

HOW DO I SELL MY
PROPERTY?

**INFORMATION
GUIDE FOR
VENDORS**

FORTY FOUR DEGREES LAWYERS
AND CONSULTANTS



FORTY FOUR DEGREES
Lawyers and Consultants

Firstly, we would like to thank you for engaging our firm to assist you in your conveyancing transaction. Forty Four Degrees Lawyers and Consultants prides itself on the level of service provided, and looks forward to assisting you throughout this transaction. We encourage you to contact our office with any queries you may have in relation to the sale of your real estate.

In an effort to reduce the amount of paper we use we endeavour, where possible, to communicate with you via either email or telephone. We invite you, where possible, to do likewise.

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Please note: this guide is designed to help you understand the process of selling your property. While other guides can provide you with helpful tips about how to maximise the sale price of your property (Hint: indoor plants!), this guide simplifies the complex legal process of being a property vendor.

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OVERVIEW

First Steps

AND SO IT BEGINS.

CHOOSING A
SOLICITOR



FIND A REAL
ESTATE AGENT



MEETING US



DECIDING
YOUR TERMS

Contract

DRAFT AND COPY.



VENDOR'S
STATEMENT



PUT IT ON THE
MARKET



AUCTION VS.
PRIVATE
SALE



ACCEPTING
AN OFFER

THE DAY OF
SALE

SECTION 27
STATEMENT

Preparing for Settlement

IN FOR A PENNY, IN FOR A POUND.



DISCHARGE
AUTHORITY

FOREIGN
RESIDENT
CAPITAL GAINS
WITHHOLDING

GST
WITHHOLDING
FOR NEW
PREMISES

ADJUSTMENTS

STAMP
DUTY

PEXA
WORKSPACE

Settlement

TYING UP LOOSE ENDS.



NOTICE OF
DISPOSTION

CONTACT
YOUR
ACCOUNTANT

CHA-CHING!

First Steps

AND SO IT BEGINS.

Choosing a Solicitor

The legal process of transferring ownership of your property is called conveyancing. To ensure a successful and worry-free transaction, you should consult a solicitor for guidance throughout the process. A solicitor who specialises in property matters can give guidance to prevent mishaps that can be very costly. Furthermore, they can ensure that things run smoothly, preventing long, drawn out hold-ups that can occur if the paperwork isn't correctly completed the first time around.

An additional thought to keep in mind for those who are selling and buying: it is generally better to use the same solicitor for both transactions to cut down on costs.

Find a Real Estate Agent

Your real estate agent plays a critical part in the property selling process. A good real estate agent should give you tips on how best to prepare your home for inspections, provide information on the market in your area and communicate with both you and your solicitor, ensuring everyone is on the same page throughout the process.

The best real estate agents have in-depth knowledge of your community and charge low commission fees. Shop around and pick an agent that feels right for you.

Meeting Us

Congratulations! You've decided to choose us to assist with your property sale. The first thing to do is schedule in a time to meet us face-to-face. At the initial meeting we'll discuss your expectations for the property sale, as well as verifying your identity.

Verification of Identity

As a result of changes in the legislation surrounding conveyancing, we need to comply with new verification of identity requirements. This means we are obliged to verify:



Your identity;

That you are a legal person; and

That you have the right to enter into the relevant instrument or dealing.

This means you will need to attend our office for a meeting with one of our solicitors, or you can meet with us via Zoom or Teams following the COVID-19 pandemic. You will need to bring ID to this meeting, to the full criteria of ONE of the categories in the table [on the next page](#).

Alternatively, if you are unable to attend our office we will provide you with a verification of identity document for Australia Post. With this document and the required ID, you can attend one of Australia Post's branches to have the verification of identity completed. Please note however not every branch can provide this service, so please call ahead to ensure your local branch offers a verification of identity service.

Client Authorisation Form

Following your first meeting with one of our solicitors, you will also need to sign a client authorisation form. This form gives us the ability to conduct the transaction on your behalf. We will provide you with a copy of the terms at your meeting.

FLIP TO THE NEXT PAGE FOR THE TABLE ON IDENTIFICATION.

FOR PERSONS WHO ARE AUSTRALIAN CITIZENS OR RESIDENTS	
<i>Category</i>	<i>Minimum document requirements</i>
<input type="checkbox"/> Category 1	Australian or foreign passport AND Australian drivers licence OR Photo card AND if name has changed Marriage certificate OR Change of name certificate
<input type="checkbox"/> Category 2	Australian or foreign passport AND Full birth certificate OR Citizenship certificate OR Descent certificate AND Medicare card OR Centrelink card OR Dept. Veterans' Affairs card AND if name has changed Marriage certificate OR Change of name certificate
<input type="checkbox"/> Category 3	Australian drivers licence OR Photo card AND Full birth certificate OR Citizenship certificate OR Descent certificate AND Medicare card OR Centrelink card OR Dept. Veterans' Affairs card AND if name has changed Marriage certificate OR Change of name certificate
<input type="checkbox"/> Category 4(a)	Australian or foreign passport AND Another form of government issued photographic identity document AND if name has changed Marriage certificate OR Change of name certificate
<input type="checkbox"/> Category 4(b)	Australian or foreign passport AND Full birth certificate AND Another form of government issued identity document AND if name has changed Marriage certificate OR Change of name certificate
<input type="checkbox"/> Category 5(a)	Identifier Declaration AND Full birth certificate OR Citizenship certificate OR Descent certificate AND Medicare card OR Centrelink card OR Dept. Veterans' Affairs card AND if name has changed Marriage certificate OR Change of name certificate
<input type="checkbox"/> Category 5(b)	Identifier Declaration by a person specified in Verification of Identity Standard paragraph 4.4(e) AND Medicare card OR Centrelink card OR Dept. Veterans' Affairs card AND if name has changed Marriage certificate OR Change of name certificate
FOR PERSONS WHO ARE NOT AUSTRALIAN CITIZENS OR RESIDENTS	
<input type="checkbox"/> Category 6(a)	Foreign passport AND Another form of government issued photographic identity document AND if name has changed Marriage certificate OR Change of name certificate
<input type="checkbox"/> Category 6(b)	Foreign passport AND Full birth certificate AND Another form of government issued identity document AND if name has changed Marriage certificate OR Change of name certificate

Eligible identification material to confirm your identity.

Deciding your Terms

It is important to set clear expectations from the beginning of the transaction. How much are you willing to accept? How long are you willing to wait to sell? Will you throw in any extras, like your furniture or the swing set in your backyard?

It may be helpful to list out what you want from the transaction and what your priorities are. For example, if you're willing to accept a lower sale price for a quicker transaction, or would prefer to wait to get a better price, you should let the real estate agent know so they can communicate these preferences to any interested purchasers.

Before the real estate agent puts the property on the market, we will prepare a contract of sale. The contract of sale consists of:

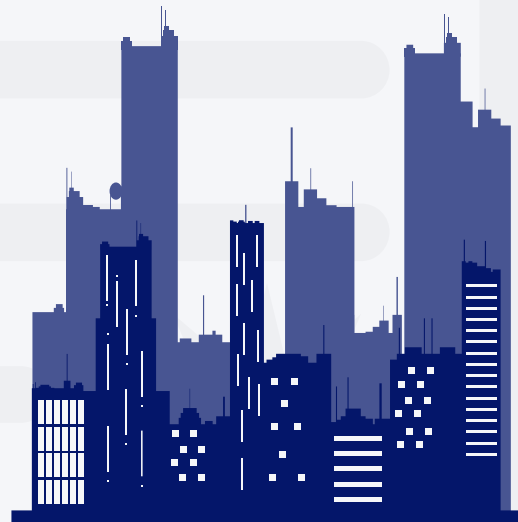
1. Particulars of Sale – the who, what, where, and when of the transaction.
2. Special Conditions – if you or the purchaser have any special terms you'd like to include, they will go here.
3. General Conditions – these conditions apply to all property sales and can be amended by special conditions. We'll go over any conditions you aren't sure about with you.
4. Section 32 Vendor's Statement – more below.

Vendor's Statement

A Vendor's statement, also known as a Section 32, is a document that must be prepared by the Vendor of a property and given to the Purchaser before a contract of sale is signed. This is a legal document and will be prepared by us.

A Vendor's statement must include the following information:

- Any debts secured against your property (charges);
- Any easements, covenants, or restrictions affecting your property. An easement allows for another person to use your property in a limited manner, such as your neighbour's drainage pipe flowing through your property. A covenant affects the way the property owner may use their property. For example, a covenant might state that the house is not to be used as a business;
- If the land is in a designated bushfire prone area, a statement that it is in such an area must be issued;



- The amounts of any rates, taxes and charges affecting the land;
- If there is an owner's corporation, information regarding that owner's corporation must be attached;
- Disclosure of non-connected services and growth-areas infrastructure contribution details if applicable; and
- Evidence of title.



What don't you need to include?

- Information regarding the condition the buildings are in;
- Whether the buildings comply with building regulations; and
- The accuracy of the measurements on the title.

If you have previously entered into a contract of sale with regards to the property, having provided a Vendor's statement, a subsequent contract in relation to the same land with substantially the same terms does not need a new Vendor's statement.

Important: if the Vendor's statement is incorrect or incomplete, the buyer may be able to withdraw from the sale and pursue legal action. It is crucial that this document is prepared correctly which is why a solicitor or conveyancer with proper expertise is recommended.

To prepare the Vendor's statement properly we will order property certificates with the required information. Property certificates range between \$300-\$600 depending on where your property is located and whether any of the above details must be included.

Putting the Property on the Market

Your real estate agent will set up a time and date to take pictures of your property. You should ensure the property is tidy and well presented for the pictures. As soon as the property is listed, be prepared for enquiries! There will be a number of inspections scheduled leading up to the day the contract is signed.

Should you go to Auction?

One of the things you must consider, is what method you want to use to sell your property. You should consult with your real estate agent about what method best suits your property. This can be influenced by factors such as location and the current state of the market.

Legally speaking, the main difference between an auction and private sale of your property is that a purchaser through auction is unable to make use of a 'cooling-off period'. In a private sale, the buyer has a set amount of time in which they can cancel the transaction, generally 3 clear days. If they buy through auction, however, there is no cooling-off period.



Accepting an Offer

When you receive an offer, you should consult with your real estate agent as to whether it is reasonable. Setting clear expectations (see previous page) will help you determine whether or not you should accept the offer.

Purchasers will often offer less than what they are willing to pay, and you should be open to negotiating if you think your property is worth more. You should also take into consideration any special conditions requested by the purchasers. Often purchasers will request that the contract is subject to some, or all, of the following clauses:

The purchaser can terminate within a set period of time, usually 7-14 days, if:



Subject to finance – they are unable to get a loan approved to finance the purchase;



Subject to building inspection – if they obtain a building inspection that reveals major defects in the property;



Subject to pest inspection – if they obtain a pest inspection that reveals major defects in the property.

Negotiations

During the process of reviewing offers, you will need to agree with the Purchaser on the following:

- How long between 'day of sale' (the time at which the final contract is exchanged) and 'settlement' (the time at which the property actually changes hands)?
- What fixtures and fittings are included in the sale? Is there a rug that really ties the room together that the buyer wants? At what price should these items be included in the sale?
- Are there any discounts you are willing to consider based on the Purchaser's bank valuation? Are you willing to offer a discount due to other factors, such as mould in the bathroom?

A formal offer by a Purchaser will be presented in the form of a signed contract.

To accept the offer, you will need to sign and date the signing page, and initial next to any special conditions requested by the purchaser.

Day of Sale

Now that the terms of sale have been negotiated, you can finalise the contract and sign it. The deposit will be paid, and at this point both you and the buyer will be legally committed to the sale, subject to any special conditions or conditional clauses.

The Day of Sale is the day when both parties sign the contract.

Section 27 Statement

Generally, the deposit paid by the Purchaser will be released to you on the settlement date along with the balance. There is, however, a process that may allow the deposit to be released to you earlier. The process is an Early Release of Deposit Authority, or a Section 27, as it is laid out in Section 27 of the Sale of Land Act (VIC).

An Early Release of Deposit Authority is a form that must be signed by both parties. It gives authority to the agent holding the deposit to release the amount to the Vendor before settlement. This would typically only be done in circumstances where it is considered 'safe' to do so, and the Vendor must give a notice in writing setting out the particulars of any mortgages or caveats on the land.

Generally, if the Purchaser does not object to an early release of the deposit, you will be entitled to the release 28 days after serving the section 27 statement on the purchasers.

It is important to note that a Section 27 is not guaranteed. You should consult us to find out whether it is appropriate for your transaction. A Section 27 can be very helpful for you as a Vendor, especially in circumstances where you may wish to use the deposit from your sale as a deposit on a new home. While you should not rely on it, a Section 27 can be a useful tool if used in the right circumstances.

Preparing for Settlement

IN FOR A PENNY, IN FOR A POUND.

Discharge Authority

A discharge authority is a vital step in selling your property. A discharge authority alerts your bank that you wish to discharge the mortgage over your property. It is necessary to complete a discharge authority form before settlement. If you do not do so, the mortgage will still be registered as an encumbrance on the property and settlement may be delayed.

If you are selling your property and paying off your mortgage in full, or have already paid off your mortgage but have not lodged documents to remove the encumbrance on the title, a discharge authority is necessary. It is also necessary in circumstances where you are re-financing to another lender or loan.

The first step is to notify your lender that you wish to discharge your mortgage. They will then ask you to complete a discharge authority form, which you can usually find online for each specific lender. After you complete and return the form the lender will process it; this usually takes upwards of 10 business days, so be organised and get in quick before settlement. The lender will register the discharge of mortgage in the same online settlement workspace, and will usually charge a processing fee of a few hundred dollars to do so.



Foreign Resident Capital Gains Withholding Certificate



As of 1 January 2025, all Vendors must prepare a foreign resident capital gains withholding clearance certificate, which is provided to the ATO notifying them of whether foreign resident capital gains withholding applies to the sale of your property. A copy must also be provided to the Purchaser before settlement. Property value thresholds no longer apply.

This is a very important step to complete, as you don't want any amount of tax withheld from the sale of your property that you don't need to pay. We will apply for the foreign resident capital gains withholding clearance certificate on your behalf.

GST Withholding Notification for New or Potential New Residential Premises

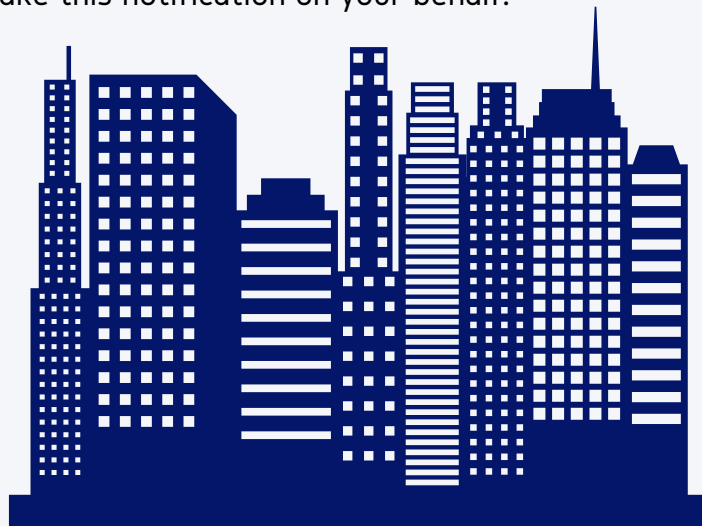
As a Vendor under the scheme applying from 1 July 2018, it is necessary that you give notice if you are selling any 'residential premises' or 'potential residential land' to the purchaser, and advise the purchaser of the correct Goods and Services tax (GST) treatment.

These changes mean that the purchaser of new residential premises or potential residential land will withhold GST at settlement and pay this directly to the ATO. Previously, the GST would form part of the purchase price and the Vendor would remit the GST amount to the ATO post-settlement. These changes come as part of a crackdown on developers, who have been avoiding remitting the GST amounts paid to them by dissolving their companies after settlement, but before remittance of the GST.

What does this mean for you?

While the purchaser only needs to remit GST if the land is either new residential premises or potential residential land, as the Vendor you must notify Purchasers of their GST obligations regarding sale of any residential premises or potential residential land, with some limited exceptions. This notice should set out your name, ABN (if applicable), the amount to be withheld by the purchaser, and the date they should pay the withheld amount. You will be entitled to a GST credit for the amount paid by the purchaser to the ATO, if any, which means that the effect, in substance, is a change to your cashflow.

This is an important notification to complete correctly, as the penalties for failing to do so are significant. To ensure the notification complies with legislation, Forty Four Degrees will make this notification on your behalf.



Online Settlement Workspace

Most conveyancing transactions today are conducted electronically through an Electronic Lodgement Network Operator (ELNO). The most popular ELNO is PEXA. PEXA, or Property Exchange Australia, is Australia's online property exchange network. It allows for documents to be lodged and financial settlements to occur electronically. Subscribers to the service, such as your solicitor, will create a new workspace for each new property settlement. This allows for a quicker and more cost-effective method of conveying the property to the Purchaser than the traditional in-person settlement process.

Stamp Duty Assessment

As of August 2019, Land Use Victoria has mandated that all transactions must be lodged and managed online. This means that the stamp duty assessment must now be settled electronically, speeding up the process and reducing costs.

Forty Four Degrees will use Duties Online, a State Revenue Office system, in order to calculate the duties payable for the transfer of your property. While generally there is no duty payable for the Vendor, the Vendor's solicitors are responsible for initiating the form to calculate the duty payable for the purchaser.

Once the form is complete you will receive a notification requesting your electronic signature. At this stage, you should review the information in the form and sign it if all information provided is correct. Duties Online is also used to complete a range of other State Revenue Office related activities like paying stamp duty for other property transfers, applying for complex assessments for duty, or applying for a duty refund if there has been an overpayment.

Statement of Adjustments

The statement of adjustments will be prepared by the Purchaser's solicitors prior to the settlement date. We will then approve the adjustments on your behalf. This document will set out the purchase price, adjusted on the basis of deposit and any prepaid amounts or arrears owed on the property. For example, if you have paid the property taxes up until a date that is later than the settlement date, the solicitors will adjust the statement to ensure that you are reimbursed for your overpayment. This also works the other way around. If you have not paid the rates up until the date of settlement, the statement will be adjusted to give the purchaser a credit against the purchase price equivalent to the amount they will need to pay.

The most commonly adjusted rates and taxes include council rates, water service charges and usage charges, tax, and owner's corporation fees, although others may also apply.

Settlement

TYING UP LOOSE ENDS.

The settlement date is the date when the property officially changes ownership and you are paid the balance of the purchase price. Settlement is conducted by us and the purchaser's solicitors. As the Vendor of a property, you are required to deliver vacant possession of the property on settlement. This means you should move out and have the property professionally cleaned prior to the settlement date.

Notice of Disposition

A notice of disposition is a common form to be completed by vendors. It must be lodged with the relevant water authority and council for your property, and essentially informs them that you are no longer the owner of the property. This ensures that you are not being billed for the Purchaser's water usage!

Contact your Accountant

Congratulations on completing your sale! Now that the sale is complete, there may be a number of loose ends to tie up. These could include GST or capital gains implications from the sale, and we recommend you contact your accountant to assist with understanding your new financial position.



**OUR FEES AND
ADDITIONAL COSTS**

PRICE LIST

All prices are inclusive of GST.

**CONVEYANCING FEE
\$1700**

**PROPERTY CERTIFICATES
~\$300-\$600**

**PAPER SETTLEMENTS
\$600**

**RESETTLEMENTS
\$300**

**CAVEAT LODGEMENT OR
WITHDRAWAL
\$200**

Ask us about our referral discounts.

Fees may still apply if the contract does not proceed after preparation.

ONE LAST THING...

NOTICE

Please note, this guide is general information only and does not constitute legal advice. The guide is an overview of simple property sales. For detailed information and complex transfers, please contact us for a confidential discussion.

We recommend you contact us to discuss your particular needs for the following:

- New builds
- Off-the-plan sales
- Property developments
- Development acquisitions
- Complex title transfers, partitions and Foreign vendors
- Estate transfers and transmission applications