

What's the difference between a default notice and a rescission notice?

A practitioner acting for a vendor contacted LPLC seeking guidance on how to prepare a default notice for a breach of a sale of land contract by a purchaser and what the difference was between a default notice and the rescission notice.

Under most contracts of sale a party is usually required to provide a written default notice before they are entitled to exercise any rights arising from the other party's default. The relevant condition in the Law Institute of Victoria contract of sale of land Copyright August 2019 ([LIV contract](#)) is general condition 34.

This condition was formerly general condition 27.1 in the prescribed contract in the Estate Agents Contracts) Regulations 2008 (Vic). See our [FAQ about the sunset of the regulations](#).

A default notice must specify the particulars of the default and give the offending party time to remedy the default — usually 14 days. It does not need to specify the consequences if the default is not remedied to satisfy any obligation to give notice of the default.



A default notice is often called a rescission notice when it contains details of the default but also states, where permitted by the contract, that unless the default is remedied, reasonable costs are paid and interest is paid within the time specified, the contract is at an end. General condition 35 of the LIV Contract, previously general condition 28 in the prescribed contract, permits a notice of this type.

The courts have said that where time is no longer 'of the essence' an offended party must make time of the essence before they can rescind. Serving a default notice would make time of the essence, and after the allotted time has expired a rescission notice can be served. Where time is still of the essence the rescission notice can be served as part of the default notice. See our [FAQ about when will time no longer be of the essence](#).

Before serving a default or rescission notice practitioners need to obtain their client's clear instructions as to what outcome the client is trying to achieve.

We have seen claims where the practitioner served a rescission notice which had the effect of ending the contract when the client did not wish to end the contract.

The courts will only enforce a default and rescission notice if the wording is very clear and unambiguous. The most common mistakes we see is in defining the time to fix the default and describing the default.

You will find a pro-forma for a default notice [here](#).

You will find a rescission notice [here](#).

The [Claim free conveyancing](#) practice risk guide contains more information on claims involving default notices and rescission notices, and a list of LPLC recommendations for avoiding claims in this area.

For an example of the way rescission notices can be challenged and considered by the court see [Damco Nominees Pty Ltd v Moxham \[2012\] VSC 79](#).