



## Vendor's practitioner checklist

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

### Section 32 statements

- When asked to prepare a [section 32](#) statement on short notice:
  - make it clear to your client and the selling agent that it takes at least a week to obtain all necessary certificates required to prepare a section 32 statement and a statement prepared in a hurry may be invalid
  - point out to your client an invalid section 32 statement risks avoidance of the contract by the purchaser which may then involve double agent's fees, delay and possibly a lower sale price
  - let your client know an invalid section 32 statement also carries the risk of an action for damages for misrepresentation
  - if despite this advice, your client insists the statement be prepared in a hurry, confirm the advice in writing to both your client and the selling agent.

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- Confirm whether an owners corporation exists and if so advise your client about the need to include owners corporation information in the [section 32](#) statement even if the owners corporation is said to be 'inactive'.

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- Do not rely on the duplicate certificate of title. Always conduct an up to date title search.

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- Read the titles to ensure they are not a 'half part or share' of land. Assess whether the titles you have cover all of the land being sold.

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- Attach a copy of the Register Search Statement and the diagram location document. See LPLC's article [Determining the right diagram location document](#) and [section 32I](#).

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- Consider having your vendor client complete the LPLC [Sale of land questions for vendor](#) available for downloading from the LPLC website.

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# CHECKLIST



- Apply for a fresh set of certificates and read each certificate carefully.

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- Make it your practice to obtain an information statement from the relevant water authority, which is necessary to establish whether there are any unregistered easements such as water, sewerage or drainage affecting the property or notices issued affecting the property. See LPLC article [Make it a rule to include water information certificates](#)

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- Consider the possibility of unregistered easements. Question your client about the existence of agreements with neighbours or a neighbour's use of an access track or water pipes across your client's land.

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- Include a plan of subdivision if appropriate.

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- Attach a planning certificate from the responsible authority.

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- Obtain a statement from the relevant municipality relating to building approvals.

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- Provide a condition report and certificate of insurance if the client is an owner builder (warranties go in the contract).

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- Make proper enquiries to ensure the [section 32](#) statement accurately states which services are not connected. See [section 32H](#). Avoid using the term 'available'.

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- When instructing estate agents to amend, update or attach relevant certificates to the [section 32](#) statement, keep a file note of any verbal instructions and confirm those instructions in writing.

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- Carefully check a revised section 32 statement to ensure no documents have been left out.

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- Obtain instructions to make further investigations if necessary or if instructed not to do so confirm this in writing.

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# CHECKLIST



## Subdivisions

- Carefully check plans of subdivision and contracts of sale to ensure the plan and the contract accurately describes what is being bought or sold.

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- Check any registered plan of subdivision carefully. Do not assume that because the subdivision plan number is the same as the plan attached to the contract, or that the vendor has not notified the purchaser of any amendments, that no amendments have been made to the plan.

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- When acting for a vendor of a lot on an unregistered plan, ensure your precedent contract complies with the obligations imposed by the SLA and warn the vendor of the consequences of any breach including that the purchaser may rescind. Specifically:
  - [Section 9AA](#): the contract must provide that deposit monies be paid into the trust account of a legal practitioner, conveyancer or licensed estate agent for the purchaser until the registration of the plan of subdivision.
  - [Section 9AB](#): details of any works affecting the natural surface level of the land must be disclosed in the contract or, if carried out after the date of contract but before registration of the plan, must be disclosed as soon as practicable after details become known to the vendor.
  - [Section 9AC](#): the vendor must notify the purchaser of any proposed amendments to the plan of subdivision prior to registration and, if the changes materially affect the lot, the purchaser may rescind within 14 days of being so notified.
  - [Section 9AE\(1\)](#): any breaches of sections 9AA and 9AB may result in the purchaser rescinding before the plan is registered.
  - [Section 9AE\(2\)](#): the purchaser may rescind if the plan is not registered within 18 months, or such other period specified in the contract, of the contract date.

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- Advise your client of the insurance requirement imposed by [section 11](#) of the SLA if the lot is affected by an owners corporation. Unless the owners corporation has the required insurance, the purchaser may avoid the sale at any time before settlement.

## Domestic owner builders

- Take detailed instructions from a client intending to sell domestic property including answers to the following questions.
  - have any building permits been issued in the last seven years or has there been any other building work in that time?

# CHECKLIST



- who did the building work? Unless a registered builder's name is on the building permit, [sections 137B](#) and [137C](#) will apply.
  - what was the value of the building work? Was it more than \$16,000?
  - when did the building work commence?
  - was any occupancy permit or certificate of final inspection issued?
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Where your client is an owner builder warn them in writing of the need to provide insurance, condition report and warranties, and the consequences of non-compliance.

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If the requirements apply, ensure the condition report and certificate of insurance are provided with the [section 32](#) statement and the [section 137C](#) warranties are set out in the contract. Insurance is only required where the value of the building work is more than \$16,000.

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When the section 32 statement contains an owner builder condition report, confirm in writing when sending the statement to the client or the real estate agent that the section 32 statement should not be used if the condition report is more than six months old and the consequences if it is used.

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## GST

Consider whether the GST threshold criteria are present.

- is the vendor registered or required to be registered for GST?
- is the sale in the course or furtherance of an enterprise?

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If yes to both questions, consider whether the property being sold will attract GST.

- is it vacant land including residential vacant land?
- is it new residential premises including substantially renovated premises?
- is it commercial residential premises?
- is it non-residential premises?

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# CHECKLIST



- If the property being sold will attract GST, ensure there is a clear GST treatment in the contract. Consult your client about whether the GST clause should be inclusive or exclusive and whether the margin scheme is available and could be applied.
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- If the margin scheme is to be applied, ensure there is agreement in writing between the parties to this effect. If a professional valuation is required, advise your client in writing of the time frame in which the valuation must be obtained such as by the end of the tax period in which settlement falls.
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- If the property is farmland, consider whether:
- the farmland exemption (section 38-480) will apply and no GST will be payable on the sale of the freehold, although GST will be payable on livestock, plant and equipment
  - the supply of a going concern exemption (section 38-325) will apply and no GST will be payable on the sale of the freehold, livestock, plant and equipment.
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- If the property is tenanted commercial premises, consider whether the going concern technical requirements of [section 38-325](#) and the ATO ruling [GSTR 2002/5](#) are met for no GST to be payable on the sale. In particular:
- the vendor and the purchaser must agree in writing that the supply is of a going concern
  - the purchaser is registered or required to be registered for GST
  - the sale is not to the tenant
  - there is a tenant at the date of supply (usually settlement) and the contract provides for receipt of rents and profits, not vacant possession
  - the tenant is in occupation pursuant to a lease or periodic tenancy, not just a tenancy at will
  - if there is a temporary vacancy, it will be necessary to show a new tenant is being actively sought or the property is undergoing necessary refurbishment. However, this will not be sufficient if the premises have never been let (see paragraph 151 of ATO ruling GSTR 2002/5)
  - the purchaser does not intend to change the creditable use of the property in the near future.
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- Even if you consider the sale will be GST-free under the farmland exemption or as the supply of a going concern, include in the contract a GST-exclusive 'claw back' clause, with an expanded definition of GST to include penalties and interest, and a non-merger clause to protect your client. General condition 19 of the standard LIV land contract adequately deals with 'claw-back'.
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# CHECKLIST



- If a tax invoice is required, ask your client to provide it. Alternatively, check if your client is GST registered, not just ABN registered, before purporting to prepare a tax invoice on your client's behalf.
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- If GST is payable in addition to the purchase price, add it to your checklist to ensure it is collected at settlement.

For additional information refer to the [LPLC Key Risk Checklist: GST](#).

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## Disbursements

- Revisit the basis on which money is held in the trust account before money is paid out of the trust account.
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- If it was agreed that the money would be placed in a joint interest-bearing account in the names of both parties or paid out to discharge a particular debt:
    - then that is what must happen regardless of your client's contrary instructions.
    - where the parties cannot agree on how the money is to be paid out and the terms of the trust do not squarely deal with the situation, do not pay it to your client or the party who shouts the loudest. [Rule 12](#) of the [Supreme Court \(General Civil Procedure\) Rules 20015](#) (Vic) sets out a procedure for a stakeholder's interpleader. Practitioners are urged to pursue this procedure where it is available.
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- Keep a file note of the instructions to disburse money and when given verbally, confirm the instructions in writing.
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- Obtain written authority from all vendors before disbursing the balance of settlement monies to one of several vendors.
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- Proactive supervision of employed practitioners and clerks, and properly training them so that they understand why it is important to obtain instructions relating to the disbursement of settlement funds.
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# CHECKLIST



## Intra-family transfers

- Never act for both parties in intrafamily transfers. Remember a deterrent excess applies where a practitioner acts for more than one party in a matter. See clause 5 of the [LPLC insurance policy](#).

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- When the other party is unrepresented, tell them you are not acting for them and recommend the party obtains separate representation and advice. Confirm this in writing.

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- Warn the transferor client in writing of the dangers in these types of arrangements, particularly that the transferee will have the right to encumber the property.

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- Find out what the transferor client is trying to achieve by the transaction and consider if there are other ways of achieving the desired result. Advise your client of those options. For example, a transfer and mortgage back to the transferor may be appropriate in some circumstances.

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- Warn the transferor to seek advice from an accountant about possible CGT liability if the property is not the longstanding residence of the transferor.

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- Also see further information on Senior Rights Victoria's website and in particular their booklet 'Care for your Assets: Money, Aging and Family' at [www.seniorsrights.org.au](http://www.seniorsrights.org.au).

## Rescission

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

## Terms contracts

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

# CHECKLIST



- 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 obtain instructions as to whether this is what the client intends and advise the client in writing of their options and the consequences of entering into a terms contract.
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- As entering into a terms contract may involve a client making financial decisions, consider the need to refer the client to their accountant and/or financial advisor.
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- Advise your vendor client of the risks of entering into a terms contract, especially where payments are made over a number of years.
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## Other

- Check your file for original documents before closing.
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