

September 2014

Amended section 32 statement

Key points

In October 2012 Consumer Affairs Victoria (CAV) released a discussion paper about amending section 32 of the *Sale of Land Act 1962 (Vic)*.

In May 2013 CAV released an options paper setting out the CAV proposed amendments and suggestions by stakeholders. CAV also sought submissions relating to the options paper.

You can find out more about the CAV process [here](#).

Amending legislation

The amendments to section 32 are contained in the *Sale of Land Amendment Act 2014 (the amending Act)*.

The amending Act received royal assent on 13 May 2014 and will commence operation on **1 October 2014**. See Victorian Government Gazette no. S282 dated 26 August 2014.

The explanatory memorandum provides that:

".....the purposes of the Bill are to amend the Sale of Land Act 1962 to re-enact, reform and modernise the provisions relating to statements made under section 32 of that Act and to make related and consequential amendments to the Owners Corporations Act 2006 and to consequentially amend other Acts."

One obvious change is the matters to be disclosed appear in a different order in the new section 32 compared to the old section 32. The Law Institute of Victoria (LIV) has adopted this new order in its updated section 32 statement that is now available on their [website](#).

Due diligence checklist

Pursuant to the amending Act for vacant residential land or land on which there is a residence, the selling agent, or vendor where there is no selling agent, is required to provide to a purchaser a due diligence checklist 'from the time the land is offered for sale'. See sections 33, 33A, 33B and 33C.

The due diligence checklist is available on the [CAV website](#).

Some information in the due diligence checklist is similar to the warnings which appear in the old section 32.

'Old section 32' is defined in the amending Act as a section 32 in force immediately before the commencement day. This definition has been adopted in this bulletin.

A purchaser has no rights where the due diligence checklist is not provided but a fine of up to 60 penalty units may be imposed.

Where there is no selling agent, practitioners should inform their vendor client of the need to provide the checklist.

New obligations

Under the new section 32 statement a vendor must:

- **Provide a copy of the 'Register Search Statement'. See section 32I(a).**

The term 'Register Search Statement' is not defined and does not appear in any Victorian Act or regulations.

The term 'Register Search Statement' is used by Land Victoria and is generally understood to be a title search. Refer to their publication [Your guide to searching a title](#).

Warning!

It is not sufficient to attach a copy of the duplicate certificate of title to the section 32 statement, a Register Search Statement must be attached.

- **Attach ".....the document or part of the document referred to as the diagram location in the Register Search Statement that identifies the land and its location. See section 32I(a)."**

The words 'diagram location' appear on the 'Register Search Statement' followed by a plan of subdivision or title plan number. It is this plan of subdivision or title plan document that is now required to be attached pursuant to 32I(a).

Section 32I(a) requires the document or 'part of' the document referred to as the diagram location be attached to the section 32 statement. What is meant by 'part of' is not clear. For example, for the sale of an apartment in a 20-storey building, is 'part of' the plan of subdivision the one page of the plan showing the apartment?

What is also not clear under the amending Act is whether it is sufficient to just include a title plan if that is what is referred to in the 'diagram location' and not include any plan of subdivision referred to in a title plan.

Under the 'old section 32' a title plan was not sufficient where the property was described as a lot on a plan of subdivision. It was necessary to attach a copy of the whole plan of subdivision.

LPLC recommends any plan of subdivision referred to in the diagram location and on any title plan be attached to the section 32 statement to avoid any dispute and because they may contain details of easements which need to be disclosed.

- **Provide the name of any planning overlay affecting the land. See section 32C(d)(iv).**
- **Specify when an owners corporation is 'inactive'. See section 32F(1)(b).**

The amendments now require the vendor to state if the owners corporation is inactive. The amended Act provides an owners corporation is inactive when in the previous 15 months it has not:

- had an annual general meeting;
- fixed any fees; and
- held any insurance.

Where a section 32 statement states the owners corporation is inactive, it is not necessary to specify the information prescribed for the purposes of section 151(4)(a) of the *Owners Corporation Act 2006* or provide a certificate.

Having an inactive owners corporation may give rise to other issues for a vendor. A purchaser of a property in a three or more lot subdivision may have a right to rescind the contract where owners corporation insurance has not been obtained in accordance with the *Owners Corporations Act 2006* (Vic). See section 11 of the *Sale of Land Act*.

Section 11 provides that:

"A person cannot sell a lot affected by an owners corporation unless the vendor or the owners corporation has a current insurance policy in accordance with the Owners Corporations Act 2006. Where a lot is sold in contravention the purchaser may avoid the sale at any time before the contract is completed."

A purchaser would not have any rights pursuant to section 11 of the *Sale of Land Act* where the property being sold is part of a two lot subdivision because any two lot subdivision is exempt from obtaining insurance. See section 7(1) of the *Owners Corporations Act 2006* (Vic).

Where an owners corporation of a three or more lot subdivision is inactive practitioners need to alert their clients to the requirement to state the owners corporation is inactive and the risk a purchaser may rescind in reliance on section 11 of the *Sale of Land Act*.

- **Specify which services are 'not connected'. See section 32H.**

A vendor is no longer required to state the name of the authority providing any services where the services are connected. They only need to state whether services are not connected.

Other matters

- **No need to attach section 32 statement to the contract.**

A vendor is no longer required to attach the section 32 statement to the contract of sale. See section 32(1). The problem with this approach is it may make it harder to prove the purchaser received a signed section 32 statement.

LPLC recommends practitioners continue to attach a copy of the section 32 statement to the contract of sale.

As an alternative, practitioners should seek written confirmation from the selling agent that a

signed section 32 statement was given to the purchaser.

- **Vendor may sign with an electronic signature. See section 32(2).**

It is not clear from the amending Act what electronic signature means.

- **Only 'current' notices, orders, declarations, reports or recommendations or approved proposals directly and currently affecting the land need to be disclosed. See section 32D(a).**
- **More detailed obligations about agricultural contamination. See section 32D(b).**

New section 32D(b) contains broader disclosure obligations relating to land contaminated by agricultural chemicals or affected by livestock disease.

- **A vendor may elect to specify the information prescribed for the purposes of section 151(4)(a) of the Owners Corporation Act 2006 or provide a certificate. See section 32F.**

Where an owners corporation does not come within the definition of 'inactive' vendors can choose whether to attach an owners corporation certificate or just provide the prescribed information.

The usual attachments are still required in either case.

- **Not necessary to disclose that a planning instrument prohibits construction of a dwelling house on the land located outside the 'metropolitan area'.**

Transitional provisions

New section 52 of the Sale of Land Act contains some transitional provisions permitting the use of an 'old section 32'.

Usually a section 32 statement is signed and dated on the day it is given to the purchaser,

In relation to off-the-plan sales and private sales, it is more common that a section 32 statement is signed by a vendor at some time before it is provided to the purchaser but is then dated on the day it is given to the purchaser by the selling agent.

Because it is unclear whether an 'old section 32' includes one which is signed before 1 October 2014 but is dated after 1 October 2014, LPLC recommends only the new form of section 32 statement be used from the commencement date.

Beware!

Failing to use the new form of section 32 statement from 1 October 2014 may result in a purchaser exercising their right to rescind the contract pursuant to the new section 32K(3).

LPLC recommendations

- Review existing files to check for any properties where a sale may occur after 30 September 2014. You will need to prepare a new form of section 32 statement for use from 1 October 2014.

- Review your precedent section 32 statement and update it to take in account the amending Act.
- Consider notifying your client base of the changes to section 32.
- Consider the costs consequences of:
 - preparing an old form and new form section 32; and
 - advising a purchaser on both an old form and new form section 32.
- Only use the new form of section 32 statement from the commencement date of 1 October 2014.
- Attach a copy of the section 32 statement to the contract of sale.
- Attach a 'Register Search Statement'. It is not sufficient to attach a copy of the duplicate title.
- Attach a plan of subdivision when referred to in a title plan.
- Where an owners corporation of a three or more lot subdivision is inactive advise clients of the need to disclose this and the risk a purchaser may rescind in reliance on section 11 of the Sale of Land Act.
- Inform a vendor client of the need to provide the checklist where there is no selling agent.

Legal Practitioners' Liability Committee

September 2014