



Purchaser's practitioner checklist

This is not a comprehensive checklist but it will help you to avoid many mistakes made by purchaser's practitioners in conveyancing transactions.

Review of contracts and section 32 statements

When you receive a contract, immediately check it for any conditional clauses. Diarise the dates and advise your client clearly about the conditions, what the client must do to comply with them and the consequences if they are not met.

Always check the SLA to determine the current requirements relating to terms contracts and consider whether a terms contract will be created.

Currently if a terms contract is created where:

- there are multiple payments and/or
 - where possession or the right to receipt of rents and profits is given before the purchaser becomes entitled to a conveyance or transfer of the land.
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If the contract is a terms contract, check whether:

- the property is subject to a mortgage
 - particulars of the mortgage have been provided or
 - the mortgage will be discharged within 90 days.
 - details of the cost of vendor finance have been provided, if multiple payments are required
 - advise the client in writing of their options and the consequences of entering into a terms contract.
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Obtain up to date copies of all certificates.

CHECKLIST



- Read all certificates when they come in and carefully compare them with the information in the section 32 statement. Advise your client if the section 32 statement is defective and if there is a possibility the contract might be avoided.
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- If the vendor is a domestic owner builder, consider whether there are any grounds to avoid the contract for non-compliance with the insurance, condition report and warranty requirements under the Building Act.
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- Advise your client about any easements or restrictive covenants on the property. Apply to the relevant water authority for information statements and check these for any unregistered easements such as water, sewerage or drainage.

- obtain instructions to make further investigations if necessary or if instructed not to do so, confirm this in writing.
 - identify any zoning restrictions or overlays and recommend your client check whether the proposed use of the land will be adversely affected by them.
 - if the section 32 statement indicates services are 'available', advise your client to check if they are in fact connected.
 - advise the client to measure the land to ensure it corresponds with the measurements on title.
 - consider the need to obtain details of any lease(s) affecting the land.
 - also refer to the LPLC checklist [Purchase of land – questions for the purchaser](#)
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Subdivisions

- If the contract is for the purchase of a lot on a plan of subdivision:
 - check the plan of subdivision is current
 - check the contract accurately describes what is being sold and whether there are accessory units included
 - if the lot is affected by an owners corporation, check whether there is insurance in place as required by section 11 of the Sale of Land Act 1962 (Vic) (SLA) and Part 3, Division 6 of the Owners Corporations Act 2006 (Vic)
 - if the lot is affected by an owners corporation, has the owners corporation information been provided?
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CHECKLIST



- If the contract is for a lot on an unregistered plan of subdivision:
 - ensure the vendor has complied with the relevant sections of the SLA and if any breaches are detected that allow your client to rescind the contract, advise your client accordingly, specifically, check the following:
 - **Section 9AA:** does the contract provide for the deposit monies to be paid into the trust account of a legal practitioner or licensed estate agent or into a special purpose account with an authorised deposit-taking institution?
 - **Section 9AB:** have details of any works affecting the natural surface level of the land been disclosed in the contract or, if carried out after the date of contract but before registration of the plan, been disclosed to the purchaser?
 - **Section 9AC:** have any proposed amendments to the plan of subdivision prior to registration been notified to the purchaser?
 - **Section 9AE (2):** has the plan been registered within 18 months (or such other period specified in the contract) of the contract date?
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Subject to finance clauses

- When a contract has a 'subject to finance' clause a number of things need to occur.
 - write to your purchaser client immediately on receipt of the contract setting out clearly the date by which finance must be obtained. Spell out the consequences if the vendor is not notified in time that finance has not been obtained.
 - confirm with the client any approval they receive is in writing is final and not conditional, and is for an amount sufficient for their needs. Where time permits, ask the client to give you a copy of the letter of approval for finance and ensure you check these points.
 - if the approval is conditional, seek instructions to request an extension of time until the conditions have been met.
 - do not leave requests for extensions of time for finance approval unanswered. Chase up the answer before the time expires.
 - confirm any oral agreement to extend time in writing.
 - when time is about to expire, pay careful attention to requests for extensions or notification that the contract is at an end. Take steps to ensure letters dictated are actually typed and sent or faxes or emails are sent to the correct person/places.
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CHECKLIST



GST

When acting for the purchaser pre-contract

Advise on the existence and consequences of any GST-exclusive clause.

If your GST registered commercial purchaser is expecting to claim an input tax credit:

- recommend your client seek advice from their accountant about whether the proposed purchase is a 'creditable acquisition' for which an input tax credit can be claimed
 - check whether the vendor is GST registered, not just ABN registered, and consider negotiating a special condition that the vendor remain GST registered up to and including the date of supply. Your client will not be entitled to an input tax credit if the vendor is not GST registered at the date of supply.
 - check whether the margin scheme can be and should be applied. Application of the margin scheme will deprive your client of an input tax credit but would normally be regarded as important if the property is to be redeveloped and sold for residential purposes and has stamp duty implications.
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When acting for the purchaser post-contract

Advise on the existence and consequences of any GST exclusive clause.

If your GST registered commercial purchaser is expecting to claim an input tax credit:

- recommend your client seek advice from their accountant about whether the proposed purchase is a 'creditable acquisition' for which an input tax credit can be claimed
 - advise the client that they will not be entitled to an input tax credit if the margin scheme is to be applied.
 - check whether the vendor is GST registered (not just ABN registered). Your client will not be entitled to an input tax credit if the vendor is not GST registered.
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Check the validity of any tax invoice provided at settlement.

CHECKLIST



Caveats

Advise your purchaser client of the benefits and/or consequences of registering a caveat and that you will lodge one unless they instruct you not to. Build in the cost of lodging the caveat to your fees.

Lodge a caveat promptly.

Always conduct a final search before settlement.

Lost title or delayed settlement

Inform the client at the first opportunity of your estimate of the amount of stamp duty and lodging fees payable. You may need to consider any stamp duty concessions, exemptions and/or the right to apply for the first homeowner's grant.

For any paper title transactions:

- keep track of the date by which a document must be stamped, especially a transfer of land must be stamped no later than 30 days after settlement. Diarise for follow-up action regularly, such as weekly.
 - advise the client of the date by which any funds must be provided to enable the documents to be stamped and registered within time and the consequences of missing the deadline. It is safest to seek the funds well before settlement.
 - notify the client in writing that you accept no responsibility for reminding the client of the due date to provide funds to your office for stamping and registration.
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Rescission

See separate checklist for [advising a purchaser when the vendor defaults](#)

CHECKLIST



Duty

- Review and understand the requirements of [section 32J](#) of the [Duties Act 2000](#) (Vic) in relation to nominations and duty.

- Speak to your purchaser client at the start of a retainer and ask them what they intend to do with the property so you can discuss the risks of taking development steps before nominating.

- Include advice in your initial precedent letter to purchaser clients about the risks of double duty when nominating if any land development, including lodging planning applications, has occurred.

- Advise your purchaser client that there is additional duty payable for foreign natural persons, foreign corporations and trustees of a foreign trust.

- Understand the definitions of foreign entities as defined on the [SRO website](#), particularly that a [discretionary trust](#) with a foreign person beneficiary is considered a foreign trust.

- Review and understand the exemptions for duty in [section 56](#) of the [Duties Act](#), in particular, if the transferor or transferee is a trust, all of the beneficiaries of the trust must be family members to qualify for an exemption from duty.

- Review and understand the exemptions for duty in [section 36A](#) of the Duties Act when a trust transfers duty to a beneficiary and what may be deemed consideration.

Capital gains tax

- Understand when capital gains tax may be triggered and advise your client to seek financial advice if the structure of the transaction could trigger capital gains tax.

Land tax

- Ask the client whether they are purchasing in a trustee capacity and check all conveyancing documents for any reference to a 'trust', especially the contract of sale and any nomination form.

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- If the client is buying on behalf of a trust advise them that:
- higher land tax will be incurred unless an exclusion applies (See [section 46A](#) of the [Land Tax Act 2005 \(Vic\)](#)).
 - notice of the acquisition must be given to the State Revenue Office and agree who is responsible for providing the [LTX-Trust-08 form](#) – the client or the practitioner.
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- When acting for a purchaser, always obtain a land tax certificate so the purchaser is protected pursuant to [section 96\(4\)](#) of the [Land Tax Act](#).
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- When advising a purchaser client precontract check the basis on which the land tax is to be adjusted. If it is to be adjusted on a proportionate basis advise the client that this may be a much larger amount than on a single holding basis.
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Other

- Clarify in writing who you are acting for, especially in family transactions. When the transferor is unrepresented, recommend in writing that the transferor obtain independent legal advice.
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- In relation to domestic owner builders, check in whose name any building permits were issued.
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- Check your file for original documents before closing it.
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