



CONVEYANCING SERIES 2022 Mastering The Essentials

Conveyancing and three key issues

Presented by | Phil Nolan, Risk Manager, LPLC



Quote

There are three schoolmasters for everybody who will employ them – the senses, intelligent companions and books.

Henry Ward Beecher



Three key points

1. There are many issues to consider about the release of deposit
2. Owner-builder requirements can be complicated
3. Consider all options when dealing with owners corporations issues



Agenda

1. Introduction

3. Owner-builders

2. Release of deposit

4. Owners corporations

INTRODUCTION





EARLY RELEASE OF DEPOSIT



Poll

Is a purchaser entitled to rescind a contract where the information in the section 27 statement is false?

- a) Yes
- b) No
- c) Don't know



Introduction – early release of deposit

Compliance sometimes is not straight forward, as section 27 is complicated and contains numerous conditions which must be satisfied.



Issues raised with LPLC

- Acceptance of title
Refer general condition 14.6
- Conditions enuring for the benefit

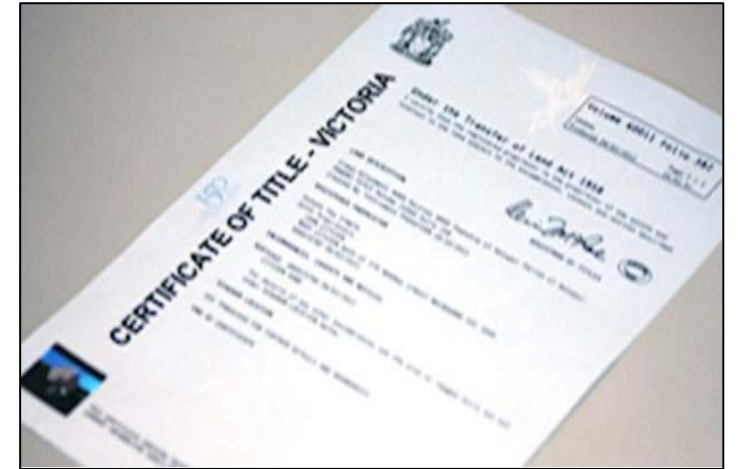
Relevant case

[Aurumstone Pty Ltd v Yarra Bank Developments Pty Ltd \[2017\] VSC 503](#)

- Grounds to object

Relevant case

[McEwen v Theologedis \[2004\] VSC 244](#)



Poll

Which of the following is a valid ground to object to the release of a 10% deposit?

- a) The vendor may default on their mortgage
- b) Outstanding rates
- c) Property may be damaged prior to settlement
- d) Loan discharge amount exceeds 90% of the sale price



Issues raised with LPLC

- Consequences for breach of section 27
- False information in section 27 statement



questions

Further information

- **Pull to release** - by Russell Cocks December 2009 83(12) LIJ p.73
- **Don't pay up to soon** - by Russell Cocks November 2011 85(11) LIJ p.78
- **Safe Deposits** - by William Rimmer 2013 87(10) LIJ p.46
- **Sale of Land Victoria** - by David Lloyd and William Rimmer 2015 Thomson Reuters



DO THE RIGHT
THING



Do the right thing

There are a number of ethical issues that may arise in relation to deposits.

Help

If you have an ethical issue, contact LIV ethics via phone on: **03 9607 9336** or via email at: ethics@liv.asn.au



Poll

Background

You act for a developer selling apartments off-the-plan. The developer is struggling to fund the final stage of the development. Prior to registration of the plan the selling agent convinces a number of purchasers to agree to the early release of the deposit to help out the vendor.

Question

Can the deposit be released to the developer?

- a) Yes b) No c) Don't know





OWNER-BUILDERS



Poll

Your vendor client has undertaken the following owner-builder works:

- Renovated laundry - \$12,000 – 2 years ago
- Renovated bathroom - \$13,000 - recently

Question

Is the vendor required to obtain owner-builder insurance as the value of the works exceed \$16,000?

- a) Yes
- b) No
- c) Don't know



Introduction – owner-builders

Some relevant legislation

- Building Act 1993 (Vic)
- Domestic Building Contracts Act 1995 (Vic)
- Sale of Land Act 1962 (Vic)
- Limitation of Actions Act 1958 (Vic)

Other

[Domestic Building Insurance Ministerial Order](#) (as amended)



Issues raised with LPLC

- Is there a definition of owner-builder works?
- Does the vendor have to comply where the works are less than \$16,000?
- How do I value the owner-builder works?



Poll

Can a contract of sale of land be subject to complying with the owner-builder obligations?

- a) Yes
- b) No
- c) Don't know



Issues raised with LPLC

- Does the building report have to be attached to the section 32 statement?
- Can a vendor sell off-the-plan as an owner-builder?
- How do I obtain details of the owner-builder insurance requirements?



Issues raised with LPLC

- When is owner-builder insurance required?
- Can the vendor obtain owner-builder insurance where no building permit was obtained?
- Are there any consequences for an owner-builder vendor after settlement?

Relevant case

[Fraser v Mason \(Building and Property\) \[2019\] VCAT 1009 \(18 July 2019\)](#)



questions

Further information

- Published by **VBA, VMIA** and **Consumer Affairs Victoria**
- LPLC article - **Owner-builder danger zone** which you will find on the LPLC website
- LPLC practice risk guide - **Claim free conveyancing** contains details about claims and owner-builder issues.
- **Unsafe as houses, owner-builders and conveyancing** by Russell Cocks August 2005 LIJ
- **The unknowns of owner-builder insurance** by Russell Cocks September 2016 LIJ

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Exercise

You act for a vender who has undertaken substantial renovations at their property as an owner-builder. The vendor says they do not intend on complying with the owner-builder requirements against your advice.

Question

Can you terminate the retainer?

- a) Yes
- b) No
- c) Don't know






Session break: 3 steps to recharge

1. Get your circulation going

- Stand up and stretch your arms way up high
- Try some jumping jacks
- Bend down and try to touch your toes

2. Reduce eye strain

- Look away from your computer and gaze at an object in the distance  at least 20 seconds
- Adjust your computer display settings – like brightness or contrast

3. Remember to stay hydrated

- Drink a big glass of water
- Have a refill ready for the next part of the session!



OWNERS CORPORATIONS



Exercise

You act for a vendor selling a villa unit. The site has a common driveway which is identified as common property on the plan of subdivision. There are 5 villa units in the plan.

The vendor has their own replacement and contents insurance which also covers public liability for the common driveway for \$20m.

S.11 of the Sale of Land Act provides that:

A person cannot sell a lot affected by an owners corporation unless the vendor or the owners corporation has a current insurance policy in accordance with the Owners Corporations Act 2006 for any insurance required by that Act to be effected by the owners corporation.



Poll

Has the vendor complied with section 11 of the Sale of Land Act?

- a) Yes
- b) No
- c) Don't know



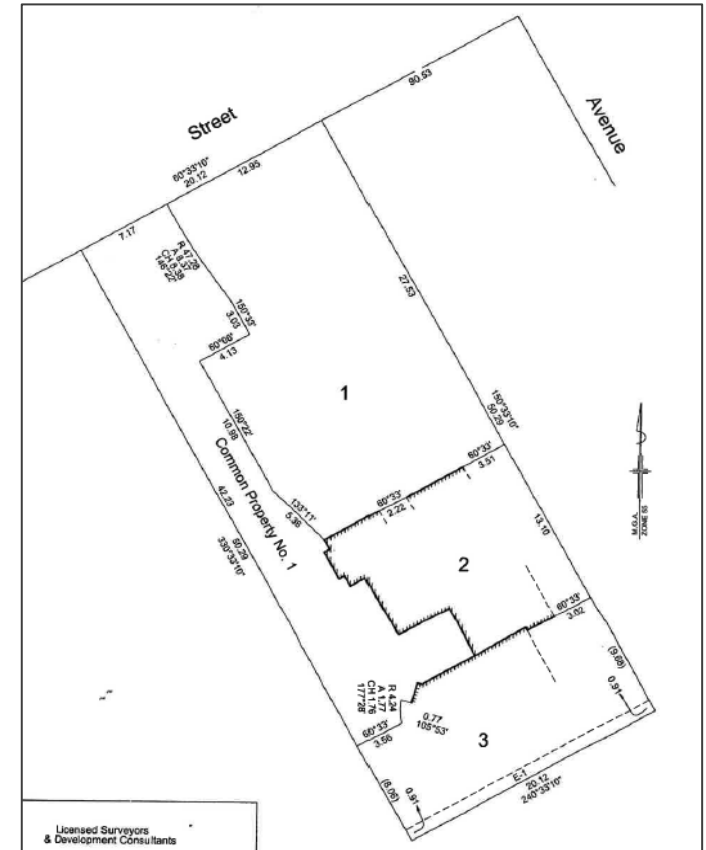
Introduction – owners corporations

LPLC regularly receives enquiries from practitioners about owners corporations issues mostly in relation to the sale of land.

Relevant legislation

Sale of Land Act 1962 (Vic)

Owners Corporations Act 2006 (Vic)



Issues raised with LPLC

- What does a vendor have to do to comply with s.32F of the Sale of Land Act?
- When is an owners corporation inactive?
- How to comply with section 11 of the Sale of Land Act?
- When is an owners corporation exempt from the insurance requirements?



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Further information

- Owners Corporations – a major reform by Norman Mermelstein and Neville Sanders December LIJ 2021
- Owners Corporations and Other Acts Amendment Act 2021
- Consumer Affairs Victoria



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Exercise

You act for a first-time developer. The client wishes to construct 5 townhouses and will retain one and sell the other 4. The driveway for the townhouses is common property. The client seeks your advice on ensuring the town house they will retain has a lower lot liability to the other town houses but a higher lot entitlement.

Question

What advice would you give this client?





REFLECTION

What have you learned from this session and materials that might help you and your colleagues in your work?





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