlement process can take up to 30 minutes. You do not need to attend settlement in any event.

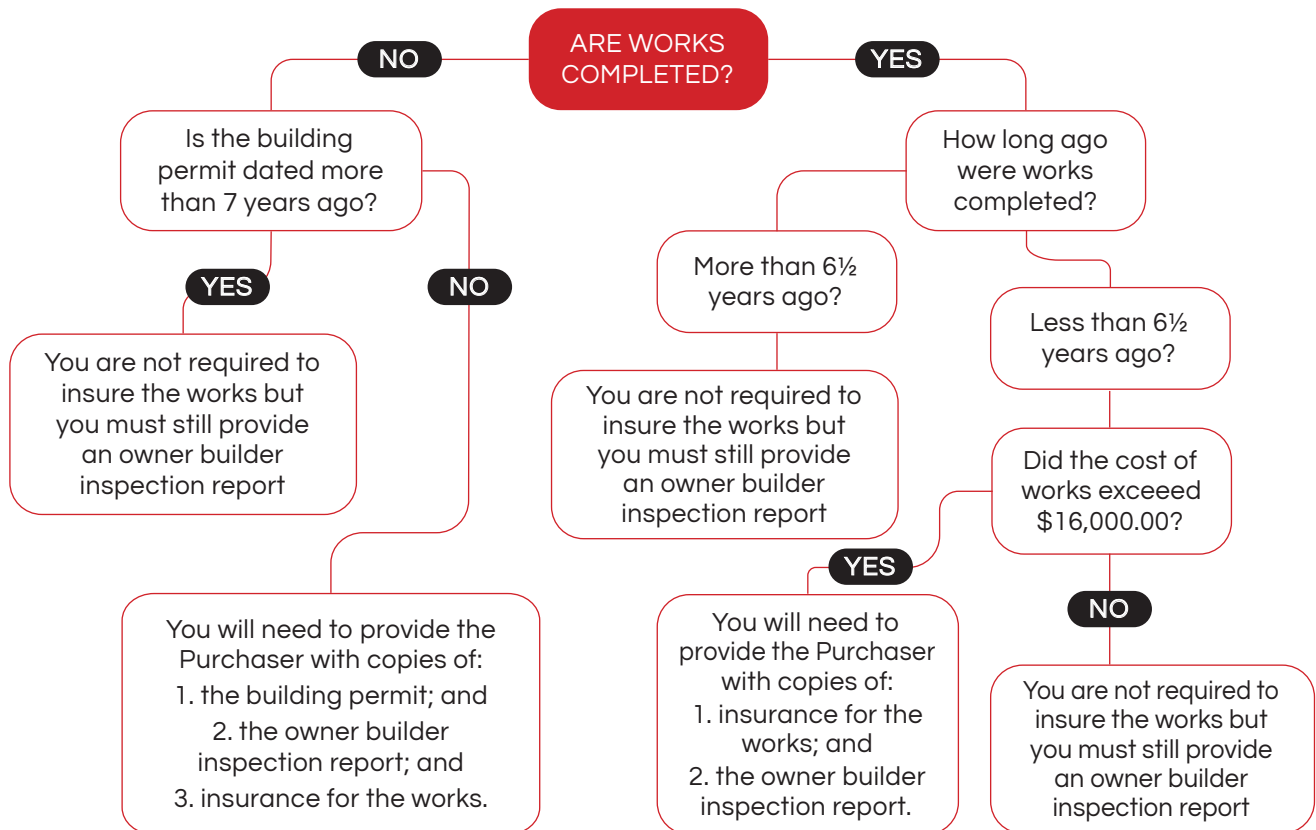
OWNER BUILDER FLOW CHART

If you have completed building works on your property and are considered an Owner Builder (for the purposes of the Building Act) there are some additional matters that need to be addressed in your Contract and Section 32 statement.

You are an Owner Builder if you:

1. Used your own skills to build, extend or renovate a home that you live in, or intend to live in.
2. Intend to manage trades people to do work on a home that you live in, or intend to live in.

TIP: If you are named as the applicant on the building permit, you will be considered to be an owner builder.



INSURANCE TIP: insurance is only required to sell as it is in place to protect the purchaser. If you sell and the work is completed you only need to maintain insurance until 6 years and 6 months from when the works were completed

and if the works are not completed, you only need to maintain insurance until 7 years from the date of the building permit. If you decide not to sell the property, you do not need to maintain the insurance

COUNCIL RATES AND WATER ADJUSTMENTS

Generally, you will be obligated to pay the rates on the property up to and including the day of settlement and the purchaser is responsible for them after the settlement.

The purchaser will calculate a rate adjustment at settlement to ensure that this happens. They do this by requesting you pay the rates in full for the current financial year at settlement and then

the purchaser pays to you at settlement a daily amount calculated from the settlement day until the end of the current financial year.

We also notify all rating authorities (council and water) that you are no longer the owner of the property immediately after settlement. From that point on, all notices will then be sent to the purchaser by the relevant authorities.

LAND TAX

Land Tax is imposed by the State Revenue Office on land with a value exceeding \$50,000.00 if that land is not used as your principal place of residence or for primary production in certain circumstances.

Additionally, residential property in certain areas of Melbourne may be subject to Vacant Residential Land Tax if that property was vacant for more than 6 months in the preceding calendar year.

From 1 January 2025, the Vacant Residential Land Tax will apply to all vacant residential land

in Victoria not just those parts of Melbourne it currently affects.

As of 1 January 2024, it is an offence for a Vendor to enter into a Contract that requires the Purchaser to pay any amount towards Land Tax or Vacant Residential Land Tax where previously this was permitted. We have amended our contracts to reflect this change in the law. If you are unsure if your land is or may be subject to Land Tax or Vacant Residential Land Tax, or you have any questions regarding the above please contact our office for further advice.

WINDFALL GAINS TAX

Windfall Gains Tax (**WGT**) is imposed by the State Revenue Office on land that has been rezoned and the rezoning results in the capital improved value of the land increasing by more than \$100,000.00.

Please be aware that liability for WGT can be created even in circumstances where you have not applied for the land to be rezoned. Council may make a rezoning decision relating to land without the consent of the landowner, and if this

rezoning increases the value of the land, WGT may be payable.

As of 1 January 2024, it is an offence for a Vendor to enter into a Contract that requires the Purchaser to pay any amount towards WGT of which the Vendor has received a notice of assessment. If you have received a notice of assessment, or your land has recently been or will soon be rezoned, or if you have any other questions, please contact our office for further advice.

WHO IS IN OCCUPATION OF THE LAND IF ANYONE?

If you are in occupation of the land, please refer to our comments titled "Handing over keys to the property" and "What you need to do before settlement".

If no one is in occupation of the land (ie. the property is empty), you should also refer to our comments titled "Handing over keys to the property" and "What you need to do before settlement".

If the property is tenanted, whether that be privately or through an estate agent, the process will be different. That depends of course on whether you sell the land with vacant possession (ie. the property must be empty at settlement) or whether you sell the land subject to lease (ie. the tenants are entitled to occupy the property until the end of their lease).

SOLD WITH VACANT POSSESSION

Tenants are entitled to a minimum of 60 days written notice to vacate. This means you (or your estate agent) will be required to give

written notice to vacate to the tenant at least 61 days prior to settlement (if providing the notice directly to the Tenant or longer if posted. A full list of the number of days required to be given when serving a notice to vacate can be found here <https://www.vcat.vic.gov.au/case-types/residential-tenancies/when-to-send-notices>).

SOLD SUBJECT TO LEASE

At settlement, you (or your estate agent) will need to notify the tenant that the property has sold and provide the tenant with instructions on where rent is payable to and where maintenance requests can be made to, if these details have changed as a result of the sale.

If rent is paid passed the settlement date, an adjustment of rent will be made at settlement. This means you will need to give to the purchaser the amount of rent paid from the settlement date to the date it is paid to. This is either handled by your estate agent or our office depending on how the property is managed.

HANDING OVER KEYS TO THE PROPERTY

Prior to settlement you must hand over your keys to the property to the agent. The purchaser will then collect the keys from the agent's office.

The agent will only hand over keys upon receipt of written authorisation from our office, which will be sent to the agent immediately after settlement has taken place.

You should leave other keys in the property, along with instruction books and household information.

If there is no agent, you should arrange collection of the keys with the purchaser direct.

WHAT YOU NEED TO DO BEFORE SETTLEMENT

It is your responsibility to disconnect electricity, gas and telephone services and steps should be taken in advance of settlement as there are sometimes waiting periods. If these services are not disconnected prior to settlement, purchasers will not be able to connect their services.

You should ensure the property is empty and cleaned prior to settlement. If you leave belongings at the property, the purchaser

can withhold money at settlement to have these items removed. The same goes if the property is not adequately cleaned.

If the property has been damaged between the offer being accepted and settlement, it will be your responsibility to repair those damages prior to settlement. Failure to do so could result in the purchaser withholding money at settlement to repair those damages.

TAXATION AND FINANCIAL IMPLICATIONS

The sale or disposal of real estate may cause a Capital Gains Tax event to occur meaning tax may be payable as a result of the sale. If the property has been solely utilised as your main residence you will usually qualify for the Main Residence Exemption. There may be circumstances where you do not qualify for the full Main Residence Exemption, if, for example, you have conducted a business from home or worked from home, or not resided in the property for the full period of ownership. Also, if you or your partner (if applicable) are in receipt of government benefits, the transaction or how you deal with the proceeds may affect your entitlements. If you or your partner are in receipt of

Centrelink entitlements or intend on claiming Centrelink entitlements within the next 5 years, you should consult with Centrelink or a financial advisor or accountant.

Beck Legal are not taxation experts or financials advisors and you should seek appropriate accounting and financial advice concerning the taxation and financial implications of your transaction. Any information that we provide concerning the proposed taxation and financial implications of your transaction is for general information only and is intended to assist you in obtaining appropriate advice. It should not be relied upon as a substitute for expert advice.

FINAL INSPECTION

Subject to any condition to the contrary in the Contract, the purchaser is entitled to conduct a final inspection of the property in the week before settlement. The purchaser should contact you direct if there is no agent to arrange this.

The purpose of the inspection is to establish that the property is in the same condition it was when the offer was accepted, fair wear

and tear excepted.

This means that the property may have deteriorated somewhat (perhaps the lawns will not be mown or there may be some rubbish about) and the purchaser will have to accept that, but the purchaser is entitled to insist substantial damage be repaired prior to settlement or compensation be made at settlement.

ELECTRONIC CONVEYANCING

As part of the increased digitisation of property transactions, PEXA, Australia's first online platform for settlements, was introduced to Victoria in 2015. PEXA allows settlement to take place online, with electronic fund transfers and registration of documents to occur in real time. Since then the multiple State Revenue Offices have also gone paperless, requiring duties forms used for the assessment of stamp duty on

conveyancing transactions to be completed and signed electronically.

Transactions completed on PEXA have the transfer and mortgage documentation checked in advance by Land Victoria and duty on the transfer assessed by the State Revenue Office in advance meaning there is no potential for nasty surprises.

Whenever possible we will endeavour to settle your matter electronically.

DO YOU HAVE A MORTGAGE OVER THE TITLE?

Usually a lender will register a mortgage over the title to secure repayment of any loan.

If you have a mortgage over the title, this will need to be discharged at settlement of your sale.

Before you sell, it is important you consider whether your desired sale price for the property is enough to repay your mortgage to release the title for the property.

THE DOCUMENTS YOU NEED TO SIGN

During the conveyancing process there will be several documents you will have to sign including the Contract, verification of identity documents and a client authorisation.

You will receive from us various documents which are necessary for verifying your identity and allowing us to sign the required Titles Office documents on your behalf. It is important you complete and sign those

documents and return them to us as soon as possible in order for us to prepare the required documents on your behalf.

It is important that you use the same signature when signing all documents.

If you receive a document and you are unsure how it is to be signed you should always contact our office.

INSURANCE

We strongly recommend that you maintain your existing home and contents insurance policy until settlement has been completed. The reason for this is, the property remains at the risk of the vendor and the purchaser can terminate the contract in the event of substantial damage or destruction.

Depending on your insurer's policy and whether your insurance is paid in advance, you may be entitled to a partial refund of your home and contents insurance. We recommend you speak with your insurer about a partial refund after settlement.

GST

Generally, selling existing residential premises will not include GST.

However, if the residential premises is considered 'new', it is a taxable sale and GST is likely applicable.

If you are selling property which has a

commercial, industrial or primary production use, GST may also be applicable.

We recommend that you speak with us and your accountant to properly consider your GST position prior to accepting any offer to sell the property.

FARMING AND WATER

WATER SHARE TRANSFERS

If you have water share entitlements associated to the property that you are selling you should consider how much water you wish to sell with it. It is not compulsory to sell all of your water share entitlement with the property.

There are a few options to vendors when considering selling Water Shares they are:-

1. sell all of your water entitlements with the land;
2. sell part of the Water Share with the property and sell remaining entitlement on the open water trading markets; and
3. don't sell any Water Shares with the property and keep the water entitlement as an investment and become a non-water user.

We recommend discussing water share entitlements with our office, your local Water Authority or Water Broker prior to putting your property on the market.

WORKS LICENCES

If your property is located close to a river or storage dam it is likely that you would have an Associated Works Licence. That is when you have a pump either on the property or on Crown Land where you extract water from the water way. Neighbouring properties can often share the same pump under the same Works Licence. We recommend speaking to your Water Authority to confirm these details prior to selling.

AGRICULTURAL LICENCES

Some properties have associated Agricultural Licences which are Agreements held between land owners and the Department of Environment, Land, Water & Planning.

These can be different types of Licences such as Water Frontage Licences, Unused Road Licences or Grazing Licences. These Licences may be transferred to the Purchaser at settlement.



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