

# **STONNINGTON CONVEYANCING**

1616 High Street, Glen Iris VIC 3146  
Fax 03 9813 8911; **Phone 03 9813 8333**  
**malvern-vic@acgol.com**  
**www.acgol.com**

## **VENDOR PRE-SALE CHECK LIST & NOTES**

### **1. SELLING IS A TWO-PART PROCESS**

**Stage One:** A Vendor must provide a “disclosure statement” to the Purchaser, known as a Vendor Statement under Section 32 of the *Sale of Land Act, 1962*. In Victoria, it is illegal to receive any written offer for sale and purchase of property without the Vendor first having served a signed Vendor Statement. The Vendor Statement, by law, must contain certain information and have certain searches and certificates attached.

Unfortunately, these obligations are sometimes abused by Vendors, in pushing for a “quick sale”. However, the ramifications of not first serving a proper Vendor Statement are severe including a right for the Purchaser to terminate the Contract of Sale at anytime up until settlement and/or sue for damages.

One of the reasons a proper Vendor Statement cannot be prepared “overnight” is the need to order, receive and check all searches and “certificates” to ensure a Vendor is meeting his or her statutory disclosure obligations – for accuracy and completeness of information. These searches and certificates typically cost \$150.00 to \$200.00 on top of our actual fees for preparing the sale documents. We issue an interim account for those costs upon completion of this stage of the conveyancing process, upon supply of all sale documents.

**Stage Two:** Once ready to “go to market” upon completion of Stage One (above) , and the sale is made (all variable terms agreed, and contract signed), the focus then turns towards settlement date, as agreed in the contract.

This involves several attendances including Section 27 “Release of Deposit”, Answering Requisitions, Arranging Discharge of Mortgage and Loan Payout Figures, Attending to Transfer and Chattels Statutory Declaration/s, Adjustments of Rates & Taxes, Settlement Statements, Calculating and Booking Cheques required, Booking and Instructing all Parties for Settlement, Disposition (change of ownership) Notices, etc. Our fees for this stage are invoiced and paid at or just prior to settlement, usually by deduction.

### **2. SEARCHES AND CERTIFICATES**

The golden rule is “Order early!” – a full set of certificates typically take 1 to 2 weeks, although some of the certificates can be ordered on priority at extra cost. It is a legal requirement to search thoroughly and disclose basically everything that presently or may prospectively affect the ownership or enjoyment of the property. Apart from the legal requirements on a Vendor, full and proper disclosure protects our Vendors and gives maximum comfort to Purchasers, leading to higher offers, without “risk margins” having to be factored into their bids or offers – also ultimately an advantage to our Vendors.

**3. GATHERING OTHER INFORMATION FOR THE VENDOR STATEMENT**

A Vendor usually knows more about their own property than anyone else. Also, there are bits of information that cannot be “searched for” on public record, and only the Vendor (and perhaps a neighbour, for example a pending private agreement to replace a shared fence) will know. To protect our Vendors, we ensure that all legal requirements of disclosure are met, by a thorough and systematic gathering of information about the property, above and beyond ordering all the required searches and certificates that are on public record. To do this, we use a one-page, but detailed questionnaire. Our preference is that we fill out the questions face to face with our Vendor client, however, where time or location issues do not permit, with due explanation, this can be done over the telephone. The importance of this stage must not be underestimated and many of our competitors do not “spend the time”.

**4. TO AUCTION OR NOT TO AUCTION?**

There are many schools of thought on the merits of Auction. It is certainly the quickest way of selling (if it sells “on the day”) and guarantees a “Cash Unconditional” sale (i.e. not “subject to finance” or any other condition which may lead to the Purchaser terminating the contract) Generally, if a property has high appeal and character, or is well located and unique, there will be at least a few parties who are very genuinely interested in buying your property. At auction, the level of competition will generally push the price up to the party who is willing to pay the most for your property.

However, many Purchasers do not like auctions, and prefer to know the upper limit as advertised by a stated price. Also, if there are many similar or comparable properties available for sale, buyers may not be especially keen to look only at yours, and you may be best to put it on the market “at a price” and negotiate with anyone interested. An advantage of private negotiation is that the potential Purchaser does not know how much competition there is, and will sometimes offer more than they intended, for fear of “missing out”. All the options should be discussed and considered with your Real Estate Agent.

One last comment is that many Vendors are under the incorrect belief that a shorter Vendor Statement is lawful for a property not being auctioned. Section 32 (see Point 1, Stage One above) does not differentiate at all between a statement for auction and a statement for “private sale negotiation” as to the format of the Vendor Statement and the amount of searches, certificates and information required. That is, the Statement should be exactly the same.

Lastly, if not Auctioning, your real estate agent will most likely look to write up the sale on the REIV “Contract Note” – a double sided single page contract that has the same enforceability as a full “long form” contract. Please note however, the REIV Contract requires substantial modification (or may be unusable) for “off plan”, “owner-builders’ sales”, company titles, stratum title schemes, etc. Please advise if our assistance is required. In these scenarios, we should prepare the Contract of Sale even though you may not be auctioning.

**5. CHOICE OF AGENT**

When you buy a property, you do not choose the agent; you will choose the property you like. However, when you sell you have the ability to choose the

agent you like best. Of course, as in any profession, there is a large variety and choice, in varying styles of presentation and selling methods, general professionalism and friendliness and fees.

We believe that the most important aspect in choosing an agent is their specialist knowledge and success rate in the particular suburb/area you are selling. We also place much importance on getting a good match, as people, between Vendor and Agent, and Agent and potential Purchasers. Thirdly, the actual type of property may favour one particular agent above another.

As we have dealt with literally hundreds of agents all over Victoria (many regularly), we urge you to consult us before you get any appraisals done by any agent, as we can help to give you a very good insight as to the best choice of agent for you and your property. Please call to discuss further.

#### **6. SELLING PRIVATELY, WITHOUT AN AGENT**

Many Vendors have the time, confidence and patience to sell their own property. Two other factors required are a certain degree of common sense and expertise (even though we still prepare and supervise signing of all the sales documents, for example not making careless or negligently wrong statements about the property) and the ability to keep the emotion out of the transaction (for example, dealing politely and sensibly with criticism of the property from a potential purchaser, and being able to "let go"). Of course, successful Sale by Owner Vendors are also happy to save the sales commission.

We have noticed a slight increase in Sales by Owner of late, and have prepared many such true private contracts. Our contract note is sufficiently flexible that it can be used for a Sale by Owner, and if not sold, the same documents can be subsequently used for an Auction by an agent later.

With these files, it is also important to involve us early, as there is a larger amount of information needed to put the contract together (e.g. full and correct name and address of the Purchaser, Purchase Price, Deposit payable, Settlement Date, any Included or Excluded Chattels, any allowable Finance Condition or any other Special Conditions, etc, etc).

#### **7. EARLY RELEASE OF DEPOSIT TO VENDOR UNDER "SECTION 27"**

Under Section 27 of the *Sale of Land Act, 1962*, under certain circumstances, the deposit can be released well before settlement from a Trust Account, directly to the Vendor. If coming from the Trust Account of a real estate agent, they will always retain their commission on the sale, and recover any Vendor agreed advertising costs. A Vendor should be well aware that a Purchaser can validly object to early release of deposit, and accordingly, a Vendor should not rely on the deposit money being released. Having said that, our view when we are acting for the Vendor is that if a Release can be arranged, let's get the funds to the Vendor! When the property is subject to mortgage, one of the requirements is to "prove" the equity" in the property by obtaining a letter from your lender with certain details of the mortgage. Please advise if you would like a list of the Section 27 details required, so you can swing your lender in to action early.

Please note, by law a deposit cannot be released to a Vendor on a new proposed subdivision or “off plan” file, or where any other yet to be satisfied condition exists. Further, if, with your approval as Vendor, the Purchaser “pays” the deposit with a “Deposit Bond” or Bank Guarantee, there can be no early release of deposit.

**8. COOLING OFF**

“Cooling Off” only applies to a Purchaser (and only then, in limited circumstances). Once a Vendor has accepted an offer in writing from a Purchaser, it is immediately binding upon a Vendor – a Vendor cannot “cool off” under any circumstances. Lastly, please note, if a Purchaser does cool off, the Vendor may retain some of the deposit paid, being the higher of \$100.00 or 0.2% of the purchase price (equivalent to \$200.00 for every \$100,000.00 of the sale price – e.g. for a \$500,000.00 property, the Vendor may retain \$1,000.00 of the deposit.

**9. GST**

GST can dramatically affect Property Sale and Purchase! 10% of the average property price on our files is a fair amount of money, so it pays to go through all the GST issues carefully before the Contract of Sale is drafted, and that is exactly what we do. Do not believe that “GST never applies to residential property” as there are several exceptions and if GST is payable later, not allowed for or not collected from the Purchaser at settlement, a “worst case scenario” for a Vendor is to have to give up 1/11<sup>th</sup> of the gross sale price some time down the track, well after settlement.

The obligation of the Vendor to collect GST and forward it to the Australian Tax Office relates *primarily* to two aspects – whether the Vendor is registered for GST (or should be registered) and the nature and occupancy status of the Property itself. There are also other GST issues we examine.

From experience, we know that Purchasers do not like bidding or offering to purchase property when it is unclear or uncertain whether GST applies to the sale and if so, whether it is to be paid by the Vendor or the Purchaser.

Accordingly, we are very thorough on GST issues, and can then insert the appropriate GST clause into the Contract so there is clarity and certainty on the issue, thus giving the Purchaser more confidence to offer to buy, and you as Vendor a higher price!

**10. CARE OF THE PROPERTY UNTIL SETTLEMENT**

It is a generally accepted principle that the property must be maintained substantially in the same condition at the date of settlement as it is on the day of sale. As there is often some delay between these two dates, i.e. at least 30 days and often 60 or 90 days etc., it can be quite a challenge for a Vendor to keep the lawns as well manicured and watered, the carpets as spotless etc as they usually are during a series of “Open Inspections”.

However, that is exactly what a Vendor must do, and if it is not done there may be last minute problems for settlement, or a claim after settlement.

Please note that the Purchaser has a right by law to re-inspect the property in the last seven days before settlement – so please keep it just as it was. Please note, fair wear and tear is allowable.

**11. INSURANCE & RISK OF PROPERTY**

Most Contracts of Sale in Victoria provide that the property is at the risk of the Vendor until settlement. However, if the property was damaged, and the Purchaser still wished to settle, and you as Vendor failed to insure, the Purchaser may have difficulty enforcing any re-building or repairs on you.

Accordingly, we strongly recommend that the Purchasers take out their own insurance well before settlement. However, this does not apply if the property is subject to a Body Corporate and the Body Corporate holds a complying single insurance policy for all buildings on the total site. It may be compulsory for a Vendor (and the other unit/lot owners to do so). If so, a copy must be included in the Vendor's Statement – see 12 below.

**12. BODY CORPORATE – ACTIVE OR INACTIVE**

When a property is subject to a "Body Corporate" (even when there are only 2 or 3 Lots, where the owners have never spoken, do not meet annually, etc.), it is likely that the owners must by law, have a common insurance policy. Some groups are required to have only a Public Liability policy in the name of the Body Corporate) over the "Common Property", other groups must by law have all the buildings also insured together, and there is a very small number of groups (that have no common property shown on the plan) that may validly resolve to keep separate insurances for each unit/lot.

We can only tell upon careful inspection of the relevant Strata Plan or Plan of Subdivision, as often areas/volumes underground or above rooves are designated as Common Property, and thus require one shared policy.

We will advise you if such insurance requirements apply, after we have received a fresh search and copy of your relevant plan. The plan is really what we need to examine, to tell you of the minimum Body Corporate requirements.

Where such insurance requirements apply, we will speak to you about arranging the same, in conjunction with the other unit/lot owners, and your share will be pro-rata adjusted back to you from Settlement Date.

**13. ITEMS INCLUDED AND EXCLUDED FROM SALE**

Properties are usually sold with "All light fittings, window dressings and fixed floor coverings, all other fixtures and fittings as inspected". Accordingly, it is essential you advise us and your real estate agent of any items you want to remove that are fixed to the land (including in ground plants) or fixed to the house. Confusion can arise over dishwashers, pot belly stoves, air-conditioners etc – if in doubt – please call us!