

Section 32 Statements

Purchasing a property can be quite daunting especially if it is your first time. There are many things that a prospective purchaser ought to be aware of when looking at purchasing a property, and, conversely, there are a number of obligations of disclosure on the vendor.

When you show interest in a property, the selling agent should provide you with a section 32 statement ("**Section 32**"), so named after the specific provisions in the *Sale of Land Act 1962* (Vic) the disclosure takes its colour from. This legislation mandates all vendors of real property in Victoria give a prospective "*purchaser, before the purchaser signs the contract, a statement signed by the vendor that contains the matters and attaches the documents*" the legislation specifies in a number of other provisions.

Section 32 of the *Sale of Land Act* was introduced in 1982 essentially to place the onus on disclosure in relation to a property on the owner especially to disclose any defects in title, any mortgages, charges or encumbrances and any restrictions upon the use of the land in question. Prior to this, it was up to the purchaser to undertake their due diligence in this regard.

The introduction of the Section 32 statement also gave complementary rights of rescission (termination) to the purchaser allowing them to rescind a contract for sale if the information supplied to the purchaser is false or incomplete and the purchaser has entered into the contract on the basis of that information. There are certain restrictions on these rights however, including that a purchaser cannot rescind if a court finds that the vendor acted honestly and reasonably and the purchaser is substantially in as good a position despite the vendor's non-compliance.

Due to the complexities and wide ranging legal issues each sale and purchase of land may have, anyone looking at purchasing a residential or commercial property should seek appropriate legal advice and should at least have a Section 32 and the sale contract perused by a lawyer.

What to look for in a Section 32

Set out below are some matters you should consider when reviewing a Section 32 statement.

Land Titles Search which should at a minimum provide:

- Who the registered proprietor/s are. It may be the case that the person selling the property is not the registered proprietor of the property, for example they may be selling by grant of probate or as power of attorney. Should the section 32 fail to detail the legal capacity in which such a person is selling the property, further enquires must be made;

- Whether there is/are mortgage/s held over the property; and
- Whether there is a registered caveat, agreement and/or charge over the property (it is important to ensure that any caveat will be removed by the caveator at settlement); and

A Plan of Subdivision - this should detail what is being offered for sale and note if there are any easements over the land. Where the property for sale is a unit, care should be taken to identify any carparks associated with the unit as sometimes a carpark has its own Certificate of Title which may have been overlooked in the Section 32.

Whether the legal description of the property is correct - we recently had a matter where our client's previous conveyancers inserted incorrect title particulars in the contract meaning he "sold" another of his property in the same development than what he intended to sell! Fixing this mess has taken more than a year and it is still ongoing.

Certificates or information including: Certificate of Title; Plan of Subdivision; Planning Certificate; Roads Certificate; Council Certificate; Water Rates Certificate; Land Tax Certificate; Owners Corporation Certificate; and Building Certificates where appropriate. Please note a Building Certificate is required to be enclosed in a section 32 if there were any extensions made to the property with a permit in the last 6 - 7 years. If it is a newly built home additional to the Building certificate a Certificate of Occupancy should also be enclosed with and Warranty certificate.

Further issues to note

As a sale and purchase of land is a private contract between parties, the parties are free to negotiate their own terms. Usually, the sale of land is on a standard form contract prepared by the Law Institute of Victoria/Real Estate Institute of Victoria.

Notwithstanding this, it is up to the parties to vary standard terms or add their own negotiated terms which usually is stated as "special conditions" to the standard contract. For example, the parties may negotiate the following as special conditions subject to finance, conditional on sale of existing home or subject to pest and building inspection.

If you are looking at purchasing a property and have a section 32 statement and contract of sale you would like advice on please feel free to contact me or our office on 03 8555 3895.

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