

OLD CLAIMS, NEW LAWS

Practitioners need to be aware of changes to section 32 of the *Sale of Land Act*.

In the past three years there have been 36 claims where a practitioner acting for the vendor has not properly completed the section 32 statement and 43 claims where a practitioner acting for a purchaser has failed to properly advise their client about a s32 statement. The total cost of the claims to date is approximately \$6.5m.

Practitioners can put in place some simple processes to help them avoid a claim, including being aware of recent changes to s32 of the *Sale of Land Act 1962* (Vic) (SLA).

The following two claims are indicative of the sorts of claims arising from s32 statements.

Sued over a sewer

A practitioner acting for a vendor in the sale of a dwelling obtained the usual searches including a water information statement. It was unclear from this statement whether the sewer was connected. The s32 statement was prepared based on an old s32 statement provided by the vendor that stated the sewer was connected.

Before settlement the purchaser demanded a reduction in the purchase price when they discovered a septic tank was in use. The claim was settled with a payment to the purchaser of several thousand dollars.

LPLC recommendations: Obtain from the client as much detail as possible about the property. Consider using the LPLC checklist *Sale of Land: Questions for the Vendor* which includes a question specifically about septic tanks. A client who is asked whether the sewer is “connected” may not understand the difference between being connected to a town sewer and connected to a septic tank.

If in doubt about information contained in a search or certificate, seek clarification from the client and/or call the relevant authority.

Designate someone other than the author to compare the s32 statement to the searches and certificates for accuracy.

Acting for a purchaser

A practitioner acted for a purchaser of a property that contained a single dwelling covenant. The covenant also prescribed the style of building to be constructed.

Some time after settlement the client complained to the practitioner that a rear deck may have been constructed in breach of the

covenant and alleged that the practitioner should have investigated any potential issues relating to the building works.

LPLC recommendations: To avoid any misunderstanding, provide clients with a detailed scope of works including a list of matters not part of the retainer. For example, the practitioner is not retained to investigate the legality of any building works. This will give clients the best chance of making informed decisions. Combine this with a suggestion to the client that if they are concerned about such issues they should contact an appropriate expert such as a private building surveyor.

When a practitioner is instructed to undertake a due diligence for a client, consider using the LPLC property website checklist. It lists 18 property-related websites including one that enables you to check the registration of a builder.

is still for sale after this date. See new s52 of the SLA.

Commonly, a s32 statement is dated on the day it is given to the purchaser regardless of when the vendor has signed.

Given the difficulty of proving when a s32 statement is signed by a vendor you should always use the new form of s32 statement and advise clients not to use an old s32 after the commencement date.

Services and the new form s32 statement

A new form of s32 statement is only required to disclose which services are not connected. See s32H. This is a departure from the previous requirement to state whether a service was connected or not and where connected, to provide the name of the authority.

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When acting for a purchaser LPLC recommends practitioners tell their clients the new form of s32 statement does not contain details of service providers.

Avoid a claim by keeping up to date

Conveyancing practitioners need to be vigilant about changes to legislation affecting the sale of land. Section 32 of the SLA was recently amended by the *Sale of Land Amendment Act 2014* (Vic) which received Royal Assent on 13 May 2014. According to Consumer Affairs Victoria the changes to s32 are set to commence 1 October 2014.

Section 32 statements under the amended legislation are essentially the same as the old form with one main difference. All warnings to purchasers have been removed and included in a separate document referred to as a due diligence checklist. See sections 33, 33A, 33B and 33C.

Transitional provisions

An old s32 statement may be used where the statement has been signed by the vendor before 1 October 2014 and where the property

form of s32 statement does not contain details of any service providers.

Under the new requirements a s32 statement does not have to be attached to the contract of sale. See s32(1).

LPLC is concerned it may be easier for a purchaser to allege they did not receive a signed s32 statement where it is not attached to the contract of sale. We therefore recommend practitioners continue the current practice of attaching a s32 statement to the contract of sale.

Alternatively, where a selling agent has been engaged, ask the agent to confirm in writing the purchaser received a signed s32 statement and to send you a copy signed by the vendor and purchaser.

See the LPLC website for more information about the changes to s32 and other risk management issues. ●

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