

This article makes a comparison of the law of Sale and Purchase of Residential Properties in the states of New South Wales (NSW) and Victoria (the two most populous states in Australia).



A. CONTRACT FOR THE SALE AND PURCHASE OF LAND

In all Australian states and territories, a formal written contract signed by both parties (purchaser and vendor) is required when partaking in property or land related transactions.

A contract only becomes binding when both parties have 'exchanged and dated the contract' after signing it.

Conveyancing practices and legislation in NSW and Victoria are regularly reformed. It is important that these reforms are complied with to ensure a smooth transaction. For instance, as of 1 July 2018, a new 2018 edition of the 'Contract for the Sale and Purchase of Land in NSW' should be used. While previous editions can be used, it is recommended that the latest edition be used as it is in accordance with the law as amended.

A.1. CONTRACTS IN NSW

Along with the 'standard provisions' contained in the 'Law Society of NSW / Real Estate NSW' Contract (including the details of both parties and the property), under section 52A(2)(a) of the *Conveyancing Act 1919* (NSW) ("the Act") the Vendor must attach or annex certain documents to the Contract.

The Conveyancing (Sale of Land) Regulation 2017 ("Conveyancing Regulations") refers to these documents as 'Schedule 1 Prescribed Documents'.

The main prescribed documents are:

1. A section 10.7 certificate (this is a zoning certificate obtained from the local council under section 10.7 of the *Environmental Planning and Assessment Act 1979*)
2. Service drainage diagrams
3. Documents lodged with the Registrar-General which could include:
 - a) A copy of the title search
 - b) A copy of the plan of the land
 - c) A copy of all deeds and dealings that purport to benefit or burden the land. For instance, if there are any easements on the land or any restrictions on the use of land
4. A copy of the strata plan that shows the lot being purchased (if the property is being purchased on a strata plan)

Under section 52A(6)(a) of the Act and under section 17(1)(a) of the Conveyancing Regulations a Purchaser may rescind the Contract if the Vendor fails to attach the prescribed documents to the Contract.



A.2. CONTRACTS IN VICTORIA

Primarily, the biggest difference in the Victorian Contract compared to the NSW version is that there is no Schedule 1 Prescribed Documents. Instead of the Prescribed Documents, a 'section 32 statement' is required under section 32 of the *Sale of Land Act 1962*. This statement, also known as the 'Vendors Statement' requires the Vendor to disclose pertinent information about the property before the Purchaser signs the Contract. Generally, this includes the following information:

1. Any mortgages or debt charged against the land
2. Details of any easements, covenants or restrictions on the title
3. Details of all services connected to the property
4. Planning and zoning information
5. The particulars of any building permits, and home-owner warranty insurances
6. Disclosure of any notices or orders on the vendor.

Similar to the NSW law above, section 32K of the *Sale of Land Act 1962* states that a Purchaser may be able to rescind the Contract if a Vendor:

1. Supplied false information in a 'section 32 statement';
2. Fails to supply all the required information in a 'section 32 statement'; or
3. Fails to provide the Purchaser with a 'signed section 32 statement' before the Purchaser signs the Contract.

Moreover, a Vendor should also be aware that under section 32L it is a criminal offence for the Vendor to knowingly and recklessly:

1. Provide false or incomplete information in the 'section 32 statement'; or
2. Fail to provide a 'section 32 statement'.

B. COOLING-OFF PERIOD

The cooling off period refers to a period in which the Purchaser is able to withdraw from purchasing a residential property despite signing, dating and exchanging the Contract. During this period, the Vendor is not allowed to sell the property to anyone else. The purpose of the cooling-off period is to provide the Purchaser with an opportunity to reconsider whether they would actually like to purchase the property. If the Purchaser decides not to proceed with the purchase, he or she will have to pay a termination fee of 0.25% of the purchase price of the property. The cooling-off period is only applicable to the purchaser and not the vendor.

In NSW, the cooling off period lasts for 5 (five) business days, whereas, in Victoria the cooling-off period lasts for 3 (three) business days. In both states, there is no cooling-off period where the property is purchased by way of an auction.

C. PRE-PURCHASE, STRATA, BUILDING AND PEST INSPECTIONS

It is recommended that Purchasers in both states (NSW and Victoria) inspect the property prior to purchasing it to ensure that they are satisfied with the state that it is in. Additionally, in the case of a house, Purchasers should also seek a building and pest inspection report through engaging a qualified building and pest inspector.



A building inspection entails the inspector analysing the building (both inside and out) to determine:

1. Any faults/defects with the property that have been cosmetically covered up;
2. Whether or not the defects in the property can be fixed; and
3. How much it will cost to repair the defects.

Similarly, a pest inspection involves the inspector observing the property for any evidence of timber pest activity (i.e. termites).

Conducting these inspections is, therefore, a good idea as it ensures that the Purchaser is aware of any problems with the property and that they are purchasing the property for the value that it is worth.

In the case of buying an apartment in a strata plan, Purchasers should commission a Strata Inspection Report.

See our legal articles on:

1. [Strata Inspection reports](#)
2. [Building Inspection Reports and Pest Inspection reports](#)

D. CONCLUSION

The steps in the Sale and Purchase of a residential property in NSW and Victoria are similar. Primarily the difference between conveyancing in the two states is that of 'the Schedule 1 Prescribed Documents' found in NSW law and 'the Section 32 statement' found in Victorian law.

Comasters is able to accept instructions from a purchaser or a vendor of residential properties in NSW and Victoria.

Comasters Law Firm can advise and assist clients with matters relating to the sale and purchase of residential property in New South Wales or Victoria

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