Consumer Affairs Victoria

Real estate

A guide for buyers and sellers

consumer.vic.gov.au

State Government Victoria

Department of Justice

This guide covers the basic steps in a residential real estate transaction in Victoria, in the order you would normally experience them when buying or selling property. The guide also includes laws regulating the conduct of agents and conveyancers in that process.

Disclaimer

Because this publication avoids the use of legal language, information about the law may have been expressed in general statements. This guide should not be relied upon as a substitute for the *Estate Agents Act 1980*, the *Conveyancers Act 2006*, the *Sale of Land Act 1962* or professional legal advice.

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Published by
Consumer Affairs Victoria
Department of Justice
121 Exhibition Street
Melbourne Victoria 3000

Authorised by the Victorian Government
121 Exhibition Street
Melbourne Victoria 3000

Print managed by Finsbury Green

ISBN: 1 921079 56 8

Additional copies

This guide is available from Consumer Affairs Victoria, **consumer.vic.gov.au**.

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Introduction

Making the right choices

Buying or selling a home can be complex and time-consuming. Even before you make the 'big decisions' about which property to buy, which home loan to select, or which agent you engage to sell your home, you have other important decisions to make.

You are more likely to make the right choices and avoid expensive mistakes by doing your research.

Know what you want

Start by making a list of all the essential features you require in your property. Then write a separate wish list of desired but non essential characteristics, to factor into your decision making when you find them in a property you can afford.

Be informed

Learn as much as you can:

- research the market value of property
- educate yourself about building terms
- attend auctions and monitor results.

Shop around

Educate yourself about the products and services offered by agents, legal practitioners, conveyancers, buyer's advocates, mortgage brokers and lenders. There are many free services or sources offering advice – by shopping around you can put their advice into context. Websites – including the Consumer Affairs Victoria website **consumer.vic.gov.au** – can be an excellent source of information.

Seeking advice from different sources will give peace of mind that you are getting value for money and your needs are being met. Increasingly, service providers are developing smartphone apps that can assist with finding properties or funding a home purchase.

Buyers' and sellers' checklists at the back of this guide provide prompts which can be helpful in ensuring you don't miss any important steps.

Dealing with an estate agent

Although you can buy and sell property directly, most people will deal with an agent.

Laws govern the licensing and conduct of 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

A person or company acting as an estate agent, advertising that they are carrying on the business of an estate agent or who holds themselves out as being ready to act as an estate agent for payment must be licensed as an estate agent in Victoria.

An agent's representative must meet prescribed eligibility requirements and be employed by a licensed estate agent who is responsible for the conduct of the agent's representative.

Only deal with a licensed agent or an authorised agent's representative. To check whether someone is a licensed agent or an agent's representative, contact the Business Licensing Authority on 1300 135 452 or search the public register of licensed agents at **bla.vic.gov.au**.

Take your time

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

Thorough research can save you time and money – for example, you can avoid pitfalls like costly and time consuming building and planning issues.

Consider a building inspection

Before signing a contract of sale, consider engaging an independent qualified building inspector, surveyor or architect to provide a building inspection report.

The fee for a professional inspection service is small compared with the cost of buying a property that needs unforeseen repairs. A qualified inspector will know what to look for and will see through any cosmetic improvements that cover up faults.

The inspector will provide a written report listing:

- faults in the property
- whether they can be repaired
- how much these repairs are likely to cost.

You may be able to use the report to:

- negotiate the price and contract conditions with the seller
- develop a maintenance program if you decide to buy.

Use an inspection service with full professional indemnity insurance. This will protect you if the inspection misses a problem that must be fixed.

Read before you sign

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

Ensure you understand 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.

Make sure you read and fully understand what you are signing, before you sign it.

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.

Foreign investors

If you are enquiring about buying property in Australia and you are not an Australian citizen or permanent resident, contact the Foreign Investment Review Board at **firb.gov.au** for more information.

Definitions

For the purposes of this guide, the:

- vendor or owner of 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.

You can find further definitions in the glossary on page 46.

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.

Get your finances in order before you start looking for a property. For help to make smart choices about your personal finance, visit **moneysmart.gov.au**.

Choosing a lender

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.

You can use mortgage calculators on financial providers websites to work out your loan repayments.

The main types of lenders are:

- Banks
- Building societies
- Credit unions

Mortgage brokers act on behalf of lenders.

There is intense competition amongst 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 in the long term when fees, ongoing charges and penalties are included.

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

Speak with several lenders about your circumstances to work out the best type of loan. You can ask them to justify the rate, fees and method of repayment. Take into account what each lender is offering when making your decision.

Most lenders will approve a loan in principle ('pre-approval'), allowing you to be confident of your spending limit. Pre-approval is only valid for a limited period and needs to be renewed after this period.

Pre-approval does not guarantee loan approval. The lender still needs to make additional enquiries into your financial standing before approving the loan.

You should speak to your lender about what pre-approval means.

Typically there are three areas that lending providers look at when approving your loan:

- how you will service the loan
- what equity you will have in the property
- your credit rating

First Home Owner Grant

The First Home Owner Grant provides eligible first home owners with a one-off payment. 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 at **sro.vic.gov.au.**

For information about budgeting, saving, loans, insurance and all other credit-related issues, call the Australian Securities and Investments Commission (ASIC) Infoline 1300 300 630 or visit **moneysmart.gov.au**.

The estate agent's responsibilities to the buyer

As a buyer, you will not pay an agent for services provided in selling the property.

Buyers may deal with several agents or agent's representatives, depending on who is handling the sale of the property they are interested in.

You can leave details with one or more agents indicating the type of property you are seeking and an approximate price range. The agent may contact you when suitable properties become available.

As a buyer, you can expect an agent to:

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

Buyer's advocates

A buyer's advocate is a licensed estate agent who, for a fee or commission, acts for a buyer instead of a seller. They can source properties, bid at auction and generally represent a buyer throughout the buying process.

Advertising

An estate agent must not misrepresent the price of a property for sale or lease. The advertised price must be fair and reasonable and reflect the instructions of the seller and the opinion of the agent of the property's selling price.

Any changes to the seller's instructions or agent's opinion during a marketing campaign likely to affect the selling price must be reflected in the advertised price. For example, if a higher offer is made for a property and rejected, the advertised price must be updated unless the seller changes their mind.

The agent-principal relationship

The relationship a seller has with an agent is different to the relationship the agent has with a buyer. Agents must act responsibly and ethically when dealing with both buyers and sellers. But buyers should be aware that the main responsibility of the agent selling the home is to the seller.

Conveyancing, vendor's statement (section 32), owners corporations and buying off the plan

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

Conveyancers

A conveyancer is someone, other than a legal practitioner, who is licensed to undertake property conveyancing work and to do legal work or give legal advice about 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 check the vendor's statement, advise on the terms and conditions in the contract of sale and conduct searches.

Licensed conveyancers must have professional indemnity insurance.

Get written quotes before choosing a legal practitioner or conveyancer.

If you use a conveyancer, make sure that they are licensed. You can check if someone is licensed by contacting the Business Licensing Authority on 1300 13 54 52 or by searching the public register of licensed conveyancers at **bla.vic.gov.au**.

Legal practitioners

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

Legal practitioners can perform general legal work and provide legal advice. Some legal practitioners specialise in conveyancing and property law.

Sellers can engage a legal practitioner to prepare all the required documentation, including the vendor's statement and the contract of sale. Legal practitioners can also be engaged by buyers to review and advise on the vendor's statement and the contract of sale, and ensure that the transfer of title is done correctly.

SELLER'S TIP TIP

Make sure all charges including disbursements (additional administrative costs) are discussed and understood before you engage a legal practitioner or conveyancer.

The vendor's statement (section 32)

Before a property is sold, the seller must provide the buyer with a vendor's statement or section 32.

This is usually prepared by the seller's legal practitioner or conveyancer. It is then signed by the seller and made available to prospective buyers, usually by the agent before the sale or auction. The buyer may then have the statement checked by his or her own legal practitioner 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 certificate of title (or similar documents evidencing title) are accurate. It is the buyer's responsibility to find out about anything 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 **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 false, incorrect or insufficient information, a buyer may be able to withdraw from the sale or take legal action.

BUYER'S TIP TIP

Before you make an offer on a property or bid at an auction, have a legal practitioner or conveyancer carefully check the vendor's statement. You should also consider getting a building inspection from a qualified building inspector.

Owners corporations

If you buy a unit, flat or apartment, you will be provided with your own certificate of title. However, you are not just purchasing the individual property but also the shared 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 its operation. You will be required to contribute to costs for repairs, maintenance and insurance for the common property shared with the other lot owners.

BUYER'S TIP TIP

Buying in an owners corporation means living with common property– and certain rights and responsibilities apply.

Get more information at **consumer.vic.gov.au**, download the *Guide to owning, managing and living in an owners corporation*.

Before buying, make sure you carefully check:

- the cost of being a member of an owners corporation
- how the owners corporation operates, including whether it uses an owners corporation manager
- the vendor's statement
- the owners corporation certificate, attached to the vendor's statement, which states whether there are any proposed works, fee increases or potential or existing legal claims affecting the property
- the plan of subdivision, to determine lot boundaries and common property
- the contents and conditions of the contract of sale
- the owners corporation rules
- any leases or licences of common property
- minutes of previous annual general meetings.

Property schemes

Properties can be held under different schemes. For example, if you're buying a unit, flat or apartment, you could be purchasing a share in a company title arrangement, a stratum title or a strata title. Get advice from a legal practitioner or conveyancer about how the type of title will affect your ownership, rights and responsibilities.

BUYER'S TIP TIP

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

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

Buying off the plan

Buying a house or unit before the building works have been completed is known as buying off the plan. In some cases, construction may not have started whilst in others it may only be partially built. The design of the building and sketches of its final appearance may be included in advertising material well before occupation is possible.

People are often attracted to off-the-plan sales as there is a reduced amount of duty (formerly stamp duty) to pay. The amount depends on how advanced the construction of the building is and its current value. If construction is close to completion, the duty is likely to be higher. You can get more information about duty by visiting **sro.vic.gov.au**.

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.

BUYER'S TIP TIP

If you intend to buy off the plan, get a firm completion date in writing from the developer. You should get legal advice before signing a contract.

Buying off the plan without being able to observe the finished product has risks, including:

- being unable to inspect the actual property. You have to rely on an artist's impression, floor plan and advertising material for information about what you are paying for
- differences in the expected and actual quality of the final finishes
- unexpected changes to the plans or specifications
- an uncertain completion date
- complex contracts
- 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
- property market volatility causing the value of an off the plan home at settlement to be less than the contract price.

If you buy off the plan and the plan of subdivision is not registered, the law protects you by requiring that the deposit is no more than 10 per cent of the contract price.

If the plan of subdivision is not registered by the time specified in the contract or the default time of 18 months, you have the right to end the contract.

The estate agent's responsibilities to the seller

If you list a property for sale with an agent, you are engaging that agent to help sell your property. The agent must act in your best interests, including following your lawful instructions and engaging in good estate agency practice.

The agent will charge you a fee for this service, usually in the form of a commission. The commission is negotiable and can either be a percentage of the sale price, a fixed fee or a combination of both. You can also expect to pay an additional cost for advertising associated with marketing your property.

You can expect the agent to:

- advise you about a method of sale
- provide you with a marketing plan and market your property
- give you an estimated selling price or price range based on their experience and skill
- advertise an up-to-date price for the property reflecting rejected offers or changed market conditions (although it is not compulsory for a price to be advertised)
- communicate all verbal and written offers from prospective buyers to you, unless you instruct the agent in writing not to do so
- organise and attend open house and other inspections
- organise and conduct an auction if applicable
- arrange the signing of the contract
- receive and hold the full deposit.

Selecting an agency

For the seller, choosing an agency is an important part of the selling process.

To help you make this decision:

- check the internet and local papers to find agencies, the services they offer and sale price information
- speak to friends about their experiences
- read promotional material from a range of agencies (including local agents who may be more familiar with the local market)
- talk to agents.

Ask the agent to provide written quotes, clearly detailing the rate of commission they charge and any additional charge for marketing your property. Do not sign anything, including an authority, unless you are prepared to engage their services.

Points to discuss

When you talk to agents, important points to discuss include:

- their knowledge of the market and experience selling homes in the area
- comparable sales in the area
- their marketing plan for your property
- preparing your property for sale
- their estimated selling price
- their commission or fee
- the cost of advertising and other outgoings.

Marketing your property

When you're choosing an agency, one of the most important factors to consider is how they plan to market your property. Ask for a comprehensive, written marketing plan. This will be based on the agent's experience, the type of property and its location and any specific wishes you have.

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

Before you sign an authority to sell, the agent must provide you with an estimate of the selling price of your property. This is the price the agent estimates your property is likely to attract, based on their experience, skill and knowledge of the market. It must be recorded in the authority to sell as either a single amount or a price range.

If estimate is 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 and it does not have to be the same as the seller's asking price or auction reserve price.

Price misrepresentation – overquoting and underquoting

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.

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

An auction reserve price is not usually set until the day of the auction.

Commissions

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

The agent must advise the seller the commission is negotiable, before the seller signs the authority to sell.

There is no set commission; the amount 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 percentage of the sale price, and must be recorded on the authority to sell. If it is recorded as a percentage, it must also be shown as a dollar figure.

If you are selling through an agent who uses a commission scale, ensure it clearly and accurately outlines how much you will pay. 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. You 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 TIP

Do not choose an agent just because they give you the highest estimated selling price. Have several agents appraise your property. You can 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 must advise you in writing if they will be sharing the commission with someone outside their own agency, such as a legal practitioner, conveyancer or another agent. A statement must be made listing the people with whom the commission is to be shared, before you sign the authority to sell.

SELLER'S TIP TIP

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 Consumer Affairs Victoria or seek legal advice.

The agent must provide you with a copy of the authority when you sign it. Retain this as proof of what was agreed with the agent.

If the agent enters a commission-sharing arrangement after you have signed the authority to sell, they must update the authority to sell (see below) with the relevant details and ask you to sign and date the amendments.

Advertising and other outgoings

There will be costs associated with marketing a property, separate from the agent's commission. Even if the property fails to sell, you will have to cover marketing costs if you authorised it. This may be avoided by negotiating a 'no sale, no fee' arrangement in the authority to sell when you sign with the agent.

Make sure that there are no hidden charges. You can ask the agent to provide a written schedule outlining marketing and other outgoings to clarify what you are paying for. All such expenses are negotiable and must be recorded in the authority to sell.

Rebates

It is illegal for agents to retain advertising or any other rebate, even if you agree to the agent keeping the rebate.

If an agent receives a rebate or discount on any goods or services, such as advertising, they must pass it on to you. If they receive benefits in a form other than money, such as gifts, they must pass the monetary value of the gift to you.

The authority to sell

Once you choose an agent, you will be asked to sign an authority to sell, appointing that agent. This is a legally binding contract, which fully sets out the details of your agreement with the agent, including:

- whether the property is to be sold by private sale or auction (and 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 or selling range
- the authority period or amount of time given to the agency to sell the property.

The authority must include two statements:

- a rebate statement indicating whether or not the agent is to receive a rebate from advertising or other expenses
- a statement explaining that you can lodge a complaint with Consumer Affairs Victoria should a dispute over commission or outgoings arise.

Authority types

The most common type of sales authority is the exclusive authority which means you appoint a single agency to exclusively market your property. Under an exclusive authority the agent is entitled to commission when the property is sold or when the agent receives a binding offer at the vendor's reserve or asking price.

You should not sign more than one exclusive authority, as in certain circumstances you may have to pay more than one commission.

Although it is less common, you can use a general authority. This allows you to list with more than one agency but only pay commission to the agency that sells your property.

SELLER'S TIP TIP

Any changes after the authority has been signed 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. You 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 have advantages and disadvantages. An agent will recommend what they consider the best method of sale for your particular circumstances.

The authority period

This is the period of time in which the authority is in force with the agent. It 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.

If no period is stated on an exclusive authority, then the default period for sale by auction is 30 days from the auction date. 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

You can negotiate the commission or agent's fee, payable when your property is sold.

Advertising and other outgoings

The costs associated with marketing and advertising a property are negotiable.

Other terms and conditions

Make sure you understand and agree upon all terms and conditions before signing. These conditions are negotiable. Any changes (deletions, amendments or additions) must be made on the authority and initialled by both parties.

The Australian Consumer Law and contracts

The agent's authority to sell is a legally binding consumer contract. The Australian Consumer Law makes unfair terms in consumer contracts void. Estate agents must make sure their authorities comply with the law.

An unfair term in a consumer contract is one 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.

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.

Taking action on unfair contract terms

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

Selling without a real estate agent

If you decide to sell your property without using an agent, you will need to thoroughly research the selling process.

A benefit of selling property without an agent is saving money by not having to pay commission.

You will need to complete a vendor's statement (Section 32) and contract of sale. This can be done with a 'do-it-yourself' conveyancing kit or by engaging a conveyancer or legal practitioner 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 to decide the sale price or range
- marketing the property. Remember that private sellers, like agents, must not make false or misleading statements about their property in the sale process
- receiving and holding a deposit. You must hold the deposit in a separate account or transfer it to your conveyancer or lawyer
- providing the contract of sale with the vendor's statement attached and arranging for it to be signed.

Regardless of whether or not you use an agent, you will have to arrange the settlement of the sale. This includes recovering the balance of the purchase price and transferring property title to the new owner. You can do this yourself or use a lawyer or conveyancer to do it for you.

An easy-to-use, do-it-yourself guide to real estate conveyancing is available from the Information Victoria Bookshop.

For further information, visit the Information Victoria Bookshop at Level 20, 80 Collins St, Melbourne, call 1300 366 356 or visit **bookshop.vic.gov.au**.

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 – by private sale or public auction.

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 help of an agent.

Common features of a private sale:

- the seller and buyer negotiate a sale price
- the contract may be conditional – with the seller's approval, the buyer can make the sale subject to finance (obtaining a loan), a satisfactory building inspection report, or other conditions
- there is a three business day cooling-off period (with exceptions) for residential properties.

Public auction

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

Common features of an auction:

- the price is determined by competitive bidding between prospective buyers
- the contract is unconditional
- you have no cooling-off rights if you buy at auction.

SELLER'S TIP

TIP

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.

Deciding on a method of sale

The agent will recommend a method of sale for your property based on its type and location, the nature of the market and your available time frame and personal preference. They should also back up their recommendation with recent sales data. You 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.

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. For a private sale, the price at which you will consider offers is known as the asking price.

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

- research local sale prices by checking property data websites (see **consumer.vic.gov.au** for details of these websites) and newspapers for similar properties listed and sold, and attending auctions and open for inspections
- use the agent's estimated selling price as a guide
- don't allow emotion to cloud any judgments
- be realistic.

Taking this approach will help you avoid disappointment and the risk of buying a property based on unrealistic expectations of the sale price of your home.

BUYER'S TIP TIP

You will be a better judge of property sales prices if you research and understand the market where you are looking to buy.

The advertised price

It is illegal for an agent to quote or advertise a figure that is less than the seller's asking price, reserve price or the agent's estimated selling price or range, stated in the authority to sell.

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

SELLER'S TIP TIP

Property advertising must not be misleading or deceptive. It is illegal to misrepresent a property, including its features and location, in any way when marketing that property, whether verbally or in writing and photographs. You should ensure any information provided to the agent about your property is factual and up to date.

Locating and inspecting properties

Inspect a property to see whether it meets your requirements. You should also consider having a qualified building inspector provide a professional condition report before purchasing.

Locating properties for sale

You can find properties using a variety of methods.

- **Internet**
  The internet is the quickest and most popular way to find properties for sale. Most estate agencies list properties on their own websites and on real estate websites. These sites may include information such as:
  - price ranges
  - property descriptions and floor plans
  - photographs and virtual tours
  - maps showing the property location
  - inspection times and agent contact details
  - recent sales in the area.

  Some websites allow you to register for free email updates of properties matching your criteria, or save properties to a 'watch' list. Some also provide auction results, which can help you determine the current market value of homes in different areas. You could also consider a virtual tour of the neighbourhood using different geographic websites.

  Some websites have links to smartphone apps with features to help your home search. They may list recent sale prices and nearby property listings, help you create an inspection shortlist, set up auction alerts, link to mortgage calculators or allow you to keep notes on favoured properties.
- **Newspapers**
  Check the property section in daily and local newspapers.
- **Direct contact**
  Directly contacting estate agencies by telephone, email, fax or in person is another way of finding properties.
- **Promotional magazines**
  Many agencies produce free magazines that list properties for sale.
- **Open houses**
  Open for inspection times are usually advertised in newspapers and online. You may also be able to arrange an alternative inspection time with the agent.

  You may be asked for proof of identity when you enter the property and to leave contact details with the agent. This is a security measure and also 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.

Inspections

Make several visits to a property before you decide to buy it. Visiting the area at different times of the day or week can highlight issues that may not be immediately be apparent at a daytime inspection – for example, the level of street noise or how well-lit and safe the areas feels at night.

The first visit will give you an initial impression and determine if the property meets your 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. You will need to get the agent's permission to take photographs.

Keep an eye out for signs of potential structural problems. For example:

- sloping or bouncy floors may mean re-stumping is needed
- 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 re-stumping. 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, cracked or broken roof tiles may involve costly repairs or replacement.

SELLER'S TIP TIP

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 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 its true condition.

Professional building inspections

Before signing a contract, consider paying an independent qualified building inspector, surveyor or architect to do a professional building inspection report on the property. A qualified inspector will know what to look for and will see through any cosmetic improvements covering up faults that may otherwise be missed.

The inspector will provide a written report listing faults, whether they can be repaired and the likely cost. The report will also highlight any unsafe renovations or extensions.

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

BUYER'S TIP TIP

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 your responsibility once the contract is signed.

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.

The fee for a professional inspection service is small compared with the cost of unforeseen and expensive repairs. Even if no major faults are found, minor faults can be identified for future maintenance if you buy the property.

Pest inspections

You should also consider a professional pest inspection.

For a full list of local councils with designated termite areas, visit **buildingcommission.com.au**, or ask the council for an updated status report.

Assessing the sustainability of homes

Sustainable housing features can affect the comfort of your home and energy costs. Features such as rainwater tanks or solar hot water are now found in an increasing number of new and older homes.

There is a 6-star energy efficiency standard for all new homes, and for renovations, additions and relocations of existing homes.

New homes must have:

- 6-star energy rating for the building fabric including the roof, walls, floor and windows
- 6-star energy rating for fixed lighting but not plug in appliances
- a rainwater tank for toilet flushing or a solar hot water system.

Renovations, additions and relocations must have a 6-star energy rating for the building fabric, but do not require a rainwater tank or a solar hot water system. If a renovation or addition is more than 50 per cent of the volume of an existing house, the whole building needs to be upgraded to a 6-star standard.

For new apartments, the average is a 6-star energy rating for the whole block with a minimum of 5-star for individual apartments.

When buying an established home, consider the benefits of sustainable features that can reduce running costs, reduce greenhouse gas emissions and add to the value of a property.

For information about the energy efficiency features to look for in a home, go to **makeyourhomegreen.vic.gov.au**.

Vacant land

If you are buying vacant land to build on, consider obtaining a soil test beforehand. This could avoid problems and extra costs when building and excavation commences.

BUYER'S TIP TIP

Never sign a contract for an owner-built property before checking the property carefully. If there is an issue with defective or incomplete work, check with your local council or ask the property owner for information.

Domestic building insurance

A builder must be registered in order to carry out domestic building work over $5000. If the contract is more than $12,000, the builder must have domestic building insurance.

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

- dies
- becomes insolvent, or
- disappears.

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

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

Consumers and builders can get free advice and assistance on domestic building disputes by contacting Building Advice and Conciliation Victoria (BACV) on 1300 557 559.

For more information about domestic building, visit **consumer.vic.gov.au/building**.

Owner-built properties

If an owner-builder sells a property within six years of obtaining a certificate of occupancy or final inspection, they must obtain a defects inspection report from a prescribed building practitioner. This 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 must also 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.

Private sales

Making an offer

If you want to make an offer to buy a property, do so through the agent managing the sale, who will then communicate it to the seller. Verbal offers are not legally binding until confirmed in a contract of sale signed by both parties.

The agent may require you to pay a deposit, which will be returned if the offer is not accepted. The deposit must be paid into the agent's trust account.

If an agent is not managing the sale, you negotiate directly with the seller and the deposit is paid to the seller. However, a seller may employ a legal practitioner or conveyancer to deal with the sale documentation. If this is so, the deposit may be paid to the lawyer or conveyancer and held in their trust account.

An offer becomes binding when both parties sign the contract of sale and all conditions are met. Don't sign before carefully reading and understanding the document.

Conditional offers

In a private sale, you can negotiate with the seller to make the sale subject to certain conditions such as finance, the sale of another property or a satisfactory building inspection.

If the contract is subject to finance, 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 your offer, the agent may come back to you for 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 in writing. Often more than one person is making an offer and the agent will negotiate between parties to get the highest possible price.

If you are making a written offer on the contract of sale, check that items of the property or goods (moveable personal property such as a dishwasher), agreed to as part of the purchase, are listed on the contract.

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

Contract of sale

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

GST

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

Do not sign the contract without checking whether GST applies. If you're 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, how it will be calculated and who will pay it.

Settlement period

Settlement is the date on which the balance of the purchase price is paid to the seller, and the property title is handed over to the buyer.

The seller sets the settlement date in the contract. Settlement is usually between 30 and 90 days but a buyer may be able to negotiate an alternative settlement period with the seller before signing the contract.

SELLER'S TIP TIP

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

Cooling-off period

A cooling-off period of three clear business days applies to private sales. This period allows the 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. The 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 where the:

- property was purchased within three clear business days before or after a public auction
- property is used mainly for industrial or commercial purposes
- property is more than 20 hectares and used mainly for farming
- buyer has previously signed a contract for the same property with the same terms
- buyer is an agent or corporate body.

When is it sold?

The property is sold when both parties have signed the contract. 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 TIP

Deciding how much to offer is difficult. You need to consider whether to make your best offer up front or offer a lower price and negotiate upwards.

If the seller receives multiple offers, they may accept another offer without giving you the opportunity to increase yours.

If you are not confident negotiating with the agent, you can use a buyer's advocate to bargain for you. You can expect to be charged a fee for this service.

Insert in the contract a date that your offer will lapse.

Sale by auction

Like private sales, auctions usually follow an advertising campaign with open house inspections.

The agent may contact prospective buyers to gauge their level of interest and the potential attendance at the auction.

Pre-auction offers and inspections

Offers may be made through an agent before the auction, if the seller agrees. These offers will usually be 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 before 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 to have a final look at the property, the relevant paperwork and the auction rules.

SELLER'S TIP TIP

Make sure your lowest selling price has been reached before the auctioneer declares the property 'on the market'. Bids may continue beyond this price; however, it is also possible there will be no further bids.

Auction rules

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.

Buyers should read them carefully before bidding. Auction rules are in the Sale of Land Regulations 2005 which are available at **legislation.vic.gov.au**.

Anyone at a public auction can ask the auctioneer a reasonable number of questions about the property, the contract or the rules and conduct of the auction. A bidder can also ask the auctioneer to indicate who made a bid.

Auction conduct

Specific rules regulate the conduct of auctions and how prospective bidders can participate. Substantial penalties may apply to anyone who breaks these rules.

Before bidding starts, the auctioneer must tell the audience:

- 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 and how they will be identified
- any additional conditions that apply to the auction.

Vendor and co-owner bids

Bids by the seller are permitted at auctions in two circumstances:

- a 'vendor bid' can only be made by the auctioneer on behalf of the seller because they are not satisfied with the amount of the last bid
- if 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' and can be made by a co-owner or a representative, but not through the auctioneer.

These bids are legal, but only if they are permitted by the auction rules. The arrangements for such bids must be set out in the rules displayed before the auction starts, and announced by the auctioneer before the auction starts.

Illegal 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 accepted by the auctioneer from a non-genuine bidder in the crowd.

SELLER'S TIP TIP

You cannot make a bid to advance the price of a property at auction; neither can anyone acting on your behalf, other than through the auctioneer.

Substantial fines apply for dummy and illegal vendor bidding.

BUYER'S TIP TIP

In order to bid successfully, you should:

- be clear about your bidding limit
- bid confidently
- ask questions of the auctioneer, including who made a bid.

Bidding at an auction

Different auctioneers have different methods of conducting an auction; but they usually try to encourage as many bidders as possible to compete, to get the highest price.

The auctioneer can set the dollar amount of bid increases, which are called rises or bidding advances. The bidder may bid at the amount stated by the auctioneer or offer an alternative amount. The auctioneer may accept or reject that bid.

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

The auctioneer can refuse any bid, at any time during the auction, including when the auction hammer is falling. If there is a disputed bid, the auctioneer may resume the auction at the last undisputed bid or start the bidding again. They can also refer a bid to the seller at any time before the auction concludes and withdraw the property from sale at any time during the auction.

'On the market'

During an auction the auctioneer can pause proceedings and say they are 'going inside' or 'seeking advice or instructions' from the seller.

Generally, if the seller is satisfied the reserve has been reached, or is prepared to sell at the bid offered, the agent will then announce that the property is 'on the market'.

This means that the property will then be knocked down to the highest bidder.

If the reserve has not been met, the auctioneer will seek further bids. If the reserve is still not met, then the property may be 'passed in'.

When is it sold?

After the fall of the hammer, no more bids will be accepted and the highest bidder will be invited to sign the contract of sale.

However, there is no legally binding contract until both the buyer and seller have signed the contract of sale. The buyer must also pay the deposit specified in the contract (unless otherwise agreed).

The buyer cannot make the contract subject to conditions and there is no cooling-off period in a sale at auction.

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'.

The highest bidder then has the first right to negotiate with the seller.

Advertising after an auction

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

For more information, visit **consumer.vic.gov.au**.

After the sale

After the sale, several steps take place before the buyer takes possession of the property. The legal practitioner 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. This happens either when the buyer makes their offer or by the date stated in the contract of sale. The deposit is held by the seller's agent, conveyancer or legal practitioner, in a trust account, until settlement.

A seller who does not have an agent and who receives a deposit must pay it to their legal practitioner or conveyancer, or bank it in a special purpose account in an authorised Victorian deposit-taking institution. 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 before settlement. In this case, the contract must have become unconditional and the buyer must be satisfied with the proof of debts information – that is, a statement by a seller detailing any mortgage or any other loans relating to the property. When 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 legal practitioner 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 property valuation. 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. If it doesn't the lender may refuse to provide finance. The buyer generally obtains pre-approved finance before making an offer for a property or bidding at auction.

Insurance

Even though the property may be covered by the seller's insurance up to the date of settlement, buyers should consider taking out building and contents insurance effective from the date of signing the contract. The buyer's lending institution will generally require this to safeguard the lending institution's interest as the lender.

Pre-settlement inspection

Buyers are entitled to inspect the property 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

Settlement

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

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.

Duty (formerly stamp duty)

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 greater. It applies to the GST-inclusive price of a new property.

There are generally two sets of duty rates:

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

If you're buying a property to live in, you can expect to pay the principal place of residence rate.

Duty exemptions may apply for certain concession card holders and first home buyers with children. Visit **sro.vic.gov.au** for complete details including a duty calculator.

Transfer of land

This document transfers the land from the seller to the buyer. It is lodged with Land Victoria 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 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 offering a free information and dispute resolution service on residential real estate matters.

Buyers and sellers who have issues with an agent or questions about a real estate sale or purchase can call EARS on 1300 73 70 30 or visit **consumer.vic.gov.au**.

Penalties

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

☑ Buyer's checklist

- ☐ 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. If you buy at auction you will need a pre-approved loan, as the property will not be offered subject to finance.
- ☐ Have you selected your preferred suburb or location?
- ☐ What features are you looking for in a property (for example, number and size of bedrooms)?
- ☐ Have you inspected similar properties in the area and found out how much they sold for?
- ☐ Do you understand the differences between a private sale and an auction?
- ☐ Does the property require building and pest inspections?
- ☐ Will you need to make the purchase subject to these inspections?
- ☐ Has your legal practitioner or conveyancer checked over the section 32 (vendor's statement) and the contract of sale?
- ☐ Have you developed a strategy for bidding at auction or for making an offer for a private sale?
- ☐ Are you clear about your cooling-off rights (if any)?
- ☐ 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?
- ☐ Do you have your deposit organised to be paid when required by the agent?
- ☐ Have you checked that all items you believe come with the property are in good working order and ensured they are in the contract of sale?
- ☐ Have you checked those items on final inspection?
- ☐ If you have decided to do your own conveyancing, have you purchased a kit?

Seller's checklist

- ☐ Have you researched how much your property is worth?
- ☐ Have at least two separate agents presented you with a marketing plan and appraised the likely selling price of your property?
- ☐ Have prospective agents provided sales records of other properties similar to yours for comparison?
- ☐ Have you chosen a conveyancer or legal practitioner to prepare the vendor's statement (section 32)?
- ☐ 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?
- ☐ Have you carefully looked over the authority to sell and other documentation the agent has provided for you to sign?
- ☐ Have you given written instructions to your agent clearly stating which items in the property are not to be included in the sale?
- ☐ Have you agreed with your agent about the price the property is to be advertised at?
- ☐ Have you specified in your authority with the agent, the level of service to be provided?
- ☐ Have you given your agent instructions about the offers you are willing to consider?
- ☐ Have you discussed and settled the terms of your proposed contract, including the time for settlement, with your agent, conveyancer or legal practitioner?
- ☐ Before accepting an offer on your property, have you discussed the details with your agent, conveyancer or legal practitioner?
- ☐ 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?
- ☐ If you have decided to do your own conveyancing, have you purchased a kit?

Glossary

Agent A licensed person authorised to act for someone else, usually the owner, in selling, buying, renting or managing a property.

Agent's representative Someone who is not a licensed agent but is employed by or acts for them, and performs the function of an agent. (See also **Agent**)

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

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

Body corporate See Owners Corporation.

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

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

Building inspector Must be registered as such with the Building Practitioners Board. Can 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 Must be registered as such with the Building Practitioners Board. A building surveyor 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 agent who acts solely for the buyer, sourcing suitable properties and representing them 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 Latin term meaning 'let the buyer beware'. It is the buyer's responsibility to ensure that the property meets their approval before 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, caveats, easements or encumbrances.

Chattels Moveable personal property or furniture. Not generally part of the property unless specifically stated in the contract of sale. See also 'Goods'.

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

Common property Areas of a property used by and belonging jointly to all owners. 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.

Contract of sale A legal document prepared by the seller, usually with the aid of a legal practitioner 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. Often performed by a legal practitioner or conveyancer.

Co-owner 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 may wish to buy out the other's share. Both parties are known as co-owners.

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

Covenant An agreement creating an obligation on the title-holder 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, usually 10 per cent, paid by the buyer when contracts are signed. The deposit must be held in a trust account by an estate agency, by the seller's legal practitioner or conveyancer or jointly in a trust account by the seller and buyer.

Deposit bond (or deposit guarantee) Offered by some lenders as an alternative to a cash deposit.

Disbursements Additional charges by some legal practitioners 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 bidding is illegal and includes 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.

Duty (formerly stamp duty) A state government tax, based on the sale price of a property, paid by the buyer when property ownership is transferred.

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

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 agent estimates a property will attract. It must be recorded on the authority to sell either as a single figure or a range when the difference between the top and bottom figures is not more than 10 per cent. For example: $400,000 to $440,000.

Equity 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 sro.vic.gov.au for further information.

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. (also see Torrens title)

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

Goods and Services Tax (GST) A consumption tax of 10 per cent levied on the final consumer of goods or services. The supplier of the transaction is responsible for collecting the GST and sending it to the Australian Taxation Office (ATO). GST is payable on the agent's commission. It applies to new homes and existing homes if the seller is registered for GST.

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

Model rules (owners corporations) these are set out in the Owners Corporations Regulations 2007. If your owners corporation does not make a rule covering any item in the model rules, then the model rules apply.

Off the plan Purchasing off the plan involves buying a property before it has been built, usually based on the developer'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. (also see 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 in which a property for auction is not sold, usually because it has not reached the seller's reserve price.

Principal The amount of a loan without interest or other charges.

Private sale A sale negotiated between the buyer and seller, usually through 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 legal practitioner.

Reserve Bank of Australia Australia's central bank, which is responsible for regulating monetary policy, including the official interest rate.

Reserve price A seller's minimum sale price. 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.

Stamp Duty See 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 in which each person owns a share of the property, equally or unequally. When one owner dies, their 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 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 buyer.

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 the amount of 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 (terms contract) When a loan is supplied by the vendor rather than by an established lender.

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

Useful contacts

Consumer Affairs Victoria

Victorian Consumer & Business Centre
113 Exhibition Street
Melbourne Victoria 3000

1300 55 81 81

Estate Agents Resolution Service (EARS)

1300 73 70 30

Building Advice and Conciliation Victoria (BACV)

1300 55 75 59

consumer.vic.gov.au

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

Australian Institute of Conveyancers (Victoria Division)

PO Box 466
Ringwood Victoria 3134

(03) 9876 8221

aicvic.com.au

Business Licensing Authority (BLA)

1300 135 452

bla.vic.gov.au

Consumer Action Law Centre

Level 7, 459 Little Collins Street
Melbourne Victoria 3000

(03) 9629 6300

consumeraction.org.au

Information Victoria Bookshop

Level 20, 80 Collins Street
Melbourne Victoria 3000

1300 36 63 56

bookshop.vic.gov.au

Land Victoria

Level 16, Marland House
570 Bourke Street
Melbourne Victoria 3000

(03) 8636 2000

land.vic.gov.au

Law Institute of Victoria (LIV)

470 Bourke Street
Melbourne Victoria 3000

(03) 9607 9311

liv.asn.au

Real Estate Institute of Victoria (REIV)

335 Camberwell Road
Camberwell Victoria 3124

(03) 9205 6666

reiv.com.au

Victorian Civil and Administrative Tribunal (VCAT)

55 King Street
Melbourne Victoria 3000

(03) 9628 9755

vcat.vic.gov.au

Consumer Affairs Victoria

Consumer Affairs Victoria

Victorian Consumer & Business Centre
113 Exhibition Street
Melbourne 3000

consumer.vic.gov.au
consumer@justice.vic.gov.au

1300 55 81 81 (local call charge)

Services from Consumer Affairs Victoria are also available at Ballarat, Bendigo, Box Hill, Broadmeadows, Dandenong, Geelong, Mildura, Morwell, Wangaratta and Warrnambool. Our mobile service regularly visits rural communities.

August 2012
MEB-07.3-12

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