

Material Fact Guidelines

Under the *Sale of Land Act* (1962) s12(d), vendors and their agents who **knowingly conceal any material facts** with the intention of inducing a person to buy land, are committing an offence. The offence carries the penalty of a substantial fine, or up to twelve months imprisonment.

“Knowingly conceal” does not require that any action was taken to actively conceal the material fact (although doing so will still be in breach of the act). If the vendor or agent do not disclose or withhold a **material fact** which they know will be of significance to the purchaser, with the intention of inducing a purchaser to buy land, this constitutes an offence under s12(d).

The intention of s12(d) is to assist a purchaser with making a fully informed decision before they commit to purchasing land or property. Even if the purchaser has inspected the property, there may be information that can only be known to a person who has owned or occupied that property previously.

A vendor or their agent with knowledge of material facts cannot fail to disclose those facts in reliance on purchasers making general inquiries or following the Due Diligence Checklist. Vendors are not required or expected to carry out specific tests and investigations of the property to determine if there are unknown problems for disclosure, beyond that required to prepare a s32 Vendor’s Statement.

What is a material fact?

- Anything important to a potential purchaser that may impact their decision whether or not to buy land. The fact must be one that an average, reasonably informed purchaser with a fair understanding of the property market would generally regard as material in their decision to purchase land.
- A fact that influences whether to buy land at all, or to buy at a certain price.
- An expert opinion held honestly on reasonable grounds that the vendor and or their agent are aware of.
- A fact is a material fact where it is known by the vendor and/or agent to be important to a purchaser (for example, if the purchase asks a specific question about the land or advises of their intended use of the land). This fact can be something important to a specific purchaser; it does not have to be broadly important to people in general.
- A fact may be a material fact if it is a fact only known to the vendor
- A fact may be a material fact if it has previously influenced another prospective purchaser’s decision whether to buy the land.
- A fact may be material if it pertains to the property being in a rare or unusual category or position.
- A material fact is **not** Inuendo, gossip or speculation.

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Examples of material facts

- A defect in the structure of the building revealed by a prior test or inspection e.g., termites, combustible cladding, asbestos, or other contamination.
- The causes behind obvious physical defects e.g., reasons behind visible cracks in the walls
- Any significant events that have occurred at the property e.g., bushfire or flood
- Pesticides used at the property for horticulture or agricultural purposes
- Restrictions of vehicular access e.g., where access is via an undisclosed easement, curfews for specific vehicles
- Facts about the surrounding neighbourhood that would be likely to affect the use and enjoyment of the property to a greater extent than regular disturbances to be expected from the kind of land or local area in question e.g., sinkholes, development proposals
- Any illegal building works
- Any history of significant crime on the property, or events that may create long-term potential risks to a purchaser e.g., extreme violence, homicide, manufacture of illegal drugs
- Any historical use of hazardous materials- this will not be considered a material fact if fully remediated and no further works or maintenance is required in the future, however if a purchaser asks specific questions in relation to prior contamination, defects or damage, these questions must be answered by the vendor to the best of their knowledge in a full and frank manner.

When Material Facts Should be Disclosed

- All material facts should be disclosed to potential purchasers as soon as they indicate they are considering purchasing the property. Continuing disclosure must be made until the property is sold.
- Material facts can also be disclosed in:
 - Marketing materials or information sheets
 - In the Contract of Sale or s32 Vendor's Statement
 - When the property is being physically inspected
 - My special disclosure to purchasers in the course of negotiations
 - At the start of a public Auction.
- Specific disclosure is always required when the vendor or their agent knows that the purchaser has not yet become aware of the material fact.

DISCLAIMER

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