

Understanding Forms

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Form 1 – Statement under section 7

What is the Form 1?

The Form 1 is the basis of the formal statement by the vendor about certain details relating to the property being conveyed. It is required under section 7 of the Land and Business (Sale and Conveyancing) Act 1994.

The Form 1 comprises:

- * an introductory statement setting out the purpose of the form;
- * details of the parties and the land;
- * details of cooling-off rights;
- * a statement by/on behalf of the vendor;
- * a certificate by/on behalf of the agent verifying the particulars in relation to the land appearing in the statement;
- * a table of particulars in relation to mortgages, charges and prescribed encumbrances affecting the property; and
- * parts detailing particulars in relation to prescribed matters affecting the property.

Tricks and Traps of Form 1

Below are explanations of some of the key prescribed matters that arise in typical property conveyances and that should be disclosed in the Statement under section 7. The form is not addressed in its entirety; rather, we have selected some of the more common “tricks and traps”.

Prescribed encumbrance	Comment
Easement	An easement is generally a right to use land; e.g. the right of an owner of land to pass over neighbouring land to access his/her land. If an easement is registered over the land, a copy of the document creating it should be obtained and carefully read (if it is not already attached to the Form 1).
Restrictive covenant	A restrictive covenant is a limitation on the use of the land; e.g. a prohibition on the construction of multi-storey dwellings or on lopping down trees. If an encumbrance is registered over the land then a copy of the document creating it should be obtained and carefully read (if it is not already attached to the Form 1).
Lease, agreement for lease, tenancy agreement or licence	This Item requires the disclosure of rights to occupy the land. Note that the Form 1 does not provide for the disclosure of any sublease or subtenancy information.
<i>Development Act</i> Items	These Items require the vendor to disclose various information in relation to the <i>Development Act 1993</i> (and associated legislation, including repealed Acts); e.g. the

	<p>vendor should disclose any building approvals, any current insurance policy issued to an owner-builder or any land management agreement entered into with the local council.</p>
Heritage matters	<p>This is the section for disclosure of restrictions on the development of the land. Sometimes they are not noted on the title and thus require further investigation. Purchasers should be aware that there may be restrictions on building and external alterations.</p>
Particulars of transactions in the last 12 months	<p>This section of the Form 1 is frequently overlooked and the details of the previous owner(s) should be supplied. Sometimes the transfer may not have been registered and therefore a simple search of the Lands Titles Office will not reveal the information that is sought; the vendor will need to provide that information. Note that this section extends beyond purchases of land; it includes, for example, transfers pursuant to matrimonial settlements.</p>
Strata matters	<p>This section is also easily overlooked and it provides for the disclosure of information relating to a unit's strata corporation, strata fees, etc. Even if a unit is self-managed, there is certain information that should be supplied; i.e. a certificate of currency for insurance and a copy of the strata plan. An astute purchaser should inquire as to any levies that are in arrears.</p>

R1 – (Vendors Written Guide to) Sales Agency Agreements

What is the Form R1?

The Form R1 is the vendor's guide to his/her rights and obligations in relation to the sales agency agreement he/she has with the sales agent.

The agent is required to serve the R1 before making a sales agency agreement in relation to residential land (and possibly other land or a business but there is some contention on this point). This form outlines the rights, duties and obligations of the agent and vendor, such as the role of the agent, marketing activities and the maximum duration of the agreement.

Tricks and Traps of Form R1

There is no prescribed period for service of the R1 before the execution of the sales agency agreement, but the vendor should be allowed sufficient time to consider the R1.

If the agent fails to serve the R1, there may be an effect on the agent's entitlement to commission and expenses and the enforceability of the sales agency agreement.

R2 – Disclosure of Benefits

What is the Form R2?

The sales agent is required to disclose to a client certain benefits that may arise in a property transaction.

The Form R2 is a statement of disclosure by the agent of:

- (a) the benefits he/she may receive from a third person to whom the agent has referred the vendor; and
- (b) the benefits any person may receive from the property transaction.

Tricks and Traps of Form R2

The obligation to disclose is ongoing and arises as soon as the agent becomes aware of a benefit. However, if the benefit has already been disclosed in a sales agency agreement, the R2 is not required.

The R2 must disclose the:

- (a) nature;
- (b) source; and
- (c) amount (or estimated amount or value)

of any benefit that the agent or any other person receives or expects to receive from a third person.

A “benefit” includes a rebate, discount or refund (e.g. advertising rebate or discount).

If the agent fails to disclose as required by the legislation, he/she may lose entitlement to sales commission and expenses and may incur a fine.

R3 – Buyers Information Notice

What is the Form R3?

The R3 is a general statement of issues and information for the purchaser to consider when buying a home.

It is only required for residential land and the obligation is on the vendor to ensure service of the notice (or on the agent if the vendor has appointed one).

Tricks and Traps of Form R3

The legislation requires that the vendor “must take all reasonable steps to deliver the prescribed notice to a purchaser when the purchaser is present on the land at the invitation of the vendor in order to inspect the land prior to its sale”.

The R3 must also be attached to the Form 1 served on the purchaser, even if the R3 has been provided previously.

Failure to serve the R3 does not necessarily void a sale contract, nor does it affect the cooling-off rights of the purchaser under the Form 1, but failure to serve the R3 is an offence.

Please note that this information is a guide only and many factors may affect the application of this information to a transaction. This information does not constitute legal advice; consult our disclaimer notice on this website for further information.