



Sale of real estate – acting for vendors

Legal Practitioners' Liability Committee

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**Current
economic
context for
vendors**

What we will cover

- Vendor statements - the basics
- Owner-builder obligations
- Terms contracts
- Off-the-plan sales
- Acting outside your jurisdiction or expertise
- When do you need to ask more questions?



**Vendor
statements:
farewell
'caveat emptor'**



Section 32A – Financial Matters

Mortgage Details

Include any mortgage details on the land that won't be paid off before possession. Rare.

Charges

Detail any charges over the land to secure a debt, including the amount owed and any additional levies.

Tax Reform Scheme Land

State if the land is under a tax reform scheme and include the entry date and AVPCC details

Terms Contract

If applicable, provide details of the terms contract including payment instalments before land transfer.

Best practices for disclosure of outgoings

A [section 32](#) statement must contain the following financial matters in respect of the [land](#)—

...

(c) in any case—

(i) the amount of any rates, taxes, charges or other similar outgoings affecting the [land](#) and any interest payable on any [part](#) of those rates, taxes, charges or outgoings which is unpaid including any rates, taxes, charges or outgoings for which the [purchaser](#) may become liable in consequence of the [sale](#) and which the [vendor](#) might reasonably be expected to have knowledge of; **or**

- (ii) a statement that the total amount of those rates, taxes, charges or other similar outgoings and interest does not exceed the amount specified;

Different options:

1. List the outgoings
2. Certificate (s 32J)
3. 'Does not exceed'

The period from April to June is particularly risky due to potential changes in council rates and charges. Consider a combined approach including 'not more than' wording, adding a buffer, and attaching current certificates.

Section 32B - Insurance



Section 32C - Restrictions

- Registered and unregistered easements (including sewers and rights of way)
- Covenants – don't forget the instrument/particulars
- Leases?
- Section 173 Agreements
- Planning
- Road access

Section 32D -

"Particulars of any notice, order, declaration, report, recommendation or approved proposal of a public authority or government department directly and currently affecting the land of which the vendor might reasonably be expected to have knowledge."



Section 32E – Building permits

- Building permits (including occupancy permits and certificate of final inspection)
- Best practice: building approvals certificate, and have the permits and domestic builder's insurance themselves available in case requested

Section 32F – Owners corporation

Section 32G – GAIC



This section requires the vendor to specify which services are NOT connected to the land:

- Electricity
- Gas
- Water
- Sewerage
- Telephone

Section 32H – Services

Section 321 – Title



Section 32K - Breach

- A purchaser may terminate the contract if the vendor:
 - Supplies false information in a section 32 statement
 - Fails to supply all required information
 - Fails to provide the section 32 statement before the purchaser signs the contract
- However, the purchaser may not rescind if the court is satisfied that:
 - The vendor acted honestly and reasonably and ought fairly to be excused for the contravention; and
 - The purchaser is substantially in as good a position as if all the relevant provisions had been complied with.



Section 12(d) - Material facts

Owner-builder obligations under s 137B of the Building Act 1993

Checklist to diagnose owner-builder issues

1. Has there been “construction” of a “building”?

(Includes works that “make alterations to” a building or structure. This includes cosmetic works)

- **Yes** → Proceed to **Question 2**.
- **No** → Outcome:  Condition Report /  Insurance.

Key:

 = Required

 = Not Required

2. What is the relevant prescribed period?

Prescribed Period Calculation:



For Residential:

- A. No permit was required- 6.5 years from start date
- B. Permit was required but did not obtain one – 6.5 years from start date.
- C. Permit obtained but OP/CFI not issued -7 years from permit date.
- D. OP/CFI obtained - 6.5 years from OP/CFI date.

For Non-Residential (A/B/C):  If no OP/CFI obtained – n/a (prescribed period only applies if OP/CFI exists)

- D.** OP/CFI obtained - 10 years from OP/CFI date.

3. Was the work done within the relevant prescribed period?

- **Yes, work was done during relevant prescribed period** → Proceed to relevant Pathway in **Question 4**.
- **Work was not done during relevant prescribed period** → Outcome:  Condition Report /  Insurance.

Checklist to diagnose owner-builder issues



4. Who performed the work?

Residential Pathway:



A: Registered builder (or subcontractor of a registered builder) under a major domestic building contract (**MDBC**)

- Outcome:  Condition Report /  DBI (if work > \$16,000).

B: Registered builder not under a MDBC.

- Outcome:  Condition Report /  Owner-Builder Insurance (if work > \$16,000 and there were structural defects in last 6 years and/or non-structural works in last 2 years). See [GG2024S095.pdf](#) at [12]

C: Non-licensed person (be it trades not under a MDBC or vendor)

- Outcome:  Condition Report (less than 6 months old) /  Owner-Builder Insurance (if work > \$16,000 and there were structural works in last 6 years and/or non-structural works in last 2 years).

Non-Residential Pathway:

A: Registered builder

- Outcome:  Condition Report /  Insurance.

B: Non-registered builder

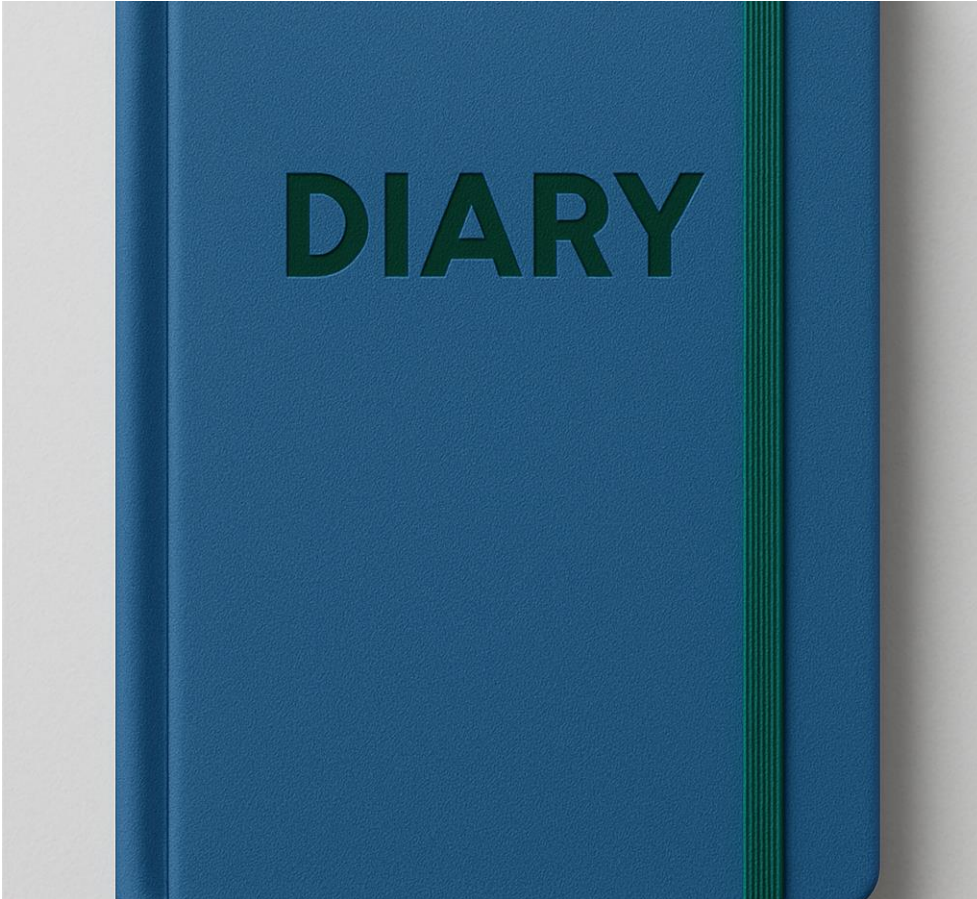
- Outcome:  Condition Report /  Insurance.



What makes someone an "owner-builder"?

- No major domestic building contract
- Using tradespeople who are not registered builders
- Project managing separate trades
- **Caught by s 137B:**
 - Kitchen/bathroom renovations
 - Any work that 'makes alterations to' a 'building' (which includes any structures) – flooring? gazebos? an affixed cubbyhouse? work done by a plumber or electrician not under a major domestic building contract?

Risk management strategies



- **Ask clear questions:** Always specifically ask vendors whether they have undertaken any building works or renovations on the property. Then ask if the works were done under a major domestic building contract with a registered builder. Then ask when the works took place and their value. Use all this information so you can then diagnose whether 137B applies and then make sure the report covers ALL applicable work
- **Check building permits:** Check the building permit to see if the vendor is listed as the owner-builder
- **Diarise expiry dates:** Set reminders for the expiry of the building report, especially if the property is taking time to sell.
- **Advise vendors of consequences:** Make sure all vendors understand that failure to comply with these requirements gives the purchaser a right to rescind the contract at any time before settlement and potentially a large financial penalty.

Terms contracts



When does a deal become a 'terms contract'?

Under s 29A, a terms contract exists where the buyer either:

- makes **two or more payments** (other than the deposit or final payment) after signing the contract but before the land is transferred or
- where they get **possession of the land or rental income** before the title is in their name.

Specific terms contract requirements and consequences



Restrictions:

- \$750,000 minimum for residential land
- Special disclosure requirements
- Special rules for mortgaged land

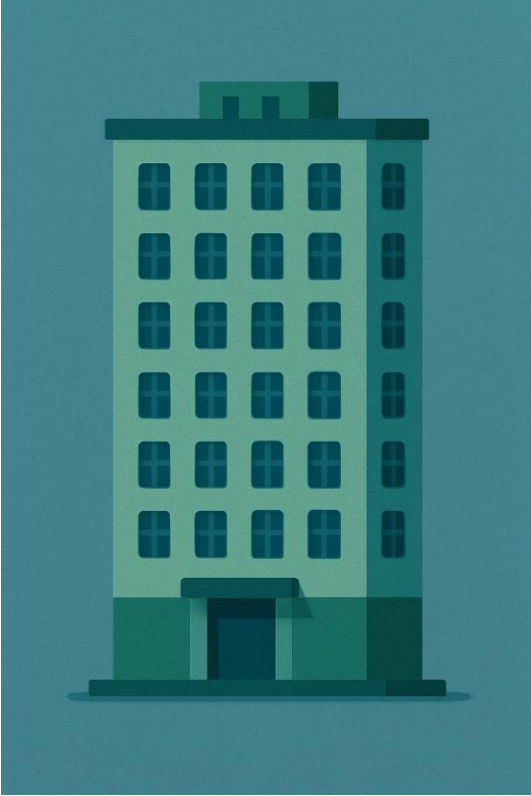
Purchaser remedies:

- May void contract before completion
- Refund of all money paid
- Market rent payable for possession period

Vendor defense:

- Honest and reasonable actions AND
- Purchaser no worse off
- (Not available for <\$750k residential land)

**Off-the-plan
sales**



Specific requirements under the Sale of Land Act

- 10% deposit limit (s 9AA)
- Deposit held in trust account and not released (s 9AA)
- Warning statement about finance/value (s 9AA)
- Common property insurance (s 9AAA)
- Surface level work disclosure (s 9AB)
- Material change notification (s 9AC)
- Sunset periods (s 9AE)



LIV OTP General Conditions

Three-Part Structure:

- Part A: Subdivision (all OTP sales)
- Part B: Owners corporation (if applicable)
- Part C: Building (if applicable)

Benefits:

- Compliant sunset provisions
- Comprehensive disclosure prompts
- Industry standardization
- Fair

**Stay in your lane
– acting outside
your expertise**

**Get good
instructions –
use a
form/checklist**

Order all relevant certificates + review for inconsistencies

Sewers? multiple lots? Not inactive OC or multiple OCs? Impending levies? Extra instruments needed to be ordered? OC certificate includes all the things? AVPCC code and CIPT? Contamination? Mixed use? Water shares? Licences? Missing a CFI or OP? Heritage? Neighbouring permits?

Consider special conditions

Simultaneous settlement? Goods/fixtures? Material facts? Wrong boundaries? Licence transfer? Stratum/company/NICO/deceased estate title?

Diarise dates + warn the agent/vendor of document's lifespan

**Put your
records on!**

Conclusion

Fabulous processes

Intake form

Checklists

Good first letter + precedents

Slow down + ask questions

Read the certificates

Ask questions if something doesn't add up – what would a reasonable lawyer do?

Second set of eyes

Document everything

Give clear advice

Keep a record of it