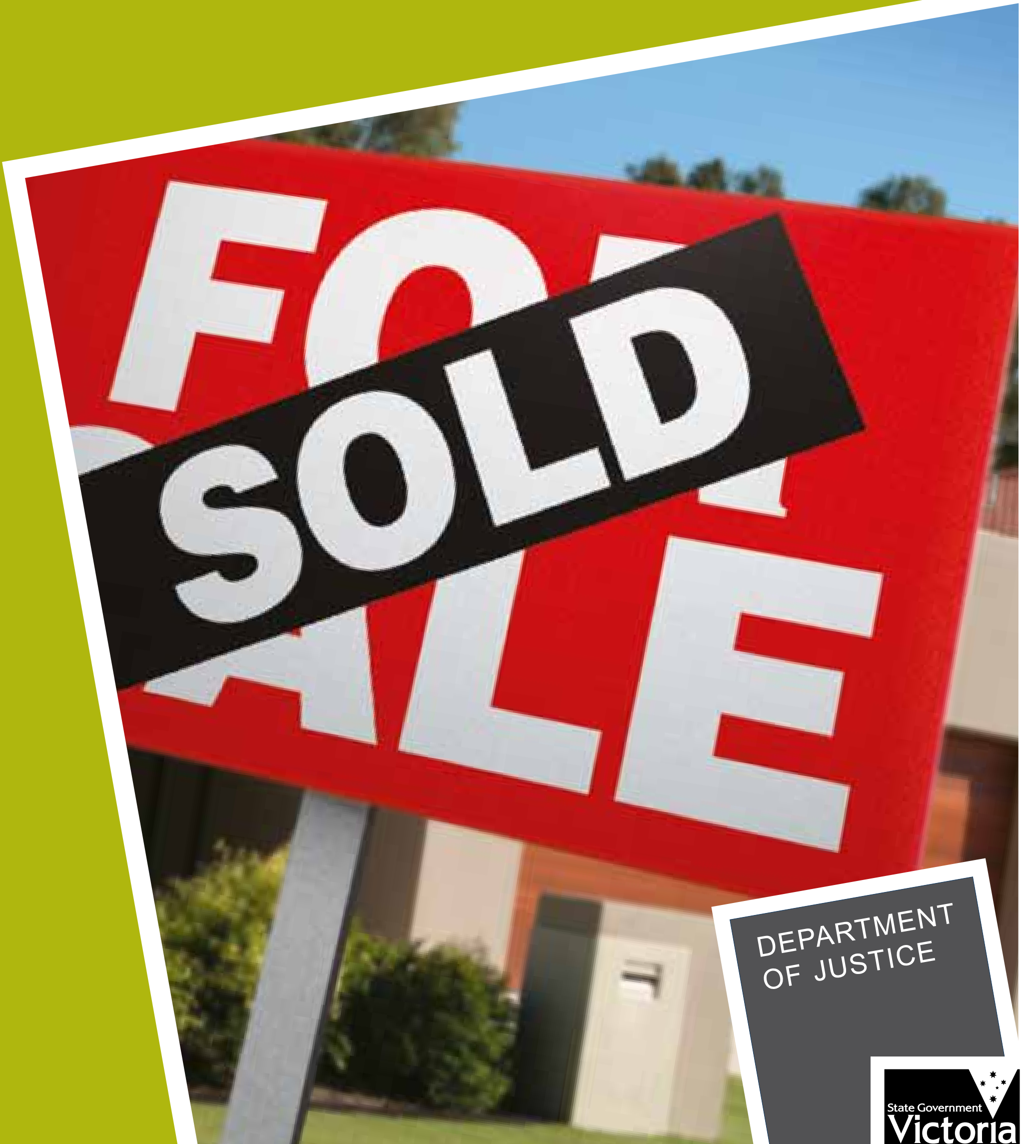
Consumer Affairs Victoria

Real estate
A guide for buyers and sellers



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Introduction

This guide provides an overview of the basic steps involved in a residential real estate transaction, including laws that regulate the conduct of estate agents and the buying and selling of real estate in Victoria. These steps have been presented in the order in which you would normally experience them in the buying or selling process.

Wherever possible, information is presented for both buyers and sellers. Information specific to one or the other is clearly identified in the form of a buyer's or seller's tip. A comprehensive glossary and list of useful contacts are provided for your reference.

This edition also contains case studies and buyers' and sellers' checklists, at the back of this guide. These questions can be helpful prompts to ensure you don't miss any important parts of the process.

Making the right choices

Buying or selling a home can be a complex and time-consuming process. Even before you make the 'big decisions' about which property to buy, which home loan to select, or which estate agent you engage to sell your home, there are many other important decisions you will need to make. Doing some homework can help you avoid expensive mistakes.

You are more likely to make the right choices if you:

- know what you want
- are informed about your options
- shop around for the best price and service or product that meets your needs
- refuse to hurry into a decision
- take your time
- read everything before you sign
- ask questions.

Know what you want

Start by making a list of all the essential features you require in your property. This will help you stay focused on your requirements so you don't get carried away and buy something that looks great but doesn't meet your needs. It's also a good idea to make a wish list of all the desired but non-essential features you would like so this can be factored into your decision making when you find them in a property you can afford.

Be informed

Learn as much as possible about every aspect of the property buying and selling process. Research as much as you can about the market value of property in your preferred areas by searching the internet, attending auctions, speaking with a variety of estate agents and reading newspapers for auction results.

Shop around

Educate yourself about the products and services offered by estate agents, solicitors, conveyancers and lenders. Websites are an excellent source of information and shopping around will give peace of mind that you are getting value for money and your needs are being met as fully as possible.

Don't hurry

Never rush or be pressured into making hasty decisions. There is a lot of money at stake and many years will be spent paying off your mortgage. Make sure you are committing to the right property for you.

If you take your time and do your homework you will feel more confident you are making an informed decision when the right house at the right price with the right loan comes your way.

Read before you sign

While buying or selling you may come across different types of contracts such as loan contracts, authorities to sell and contracts of sale.

It's important to take the time to read and fully understand what you are signing, before you sign it.

This includes all terms, conditions and fine print. Make sure anything agreed to verbally is put in writing so you know exactly what you are committing yourself to.

If something is unclear, ask for an explanation. If you are still uncertain, it is better to wait and seek professional advice before signing. You should keep a copy of all documents you have signed as a record for your reference.

Negotiate

Many terms and conditions are negotiable between the parties. Estate agents, lenders, solicitors and conveyancers, as well as buyers and sellers, want your business.

Definitions

For the purposes of this guide, unless otherwise specified the:

- vendor or person who owns the property being sold is referred to as the seller
- mortgagee is referred to as the lender
- mortgagor is referred to as the borrower
- purchaser is referred to as the buyer.

Contents

Section 1
Finance

Buying a property is a significant and ongoing financial commitment. As a buyer you should spend time working out exactly what you need and can afford.

It pays to be cautious when it comes to getting a home loan (or mortgage). Asking lots of questions about fees and charges and studying the fine print on contracts, brochures and printed material may save you time and money in the long term.

Be cautious about receiving financial advice or referrals from a mortgage broker when dealing in a property transaction with them. It is illegal for estate agents to give financial advice.

Assessing finances

As a borrower you should carefully assess your financial situation and desired standard of living, then calculate a loan amount based on what you can afford.

You should take into account not only your current circumstances and financial commitments, but any changes that may occur in the future. For example, starting a family could mean a drop in income. It is also important to consider changes that cannot necessarily be predicted, such as rises in interest rates or the loss of a job.

You need to factor in additional purchase costs such as:

- legal fees
- loan establishment fees
- government charges such as stamp duty and GST
- building and pest inspection fees
- moving costs
- insurance (building and contents).

Lending criteria

Eligibility requirements vary between institutions but lenders generally use two criteria to work out how much they will lend:

- the borrower's income and repayment capacity
- the loan to value ratio. This is the percentage of the purchase price that lenders will agree to lend.

The lender will calculate a maximum loan amount. This does not mean you have to take this whole amount and, as an informed borrower, you need to work out how much you can afford to borrow.

As a general rule of thumb, aim to spend less than one third of your gross income on mortgage repayments.

The deposit

Depending on the lending institution and type of loan, a deposit equal to a certain percentage of the purchase price will be required. While most minimum deposits are 10 per cent of the purchase price, in some cases an institution may lend 100 per cent of the purchase price, requiring no deposit at all. If you are borrowing 80 per cent or more of the purchase price, lenders generally require you to pay for mortgage insurance, which means an additional upfront payment.

Some lenders require proof through bank statements that a certain amount of the deposit came from the borrower's own savings.

Deposit bonds

A deposit bond, or guarantee, is an alternative to providing a deposit upon signing the contract of sale. The use of a deposit bond requires the specific approval of the seller, and needs to be written into the contract of sale. There may be risks for buyers and sellers where a deposit bond is used. Deposit bonds should be used with caution as the buyer is effectively borrowing up to 100 per cent of the purchase price of the property, which must be paid in total on settlement.

Insurance

Mortgage insurance

Mortgage insurance, or mortgage guarantee insurance, generally applies if you are borrowing more than 80 per cent of the purchase price. This is usually in the form of a one-off premium paid at the time of settlement. Mortgage insurance doesn't protect your interest. It protects the lender in the event that you default on the loan and the amount still owed is greater than what is received from the sale of the property.

It is important to note that if you default and the mortgage insurance is paid out, the insurance company will pursue you to repay the debt.

Under the Consumer Credit Code a lender can require you to take out this insurance though you can choose the specific insurer.

Consumer credit insurance

Consumer credit insurance is an option for you to safeguard against losing your property if you default on the loan repayments. This will protect the loan if repayments cannot be made because of sickness, accident or unemployment.

Carefully consider the costs of consumer credit insurance to determine if the benefits are worth the outlay. Also, study the terms and conditions for any restrictions or limitations, such as a three-month limit on coverage.

Under the Consumer Credit Code it is against the law for a lender to require you to take out this type of insurance.

Consumer Credit Code

To ensure fair dealing and to protect the interests of consumers, all lenders are required to comply with the Consumer Credit Code. The Code regulates home loans and other forms of consumer credit.

Under this Code, prior to contract, lenders must provide:

- a statement outlining the borrower's rights and obligations
- a precontractual statement setting out certain financial information, which must be included in the contract document
- the contract setting out the loan.

This protects borrowers, and helps them to compare products and make an informed choice.

Choosing a lender

It usually takes some time to find the right home. This gives buyers the opportunity to organise their finances and apply for a loan. Most lenders will approve a loan in principle, allowing a buyer to be confident of his or her spending limit when searching for a property. This approval is usually valid for 6 to 12 months and needs to be renewed after this period. The loan is then formally approved once a purchase has been made.

Choosing the right home loan is as important as choosing the right home. Researching and understanding the home loan market will help you to choose the most appropriate loan for you.

There is intense competition among lenders who offer a variety of packages, options and methods of payment. The loan that appears to be the cheapest because it has the lowest interest rate may not necessarily be the cheapest option in the longer term when fees, ongoing charges and penalties are included.

The cheapest loan may also be less flexible and have fewer extras than other loans.

The main types of lenders are:

- banks
- credit unions
- building societies
- mortgage originators.

Lenders conduct their business through the internet, over the telephone and even by visiting you at home.

Comparison rate

Use the comparison rates in advertisements to compare loans among different lenders. A comparison rate allows consumers to check the real cost of a home loan. It presents the comparison rate as a single percentage figure, based on the interest rate plus any fees and charges relating to the loan. For example, the lender's advertised interest rate may be 6.30 per cent, but the comparison rate may be 6.95 per cent.

Mortgage brokers

A mortgage broker can assist you in finding the right loan. Even if you use a broker, it is best to do some research to be sure that the recommended loan is the right one for you.

Choosing a broker

Before engaging the services of a broker you should question the way their business is conducted.

- Do they belong to a reputable industry association?
- Are they independent or do they only deal with a particular lender?
- Do they have professional indemnity insurance?
- Are they a lender AND a broker, as this may affect their recommendations?
- Do they offer a wide range of loans from a variety of independent lenders?
- Establish if an upfront fee is charged. It is important to note that a broker cannot require payment unless they have entered into a written agreement with you
- Ensure your broker discloses all fees and commissions prior to signing
- Ask them to justify their recommendations
- Ask to see a copy of the application and any financial details they send to the lender on your behalf
- For further information go to the Australian Securities and Investment Commission website at www.asic.gov.au.

It is also important to note that before sourcing a loan for you, the broker must provide a written contract specifying the:

- amount of the loan to be obtained
- maximum interest rate you are willing to pay
- maximum valuation fees you are willing to pay
- any commissions payable to the broker
- fee to be charged for the broker's services
- duration of the broker's appointment.

Types of loan

There are a variety of home loan types offering different rates and features. A loan can usually be tailored to suit individual requirements. Lenders will advise on the types of loan they have available.

With many packages on offer, it can often be difficult to work out the differences, benefits and disadvantages. Make sure you read all documentation and understand exactly what you are signing.

Choosing the right loan

You should try to obtain as much information as possible and ask lenders to explain terms and conditions of loan packages in writing.

Most lenders have computer software (a mortgage simulator) to create a model of a mortgage. A mortgage simulator shows variables such as the amount and duration of the loan and the frequency of repayments (weekly, fortnightly or monthly). By entering these details into the software, you will see a graph of how much will be paid off the loan each year, depending on the variables. Mortgage simulators are usually available on lenders' websites.

When choosing a loan, repayment options and switching costs should be taken into account. For example:

- a flexible repayment option may be beneficial if you are planning to start a family. A loan with a fixed term rate will not allow you to vary the amount of your repayments without incurring substantial fees
- substantial costs may be incurred for ending or switching from certain loans. Check your contract for references to deferred establishment fee, termination fee and legal fees. These are the most common items used by lenders in calculating the cancellation fee.

The two basic home loan types are:

- variable loans
- fixed loans.

Variable loans

A variable rate home loan is a loan where the interest rate varies throughout the life of the loan. The lender will adjust the rate according to the economic climate and the cash rate set by the Reserve Bank. Competition among lenders may also affect the rate.

Fluctuation of 1 per cent may not sound like much but it can translate to as much as $170 a month on a $200,000 loan.

Most lenders will offer several types of variable loan, with different rates and added extras. Generally, the loans with the lower interest rates have less flexibility in conditions and fewer or no added extras.

Those with higher rates may offer extras such as a redraw facility, which allows you to draw on money already paid into the loan. They will also have more flexible conditions such as no restrictions on making extra payments or paying off the loan early.

Fixed loans

These loans are set at a fixed rate for a certain period, generally between one and five years. This type of loan allows you to organise your finances and repayments without having to worry about fluctuating interest rates.

By locking in the rate, you will not benefit if interests rates drop, but will also not lose out if interest rates rise. Significant break fees may apply for breaking the loan contract or paying off the loan early.

Most fixed loans have a restriction on extra repayments and limited extra features.

Split loans

Many lenders will allow you the option of splitting a loan between a fixed rate and a variable rate at whatever percentage you choose, such as an 80 per cent fixed rate with a 20 per cent variable rate. This allows you to customise the loan and combine the security of the fixed loan with some of the flexibility of the variable loan.

Capped rate loans

These are loans with rates that cannot exceed an agreed percentage for a fixed period of time, but may decrease during the fixed period.

Honeymoon loans

This type of loan has rates that are lower for the first 6 to 12 months. After this period, the loan reverts to a standard variable rate and the repayments increase. At the end of the honeymoon period there may be ‘switch costs’ depending upon the type of loan chosen.

Offset loans

This loan is essentially a revolving line of credit where all salary or wages are paid into the loan account. Interest on the loan is usually set at a higher variable rate than the standard rate. Fees and charges may also be higher.

A credit card can be used to pay for day-to-day running expenses, which can then be paid off once a month via the loan account.

The advantage of this loan is that your salary paid into the account is being used to pay off the loan. This means the loan may be paid off faster and more cheaply.

The downside is the temptation for you to overuse the credit card facility. If you overspend the loan will not be paid off as quickly. Some loans may also have penalty rates if the credit limit is exceeded.

Bridging loans

Timing can be a crucial issue when selling one property and buying another. Sometimes if the right property becomes available, it is not always possible to wait until the current one is sold or negotiate convenient settlement terms. A bridging loan can be used to cover the financial gap when buying one property before the existing one is sold. There is a nominated time period, usually 6 to 12 months, in which the existing property must be sold. A bridging loan can be secured by both the existing and new properties.

Bridging finance is often much more expensive than an ordinary home loan.

Vendor terms financing

Under a vendor terms contract, the loan is supplied by the seller, rather than by an established lender. The seller provides the loan to you at a higher interest rate than mainstream interest rates – from 2 per cent to 10 per cent higher.

Be very cautious about entering into this type of contract. The penalties for default can be severe. If you fall behind in your repayments, you may lose:

- your house
- any repayments already paid
- any government grants such as the First Home Owner Grant
- your credit rating.

Before entering into a vendor terms contract the buyer should:

- ensure the loan is affordable
- seek independent legal advice
- be clear about will happen if repayments are missed
- get an independent valuation of the property.

Solicitor lending

Solicitor lending or solicitor nominee lending is another alternative means of obtaining a home loan. The loans are usually 'interest only' and require payment of the principal after a relatively short period of time.

Make sure you understand the loan terms and conditions before signing. The comprehensive disclosure required under the Consumer Credit Code may not be provided in such loans.

It is advisable to obtain independent legal advice before entering this type of loan arrangement.

Other considerations

Early repayments

Making lump sum payments or higher loan repayments will help you pay off your loan sooner. It is also possible to shorten the term of the loan by making more frequent payments, for example, weekly or fortnightly payments instead of monthly payments. While the term (or repayment period) of many home loans is 25 years, the trend recently has been towards shortening the term to around 15 years.

Depending on the type of loan, there may be restrictions on making unscheduled payments or increasing the number of repayments.

Interest rate rises

In calculating the size of the loan and repayments, you should include a margin to allow for potential rises in interest rates.

Break fees

Break fees are charged by lenders to discourage borrowers with either a fixed term or variable rate from 'loan hopping' and refinancing to another mortgage contract with more competitive rates.

Should you wish to prematurely end a fixed term or variable rate contract to refinance at a lower rate, the lender will calculate its losses over the remainder of the contract period and charge a break fee. In some cases, this may add up to many thousands of dollars.

The break fee will depend on the size of the loan, the date the fixed period commenced and the gap between fixed and variable rates.

Mortgage offset

This allows interest on savings held by you to be credited against interest charges on the mortgage. This in turn helps reduce the term of the loan by paying off the interest earlier.

Carefully check the terms and conditions, as hidden fees and charges may apply.

First Home Owner Grant

The First Home Owner Grant scheme provides eligible first home owners with a non-means-tested one-off payment, regardless of the purchase price of the property.

Some lenders will help to arrange the First Home Owner Grant application for you. Eligibility criteria and application forms are available from the State Revenue Office website at www.sro.vic.gov.au.

Applying for a loan

When you apply for a loan, the lender should ask a number of questions to fully assess your borrowing capacity. If you have any questions for the lender, prepare a list so you don't forget to ask anything.

Your application needs to be accompanied by:

- photocopies of current bank account statements
- proof of shareholdings and other assets
- details of any second income, bonuses, allowances or benefits
- payslips or a letter from your employer demonstrating how long you have been employed and your salary
- a photocopy of the front page of the contract of sale, if you have already decided on a property
- a copy of the contract or a solicitor's letter confirming a firm buyer, if you are also selling a home
- a letter from your current lender stating the amount owing and proof of past repayments, if you are paying out an existing mortgage and starting a new home loan
- tax agent income statements and income tax returns, if self-employed
- profit and loss statements certified by a registered accountant, if self-employed.

The loan contract

Do not sign the loan contract without reading it carefully first and fully understanding its contents. It is advisable to give yourself at least three days to look over it. Ask any questions you may have before you sign the document.

Each loan contract and precontractual statement must include:

- amount of the loan to be provided
- annual percentage rate/s
- how the interest will be calculated and when it will be charged
- total amount of interest if the loan does not exceed seven years
- loan fees and charges
- how changes in the contract will be advised
- any default rate of interest and how it will be calculated
- frequency of account statements
- relevant commission charges
- details of loan-related insurance financed under the contract
- repayment amount and frequency of repayments
- possible enforcement expenses that may apply if you breach the contract
- a statement confirming you are taking the mortgage or guarantee
- a description of the property.

After the contract is signed, the lender is required to provide a copy of the signed contract to you.

Regular account statements should be provided by the lender including:

- all fees and charges
- the amount of the loan provided during the statement period
- interest charges, including when they were charged
- the annual percentage rate, including any changes during the statement period
- the opening and closing balances
- the date the statement period begins and ends
- payment transfers to and from other accounts
- minimum payments owed and the due date
- insurance payments made, the name of the insurer and any commission paid
- any corrections to previous accounts.

If you are unsure about any part of the contract, ask for clarification from the lender or seek independent advice from your solicitor, financial adviser or mortgage broker.

For information about loans and other credit, contact Australian Securities and Investment Commission

☎ 1300 300 630
www.asic.gov.au

Case study #1

First home buyers

While searching for their first home, Max and Jessica found a two bedroom flat in a subdivided Victorian-era mansion with a 'for sale by auction' notice. They inspected the flat and found it had almost all the features they wanted in their new home.

Max and Jessica felt they had a good idea of the market value of the flat. They had looked at properties in the area over the last six months, thoroughly researched prices and attended a number of auctions. As their mortgage had been pre-approved, they knew their estimate of the sale price of the flat was within their budget. Based on their research and financial position, they decided to bid for the flat at the forthcoming auction.

Max and Jessica wanted a building inspection conducted as auction sales are usually unconditional. When they spoke to the agent to make arrangements for the inspection, they also asked for a copy of the vendor's statement and a draft of the contract of sale. While waiting for these documents to be prepared, they contacted the local council and asked whether any proposed developments could impact on the apartment; for example, whether the view of the city could be affected by proposed development.

They received the vendor's statement and draft contract one week before the auction and immediately engaged a solicitor to review the documentation and give them advice on the sale.

They also looked at the information in the vendor's statement and attached Owners Corporation Certificate. The certificate had information about owners corporation fees, proposed expenditure that could affect them after the sale and common property rules. Using the information in the vendor's statement and the certificate, they did some calculations and determined they could easily afford the mortgage repayments, owners corporation fees, rates and taxes even if Jessica was not working.

The building inspection report found no structural problems with the flat. While there were some minor problems that needed rectifying, they were not urgent and Max and Jessica had some ideas of renovating the flat at a later date so the repairs could be performed then.

Their solicitor had no issues with the documentation so Max and Jessica made a final inspection of the property and tested the taps, toilet, hot water service, ceiling fans and heaters.

Max and Jessica had predetermined a maximum price they would bid and not exceed and agreed that Max would perform the bidding. They arranged for a bank cheque for the 10 per cent deposit they needed to pay if they were the successful bidders.

At the auction the bidding opened at $600,000 and rose by $10,000 increments to $630,000. The auctioneer would not accept lower increments and at this point Max made his first bid of $640,000. Max and another bidder were against each other until Max held the last bid at $680,000. No further bids were forthcoming and the property was knocked down to Max.

Max and Jessica were thrilled they were the successful bidders and immediately signed the contract of sale and paid the deposit. They then contacted their lender and solicitor to advise them of their purchase.

Max and Jessica's extensive research prior to the sale reassured them they paid what they wanted to pay for a property that met their standards and requirements.

Section 2
Dealing with an estate agent

If you use an estate agent, there are several important things to know about their role and responsibilities and the rules that govern their conduct.

When buying or selling property, most people will deal with an estate agent. A property transaction can also be undertaken directly between buyer and seller without the services of an estate agent.

There are laws governing the licensing and conduct of estate agents. These laws prohibit unethical practices such as misrepresentations about property including the price, location, size and dummy bidding at auctions.

Licensed estate agents and agents' representatives

Anyone in the business of buying, selling or leasing property on behalf of another person must hold an estate agent's licence or be employed by a licensed estate agent as an agent's representative. An agent's representative needs written authority to act on behalf of their employer before commencing work, and the licensed estate agent is responsible for the employee's professional conduct.

Only deal with a licensed estate agent or an authorised agent's representative.

You can check if someone is a licensed estate agent or an agent's representative by contacting the Victorian Business Licensing Authority on 1300 13 54 52 or by searching the public register of licensed estate agents at www.bla.vic.gov.au.

Laws governing estate agents

By law, estate agents must:

- advise a seller that all commissions and other outgoings are negotiable
- disclose any bid made by the seller (if auction rules allow vendor bids) to advance the price of the property at auction
- communicate all offers to buy, unless instructed otherwise by the seller
- state an estimated selling price in the authority to sell.

By law, estate agents must not:

- mislead or deceive any party
- make or accept dummy bids
- retain advertising or other rebates
- charge a seller more for outgoings than was paid by the agent
- charge more than was authorised by the seller in writing
- accept any late bids after the fall of the hammer at an auction.

The agent's responsibilities to the buyer

A buyer will usually not pay for the services of an agent, unless specifically employing a buyer's advocate. Buyers will generally deal with several agents, depending on who is handling the sale of the properties they are interested in. They may also leave their details with one or a number of agents indicating the type of property they are seeking and an approximate price range. The agent can then contact them when suitable properties become available.

A buyer can expect an agent to:

- take their details and provide advice about relevant properties for sale
- answer questions about listed properties
- arrange inspections
- provide a copy of the vendor's statement
- communicate genuine offers to the seller
- organise the signing of the contract.

The agent-principal relationship

The relationship a seller has with an estate agent is different to the relationship the estate agent has with a buyer. Estate agents are obliged to act responsibly and ethically when dealing with both buyers and sellers. However, the agent's responsibility is to the seller, unless they are acting as a buyer's advocate (also known as a buyer's agent). It is important for a buyer to be aware of this whenever they are dealing with an agent.

The agent's responsibilities to the seller

A seller who lists their property with an agent is engaging the agent to help sell their property. The agent is bound by professional conduct regulations to always act in the best interests of the seller, to follow the seller's lawful instructions and to engage in good estate agency practice.

The agent will charge a fee for this service, usually in the form of a commission. The commission is negotiable and can either be a percentage, a fixed fee or a combination of both.

A seller can expect the agent to give an estimated selling price of the property and to communicate all offers unless otherwise instructed by the seller.

A seller can expect the agent to:

- advise on a method of sale
- advertise and market the property, and provide a marketing plan
- give an estimated selling price that does not misrepresent the price at which they genuinely believe the property may be sold
- advertise an up-to-date price for the property reflecting rejected offers. However, it is not compulsory for a price to be advertised
- communicate all verbal and written offers to the seller from prospective buyers, unless instructed in writing not to do so
- organise and attend open house and other inspections
- attract prospective buyers
- organise and conduct an auction
- arrange the signing of the contract
- collect and hold the full deposit.

Selecting an agency

For the seller, choosing an agency is an important part of the selling process. There are several ways to help you make this decision such as:

- checking the internet and local papers to find agencies, the services they offer and sale price information
- speaking to friends and acquaintances about their experiences
- reading promotional material from a range of agencies including local agents who are more likely to be familiar with the local market
- talking to several agents and arranging to meet them.

Buyer's tip #1

If you use a buyer's advocate, make sure they are a licensed estate agent. A buyer's advocate may be engaged to source properties, bid at auction and generally represent you throughout the buying process. You will usually pay a fee or commission for this service.

Ask the agent to provide any quotes in writing. Do not sign anything, including an authority, unless you are prepared to engage the services of that agent.

Points to discuss

When meeting with agents, important points to discuss are:

- their knowledge of the market in the area
- comparable sales in the area
- their marketing plan for the property
- their estimated selling price of the property
- their commission, or how much they will charge
- the cost of advertising and other outgoings.

Marketing your property

One of the most important factors when choosing an agency is how they plan to market your property. Sellers should ask for a comprehensive, written marketing plan. This will be based on the agent's experience, the nature of the property and any specific wishes of the seller.

The marketing plan should include advertising methods and costs, and the price or range at which the property will be advertised.

The estimated selling price

This is the price the estate agent estimates a property is likely to attract, based on their experience and knowledge of the market. It must be recorded in the authority to sell as either a single amount or a price range.

If recorded as a range, the difference between the top and the bottom figures must not exceed 10 per cent of the bottom figure. For example, a quoted range of $400,000 to $440,000 is $400,000 plus 10 per cent.

This price is not a sworn valuation or a guaranteed selling price.

The agent's estimated selling price does not have to be the same as the seller's reserve price.

Price misrepresentation

The practice of deliberately overstating the estimated selling price to encourage a seller to appoint a particular agent is known as overquoting.

It is illegal for an agent to mislead a seller or prospective seller about the estimated selling price of a property.

It is also illegal for an agent to advertise or advise a prospective buyer of a price that is less than the seller's asking price, or if there is no such price, the agent's estimated selling price. This is known as underquoting.

Commissions

Most agents obtain their fee from the seller in the form of a commission upon completion of the sale. An agent cannot obtain a commission without an authority to sell signed by the seller.

The agent is required by law to advise the seller the commission is negotiable, prior to the seller signing the authority to sell.

There is no set amount for a commission; it is negotiable between the seller and the agent, and can be set at whatever amount both parties agree on.

The commission can be paid as either a fixed fee or a percentage of the sale price. The agreed commission must be recorded on the authority to sell. If it is recorded as a percentage (per cent), it must also be shown as a figure in dollar terms. If the agent is using a commission scale, ensure it clearly and accurately outlines how much could be paid.

For example, the agent's commission may be 3.3 per cent (including GST) on a scale up to $500,000 and 3.85 per cent (including GST) if the price goes above $500,000. The seller may interpret this as only the amount above $500,000 having a 3.85 per cent commission; however, if the sale price exceeds $500,000, the agent may interpret this as the entire sale price having a 3.85 per cent commission.

Seller's tip #1

Do not choose an agent just because they give you the highest estimated selling price. Have several agents appraise your property and give you an estimated selling price. Ask them to justify their price by showing you, for example, similar properties sold at similar prices in the area.

Take into account the agent's overall marketing plan when making your decision.

Commission sharing

The agent is required by law to advise the seller in writing if they will be sharing the commission with someone outside their own agency, such as a solicitor, conveyancer or another estate agent. A statement must be made listing the people with whom the commission is to be shared, prior to the seller signing the authority to sell.

If a commission-sharing arrangement is entered into after the authority to sell has been signed, the agent needs to update the authority to sell with the relevant details and ask the seller to sign and date the amendments.

Seller's tip #2

Clarify with the agent the exact circumstances under which the commission must be paid, before signing the authority. Do not sign without carefully reading and understanding the authority to sell. If you are unsure of anything, ask for clarification from the agent, contact the Estate Agents Resolution Service at Consumer Affairs Victoria or seek professional legal advice.

By law, the agent is obliged to provide a copy of the authority to the seller at the time of signing. Retain this as proof of what was agreed with the agent.

Advertising and other outgoings

There will be costs associated with marketing and advertising a property, on top of the estate agent's commission. Even if the property fails to sell, the seller will have to cover marketing and advertising costs if they authorised it. This may be avoided by negotiating a 'no sale, no fee' arrangement in the authority to sell. In this instance, make sure that there are no hidden charges. You can ask the agent to provide a written schedule outlining advertising and other outgoings to clarify what is being paid for.

All expenses, including advertising and other outgoings, are negotiable and must be recorded in the authority to sell.

Rebates

Agents place substantial amounts of advertising and can be offered significant discounts or rebates by newspapers for purchasing bulk advertising.

It is illegal for agents to retain advertising or any other rebate, even where the seller agrees to the agent keeping the rebate.

If a rebate or discount is received on any goods or services, such as advertising, it must be passed on to the seller. If benefits received are in a form other than money, such as gifts, then the monetary value of the gift must be passed on to the seller.

If the exact price is not known, then an estimation must be made by the agent. The amount of any rebates or benefits must be stated in the authority to sell.

The authority to sell

Once an agent is chosen, the seller will be asked to sign an authority to sell appointing that agent. The authority to sell is a legally binding contract, which fully sets out the details of the seller's agreement with the agent, including:

- whether the property is to be sold by private sale or auction and, if by auction, the auction date

- the negotiated commission and marketing expenses with GST set out separately
- the circumstances under which commission is payable; this will depend upon the type of authority signed, whether it is an 'exclusive' or 'general' authority
- the agent's estimation of the likely selling price
- the authority period or amount of time given to the agency to sell the property.

By law, the authority must include two statements. The first is a rebate statement, which will be completed if the agent is to receive any rebates from the advertising expenses. The second is a complaints statement, which explains that you can lodge a complaint at Consumer Affairs Victoria should a dispute over commission or outgoings arise.

If the agency is to share commission for the sale with another agency, the authority to sell may include a commission sharing statement. Alternatively, a seller may be given a separate statement before they sign the authority, informing them that the agency will be sharing commission.

Authority types

The most common type of sales authority is the exclusive authority which means the seller appoints a single agency to exclusively market their property. Under an exclusive authority the agent is entitled to commission when the property is sold. An agent can claim commission under an exclusive authority even if the seller sells their own property without the agent.

Sellers should not sign more than one exclusive authority, as in certain circumstances more than one commission may have to be paid.

It is less common but a seller can also use a general authority. This allows them to list with more than one agency but only pay commission to the agency that sells their property.

Seller's tip #3

If you want to make any changes after the authority has been signed, they must be made in writing on all copies of the authority to sell and initialled by both you and the agent.

What can be negotiated?

Many aspects of the authority to sell are negotiable between the seller and the agent. Sellers should discuss these with the agent and make sure all details fit their requirements before signing.

The following aspects of the sales authority can be negotiated.

The method of sale

There are two main ways of selling a property: by auction or private sale. Both these methods of sale have their advantages and disadvantages. An agent will be able to recommend the best method of sale for the seller's particular circumstances. (See page 34)

The authority period

This is the period of time in which the authority is in force with the agent. The authority period is negotiable and you should consider the length of time carefully. Once you sign the authority, you will not be able to cancel it during this period unless the agent agrees. There is no cooling-off period with an authority. It is advisable to consider an authority period that does not exceed 60 days.

If no period is stated on an exclusive authority, then the default period for sale by auction is 30 days from the date of the auction. For a private sale, the default period is 60 days from the signing of the authority to sell.

If the authority period expires and the property has not been sold, you should notify the agent in writing if their services are no longer required.

The commission

The commission or agent's fee is completely negotiable. Sellers may wish to negotiate a 'no sale, no fee', contract meaning they will not have to pay any commission or outgoings unless the agent completes the sale of the property.

Advertising and other outgoings

There will generally be costs associated with marketing and advertising a property. The amount spent on these outgoings is negotiable with the agent.

Other terms and conditions

Read all pages of the authority carefully and make sure all terms and conditions are understood and agreed upon before signing. These conditions are negotiable. Any changes, whether they be deletions, amendments or additions, must be made on the authority and initialled by both parties. All verbal agreements should be confirmed in writing on the authority and signed by both parties. If you have specific instructions for the agency, attach them to the authority.

Unfair contract terms

The agent's authority to sell is a legally binding contract.

The *Fair Trading Act 1999* makes unfair terms in consumer contracts void. The authority to sell a residential property is a consumer contract. Sellers can take action if they believe a term in an authority is unfair, and estate agents must make sure their authorities comply with the law.

If a term is unfair, it will be void. The contract will continue to bind all parties, but only if it can exist without the unfair term.

An unfair term in a consumer contract is a term that causes a significant imbalance in the rights and obligations of both parties to the detriment of the consumer, and was inserted in the contract intentionally.

Unfair term in your authority to sell?

If you believe there is an unfair term in the authority, contact the Estate Agents Resolution Service at Consumer Affairs Victoria on 1300 73 70 30.

Selling without a real estate agent

If you decide to sell your property without the assistance of an agent you will need to thoroughly research every aspect of the selling process in order to obtain the best possible price.

A major benefit of selling property without an agent is the opportunity to make a financial saving by not having to pay commission.

Prospective sellers will need to prepare a vendor's statement (also known as a Section 32) and contract of sale. This can be done with a 'do-it-yourself' conveyancing kit or by engaging a conveyancer or solicitor to prepare the documentation for you.

The steps involved in selling property without an agent include:

- considering having the property valued by a qualified valuer
- deciding the sale price or range sought
- advertising the house. You may wish to advertise your property on one of the many websites that advertise properties for private sale.
- obtaining a deposit
- providing the contract of sale with the vendor's statement attached and arranging for it to be signed
- handling settlement.

An easy-to-use, do-it-yourself guide to real estate conveyancing is available from the Information Victoria Bookshop and includes the contract of sale and vendor's statement to assist you with the sale.

For further information visit the Information Victoria Bookshop at 505 Little Collins St, Melbourne, call 1300 366 356 or go to www.bookshop.vic.gov.au

Section 3

The vendor's statement, owners corporation and buying off the plan

Before a property is sold, the seller is required by law to provide the buyer with a vendor's statement or section 32.

The transfer of ownership of land from the seller to the buyer is called a conveyance of land. This process is usually undertaken with the assistance of a solicitor or conveyancer. Buyers and sellers should engage their own solicitor or conveyancer.

The buyer's or seller's preferences and individual requirements will dictate whether a solicitor or conveyancer is chosen. However, it is important to understand there are differences in what solicitors and conveyancers are legally allowed to undertake on behalf of a client.

Solicitors and conveyancers

Solicitors

A solicitor must hold a current practising certificate and have professional indemnity insurance.

Solicitors can perform general legal work and provide legal advice to their client. Some solicitors specialise in conveyancing and property law. A solicitor can be engaged by a seller to prepare all the required documentation including the vendor's statement and the contract of sale.

Solicitors can also be engaged by a buyer to review and advise on the vendor's statement and the contract of sale, and ensure that the transfer of title is done correctly. A solicitor can advise a prospective buyer about terms and conditions that need to be included in a contract to meet their needs, and on how different types of title may affect their ownership rights and responsibilities.

Conveyancers

A conveyancer is a person other than a solicitor, who is licensed to undertake property conveyancing work and to do legal work or give legal advice with respect to the transfer of title.

Conveyancers can be engaged by a seller to prepare the vendor's statement and other legal documentation, such as the contract of sale. They can be engaged by a buyer to conduct searches on title, check the vendor's statement and advise on the terms and conditions in the contract of sale.

Licensed conveyancers

- must have professional indemnity insurance
- hold prescribed qualifications
- contribute to the Victorian Property fund to compensate consumers who lose money as a result of any fraudulent use of trust funds.

If you use a conveyancer make sure that they are licensed. Details of the conveyancer's licence are required to be displayed on the conveyancer's letterhead.

It is advisable to obtain written quotes before choosing a solicitor or conveyancer.

The vendor's statement (section 32)

The vendor's statement (or section 32) is usually prepared by the seller's solicitor or conveyancer. It is then signed by the seller and made available to prospective buyers, usually via the agent before the sale or auction. The buyer may then have the statement checked by his or her own solicitor or conveyancer prior to purchase.

The vendor's statement contains information about the property's title, including mortgages, covenants, easements, zoning and outgoings such as rates. It does not include any information about the condition of buildings, whether they comply with building regulations or if measurements on the title are accurate. The responsibility is on the buyer to find out about anything that is not covered in the vendor's statement.

The information that must be included in the vendor's statement is outlined in section 32 of the *Sale of Land Act 1962*. This can be viewed online at www.legislation.vic.gov.au.

The vendor's statement is a legal document and must be factually accurate and complete. If the vendor's statement contains incorrect or insufficient information, a buyer may be able to withdraw from the sale or take legal action.

Seller's tip #4

Make sure all charges including disbursements (additional administrative costs) are discussed before signing with a solicitor or conveyancer.

Do-it-yourself conveyancing kits

Do-it-yourself conveyancing kits are available through the Information Victoria Bookshop at a small cost. The kits include documentation to assist you with your sale, such as the contract of sale and vendor's statement.

If you choose to perform your own conveyancing, you will not be covered by a solicitor's or conveyancer's professional indemnity insurance if something goes wrong.

There is a lot at stake selling or buying a property so you need to ensure you are completely confident in your ability to handle the conveyancing yourself. If not, you should employ the services of a conveyancer or solicitor.

For further information about do-it-yourself conveyancing, visit the Information Victoria Bookshop at 505 Little Collins St, Melbourne, call 1300 366 356 or go to www.bookshop.vic.gov.au.

Property schemes

Properties can be held under different schemes. For example, when purchasing a unit, flat or apartment, a buyer could be purchasing a share in a company title arrangement, a stratum title or a strata title. A solicitor or conveyancer will be able to advise on how the various types of title will affect the buyer's ownership, rights and responsibilities.

Buyer's tip #2

Before making an offer on a property or bidding at an auction, have a solicitor or conveyancer carefully check the vendor's statement for you. You should also consider getting a building inspection from a qualified building inspector.

Buyer's tip #3

If you are buying an investment property, check with the Australian Tax Office about allowable deductions for rental properties.

Owners corporation

When buying a unit, flat or apartment, the buyer will be provided with their own certificate of title. The buyer is not just purchasing the individual property but also the ownership of, and the right to use, common property as set out by the plan of subdivision.

Where a plan of subdivision creates common property, there must be an owners corporation. The owners are referred to as lot owners or members. As a member of an owners corporation, you have the right to vote on decisions about the operation of the owners corporation and will be required to contribute to costs for repairs, maintenance and insurance, not only for your own home but also for the common property shared with the other lot owners.

Before signing a contract, make sure you carefully check:

- cost of living in an owners corporation
- how the owners corporation operates
- vendor's statement
- Owners Corporation Certificate, part of the section 32, stating whether there are any proposed works, fee increases and any potential or existing legal claims affecting the property being purchased
- register of owners corporation managers at the Business Licensing Authority website at www.bla.vic.gov.au
- plan of subdivision to determine boundaries of the lot and common property
- contents and conditions of the contract of sale
- matters contained in the Owners Corporation Rules including the Model Rules
- any leases/licenses of common property
- minutes of previous Annual General Meetings.

Prospective buyers may wish to obtain a copy of Consumer Affairs Victoria's publication *Guide to owners corporations* from the Victorian Consumer & Business Centre, 113 Exhibition Street, Melbourne or visit www.consumer.vic.gov.au

Buyer's tip #4

Obtain independent legal advice before buying a unit, flat or apartment to find out about the advantages and disadvantages of holding a title under the different property schemes.

Buying off the plan

Buying a house or unit before it has been constructed is known as buying off the plan. The design of the building and sketches of its final appearance may be included in advertising material well before occupation is possible.

There are advantages and disadvantages with buying off the plan. People are often attracted to off the plan sales as there is a reduced amount of stamp duty to pay. The amount to pay depends on how advanced the construction of the building is and its current value. The closer construction is to the full completed value, the higher the stamp duty. Other benefits for buyers include more input into the design and a price at today's market value that is locked in at the time the contract is signed.

Buying off the plan without being able to observe the finished product does have its risks such as:

- differences in the expected and actual quality of the final finishes
- unexpected changes to the plans
- an uncertain completion date
- limited recourse with the builder if there is a dispute. This is because the developer, not the buyer, enters into a major domestic building contract with the builder
- the volatility of the property market resulting in the market value of an off-the-plan home at settlement being less than the contract price.

The law protects off the plan buyers by requiring their deposit be no more than 10 per cent of the contract price. The deposit is held in trust by an estate agent, solicitor or conveyancer or jointly by the buyer and seller. If the plan of subdivision is not registered by the time specified in the contract or the default time of 18 months, the buyer has the right to end the contract.

Buyer's tip #5

When buying a unit, apartment or flat, you will probably be living in close proximity to others. This means certain rights and responsibilities apply. Be aware this can also mean additional noise and other possible inconveniences.

Buyer's tip #6

If buying off the plan, get a firm date from the developer of when the property will be finished. Seek professional legal advice before signing a contract with a developer.

Section 4
Methods of sale and the sales campaign

How you decide to sell will depend on many factors.

There are generally two ways that real estate can be bought and sold.

Private sale

In a private sale the property is advertised and offers are invited from prospective buyers. The sale is negotiated between the buyer and seller, usually with the assistance of an agent.

Public auction

An auction is a public sale, usually conducted by an estate agent acting as auctioneer. The auction is advertised for a specific place, time and date. Prospective buyers bid and the property is offered to the highest bidder.

Private sale

- The seller and buyer agree on a sale price through negotiation
- The contract can be conditional. With the seller's approval, the buyer can make the sale subject to obtaining a loan, a satisfactory building inspection report, or other conditions
- For residential properties, the buyer has a three business day cooling-off period (with exceptions).

Auction

- Price is determined by competitive bidding between prospective buyers present at the auction
- The contract is unconditional, that is, the buyer cannot make it subject to any conditions such as obtain a loan or an inspection
- There is no cooling-off period.

Deciding on a method of sale

The agent will recommend a method of sale based on the type and location of the property, the nature of the market and the seller's available time frame and personal preference. They should also back up their recommendation with recent sales data. The seller should understand all the advantages and disadvantages before deciding on a method of sale. The agent's commission is generally the same whether the property is sold privately or at auction.

However, there are usually additional costs involved in selling by auction.

Although it is best not to sell in a hurry, sometimes there is no choice. If a property must be sold quickly, an auction may provide a better opportunity to sell by a specified date. However, there is no guarantee that the property will be sold at auction or that the best price will be achieved.

The reserve or asking price

The reserve price is the lowest price at which a seller is prepared to sell a property at an auction, or the seller's asking price for a private sale.

It may not be easy to put a price on property such as the family home. No matter what anyone says, your house will seem much more to you than just bricks and mortar.

To help you decide on the asking price or reserve price for your home, you should:

- get to know sale prices in your area by checking property websites and newspapers for similar properties listed and sold in the area and attending auctions and open for inspections
- use the agent's estimated selling price as a guide
- consider paying for a valuation by an independent sworn valuer
- not allow emotion to cloud any judgments
- be realistic.

This will help you avoid both disappointment and the risk of buying a property based on unrealistic expectations of the sale price of your own home.

Buyer's tip #7

By researching and knowing the market in a particular area, you will be a better judge of property sales prices.

The sales campaign

The aim of a sales campaign is to attract prospective buyers and encourage them to inspect a property. There are two main ways of doing this.

Advertising

This is the main way of attracting prospective buyers to a property. The nature of the advertising depends on the type and location of the property and the amount of money spent. Advertising notifies prospective buyers that the property is for sale and may list the inspection dates and times. It also includes names of the agents who are handling the sale.

Direct notification

The agent may have a list of prospective buyers who can be contacted when suitable properties become available. These are people who have previously registered their interest with the agency.

The advertised price

When marketing a property, it is illegal for an agent to quote or advertise a figure that is less than the vendor's asking price or the agent's estimated selling price or range, stated in the authority to sell.

Underquoting is unfair to buyers who may waste time and money inspecting a property they cannot realistically afford. It is also unfair to the seller who is expecting the agent to generate genuine interest from prospective buyers prepared to pay a fair price.

Before advertising a property for sale, an agent will generally ask a seller to approve the advertised price and to confirm in writing that they will consider all offers at the advertised price or within the advertised price range.

Seller's tip #5

Although auctions are a popular method of sale, it is important to do your homework to decide if it is the best method for you.

Seller's tip #6

Property advertising must not be misleading or deceptive. It is illegal to misrepresent a property in any way when advertising or marketing that property, whether verbally or in writing and photographs. Sellers must ensure any information provided to the agent about their property is factual and up to date. If advertising is not accurate, and a buyer can prove a property has been 'misrepresented', the buyer may be able to take legal action.

Section 5
Locating and inspecting properties

Prospective buyers should inspect a property to see whether it meets their requirements. Consider having a qualified building inspector provide a professional condition report prior to purchasing.

Locating properties for sale

Buyers can find their property using a variety of methods.

The internet

The internet is the quickest and most popular way to find properties for sale. Almost all estate agencies list properties on their websites and on real estate classifieds websites and include information such as:

- indicative price ranges
- descriptions of the property
- photographs
- virtual tours
- inspection times.

Some websites also offer the opportunity for prospective buyers to register for free email updates of properties matching their criteria to be sent directly to them.

Newspapers

Most local newspapers have a property section and major metropolitan papers have lists of properties for sale and inspection.

Direct contact

Directly contacting estate agencies by telephone, email, fax or in person is another way of sourcing properties for sale.

Promotional magazines

Many agencies produce colour magazines providing a comprehensive list of properties for sale. These magazines are available free of charge from most agencies.

Other ways of sourcing properties for sale include:

- noting signboards in front of properties
- hearing of listings through word of mouth.

Open houses

Open for inspection times are usually advertised in newspapers and on the internet. Buyers may wish to arrange an alternative inspection time with the agent.

Anyone entering the property may be asked for proof of identity and to leave contact details with the agent. This is a security measure and provides the agent with a ready database of potential buyers, who can be notified if an offer is received on the property, or if other properties become available.

Seller's tip #7

It is not a legal requirement for people to leave their details with an agent at an open house; however, sellers can make this a condition of entry to their property.

If there is anything the seller does not want the public to see, it should be hidden from view. Valuables should be locked away.

Inspections

As a prospective buyer you should make several visits to a property before deciding to buy it. The first visit will give you an initial impression and determine if the property meets basic requirements, such as location, age, size, access to facilities, style and condition. If you are inspecting a number of properties in one day, it is a good idea to take a notebook and record any identifying features.

Buyers should also keep an eye out for signs of potential structural problems.

For example:

- sloping or bouncy floors may mean stumps need replacing
- damp brick walls can indicate rising damp or salt damp
- blisters or bubbles on paintwork can indicate termite activity
- cracked walls can indicate subsidence, requiring the replacement of stumps. If there are large cracks, you should seek advice from a structural engineer.
- mouldy walls, lifting tiles, peeling paint or pools of water in wet areas can indicate excessive moisture
- fretting (crazed) brickwork can indicate major structural problems
- a sagging roof, or cracked or broken roof tiles may involve costly roof repairs or replacement.

Assessing the sustainability of homes

Installing sustainable housing features can have a measurable impact on the comfort of your home and how much it costs to run. Features such as rainwater tanks or solar hot water are now found in many new and older homes.

There is a 5 star environmental standard for all new homes and for renovations and relocations of existing homes.

It is compulsory for new homes to have:

- 5 star energy rating for the building fabric
- water efficient taps and fittings, plus
- a rainwater tank for toilet flushing or a solar hot water system.

Renovations and relocations are required to have 5 star energy rating for the building fabric, but do not require the water efficient taps, rainwater tank or solar hot water system.

When buying an established home it is worthwhile considering the benefits of sustainable features. Sustainable housing features that can reduce running costs, reduce greenhouse gas emissions and add to the value of a property include:

- water tanks which help to lower water consumption and enable you to maintain a healthy garden
- solar or energy efficient gas hot water which can cost less to run
- installing insulation, draught sealing, window coverings and windows to let in the winter sun, helping to keep heating bills low in winter
- heating small areas using zone controls rather than heating the whole home
- using natural gas which generally costs less to run than electricity
- replacing your old bulbs with energy saving compact fluorescent lights when they fail.

For more information on sustainable living in your home, visit www.makeyourhomegreen.vic.gov.au or www.resourcesmart.vic.gov.au.

Professional building inspections

Before signing a contract, you should consider enlisting the services of a qualified building inspector, surveyor or architect to provide a professional building inspection report of the property you intend to purchase. A qualified inspector will know what to look for, and will see through any cosmetic improvements covering up faults that may be missed by the untrained eye.

The inspector will provide a written report listing faults in the property, whether they can be repaired and how much these repairs are likely to cost. The report will also highlight any unsafe or unauthorised renovations and/or extensions.

You may be able to use this report to negotiate conditions in the contract with the seller as well as the price. The inspection service should have full professional indemnity insurance to protect you, as the buyer, if a problem is missed in the inspection.

Pest inspections

In some circumstances it is recommended you get a professional pest inspection. If the area you are looking to buy is prone to pest infestations such as termites this becomes even more important.

Buyer's tip #8

If the property has been renovated or extended, check the vendor's statement and contact the local council to check whether relevant planning or building permits were obtained.

Any illegal alterations may become the responsibility of the buyer once the contract is signed.

Buyer's tip #9

Be cautious of any property inspection report offered by the agent or the seller. The independence of a report is only guaranteed if it is obtained specifically by and for the buyer.

Buyer's tip #10

The fee for a professional inspection service is small compared with the cost of buying a property requiring extensive unforeseen repairs. Even if major faults are not found, you can use minor faults discovered in the pre-purchase inspection as the basis of an ongoing maintenance program if you decide to buy the property.

A report by Archicentre in 2006, titled *An analysis of termite damage in Sydney and Melbourne,* suggests that about one in five houses in Armadale, Frankston, Greensborough, Monbulk, Newport, Wantirna and their immediate surrounding areas currently has a termite infestation problem or has evidence of a past pest problem.

A pest inspection could save you thousands of dollars in repair costs.

For more information, contact Archicentre on 1300 13 45 13 or visit their website at www.archicentre.com.au.

Vacant land

If you are buying vacant land to build a home on consider obtaining a soil test prior to purchasing. This could avoid problems when building and excavation commences. If hard and high level rock needs excavating or the site is a filled dam or on a flood plain, there will be extra costs associated with footings and foundations.

It is best to do your homework so you can be fully aware of all the costs involved in building your property. You will then be better informed to decide whether or not to purchase the vacant land.

Buyer's tip #11

Do not sign a contract for an owner-built property before checking the property very carefully.

If there is a query regarding defective or incomplete work, check with your local council or ask the property owner for information.

Domestic building insurance

Under the *Domestic Building Contracts Act 1995*, a builder may not carry out domestic building work over $5,000 without being registered and where the contract is more than $12,000, the builder must take out domestic building insurance.

Domestic building insurance will protect a home owner from defective or incomplete building works where the builder:

- has died
- is insolvent, or
- has disappeared.

However, insurance cover is limited to six years for structural defects and to two years for non-structural defects.

A builder still operating a business has responsibility for fixing defects or completing building work according to plans and specifications in the domestic building contract.

Owner-built properties

Buyers of a property are protected if the house is owner-built.

If an owner-builder sells a property within six years of obtaining a certificate of occupancy or final inspection, a defects inspection report must be obtained from a prescribed building practitioner. The defects inspection report will be attached to the contract of sale. Any defects that arise and are not listed in the report will be covered under the builder's domestic building insurance. For properties built after June 2005, owner-builders are also required to have a certificate of consent issued by the Building Practitioners' Board for the domestic building works.

An owner-builder must have domestic building insurance if the property is sold within six years of completion.

Checking the vendor's statement

As well as inspecting the property itself, a prospective buyer should have all legal aspects relating to the land and title checked thoroughly before making an offer. A copy of the vendor's statement must be made available and can be obtained from the seller through the agent. The buyer can then have their solicitor or conveyancer check the document.

Seller's tip #8

It is natural to want to present your property in the best possible light. First impressions count and it never hurts to mow the lawn, place a few plants in the garden, keep the house clean and tidy and even to add a lick of paint.

While it is acceptable to present a property in a good light, it is not acceptable to cover up, misrepresent or in any way mislead a buyer about the true condition of your property.

Section 6
Private sales

A property may be sold privately by a seller dealing directly with prospective buyers, however it is more common for a seller to engage the services of an estate agent for this purpose.

Making an offer

If an agent is managing the sale, the offer to buy a property must be made through the agent. The agent will then communicate this offer to the seller. Although an offer can be made verbally, it is not legally binding until it is in writing and signed by both parties. This will generally be in the form of a contract of sale signed by the buyer and, if accepted, signed by the seller.

The agent may also require the buyer to pay a deposit. The deposit will be returned if the offer is not accepted.

If an agent is not managing the sale, the offer will be made to the seller who must negotiate with prospective buyers. The deposit will be paid directly to the seller. A seller who is not using an agent may engage a legal representative to assist with negotiating the sale, In this case the deposit may be paid to the legal representative and held in their trust account.

An offer becomes binding when both parties sign the contract of sale and all conditions are met. A buyer should not sign without carefully reading and understanding the document first.

Conditional offers

In a private sale, the buyer can negotiate with the seller to make the sale subject to certain conditions such as obtaining a loan, the sale of an existing property or the successful completion of a building inspection.

If the contract is subject to obtaining a loan, the buyer should always nominate a lender in the relevant section of the contract. An auction contract of sale is unconditional.

Negotiation

If the seller does not accept the offer, the agent may go back to the buyer and see if they are prepared to make another offer. Through a process of negotiation the agent will attempt to achieve a mutually acceptable price. This negotiation may involve verbal offers, but will only be legally binding when made in writing.

Often there is more than one person making an offer on a property. The agent will negotiate between parties to obtain the highest possible price for the seller.

Goods in relation to the sale of property include personal items, chattels and fittings.

Prospective buyers making their offer in writing on the contract of sale should check that items of the property or goods (moveable personal property such as a dishwasher) are listed on the contract if they are agreed to as part of the purchase.

There is space in the contract to write the agreed goods that may be included in the sale. If the buyer does not ensure specific goods are agreed to on the contract of sale, it may be difficult to argue ownership of those goods at the settlement of the property.

The requirement that a contract of sale must be in writing does not apply to company title properties. If a verbal offer for a company title property is accepted, it could be legally binding.

Contracts

Contract of sale

Prospective buyers will sign a contract of sale when they wish to make an offer on a property. The contract contains details of the property, names of the seller and buyer, seller's estate agent, price, the deposit paid, balance owing at settlement and any special conditions such as a clause 'subject to finance'. An agent or agent's representative can complete the details on a contract in preparation for the buyer and seller to sign.

Goods and services tax (GST)

Generally GST only applies to the purchase of new homes. It does not apply to established homes unless the seller is registered for GST. You can check a seller's GST status at www.asic.gov.au.

Do not sign the contract without checking whether GST applies. If uncertain, seek professional advice.

If GST applies to a sale, it must be clearly specified in the contract whether the price is inclusive or exclusive of GST and how it will be calculated.

Settlement period

Settlement is the date on which the balance of the purchase price is paid to the seller, and the title of the property is handed over to the buyer. The seller sets the date of settlement in the contract. The settlement period is usually between 30 and 90 days but a buyer may be able to negotiate an alternative settlement period with the seller prior to signing the contract.

Seller's tip #9

Do not accept a lower offer for the sake of a quick sale unless you are completely satisfied and willing to sell at that price.

Cooling-off period

A cooling-off period of three clear business days applies to non-auctioned residential property sales regardless of price. The cooling-off period allows the prospective buyer time to consider the offer, and begins from the date the buyer signs the contract, not from the date the seller signs it.

To end the contract within that period, the buyer must give written notice to the seller or the seller's agent. A buyer will be entitled to a full refund of monies paid, less $100 or 0.2 per cent of the purchase price, whichever is the greater.

The cooling-off period does not apply in the following circumstances:

- the property was purchased within three clear business days before or after a public auction
- the buyer received independent advice from a solicitor prior to signing the contract
- the property is used mainly for industrial or commercial purposes
- the property is more than 20 hectares in size and is used mainly for farming
- the buyer has previously signed a contract for the same property with the same terms
- the buyer is an estate agent or corporate body.

When is it sold?

When both parties have signed the contract, the property is sold. All parties who sign the contract must be given a copy.

The sale is finalised at settlement when all checks have been made, the title and transfer documents exchanged, and the balance of the purchase price paid.

Buyer's tip #12

The decision on how much to offer is a difficult one to make. You need to consider whether to make your best offer upfront or offer a lower price and be prepared to negotiate upwards. Note that in the case of multiple offers, the seller may decide to accept another offer without giving you the opportunity to increase yours.

If you are not confident negotiating with the agent, you may prefer to engage a buyer's advocate or other professional to do your bargaining for you. You can expect to be charged a fee for this service.

Buyer's tip #13

You should insert in the contract a date by which your offer will lapse. This way you will know whether your offer has been accepted within the specified timeframe.

Case study #2

Vendor private sale

Mr Lambert decided to sell his old family home as he was no longer well enough to maintain it. It was built over 100 years ago and had been in his family for 60 years. He was reluctant to sell it for fear of it being pulled down for a new development.

Mr Lambert decided to sell his house by private sale. He was in no hurry and he did not want the public interest associated with an auction. He engaged a local estate agent recommended to him by friends and negotiated the commission and marketing expenses.

Mr Lambert wanted to steer away from fancy advertising in glossy magazines. On the agent's advice he set an asking price and decided to advertise the home at a single price with basic advertising combining a well-designed sign board to attract and inform buyers, with advertisements in the newspaper and on the internet.

Before the marketing campaign commenced, Mr Lambert hired tradespeople to repair and refresh the house to ensure it would be presented in the best possible condition. The house was repainted, curtains replaced, light fittings cleaned, the old carpet was removed to expose the natural floor boards and the garden was landscaped.

Within a short period of time of the sign board being erected, the agency received six enquiries.

A young couple inspected the house and after negotiating a 30-day settlement, made an offer by signing the contract and providing a 10 per cent deposit.

Mr Lambert accepted the offer and was happy with the sale as it occurred much sooner than he had expected. The sale resulted in a price that was higher than his asking price and covered all associated expenditure.

The best aspect of the sale, according to Mr Lambert, was knowing the buyers wanted to preserve the heritage of the house and only intended to perform extensions.

Section 7
Sale by auction

In the interests of transparency and fairness, there are strict rules governing the conduct of public auctions.

The sales campaign leading up to an auction is generally similar to that for a private sale. There is an advertising campaign with open house inspections for several weeks leading up to the auction date.

In the lead-up to the auction the agent may contact prospective buyers to gauge their level of interest. This gives an indication of the potential attendance on auction day.

Pre-auction offers and inspections

Offers may be made through an agent prior to an auction, if this is agreed to by the seller. These offers will usually be in the form of a signed contract and the process of negotiation is the same as for a private sale.

If an offer is accepted less than three clear business days prior to the auction date, then no cooling-off period applies.

On the day of the auction the property may be open for inspection, generally half an hour before the bidding starts. This allows prospective buyers the chance to have one final look at the property, the relevant paperwork and the rules for the auction.

Seller's tip #10

Make sure your lowest selling price has been reached before allowing the agent to declare the property is 'on the market'.

Bids may continue beyond this price; however, it is also possible there will be no further bids.

Buyer's tip #14

A copy of the auction rules and information statement and any additional conditions must be made available for inspection at least 30 minutes before the auction starts.

You are advised to read them carefully before making a bid. Auction rules are available at Consumer Affairs Victoria's website at www.consumer.vic.gov.au.

Buyer's tip #15

Anyone at a public auction is permitted to ask the auctioneer in good faith a reasonable number of questions about the property, the contract or the rules and conduct of the auction.

A bidder may also ask the auctioneer to indicate who made a bid.

Auction conduct

There are specific rules that regulate the auctioneer's conduct and how prospective bidders can participate in the auction. Substantial penalties may apply to anyone who breaks these rules.

Before the bidding starts, the auctioneer must tell the bidders:

- the auction will be conducted according to the auction rules
- the rules prohibit bids being accepted after the fall of the hammer
- bidders will be identified on request
- the law prohibits an intending bidder from making a false bid, hindering another bidder, or in any way intentionally disrupting an auction
- substantial penalties apply to anyone who engages in prohibited conduct
- whether or not there will be vendor or co-owner bids
- any additional conditions that apply to the auction.

Vendor and co-owner bids

Vendor and co-owner bids are permitted at auctions in two circumstances.

- A bid may be made by the auctioneer on behalf of the seller because they are not satisfied with the amount of the last bid. This is known as a 'vendor bid' and will be announced by the auctioneer at the time the bid is made. Only the auctioneer can make such a bid
- Alternatively, where the property is jointly owned, one or more of the owners who genuinely wishes to buy the property may bid from the crowd. This is known as a 'co-owner bid'. Co-owners may bid themselves or through a representative in the crowd but not through the auctioneer.

Vendor and co-owner bids are legal, but only if they are permitted by the auction rules. The arrangements for making vendor and co-owner bids must be set out in the rules displayed before the auction starts, and announced by the auctioneer at the start of the auction.

Dummy bidding

All other bids by or on behalf of the seller or any dummy bids are illegal. A dummy bid is either a false bid made up by the auctioneer or a bid accepted by the auctioneer from a non-genuine bidder from the crowd.

Bidding at an auction

Different auctioneers have different methods of conducting an auction. Generally, their aim is to encourage as many bidders as possible to compete in order to achieve the highest possible price.

The auctioneer can set the amount by which bids increase. These are called rises or bidding advances. The bidder may make a bid at the amount stated by the auctioneer or offer an alternative amount. The auctioneer may in turn choose to accept or reject that bid.

Generally, the amount the bidding advances will decrease as the auction draws to a close.

At any time during the auction, including when the auction hammer is falling, an auctioneer may refuse any bid and, if there is a dispute over a bid, resume the auction at the last undisputed bid or start the bidding again. The auctioneer can also refer a bid to the seller at any time before the conclusion of the auction and withdraw the property from sale at any time.

Buyer's tip #16

In order to bid successfully at an auction, a bidder should:

- be clear about their bidding limit
- bid confidently
- ask questions of the auctioneer including an indication of who made a bid.

'On the market'

At a certain point the auctioneer may halt the proceedings and say they are 'going inside' or 'seeking advice or instructions' from the seller. The agent will then consult with the seller.

Generally, if the seller is satisfied the reserve has been reached, or if the seller is prepared to sell at the bid offered, then the agent will announce that the property is 'on the market'. This means that the property will then be sold, at the seller's discretion. Alternatively, if the seller's reserve is not met, the auctioneer will seek further bids. If the reserve is still not met, then the property may be 'passed in'.

Seller's tip #11

The seller cannot make a bid to advance the price of a property at auction; neither can anyone acting on the seller's behalf, other than through the auctioneer and only under the conditions outlined on page 53.

Substantial financial penalties apply for dummy and illegal vendor bidding.

However, a co-owner of a property may make a bid from the crowd to genuinely purchase the property.

Buyer's tip #17

At an auction, be sure to make all your bids during the auction process because the auctioneer cannot accept any late bids after the property has been knocked down to the successful bidder.

When is it sold?

After the fall of the hammer, no more bids will be accepted and the property will be offered to the highest bidder. However, there is no legally binding contract until both the buyer and seller have signed the contract of sale. The buyer will also be required to pay the deposit specified in the contract (unless otherwise agreed).

As this is an auction, the buyer cannot make the contract subject to conditions and there is no cooling-off period.

The sale is finalised at settlement when all checks have been made, the title and transfer documents have been exchanged and the balance of the purchase price has been paid.

'Passed in'

If bidding does not reach the seller's reserve price, then the property may be 'passed in' or 'withdrawn from auction'.

The seller may then negotiate with the highest bidder who will be given the first opportunity to purchase the property at the seller's asking price.

Advertising after an auction

If a property is 'passed in' on a vendor bid, then an agent cannot quote this 'passed in' amount when advertising and marketing the property, without disclosing that it was a vendor bid.

Generally, if the seller is satisfied the reserve has been reached, or if the seller is prepared to sell at the bid offered, then the agent will announce that the property is 'on the market'. This means that the property will be sold to the highest bidder, even if there are no further bids.

Case study #3

Selling at auction

Retired couple Bev and Norm had lived in the family home for 32 years. Their adult children had moved out and they were looking at downsizing.

After deciding to sell, they made necessary repairs and tidied the house and the garden.

Satisfied the property was in a presentable condition, Bev and Norm researched the prices of properties selling in the area while investigating the track records and auction success rates of local estate agents.

Bev and Norm were attracted to an auction sale because of the potential benefits of a quick sale, maximum exposure, controlled inspection times, competition between buyers and a binding unconditional contract.

They invited three agents individually to their home to assess their property and to outline a marketing plan. They asked each of the agents to estimate the likely selling price and how much they would charge in commission and advertising expenses. Bev and Norm refused to sign any agency agreement at this point, as they wanted time to consider.

After careful consideration of all the information, they selected their agent.

Bev and Norm negotiated and agreed commission would be calculated at 2.5 per cent of the full sale price inclusive of GST. This was included in the 'Exclusive Auction Authority'.

After reviewing the estate agent's proposed marketing schedule, Bev and Norm agreed for marketing expenses to be capped at $2,000. They also negotiated 30 days after the auction date as the length of time the agreement would last if the property did not sell at auction. These details were also inserted into the auction authority along with the agent's estimated selling price for their house. They carefully read the authority and asked the agent to explain some of the terms. When they were satisfied they understood the terms, they signed the authority.

To raise immediate interest from potential buyers, the agent commenced an aggressive advertising campaign. Bev and Norm agreed to prominent advertisements in local newspapers and on the internet as well as the erection of a large sign board in front of their house. They agreed in writing to the price at which the property would be advertised.

On auction day, the auctioneer discussed the reserve price with Bev and Norm and

advised he would seek their instructions prior to declaring the property on the market.

When the auction commenced, the reserve price quickly passed and once bidding stalled, the auctioneer paused and advised the crowd he would seek the vendor's instructions. Bev and Norm instructed the auctioneer their reserve had been reached and the property would sell to the highest bidder. The auction resumed and the auctioneer informed the crowd the property 'would be sold today'. After calling for final bids and with no further bids forthcoming, the auctioneer announced the successful bidder.

The successful bidder immediately signed the contract and paid the required 10 per cent deposit. Bev and Norm then signed the contract in acceptance of the property officially being sold.

Although selling the family home was bittersweet, Bev and Norm were satisfied with the result, the performance of their agent and the overall auction experience.

Section 8
After the sale

After the sale there are several steps before the buyer can take possession of the property. The solicitor or conveyancer usually undertakes these steps if acting on the buyer's behalf.

Before taking possession

The deposit

The deposit is generally paid by the buyer to the seller's agent either when the buyer makes their offer or by the date stated in the contract of sale. It is held by the seller's estate agent, conveyancer or solicitor in a trust account until the settlement date. A seller who does not have an estate agent and who receives a deposit must pay it to their solicitor or conveyancer or bank it in a special purpose account in an authorised deposit-taking institution in Victoria. The account must be in both the seller's and the buyer's name.

In certain circumstances the buyer may release the deposit money to the seller earlier than the settlement date. For the early release of the deposit the contract must be unconditional and the buyer must be satisfied with the proof of debts information provided by the seller. Where this occurs, the deposit can be released no earlier than, 28 days after the date the contract was signed.

Checking the measurements

The buyer's solicitor or conveyancer will send a plan of the land to the buyer to check all measurements and boundaries correspond with those on the title.

Lender's valuation

The buyer's lender may also arrange for a valuation of the property. As they are lending against the value of the property, the lender will want to ensure that the price paid for the property corresponds with its approximate market value. This may happen prior to the sale if the property is not being sold at auction.

Insurance

Even though the property may be covered by the seller's insurance up to the date of settlement, it is recommended that the buyer take out building and contents insurance effective from the date of signing the contract. The buyer's lending institution will generally require the borrower to take out insurance on the property to safeguard the lending institution's interest as the lender.

Pre-settlement inspection

Buyers are entitled to make an inspection at any reasonable time one week before settlement. The contract of sale outlines the seller's obligation to hand over the property in the same condition as when it was sold.

Taking possession

Once settlement is completed, the buyer can collect the keys from the agent and take possession of the property.

Stamp duty

Stamp duty, now known as duty, must be paid by the buyer within three months of settlement. It is calculated as a percentage of the purchase price or the market value of the property, whichever is the greater. Duty applies to the GST-inclusive price of a new property.

There are generally two sets of duty rates:

- a general rate applicable to all types of property including residential, commercial, industrial and rural
- a principal place of residence rate that provides a reduced rate of duty for a property with a residence that is the buyer's principal place of residence.

For example, the general duty rate would be $25,070 on a $500,000 property while the principal place of residence duty rate would be $21,970.

Duty exemptions may apply for certain concession card holders and first home buyers with children. Refer to the State Revenue Office for complete details including a duty calculator on their website at www.sro.vic.gov.au.

Settlement

The settlement date is the date on which the balance of the purchase price is paid to the seller in exchange for the title to the property.

This is an official process conducted between legal and financial representatives of the buyer and seller. The settlement date is also the date on which the buyer can take possession of the property, unless otherwise arranged.

At settlement all outgoings such as rates and other charges will be adjusted between the seller and the buyer. The seller is responsible for rates up to and including the day of settlement. The buyer is liable from the day after settlement.

Transfer of land

This document transfers the land from the seller to the buyer. It is lodged with the Land Registry office and describes how the land is to be held if purchased by more than one person.

The land can be held either jointly or as tenants in common. If held jointly, and one person dies, ownership of the land is automatically transferred to the survivor. Tenants in common effectively hold shares (equally or unequally) in the property and each has the right to dispose of their interest in the land as they see fit.

Disputes and complaints

The Estate Agents Resolution Service (EARS) is a dedicated team within Consumer Affairs Victoria. EARS offers a free information and dispute resolution service on residential real estate matters.

If a buyer or seller has a problem with an estate agent, they can call EARS on 1300 73 70 30 or visit the Consumer Affairs Victoria website at www.consumer.vic.gov.au.

If EARS is unable to reach a mutually acceptable settlement, it can provide information and advice about alternative methods of dispute resolution. As part of the assessment of a complaint, EARS also considers whether the complaint may involve a breach of legislation and whether an investigation should be launched to determine if enforcement action is necessary.

Penalties

Substantial penalties including fines apply to illegal conduct relating to a real estate transaction.

Buyer's checklist

1. **Have you worked out your budget?**

   For most buyers this means finding out if you are eligible for a loan and the amount of the loan. For an auction sale you will need a pre-approved loan as the property will not be offered subject to finance.

2. **Have you selected your preferred suburb/location?**

3. **What features are you looking for in a property** (for example, number and size of bedrooms)?

4. **Have you inspected similar properties in the area and found out how much they sold for?**

5. **Do you understand the differences between a private sale and an auction?**

   For more information, go to page 34.

6. **Does the property require a building inspection?**

   Will you need to make the purchase subject to this inspection?

7. **Does the property require a pest inspection?**

   Will you need to make the purchase subject to this inspection?

8. **Has your solicitor or conveyancer checked over the section 32 vendor's statement and the contract of sale?**

9. **Have you developed a strategy for bidding at auction or for making an offer for a private sale?**

10. **Are you clear about your cooling-off rights?**

    For more information, go to page 49.

11. **Do you need to check with the agent about any items that appear to be fixtures of the property but could instead be items (personal chattels) that the vendor may remove at settlement?**

12. **Do you have your 10 per cent deposit organised to be paid when required by the agent?**

13. **Have you checked all items you believe come with the property are in good working order and ensured they are stated on the contract of sale?**

14. **Have you checked those items on final inspection?**

15. **Have you decided to do your own conveyancing?**

    If yes, have you purchased a kit?

Seller's checklist

1. **Have you researched how much your property is worth?**
2. **Have you had at least two separate real estate agents present you with a marketing plan and appraise the likely selling price of your property?**
3. **Have prospective agents provided sales records of other properties similar to yours for comparison?**
4. **Have you chosen an independent legal representative to prepare the vendor's statement or section 32?**
5. **Before selecting and signing with your preferred agent, have you thought about your rights to negotiate the rate of commission and the cost of marketing and advertising?**
6. **Have you carefully looked over the authority to sell and other documentation the agent has provided for you to sign?**
7. **Have you given written instructions to your agent clearly stating which items in the property are not to be included in the sale?**
8. **Have you agreed with your agent about the price the property is to be advertised at?**
9. **Have you specified in your authority with the agent, the level of service to be provided?**
10. **Have you given your agent instructions about the offers you are willing to consider?**
11. **Have you discussed and settled the terms of your proposed contract including the time for settlement with your agent, conveyancer or solicitor?**
12. **Before accepting an offer on your property, have you discussed the details with your agent, chosen conveyancer or solicitor?**
13. **Having accepted the offer, have you confirmed with your agent that the full deposit stated on the contract of sale has been paid by the purchaser?**
14. **Have you decided to do your own conveyancing?**

    If yes, have you purchased a kit? If no, have you arranged a solicitor or conveyancer to do this work?

Glossary

Agent's representative Not a licensed agent. The agent's representative is employed by or acts for a licensed agent and performs the function of an estate agent. (See also **estate agent**)

Auction A public sale of property when the highest bidder is normally the successful buyer.

Authority to sell A legally binding document signed by the seller detailing the agreement between the seller and the agent. Many aspects of the authority to sell, such as commission and advertising costs, are negotiable between the parties.

Breach of contract The breaking of one or more of the terms or conditions of a contract.

Break fee A fee charged by a lender to a borrower to prematurely exit an existing contract. Note that this process may cost the borrower many thousands of dollars.

Bridging finance A short-term loan (approximately 6 to 12 months) used to fill the time gap between buying another property and either selling the one you own or obtaining a long-term loan. This type of borrowing is usually at a higher interest rate.

Building consultant An expert experienced in designing and/or constructing a building. When employing an expert for a pre-purchase report on a property, you should ask whether they have indemnity insurance to cover any serious omissions about building defects not covered in the report. A building consultant is not required to be registered.

Building inspector A person registered with the Building Practitioners Board as a building inspector. This person may operate as a private or council building inspector and is qualified to inspect buildings to ensure compliance with the *Building Act* and building regulations.

Building surveyor A person registered with the Building Practitioners Board as a building surveyor. This person is qualified to issue a building permit, inspect a building for compliance with the *Building Act* and building regulations, and issue an occupancy permit or certificate of final inspection.

Buyer's advocate (buyer's agent) An estate agent acting solely for the buyer by sourcing suitable properties and representing the buyer throughout the buying process.

Capital gain Profits made from the sale of property.

Caveat A note on the title that an interest in the land is claimed by a third party.

Caveat emptor A Latin expression meaning 'let the buyer beware'. It is the buyer's responsibility to ensure that the property meets their approval prior to purchase.

Certificate of occupancy A document issued by a building surveyor stating the building is suitable for occupation. It is not evidence that the building complies with the *Building Act* or building regulations.

Certificate of title A document showing who owns the property, the size of the land and whether there are any limitations on the title such as mortgages, easements or encumbrances.

Chattels Moveable personal property or furniture.

Commission Paid by the seller to the estate agent, normally when the property is sold. It is usually a percentage of the selling price of the property. The amount of commission is negotiable between the seller and the agent.

Common property Areas of a property used by and belonging jointly to all owners of a property. This applies to such properties as apartment blocks or multi-dwelling complexes.

Company title Each owner in a block of flats has shares in the company that owns the land and the building. The owners receive a parcel of the shares with rights attached. Each owner is entitled to exclusive occupation of a flat, but is subject to the company's Memoranda and Articles of Association. These documents should be carefully examined for any restrictions.

Comparison rate A tool allowing the true cost of a loan – interest rate, fees and charges – to be compared with other loans using a single figure percentage.

Consumer Credit Code Regulates all credit for personal, domestic or household purposes. To ensure fair dealing and to protect the interests of consumers, all lenders must comply with the Consumer Credit Code.

Consumer credit insurance An option for borrowers to guard against losing their property in case they default on the loan repayments. This will safeguard the loan if repayments cannot be made because of sickness, accident or unemployment.

Contract of sale A legal document prepared by the seller, usually with the aid of a solicitor or a conveyancer, outlining the details of the sale. The contract of sale is legally binding when signed by both parties.

Conveyancer A person or company licensed to conduct conveyancing business. This means any business where conveyancing work is undertaken for a fee or reward.

Conveyancing Transferring the ownership of a property from the seller to the buyer. It is often performed by a solicitor or conveyancer.

Co-owner A co-owner is a seller who has a financial share in a property and wants to buy out the other co-owners. For example, in the case of a divorce, two parties may have a share in a property and one party may wish to buy out the other party's share. Both parties are known as co-owners.

Co-owner bid A co-owner bid is a bid made by a seller who is a co-owner of the property or by a person (other than the auctioneer of the land) on behalf of a seller who is a co-owner of the property.

Covenant An agreement creating an obligation on the titleholder of a property to do or refrain from doing something. For example, a restrictive covenant could state that no more than one dwelling may be built on the land.

Deposit A percentage of the purchase price paid by the buyer when contracts are signed. It is usually 10 per cent. The deposit must be held in a trust account by an estate agency, by the seller's solicitor or conveyancer or jointly in a trust account by the seller and buyer.

Deposit bond Offered by some lenders as an alternative to a cash deposit. It is also known as a deposit guarantee.

Disbursements Additional charges by some solicitors and conveyancers on top of their fee for extras such as postage, phone calls and government charges.

Dummy bid A false bid made or accepted by the auctioneer. Dummy bids can include bids made by a non-genuine bidder and 'fictitious' bids pulled out of the air by the auctioneer. Any bid made on behalf of the vendor by anyone, other than the auctioneer under the auction rules, is considered a dummy bid. Dummy bidding is illegal.

Easement A right held by one person to make use of the land of another. Drainage and sewerage pipes are examples.

Estate agent A licensed person authorised to act for another in the selling, buying, renting or management of a property. Estate agents usually act for the owner.

Encroachment The use of, or intrusion onto, another person's property without consent. This usually refers to a structure.

Encumbrance A third party's right that obstructs the unencumbered use or transfer of a property. Examples are easements, mortgages or caveats.

Estimated selling price The price an estate agent estimates a property will attract. It must be recorded on the authority to sell either as a single figure or as a range where the difference between the top and bottom figures does not exceed 10 per cent. For example: $400,000 to $440,000.

Equity Having 'equity in your own house' refers to the difference between the market value of a property and what is still owing on a mortgage. This will increase as the loan is repaid or as the property's market value increases.

First Home Owners Grant A scheme for first home owners. Please refer to the State Revenue Office website at www.sro.vic.gov.au for further information.

Fittings Items which can be removed without damaging the property such as garden ornaments, lighting and air conditioners. They must be listed in the contract of sale if the buyer wants them to remain with the property.

Fixtures Items which are attached to the property and cannot be removed without causing damage to the property such as bathroom suites, built-in wardrobes and kitchen stoves. They are usually included in the sale.

Fixed interest rate An interest rate that remains unchanged for a set period.

Foreclosure When a borrower fails to meet mortgage repayments or repay a loan, the lender takes over the property and keeps it.

General Law title (old system title) The original system of land titles. A General Law title is comprised of all the documents that show a property's complete historical record of title ownership. For the title to be 'clear', it must be traceable without a break up to and including the current ownership. Such a title must now be converted to a 'Torrens title' when such a property title is resold. (See also **Torrens title**)

Goods in relation to a sale of a property include personal items, chattels and fittings.

Goods and Services Tax (GST) A consumption tax of 10 per cent levied on the final consumer of the goods or services. The supplier of the transaction is responsible for collecting the GST and sending it to the Australian Taxation Office (ATO).

Gross income Total income before income tax and expenses are deducted.

Interest only loan Throughout the term of the loan, only the interest is paid off. The loan itself (the principal) is repaid at the end of the time limit of the loan.

Joint tenants The form of ownership where two or more people purchase a property in equal shares. If one dies, their share of the property passes to the surviving owner/s. (See also **tenants in common**)

Land Tax Calculated on the value of a block of land and payable by the owner/s.

Mortgage A written contract giving the lender of finance certain rights over specific property. For example, the house bought by the borrower is used as security for the loan.

Mortgage guarantee insurance Paid by the borrower to protect the lender against failure by the borrower to keep up mortgage repayments or to pay back the loan in full when it is due. Such insurance normally applies where the borrower's loan exceeds 80 per cent of the value of the property. This type of insurance is taken out by the lender with the cost passed on to the borrower. The borrower remains liable for any shortfall; for example, if the property is sold and the proceeds do not cover what is owed to the lender.

Mortgagee (lender) An organisation lending money to a borrower by a mortgage agreement.

Mortgagee sale If the borrower defaults, the lender can seek to recover the debt by selling the property that was the security for the loan under the mortgage.

Mortgagor (borrower) A person taking out a mortgage on a property they are buying. The property is assigned to the lender as security for the loan.

Net income Your income after income tax and mandatory levies have been deducted.

Off the plan Purchasing off the plan involves buying a property before it has been built. Such purchases are usually based on the architect's plans and models.

'On the market' The point at an auction where a price is reached at or above which the seller is prepared to sell. (See also **reserve price**)

Outgoings Any costs incurred by the seller on top of the agent's commission, such as advertising costs. All outgoings are negotiable.

Overquoting The illegal practice of overstating the estimated selling price of a property. This is usually done to encourage a seller to list.

Owners corporation Formerly known as a body corporate. An owners corporation has the collective ownership of the common area in a subdivision of land or buildings. It is responsible for the administration, upkeep and insurance of the common area shared by all the owners (the common property).

'Passed in' The circumstance where a property for auction is not sold, usually because it has not reached the seller's reserve price.

Principal The amount of the loan itself without interest or other charges associated with the loan.

Private sale In a private sale, the sale is negotiated between the buyer and seller usually with the assistance of an agent.

Rebates Discounts received, usually for bulk purchases such as advertising. Any rebates received by an agent must be passed on to the seller.

Requisitions on title A set of questions about a property the buyer asks the seller after the contract has been signed, usually with the help of a solicitor.

Reserve Bank of Australia Australia's central bank with responsibility for regulating monetary policy including the official interest rate.

Reserve price A seller's minimum sale price for the property. It may be recorded on the authority to sell.

Settlement When ownership of a property passes from the seller to the buyer and the balance of the sale price is paid to the seller.

Solicitor A legally qualified and licensed person undertaking legal work and providing legal advice for a fee. A solicitor may specialise in conveyancing and property law.

Stamp duty A state government tax, based on the sale price of a property, paid by the buyer when property ownership is transferred. Also known as duty.

Strata title Individual ownership of an apartment or unit within a block or multi-unit complex. This is separate from and additional to the joint ownership of common areas shared by all the property owners in the building or complex.

Stratum title Each owner has a certificate of title and is absolute owner of a freehold flat. A service company has the title to the common property and each flat titleholder has a responsibility to the service company. The service company, in which each flat titleholder has shares, administers, manages and maintains the property in which each owner's flat is registered.

Tenants in common A form of joint ownership of a property when each person owns a share of the property, equally or unequally. On the death of one owner, the deceased's share passes to their heirs, who assume the role of tenant in common with the other existing owner/s.

Title A legal document identifying who has a right to the ownership of a property.

Torrens title A system of title by registration governed by the Transfer of Land Act.

Transfer of land A document recording the change of ownership of a property from the seller to the buyer.

Underquoting The illegal practice of understating the likely selling price.

Unfair contract terms Terms not in good faith causing a significant imbalance in the rights and obligations of both parties to the detriment of the consumer.

Valuation An estimate of the value of a property by a registered valuer, usually for a fee.

Vendor (seller) The person selling the property.

Vendor bid A bid made on behalf of the vendor. Vendor bids can only be made by the auctioneer and only when the auction rules allow it. The auctioneer makes this statement before bidding starts and announces each vendor bid as, or before, it is made.

Vendor's statement (or section 32) Information which the seller must provide to the buyer advising of restrictions such as covenants and easements, outgoings such as rates and any other notices such as compulsory acquisition.

Vendor terms contract Also known as a terms contract, when a loan is supplied by the vendor rather than by an established lender.

'Wrapping' A type of vendor terms contract in which the property price and loan interest rates are usually well above the market rate. Penalties for defaulting can be severe and such contracts should be entered into with caution.

Zoning The permissible uses of an area of land as stipulated by the council.

Useful contacts

Consumer Affairs Victoria

In person
Victorian Consumer &
Business Centre
113 Exhibition Street
Melbourne Victoria 3000

By telephone
1300 55 81 81

Estate Agents Resolution Service (EARS)
1300 73 70 30

Building Advice and Conciliation Victoria (BACV)
1300 55 75 59

Internet
www.consumer.vic.gov.au

Services from Consumer Affairs Victoria are available at Ballarat, Bendigo, Berwick, Box Hill, Broadmeadows, Geelong, Mildura, Morwell, Wangaratta and Warrnambool together with a mobile outreach service regularly visiting rural communities.

To find details about the regional office nearest you or the mobile service, call 1300 55 81 81 or go to www.consumer.vic.gov.au and click on “Contact Us”.

Archicentre

Royal Australian Institute
of Architects
530 Glenferrie Road
Hawthorn Victoria 3122
1300 13 45 13
www.archicentre.com.au

Australian Securities and Investment Commission

GST enquiries
1300 300 630
www.asic.gov.au

Australian Tax Office

Personal tax enquiries line
13 28 61
www.ato.gov.au

Business Licensing Authority (BLA)

1300 13 54 52
www.bla.vic.gov.au

Consumer Action Law Centre

Level 7, 459 Little Collins Street
Melbourne Victoria 3000
(03) 9629 6300
www.consumeraction.org.au

Foundation and Footings Society

PO Box 1175
Hartwell Victoria 3124
www.footingsgroup.org

Housing Industry Association

70 Jolimont Street
Jolimont Victoria 3002
(03) 9280 8200
www.hia.com.au

Information Victoria Bookshop

505 Little Collins Street
Melbourne Victoria 3000
1300 36 63 56
www.bookshop.vic.gov.au

Insurance Council of Australia

PO Box R1832
Royal Exchange
Sydney NSW 1225
(02) 9253 5100
www.insurancecouncil.com.au

Land Victoria

Level 16, Marland House
570 Bourke Street
Melbourne Victoria 3000
(03) 8636 2000
www.land.vic.gov.au

Law Institute of Victoria

470 Bourke Street
Melbourne Victoria 3000
(03) 9607 9311
www.liv.asn.au

Real Estate Institute of Victoria (REIV)

335 Camberwell Road
Camberwell Victoria 3124
(03) 9205 6666
www.reiv.com.au

State Revenue Office (SRO)

Level 2, 121 Exhibition Street
Melbourne Victoria 3000
13 21 61
www.sro.vic.gov.au

Sustainability Victoria

Urban Workshop
Level 28, 50 Lonsdale Street
Melbourne Victoria 3000
(03) 8626 8700
www.sustainability.vic.gov.au

Victorian Civil and Administrative Tribunal (VCAT)

55 King Street
Melbourne Victoria 3000
(03) 9628 9755
www.vcat.vic.gov.au

Victorian Conveyancers' Association

Australian Institute of Conveyancers
(Victorian Division)
PO Box 466
Ringwood Victoria 3134
(03) 9876 8221
www.aicvic.com.au

Consumer Affairs Victoria

Victorian Consumer & Business Centre

113 Exhibition Street Melbourne Victoria 3000

1300 55 81 81 (local charge)

(03) 8684 6295

consumer@justice.vic.gov.au

www.consumer.vic.gov.au

Services from Consumer Affairs Victoria are available at Justice Service Centres in Ballarat, Bendigo, Berwick, Box Hill, Broadmeadows, Geelong, Mildura, Morwell, Wangaratta and Warrnambool. Our mobile service regularly visits rural communities. Call 1300 55 81 81 or visit www.consumer.vic.gov.au for more information.

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TIS Telephone Interpreting Service 131 450

TTY Textphone or modem users only, ring the NRS on 133 677, then quote 1300 55 81 81

Callers who use Speech to Speech Relay dial 1300 555 727, then quote 1300 55 81 81