

PROPERTY PRACTICE PRACTICAL GUIDE



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Sample

1. HOW TO USE THIS PRACTICAL GUIDE

This practical guide has been developed for your assistance in the College of Law compulsory unit Property Practice. This guide is structured in a way that aims to equip you with the skills to conduct transactions involving the conveyancing, leasing or mortgaging of real property, as well as to advise clients on general property law matters.

The types of assessment in this College of Law compulsory unit currently include the following:

- A. preparing a contract for the sale of land and drafting special conditions;
- B. participation in a property settlement by oral assessment and a drafting task;
- C. oral assessment and a drafting task on a property practice problem-based file; and
- D. a multiple choice examination.

This practical guide is structured in a way that simulates these types of assessment. Lawskool Pty Ltd recommends that you follow this practical guide in the order as it appears, and work through each practical task in a way that ensures you understand the steps taken along the way.

Throughout your studies, you may adopt an engaged learning style which enables you to actively explore ideas and issues about a topic, and connect with your peers and mentors about real life situations and how they apply to the topic. Lawskool Pty Ltd hopes that you may use this practical guide as a tool in your engagement with Property Practice in the College of Law.

PART A. PREPARING A CONTRACT FOR SALE OF LAND INCLUDING SPECIAL CONDITIONS

2. FILE NOTE OF INTERVIEW

Names:	Adam Johnson attendance with Mr Alistair and Mrs Linda Howard
Date:	7 March 2015
Time Spent:	10 units (60 minutes)
Client Details:	Mr Alistair Howard and Mrs Linda Howard
Name of Matter:	Mr Alistair and Mrs Linda Howard – Property Law Advice RE 35 Melvin Circuit, St Kilda, Victoria.
Instructions from the client:	<ol style="list-style-type: none">1. Mr Alistair and Mrs Linda Howard want to sell their house. They want to engage me to help them facilitate this sale.2. They have found a buyer themselves and there is no agent involved. They would like me to proceed with preparing a Contract of Sale and Vendors' Statement to document their agreement.3. They have provided me with the following information in order to prepare the Contract of Sale:
Vendors:	Alistair Alan Howard and Linda Maree Howard both of 6 Yarraville Road, Mulgrave 3144
Purchasers:	Malcolm John Farmer and Glenda Merle Farmer both of 32 St Vincent Place, South Melbourne 3205
Property:	35 Melva Circuit, St Kilda
Price:	\$950,000.00

Deposit: \$95,000.00 payable upon exchange of contract
Balance: \$855,000.00
Settlement: 12 April 2015
Subject to finance: From Federation Bank
Amount \$100,000.00
Approval date: 15 March 2015
Mortgage: The property has no mortgage left over it and the title is with Federation Bank. The vendors give you authority to arrange for the title to be released to you for settlement.
Special conditions: The purchasers have requested for the contract to be made conditional on an architect's report being obtained by the purchasers at their expense revealing no major structural defects. If major structural defects are revealed then the purchasers may terminate by notice in writing no later than by 18 March 2015. We are to provide reasonable access to the purchaser's architect within 5 business days of exchange of contract.

4. They have provided me with the following information in order to complete the Vendors' Statement:

- The rates they pay are:
 - a. to the City of Port Philip for \$975;
 - b. to South East Water for \$117.54; and
 - c. there is no land tax.
- All services are connected.
- Finally, there are no building approvals or insurances effected for building on their property and they have not received any notices from Council or other authorities regarding the property.

5. The clients instruct me that this matter is urgent as they do not wish to lose the buyer so they want the matter formalised as quickly as possible.

6. The purchasers' lawyers are:

John Bradden
Bradden Lawyers
152/360 Little Burke Street
Melbourne 3000

Issues:

- (i) Legal
1. Sale of real property.
 2. Special conditions.
- (ii) Non Legal:
1. Urgent sale as they do not wish to lose the buyer and want to matter formalised as quickly as possible.

Further information required:

(i) Who to supply?

I am to supply Mr and Mrs Howard written advice which as I explained to them during the interview, I will send in about one weeks' time after further research.

(ii) If yourself: How to be obtained?

Prepare all relevant documents, contracts and searches in order to effect the sale of the property for your client in a timely manner.

Action to be taken:

(i) By yourself:

I am to provide Mr and Mrs Howard with written Advice as well as prepare a Contract of Sale with the commercial terms and create a Vendors Statement. To do this I will have to complete a relevant searches in order to effect the sale of the property for the client in the time frame outlined.

(ii) By Client:

I advised the client during the interview to contact me if they have any queries or further instructions at any stage. The client has provided me with the Certificate of Title to their property at St. Kilda in the initial meeting.

(ii) By third parties:

Once the Vendors Statement and Contract of Sale have been finalised by me and signed by my clients I am to post those documents to the purchaser's solicitor. The purchaser's solicitor will get his client to read over those documents. Once that has been done we will arrange a meeting at which point the purchasers can sign the documents and the sale will be effective.

Advice on Each Issue

(i) Given at interview:

I gave the following advice:

1. I advised the client that this matter is a fairly routine, straight forward sale of property and that as long as the purchaser's cooperated there would be no problem in having this matter resolved within the specified time limit.
2. At a later date I would set a time where we could sign the documents with the purchasers.

Sample

3. CONTRACT OF SALE OF REAL ESTATE

- The Contract of Sale is the term used to describe the document used to formalise the sale of real estate.
- For example, Section 126 of the *Instruments Act 1958 (Vic)* states that any Contract for the sale of real estate must be “in writing signed by the person to be charged or by a person lawfully authorised in writing by that person”.
- This means that a simple verbal contract is not enforceable if it relates to the sale of real estate.
- To comply with the *Instruments Act 1958 (Vic)*, and to ensure that the parties involved in the sale of real estate know exactly what is being bought and sold, and the conditions by which the sale is to take place, a formal “Contract of Sale of Real Estate” document is used.
- This document is usually prepared by a lawyer, and is tailored to suit the parties and the circumstances of the sale.
- The document itself usually contains numerous conditions that set out the “rules” by which the deal will proceed and eventually settle.
- Once a contract has been signed by both parties, any variation or change to the contract must also be signed by both parties to a transaction.
- The Contract of Sale of Real Estate should be drafted by a lawyer or licensed conveyancer.
- Most lawyers and licensed conveyancers use the standard form Contract of Sale of Real Estate in order to ensure that there is some uniformity in the industry, allowing industry professionals and consumers to anticipate the rights and responsibilities they will assume in a real estate sale transaction.
- Below is an example of a Contract of Sale of Real Estate in Victoria which is prepared based on the instructions given by Mr and Mrs Howard at the initial client interview.



CONTRACT OF SALE OF REAL ESTATE

Part 1 of the standard form of contract prescribed by the Estate Agents (Contracts) Regulations 2008

The vendor sells and the purchaser buys the property, being the land and the goods, for the price and on the conditions set out in this contract.

The terms of this contract are contained in the:

- Particulars of sale;
- Special conditions, if any;
- General conditions; and
- Vendor's Statement

and in that order of priority.

The Vendor's Statement required by section 32(1) of the **Sale of Land Act 1962** is attached to and forms part of this contract. The parties should ensure that when they sign the contract they receive a copy of the Vendor's Statement, the general conditions and any special conditions.

SIGNING OF THIS CONTRACT

The authority of a person signing:

- under power of attorney; or
 - as director of a corporation; or
 - as agent authorised in writing by one of the parties;
- must be noted beneath the signature.

Any person whose signature is secured by an estate agent acknowledges being given by the agent at the time of signing a copy of this contract comprising:

- Form 1 (Contract of Sale of Real Estate, Particulars of Sale);
- Special Conditions, if any;
- Form 2 (Contract of Sale of Real Estate, General Conditions); and
- Vendor's Statement.

SIGNED BY THE PURCHASER on / /20.....

Print name of person signing

State nature of authority if applicable (e.g. 'director', "attorney under power of attorney")

This offer will lapse unless accepted within [] clear business days (3 business days if none specified).

SIGNED BY THE VENDOR on 08/03/2015

Print name of person signingAlistair Alan Howard and Linda Maree Howard

State nature of authority if applicable (e.g. 'director', "attorney under power of attorney")

The **DAY OF SALE** is the date by which both parties have signed this contract.

IMPORTANT NOTICE TO PURCHASERS

Cooling-off period (Section 31 Sale of Land Act 1962)

You may end this contract within 3 clear business days of the day that you sign the contract if none of the exceptions listed below applies to you.

You must either give the vendor or the vendor's agent **written** notice that you are ending the contract or leave the notice at the address of the vendor or the vendor's agent to end this contract within this time in accordance with this cooling-off provision. You are entitled to a refund of all the money you paid EXCEPT for \$100 or 0.2% of the purchase price (whichever is more) if you end the contract in this way.

EXCEPTIONS The 3-day cooling-off period does not apply if:

- you bought the property at or within 3 clear business days **before or after** a publicly advertised auction;
- you received independent advice from a legal practitioner before signing the contract;
- the property is used mainly for industrial or commercial purposes;
- the property is more than 20 hectares in size and is used mainly for farming;
- you and the vendor previously signed a similar contract for the same property; or
- you are an estate agent or a corporate body.



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