

Material facts about the land for sale

Section 12(d) of the Sale of Land Act states that:

Any person who, with the intention of inducing any person to buy any land –

- (d) makes or publishes any statement promise or forecast which he knows to be misleading or deceptive or **knowingly** conceals any material facts or recklessly makes any statement or forecast which is misleading or deceptive

shall be guilty of an offence against this Act...

The penalty for breaching section 12(d) is 120 penalty units or up to 12 months imprisonment.

Note that this says, “any person”, so it applies to both vendors and their real estate agents, as well as anybody else who may convey information or refuse to convey information to a potential purchaser about land they are considering buying.

The Sale of Land Act does not define a material fact but a recent amendment to the Act allows for the Director of Consumer Affairs Victoria to make Guidelines to assist in understanding what a Material Fact is likely to be.

The CAV web site contains a 4 page item headed Material Fact Guidelines and section 12A(2) of the Act states that a court may have regard to any such guidelines. Vendors and their real estate agents should familiarise themselves with those guidelines. The following three questions and answers have been extracted from the guidelines:

What is a material fact?

A fact is a material fact in the sale of land if it is:

- important to a potential purchaser
- an opinion, but only if it is an expert opinion
- a fact that an average purchaser would regard as material in their decision to buy
- known to the vendor or their agent, including an estate agent, to be important to a specific purchaser

When to disclose material facts?

- as soon as a potential purchaser indicates they are considering purchasing the property, and
- new arising material facts must be disclosed until the property has been sold.

How can material facts be disclosed?

- in marketing material or information statements; or
- in a section 32 statement or contract of sale; or
- on a physical inspection of the property where they are clearly visible; or
- by specific disclosures made to a potential purchaser in the course of negotiations; or
- before the start of a public auction; or
- by specific disclosure to a potential purchaser where it is known to have not come to their attention by other means.

Vendor checklist of potential facts

In addition to the information your solicitor or conveyancer will require for the preparation of a Section 32 Statement please provide answers to the following questions. In the questions where the word “land” is used it includes the land for sale and any structures on the land.

	Yes	No	Unknown
Are you the owner of the structures on the land and any goods to be included in the proposed sale?			
Is there an unrectified defect in the structure of any building on the land?			
Are all appliances, fixtures and fittings on the land in working order?			
Do any electrical, gas or plumbing systems on the land remain unrectified after being assessed as unsafe by an appropriately qualified person?			
Is there an active pest infestation affecting structures on the land?			
Is there unrectified damage from a pest infestation affecting structures on the land?			
Is there any asbestos on the land, including in structures on the land?			
If yes, is any of the asbestos in friable form?			
Does any of the cladding on structures on the land consist of expanded polystyrene or aluminium composite panels?			
Is access to the land, including vehicle access, via an unregistered easement?			
Is there any restriction on vehicle access to the land (e.g. a truck curfew, weight limits)?			
Are there any on street parking restrictions on streets adjacent to the land?			
Do any structures on the land have weight bearing limits?			
Is the land beneath a commercial flight path?			
Is the land subject to loud intermittent noises (defence force training, quarrying explosions, car races)?			
Has the land been used for the manufacture of substances such as methylamphetamine?			
Has the land been used for the storage of toxic substances beyond what might be needed for domestic purposes?			
Has the land been used for the sale of illegal substances?			
Has the land been used as a brothel?			
Has the land been occupied by a person who has been convicted of an offence of drug trafficking or violence?			
Do any registered sex offenders reside in nearby premises?			
Have police ever been called about the behaviour of the occupants of nearby properties?			
Is any neighbouring land owned or leased by the state government?			
Is any neighbouring land owned or leased by a community housing group?			
Does any neighbouring land contain a registered rooming house?			

Initial _____

March 2020

Material Fact Checklist v1.3

Please Note: This document has been developed by the REIV as a guide only. This is NOT an exhaustive list of all material facts. Agents should consider whether this document is adequate for the property being listed.

Vendor checklist of potential facts

	Yes	No	Unknown
Is any neighbouring land used for a noxious industry?			
Is the land subject to offensive odours?			
Is the land contaminated by toxic chemicals?			
Does the land contain lead-based paint?			
Has the land or neighbouring land been used for fire brigade training using hazardous materials?			
Has the land or neighbouring land been used for defence force training using hazardous materials?			
Has the land been used for the commercial growing of potatoes?			
Has the land been used for the commercial growing or tobacco?			
Has the land been used for mining?			
Does the land contain mining tailings?			
Is the groundwater beneath the land contaminated by toxic chemicals?			
Have any complaints been lodged with the municipal council regarding the use of nearby properties?			
Are there any disputes between you and the owners of neighbouring properties?			
If yes, are the disputes about:			
Boundaries?			
Overhanging trees?			
Tree roots?			
Fences?			
Drainage?			
The overland flow of water?			
Noise?			
Waste storage or disposal?			
Fumes?			
Odours?			
Toxic substances?			
Non-permitted use of land and/or structures?			
Another matter or matters?			
On the land is there a structure or part of a structure for which the required planning permit was not obtained?			
On the land is there a structure or part of a structure for which the required building permit was not obtained?			
Is there a current safety compliance certificate for any swimming pool or spa on the land?			
Are there any structures buried in the land?			
Is there any waste material in the land?			
Are there any as yet undecided planning applications for nearby land?			
Are there any approved planning applications for nearby land where the approved changes have yet to be carried out?			
Have any authorities advised that services will not be connected to the land?			

Initial _____

Vendor checklist of potential facts

	Yes	No	Unknown
If services are not connected, have quotes been obtained for the connection of services to the land?			
If yes, which services:			
Electricity?			
Water?			
Sewerage?			
Gas?			
Telephone?			
NBN?			
Are any services supplied to the land under an embedded supplier arrangement?			
Is the land connected to a storm water system?			
Have any planning applications for the land been rejected?			
Do you have knowledge of anybody dying on the land?			
If yes, was the death the result of:			
Natural causes?			
Murder?			
Manslaughter?			
Suicide?			
Are there any memorials on the site?			
If yes, is the memorial to:			
A person?			
An animal?			
A previous use of the property?			
A historical event?			
Does the land contain any aboriginal heritage material?			
Does the land contain any sites of aboriginal cultural significance?			
Is the land or anything attached to it the subject of an application for heritage protection?			
Does the land contain any rare indigenous plants?			
Does the land contain any rare indigenous animals?			
Does the land contain any native vegetation for which a permit would be required for its removal?			
Is the land subject to seasonal inundation by water?			
Have any structures on the land been flooded?			
Is the current surface level of the land the result of fill being added?			
Is the land or that surrounding it subject sinkholes, subsidence, landslips, rock falls or the like?			
Do all structures included in the proposed sale fall within the boundaries of the land?			
Are any structures on the land built on an easement?			
Are there any declared noxious weeds on the land?			
Are there any declared pest animals on the land?			
Has the land been subject to a bushfire?			
Are there any other material facts of which you are aware?			

Sign _____

Date ____/____/____