

# KELLEHERS AUSTRALIA

## In-House Memorandum

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### Section 32 Amendments

Each Saturday, young couples throughout Victoria inspect houses and apartments with the hope of securing a new home. Before a prospective Purchaser signs a contract, the Vendor must provide a signed document, required under Section 32 of the *Sale of Land Act 1962* (Vic), disclosing key matters affecting the land to be sold. This is called a 'Vendor's Statement' or a 'Section 32 Statement'.

In the years since its introduction, S32 has been amended many times<sup>1</sup>. It will be amended again on 1 October 2014 under reforms set out in the *Sale of Land Amendment Act 2014* (Vic)<sup>2</sup> ('the Amendment Act').

A S32 Statement is a most important document. If its contents are false, the purchaser may avoid the contract. The LIV/REIV Standard Contract in wide use throughout Victoria provides that the S32 Statement forms part of the contract.

The new Section 32 Statement can be divided into two major sections, with new "Due Diligence Checklist" forming a third segment as follows:

- Vendor's Statement
- Other Circumstances
- Due Diligence Checklist

#### Vendor's Statement

The new Vendor's Statement under the new Section 32 can be divided into ten major sections. Each section amalgamates existing provisions (incorporating amendments as at 1 July 2014)<sup>3</sup>. Key differences include:

- Provisions an Owners Corporation Certificate, Rules, and a copy of all resolutions made at the last AGM of the Owners Corporation. If the owners corporation is inactive<sup>4</sup>, the Vendor must specify this fact. At present the purchaser needs to seek these after contract;

<sup>1</sup> Victoria, Parliamentary Debates House of Assembly, 6 February 2014, (Hon. Heidi Victoria MP).

<sup>2</sup> These reforms arose from a review of Vendor Disclosure Obligations undertaken by the Department of Justice in 2012.

<sup>3</sup> New and existing provisions are compared in the table below:

NEW	EXISTING
<i>Sale of Land Amendment Act 2014</i>	<i>Sale of Land Act (incorporating amendments as at 1 July 2014)</i>
<b>S32A (Financial)</b>	Sub-Sections 32(2)(a),(aa),(d) and (f)
<b>S32B (Insurance)</b>	Sub-Sections 32(1A)(c) <sup>3</sup> and (2)(g)
<b>S32C (Land Use)</b>	Sub-Sections 32(2)(b),(c),(dc) and (ec)
<b>S32D (Notices)</b>	Sub-Section 32(2)(e), (ca), (cb) and (i)
<b>S32E (Building Permits)</b>	Sub-Sections 32(1A)(a)
<b>S32F (Owners Corporation)</b>	Sub-Section 32(3A)
<b>S32G (Growth Areas)</b>	Sub-Sections 32(2)(db) and (3)(f)
<b>S32H (Services)</b>	Sub-Section 32(2)(ea)
<b>S32I (Title)</b>	Sub-Sections 32(3)(a) to (ba)
<b>S32J (Certificates)</b>	Sub-Section 32(4)

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- The S32 will now only identify if any services (electricity, gas, water, sewerage, telephone) are **not** connected to the land, reversing the current situation.
- Where a plan of subdivision has not yet been registered or certified, and land is part of a staged subdivision or is subject to subdivision in respect of which a further plan is proposed, it imposes additional requirements to provide plans and statements of compliance.

The new Section 32 requirements remove warnings pertaining to planning, building permits and consents [32(2)(ca)], commercial agricultural production activity [32(2)(cb)], liability to pay a Growth Area Infrastructure Contribution [32(2)(da)] and essential services [32(2)(eb)]. These are proposed to be relocated to the Due Diligence Checklist (see below)<sup>5</sup>. It removes provisions relating to certain subdivided land and residences affected by Part 2 of the *House Contracts Guarantee Act 1987* and certain subdivided land and services information.

## Other Circumstances

Other Circumstances under the new Section 32 can be divided into six major sections. Each section amalgamates existing provisions (incorporating amendments as at 1 July 2014)<sup>6</sup>. New provisions are:

- **S32K (Rescission)** – that the purchaser may rescind any contract on the basis of information contained in the S32 at any time before the purchaser accepts title, but may not rescind where the vendor acted honestly and ought to be excused or the purchaser is substantially in as good a position as if all relevant provisions had been complied with.
- **S32L (False Statement)** – Penalty units that apply to provision of false information are increased. A 300 unit penalty (\$44,283.00) applies to a body corporate and a 60 unit penalty (\$8,856.60) in any other case.

## Due Diligence Checklist

The Amendment Act introduces a Due Diligence Checklist ('the Checklist'), designed to apply to vacant residential land or land on which there is a residence for sale. The Amendment Act does not specify what information should be contained in the Checklist. It notes only that the Director of Consumer Affairs Victoria ('CAV') is responsible for approving the Checklist prior to distribution to prospective purchasers. As yet, the Director has not published a copy (or draft copy) of the Checklist on the CAV website.

<sup>4</sup> The proposed S32F(2) defines 'inactive' to include an owners corporation that has not, in the previous 15 months (a) had an annual general meeting (b) fixed any fee; and (c) held any insurance.

<sup>5</sup> Following recommendations proposed in the CAV Discussion Paper released on 31 October 2012, which can be accessed at: <http://www.consumer.vic.gov.au/resources-and-education/legislation/public-consultations-and-reviews/review-of-section-32-of-the-sale-of-land-act-1962-options>, accessed 29/8/14

<sup>6</sup> New and existing provisions are compared in the table below:

NEW	EXISTING
<i>Sale of Land Amendment Act 2014</i>	<i>Sale of Land Act (incorporating amendments as at 1 July 2014)</i>
<b>S32K (Rescission)</b>	Sub-Sections 32(5)
<b>S32L (False Statement)</b>	Sub-Sections 32(6)
<b>S32M (Other)</b>	Sub-Sections 32(5A)
<b>S32N (Other)</b>	Sub-Section 32(8)
<b>S32O (Other)</b>	Sub-Sections 32(9)
<b>S32P (Forest Carbon Rights)</b>	Sub-Section 32(11)

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It is likely the Checklist will<sup>7</sup>:

- Migrate generic warnings to the Checklist<sup>8</sup>;
- State a series of generic questions for a purchaser to consider such as:
  - What information the purchaser has about the neighbourhood or surrounding location;
  - How the purchaser intends to use the property;
  - The features of the particular property for sale.

A Vendor, or licensed estate agent, will be required to ensure the Checklist is made available to any purchaser from the time the land is offered for sale<sup>9</sup>. This may be done by offering or displaying it to prospective purchasers or by allowing access to a copy of it on the web.

Cameron Algie  
29 August 2014

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<sup>7</sup> Following recommendations proposed in the CAV Discussion Paper released on 31 October 2012, which can be accessed at: <http://www.consumer.vic.gov.au/resources-and-education/legislation/public-consultations-and-reviews/review-of-section-32-of-the-sale-of-land-act-1962-options>, accessed 29/8/14

<sup>8</sup> Currently provided in S32(2)(ca), (cb), (da) and (eb).

<sup>9</sup> A 60 unit penalty (\$8,856.60) is applied where this is not done.

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