

Quick Guide: Before you sell

If you're getting ready to sell your property, we have gathered our top tips and the most helpful resources for how to maximise the property value, how the process works, and common pitfalls.

Once you're ready to go, contact us and we can promptly draft your contract of sale and section 32 vendor's statement.

Introduction

Whether it's your family home or a 300-apartment complex, all vendors want to get the best price possible with minimum hassle.

Our tips for navigating the transaction successfully are:

1. Consider the timing, especially if you are buying your next house at the same time.
2. Budget for all the transactional costs: agent's commission, marketing fees, conveyancing, loan discharge fees, etc.
3. Prepare the property for sale, to make it as attractive as possible for buyers.
4. Know what your property is worth: research the market.
5. Choose an estate agent who you trust, and negotiate the fees and terms of authority carefully.
6. Decide with your estate agent the sale and marketing strategy.
7. Get your contract of sale and section 32 vendor's statement prepared in advance.

8. If in the past 6.5 years, you personally built the house or undertook renovations, you need a building report and/or insurance certificate before you are allowed to sell.

We have also compiled for you here the best resources on the web, to give you a smooth ride through the whole process.

Consider the timing

Timing can be everything in a property sale. Some factors to consider:

- the property market, is it a rising or falling market? It might be worth bringing forward or pushing back your sale;
- the number of properties on the market, the market is usually a little busier around spring;
- avoid major sporting and public holiday weekends for auctions, and try to have yours no earlier than midday;
- if you or your co-owners' income differ from year to year, consider selling in a year when that income is low;
- for off-the-plan sales, income generally counts in the year in which

the contract of sale is signed, rather than the settlement date, so it may be better to sell your development over multiple financial years;

- if you are buying your next house at the same time, try to align the settlement dates so that you have enough funds to settle your purchase and have somewhere to stay if your sale settles earlier; and
- if a tenancy is about to end, consider waiting for that to happen first. It'll make cleaning it up and showing it to prospective buyers easier.

Know the transactional costs

There are costs to selling, some of which you incur before you receive the funds, so keep them in mind:

- agent's commission and marketing fees: it pays to shop around as this can differ widely;
- legal or conveyancing costs: speak to your lawyer or conveyancer;
- mortgage discharge fees: ask your lender whether you might need to pay a fee because you are discharging your mortgage early;
- moving costs, possibly two moves if your sale settles before your purchase;
- bridging finance fees, if your sale completes after your purchase, and you need a loan to cover the period in between;

- the cost of any repairs or renovations that will need to be done before sale, or if you agree to do them for a purchaser; and
- capital gains tax may be payable when you sell your property, and you may need to remit GST in certain circumstances: speak to your lawyer or accountant to find out more.

Prepare your property

It's common sense: the better your property looks, the higher price it'll fetch. This is especially true in today's photograph-obsessed internet age. Get the weeds under control, plant some flowers, add a slick of paint, clear out some clutter.

If your property is leased, you have a right to show the property to prospective buyers or to allow agents or photographers access, as long as you give your tenant proper notice. See Consumer Affairs Victoria for more details -

<http://www.consumer.vic.gov.au/housing-and-accommodation/renting/during-a-lease-or-residency/landlord-or-owner-entry-to-the-property>.

If the lease is about to end, or is on a month-to-month basis, discuss with your real estate agent whether the property would be more attractive to buyers with or without the tenant. If you decide to end the lease, take the timing into account, and do it lawfully: see <http://www.consumer.vic.gov.au/housing-and-accommodation/renting/ending-a-lease-or-residency/landlord-or-owner-ending-lease-or-residency/landlord-giving->

notice-to-vacate. Also consider what to do if you fail to sell.

Research the market

You need to have a realistic idea of what your house is worth. Speak to multiple local real estate agents, and monitor the public resources:

- check the weekly REIV auction and private sale results for your area – <http://www.reiv.com.au/Property-Research/Auction-Results> (select your suburb towards the bottom of the page);
- for older sales, check the free websites at <http://www.realestate.com.au/sold>; <http://house.ksou.cn/>; <http://www.getsoldprice.com.au/>;
- you can also pay for a comprehensive property report from a property data provider, or ask a real estate agent for a free report.

Choose a real estate agent

Most property is sold through real estate agents, and in our experience, that is the most reliable and cost-effective way to get a good price for property.

Consumer Affairs Victoria has a great guide on the pros and cons of using an estate agent, and how to deal with them: <http://www.consumer.vic.gov.au/housing-and-accommodation/buying-and-selling-property/selling-property/selling-property-with-or-without-an-agent>.

Our tips for estate agents are:

- Shop around the local agents until you find one you are comfortable with; and
- Before you sign anything, understand fully the commission agreement, the sale authority, the advertising strategy and costs.

Decide the sale strategy

Your agent will advise you on the best sales strategy for your home and your goals.

Consumer Affairs Victoria has some guides on deciding how to sell, and how each sale process works:

- Selling methods: <http://www.consumer.vic.gov.au/housing-and-accommodation/buying-and-selling-property/selling-property/property-sales-method-and-price>.
- Auctions: <http://www.consumer.vic.gov.au/housing-and-accommodation/buying-and-selling-property/selling-property/selling-property-by-auction>.
- Private sale: <http://www.consumer.vic.gov.au/housing-and-accommodation/buying-and-selling-property/selling-property/selling-property-by-private-sale>.

You should also consider what you will do if the property fails to sell, especially if you want to purchase another property.

Prepare the legal documents

Around the same time as engaging the estate agent, you will need to get a conveyancer or lawyer involved to draft the contract of sale, and the section 32 vendor's statement.

These documents take a few weeks to draft properly (because information has to be sought from various third parties like local councils and utilities providers), and getting it wrong will mean that any future purchasers will have a right to back out of the contract. **This is very inconvenient and expensive!**

Having these documents ready early also helps your prospective buyers know early on exactly what is being sold, and allows them to start giving you offers earlier.

It is illegal for estate agents to draft these documents, though they are allowed to fill in one that has been drafted by a lawyer or conveyancer.

As for retaining a lawyer or a conveyancer, the main difference is that lawyers can advise and act on broader issues like the most tax effective way of making your sale and related legal disputes, like recovering damages if a party cancels the sales contract or fails to settle. See Consumer Affairs Victoria for more details:

<http://www.consumer.vic.gov.au/housing-and-accommodation/buying-and-selling-property/selling-property/conveyancing-and-contracts-for-sellers>.

Owner-builders

There are extra legal requirements if you are an owner-builder. They cover you if you personally built the house, or undertook any renovations, in the past 6 years and 6 months.

The requirements can be quite complicated, so you should always check with your lawyer or conveyancer whether the requirements apply to you. In very general terms:

- if you are not a registered builder, you need to get a building report for the property and give it to the purchaser, and the report cannot be more than 6 months old at the time of sale;
- whether or not you are a registered builder, if the building or renovations cost more than \$16,000, you will also need to get insurance for the work, and provide the certificate of insurance in your section 32 vendor's statement / sale contract; and
- in all cases, there are extra warranties implied into the sale contract:
http://www.austlii.edu.au/au/legis/vic/consol_act/ba199391/s137c.html.

Find out more

Call us on (03) 9041 7733 if you would like to find out more.

The Fitzroy Legal Centre's law handbook is a good reference for the legal aspects of a property transaction -
<http://www.lawhandbook.org.au/handbook/ch14s01.php>.

There are many helpful resources on the web to help property sellers. Always check when they were written, as the law and industry practices change quite frequently, and there are many outdated articles.

Finally, do as much research as you can for such an important purchase!

Our related services

Our fees for related services are:

| Service | Legal fee (incl GST) | Gov't fees | Total (incl GST) |
|--|----------------------|-------------|------------------|
| Conveyance: established residence – vendor | \$660 | \$160-\$200 | \$820-\$860 |
| Conveyance: off-the-plan | \$550+ | \$160-\$200 | \$710+ |

About the author



Growing up in a family of property developers, real estate is in Lucy's blood. It's that experience and her time at her previous commercial and property law practice

that allows Lucy to cut to the chase, identify the real issues, give you practical advice alongside the legal, and help you with anything from selling the family home to your 300-apartment block.

Lucy can also draw from her years of experience at the Australian Tax Office and Victorian State Revenue Office to help you structure your property

transactions in the most tax-effective way.

About Kai Legal

Kai Legal is a modern commercial law practice based in the Melbourne CBD.

Our focus areas are:

- property law, in particular property development and planning;
- state and federal taxes, in particular Victorian stamp duty and other property-related taxes;
- competition and consumer law; and
- general commercial law.

We aim to give you peace of mind over all of your legal matters.

About this publication

Kai Legal fact sheets provide general information, and are not legal or financial advice. These are not complete summaries of the law, and only touch on select points and scenarios that may be relevant to our readers.

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