

Guidelines and Forms for Applications to Purchase Real Estate or a Business by a Prohibited Person

Section 55 of the Estate Agents Act 1980

The granting of permission to a prohibited person is at the discretion of the Director of Consumer Affairs Victoria (the Director).

No legally binding sale documents should be signed before the express permission is given for the purchase to proceed.

The prescribed fee for applications is \$134.10 (no GST payable).
Your application will not be considered until the application fee is received.

Enquiries

Enquiries regarding these Guidelines and forms should be directed to:

Compliance & Enforcement Branch, Consumer Affairs Victoria, Telephone: 03 8684 6292, Fax: 03 8684 6211.

Introduction

Under section 55 of the Estate Agents Act 1980 (the Act) estate agents, their employees, family members and others are prohibited from purchasing any property or business which the agency is commissioned to sell. This prohibition remains in force, however, the 1994 amendments to the Act allow this prohibition to be waived in certain circumstances.

The Act makes a clear distinction between two categories of prohibited persons and the procedure that each must follow when seeking to purchase property which the agency is commissioned to sell.

Relatives of Estate Agents and Agents Representatives

Sub-section 55(14) of the Act provides an exemption in certain circumstances for estate agents, agents' representatives, employees and/or their immediate family members. (NOTE: The procedures for relatives of clerical and administrative employees are outlined on page 3).

Any person in this category must apply in writing to waive the prohibition. A person may be permitted to make a purchase that would otherwise be prohibited if it is shown that: (i) the purchase would not be contrary to the interests of the vendor; and, (ii) any conditions imposed are met.

These guidelines have been prepared to assist estate agents to meet the requirements of sub-section 55(14) when applying for permission to purchase a prohibited property or business.

Documents Required for a Section 55(14) Application

A person seeking permission to purchase real estate or business pursuant to section 55(14), where that purchase would otherwise be prohibited, is required to submit the following documentation in support of the application along with an application fee of \$134.10 (no GST Payable).

1. A written valuation of the property from an independent qualified valuer addressed to the vendor and carried out at the cost of the purchaser.

This valuation must be in the form of a statutory declaration and must state that the valuer has inspected the real estate or business and is of the opinion that the proposed purchase price, (or in the case of an auction), the valuation is the fair market price for the real estate or business. (Refer attached format).

The person conducting the valuation must: (i) have completed the valuation stream of the Bachelor of Business (Property) Course at RMIT; or (ii) be a member of the Australian Institute of Valuers and Land Economists; or (iii) be a person who was registered as a valuer under the Valuation of Land Act 1960 as at 31 December 1994; or (iv) have appropriate qualifications to conduct the valuation.

Privacy

Consumer Affairs Victoria is bound by laws that protect your privacy concerning the collection, use and disclosure of your personal information. Where you do not provide the information required, we may refuse or be unable to process your transaction. We may need to disclose your personal information to other State and Commonwealth agencies. You can request access to your personal information by contacting us. Our privacy statement is available at www.consumer.vic.gov.au

Documents Required for a Section 55(14) Application

- 2. The written consent of the vendor/s to the sale of the real estate or business to the proposed purchaser. Provision for nomination of a substitute purchaser will not be approved.**

This document must be signed by the vendor/s and must contain the following information: (i) acknowledgment that the vendor is aware of the identity of the purchaser, and of his, her or its relationship with the agency; (ii) the sale price being offered, and confirmation that this price and the terms of the contract are acceptable to the vendor; (iii) advice as to whether the vendor's legal adviser has been consulted in relation to the proposed sale; (iv) advice as to whether the vendor has agreed to pay commission on the sale, and the commission (if any) expressed in dollar terms; and (v) confirmation that the vendor has sighted the valuation, specifying the market value quoted in the valuer's report. (Refer attached format).

- 3. A complete and unamended photocopy of the sales file.**

The sales file must include the following material: (i) the Section 32 Statement, including a copy of the Certificate of Title and plan of subdivision; (ii) the engagement authority; (iii) any listing notes, including initial appraisal notes; (iv) all correspondence; (v) details of previous offers (complete with copies of contracts of sale or contract notes previously prepared); (vi) copies of all advertising material and cost of advertising to date undertaken with respect to the property; and (vii) any other relevant material.

- 4. A statutory declaration made by the selling agent giving details of actions taken to market and sell the real estate or business.**

- 5. Particulars of the involvement of any other estate agent in the marketing of the real estate or business in the preceding 12 months.**

- 6. Details of the vendor's solicitor.**

The vendor will be advised to inform his or her legal adviser of the details of the proposed purchase.

- 7. In the event of a proposed purchase by an employee or a relative, a signed statement by the licensed estate agent or the Officer in Effective Control indicating that he or she agrees to the proposed purchase.**

This should include the address of the property, the proposed purchase price and the amount of commission (if any) expressed in dollar terms.

- 8. A letter from the proposed purchaser indicating whether he or she intends to retain or dispose of the property.**

Note: Any approval or permission granted will be conditional upon the purchaser notifying the Director of any re-sale of the property within 6 months of the date of the signing of the contract.

- 9. A copy of the proposed Contract of Sale.**

The Contract of Sale:

- (i) MUST NOT BE SIGNED BEFORE MAKING APPLICATION UNDER SECTION 55 OF THE ESTATE AGENTS ACT 1980.
- (ii) MUST allow a cooling-off period of not less than 3 clear business days during which the VENDOR may withdraw from the Contract.
- (iii) MUST NOT provide for settlement or possession of the real estate or business at a time before payment of ALL purchase moneys by the purchaser. A deposit of at least 10% of the purchase price must be paid by the purchaser on the signing of the Contract of Sale.
- (iv) MUST include any terms and special conditions further required if necessary.

- 10. Where a person who has obtained permission to purchase a property is to be a bidder at a public auction for the sale of that property, the following statement must be attached to the Contract of Sale:**

'Permission has been granted by the Director of Consumer Affairs Victoria under sub-section 55(14) of the Estate Agents Act 1980 for a person who would otherwise be prohibited from purchasing the property because of a connection with the selling agent or the selling agent's employees, to purchase the property if the successful bidder.'

Applicants seeking permission to bid at an auction are advised that their application must be received by Consumer Affairs Victoria at least three weeks prior to the auction to enable time for the application to be processed. Process of applications received less than three weeks before the date of the auction cannot be guaranteed.

- 11. At the request of Consumer Affairs Victoria, any other information, documents, valuation or things relevant for the purposes of section 55 of the Estate Agents Act.**

- 12. The prescribed fee of \$134.10 (no GST payable). Your application will not be considered until the application fee is received.**

Relatives of Clerical and Administrative Employees

Sub-section 55(10) provides for an exemption in certain circumstances for relatives of agency employees where the employee is not a licensed estate agent or agents' representative.

The spouse, parent, brother, sister or child of, for example, a receptionist or other clerical employee is permitted to purchase a property which the agency is commissioned to sell provided that the spouse, parent, brother, sister or child will be purchasing in their own name and not jointly with the employee,

AND;

that before the purchaser signs the contract, the vendor:

- (i) is informed in writing of the prospective purchaser's relationship to the agency employee; and
- (ii) agrees to the sale by completing the form approved by the Director.

Note: The exemption in sub-section 55(10) does not apply if the employee will be a new proprietor of the property or business jointly with his or her spouse, parent, brother, sister or child. If the employee will be a joint proprietor of the property or business to be purchased, an application in accordance with the procedure set out on pages 1 to 2 will need to be made to the Director.

Copies of the approved sub-section 55(10) form are available from www.consumer.vic.gov.au or by phoning Consumer Affairs Victoria on 1300 737 030. The estate agent must send a signed copy of this form to Consumer Affairs Victoria within 7 days of the form being signed. Failure to do so may result in a fine of up to \$2,700.

5. Selling agent's statutory declaration

This section must be completed by the selling agent

I, (print your full name)

of, (print your address)

Postcode

declare that to the best of my knowledge, the contents of this application are true and correct and I make it in the belief that a person making a false declaration is liable to the penalties of perjury.

Note: You must sign this declaration in the presence of the witness

Signature of person making this declaration

This section must be completed by the witness

Declared at (print suburb or town)

in the State of Victoria, on the

(day of)

(month)

(year)

Before me, being a person authorised under Section 107A(1) of the Evidence Act 1958 to witness the signing of a Statutory Declaration.

Signature of witness

Printed name, address and qualification to witness this Statutory Declaration

In accordance with the Evidence Act 1958, the following people may witness a Statutory Declaration within Victoria

- A member of the Police Force
- The Sheriff or a Deputy Sheriff
- A Justice of the Peace
- A notary public
- A registered medical practitioner
- A registered dentist
- A veterinary practitioner
- A pharmacist
- A principal in the teaching service
- The manager of a bank
- A barrister and solicitor of the Supreme Court
- A clerk to the barrister and solicitor of the Supreme Court
- The Prothonotary or a Deputy Prothonotary of the Supreme Court
- The Registrar or a Deputy Registrar of the County Court
- The Principal Registrar of the Magistrates' Court
- The Registrar or a Deputy Registrar of the Magistrates' Court
- The Registrar of Probates or an Assistant Registrar of Probates
- The associate to a Judge of the Supreme Court or of the County Court
- The secretary of a Master of the Supreme Court or of the County Court
- A person registered as a patent attorney under Part XV of the Patents Act 1952 of the Commonwealth
- A member or former member of either House of the Parliament of Victoria
- A member or former member of either House of the Parliament of the Commonwealth
- A councillor of a municipality
- A senior officer of a Council as defined in the Local Government Act 1989
- A member of the Institute of Chartered Accountants in Australia or Australian Society of Accountants or National Institute of Accountants
- The secretary of a building society
- A minister of religion authorised to celebrate marriages
- A person who holds a prescribed office in the public service under Section 107A of the Evidence Act 1958
- A fellow of the Institute of Legal Executives (Victoria)

Privacy

Consumer Affairs Victoria is bound by laws that protect your privacy concerning the collection, use and disclosure of your personal information. Where you do not provide the information required by this form, we may refuse or be unable to process this transaction. We may need to disclose your personal information to other State and Commonwealth agencies. You can request access to your personal information by contacting us. Our privacy statement is available at www.consumer.vic.gov.au

Valuer's Statutory Declaration

Estate Agents Act 1980 (Section 55(14))

This section must be completed by the valuer

I, (print your full name)

of, (print your address)

Postcode

in the state of Victoria, do solemnly and sincerely declare that I am a qualified valuer and I inspected and conducted a valuation of the (tick applicable boxes)

real estate business

situated at (address)

Postcode

on (date of valuation)

(day of)

(month)

(year)

It is my opinion the valuation of (amount)

is the fair market price for the real estate/business.

I acknowledge that this declaration is true and correct and I make it in the belief that a person making a false declaration is liable to the penalties of perjury.

Note: You must sign this declaration in the presence of the witness

Signature of person making this declaration

Qualification to make this valuation

This section must be completed by the witness

Declared at (print suburb or town)

in the State of Victoria, on the

(day of)

(month)

(year)

Before me, being a person authorised under Section 107A(1) of the Evidence Act 1958 to witness the signing of a Statutory Declaration.

Signature of witness

Printed name, address and qualification to witness this Statutory Declaration

Note:

The person conducting the valuation must be an independent valuer not associated with the estate agency and must:

- have completed the valuation stream of the Bachelor of Business (Property) Course at RMIT; or
- be a member of the Australian Institute of Valuers and Land Economists; or
- be a person who is registered as a valuer under the Valuation of Land Act 1960 as at 31 December 1994; or
- have appropriate qualifications to conduct the valuation.

In accordance with the Evidence Act 1958, the following people may witness a Statutory Declaration within Victoria

- A member of the Police Force
- The Sheriff or a Deputy Sheriff
- A Justice of the Peace
- A notary public
- A registered medical practitioner
- A registered dentist
- A veterinary practitioner
- A pharmacist
- A principal in the teaching service
- The manager of a bank
- A barrister and solicitor of the Supreme Court
- A clerk to the barrister and solicitor of the Supreme Court
- The Prothonotary or a Deputy Prothonotary of the Supreme Court
- The Registrar or a Deputy Registrar of the County Court
- The Principal Registrar of the Magistrates' Court
- The Registrar or a Deputy Registrar of the Magistrates' Court
- The Registrar of Probates or an Assistant Registrar of Probates
- The associate to a Judge of the Supreme Court or of the County Court
- The secretary of a Master of the Supreme Court or of the County Court
- A person registered as a patent attorney under Part XV of the Patents Act 1952 of the Commonwealth
- A member or former member of either House of the Parliament of Victoria
- A member or former member of either House of the Parliament of the Commonwealth
- A councillor of a municipality
- A senior officer of a Council as defined in the Local Government Act 1989
- A member of the Institute of Chartered Accountants in Australia or CPA Australia or National Institute of Accountants
- The secretary of a building society
- A minister of religion authorised to celebrate marriages
- A person who holds a prescribed office in the public service under Section 107A of the Evidence Act 1958
- A fellow of the Institute of Legal Executives (Victoria)

Privacy

Consumer Affairs Victoria is bound by laws that protect your privacy concerning the collection, use and disclosure of your personal information. Where you do not provide the information required by this form, we may refuse or be unable to process this transaction. We may need to disclose your personal information to other State and Commonwealth agencies. You can request access to your personal information by contacting us. Our privacy statement is available at www.consumer.vic.gov.au

The selling agent must lodge this form within 7 days of being signed by the vendor(s) or risk a fine of \$2700.

Vendor(s) Consent

Estate Agents Act 1980 Section 55

Important Notice to the Vendor

Your estate agent or a relative of your estate agent or a relative of an employee of your estate agent is a prospective purchaser of your property

- The selling agent is required to give you this notice **before you sign** any document to sell your property or business to that person.
- If your property/business is for sale by auction, the agent must give you this notice at least 3 weeks before the auction.
- It is strongly recommended that you obtain independent advice if you are unsure of the fair market value of your property/business

To be completed by the vendor(s)

I/We (write in full name(s) of all property owners)

Being the vendors of the property/business situated at (write in address of property to be sold)

 Postcode

Acknowledge that I/we have been informed of the identity of the purchaser and their relationship with the selling agency which is: (write in the names of all purchasers who are relatives to the estate agent or agency employee and describe what their relationship is)

Names of purchasers	Relationship with agency (eg brother of selling agent)

I/We confirm the sale price of (write in amount)

 \$

and the terms of the contract offered are acceptable.

Have you consulted a solicitor or legal adviser in relation to the proposed sale?

No Yes If yes, provide the name and address of your solicitor or legal adviser

 Postcode

Have you agreed to pay commission on the sale?

No Yes If yes, specify the agreed commission amount here

 \$

Have you been given a copy of a valuation conducted by an independent and qualified valuer specifying the market value of the property/business?

No Yes If yes, specify here the market value given and the date of the valuation

Market value

Date of valuation

 \$ / /

Declaration, names and signatures of all vendors

- I have considered the information stated on this form concerning the prospective purchaser's relationship to an employee of the selling agency and agree to the purchase.
- Whilst I agree to the purchase I have not, as yet, signed any document binding me to sell to the prospective purchaser named in this form.
- I understand that if my property/business is sold to the prospective purchaser named in this form at auction (whether I have been given this notice before or after the auction) I can withdraw from the contract within 72 hours of signing it by giving written notice to the purchaser and if I do so I will not be liable to pay the selling agent commission or outgoings.
- I note that I am to be given a copy of this completed form after I have signed it.

Signature(s) and consent of all vendors (if the vendor is a corporation - a director must sign)

Signature of vendor

 X

Date

 / /

Signature of vendor

 X

Date

 / /

Signature of vendor

 X

Date

 / /

Signature of vendor

 X

Date

 / /

Privacy

Application for Purchase of Real Estate or Business by a Prohibited Person

Estate Agents Act 1980 Section 55

Document checklist

You must attach the following for your application to be considered

- The Vendor(s) Consent form must have been completed by the vendor(s). You must provide a copy of this form to the vendor.
- The Selling Agent's Statutory Declaration must be completed by the selling agent and witnessed by an authorised person.
- The Valuer's Statutory Declaration form must be completed by an independent qualified valuer and witnessed by an authorised person. The valuation provided must be the most recent valuation of the property. You must provide a copy of this valuation to the vendor.
- A copy of the section 32 Statement or Contract of Sale of Business.
- A copy of the Engagement Authority Contract signed with the vendor.
- A complete and unamended photocopy of the sales file.
- If other agencies have been engaged to sell the property/business within the last 12 months, you must provide a list of the names of those agents.
- A written and signed statement from the purchaser outlining the future use of property.
- A letter from the Licensed Estate Agent or Officer in Effective Control consenting to this transaction.

How to lodge and pay for this application

The application fee is \$134.10. This application cannot be processed without payment

The application fee of \$110.20 can be paid by cheque, money order or credit card. Cash is only accepted if paying in person. Cheques and money orders are to be made payable to 'Department of Justice'.

When you have completed and attached all the necessary documents, lodge your application by:

sending it by post to:
Consumer Affairs Victoria
GPO Box 123A, Melbourne 3001

OR

personally delivering to:
Consumer Affairs Victoria
113 Exhibition Street, Melbourne
Office hours are 8.30am–5pm Monday to Friday
(closed on public holidays)

If paying by credit card fill in your credit card details below.

Amount
\$134.10

Visa Mastercard Bankcard Amex

Card number

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------

Name of cardholder

Card expiry date

 /

Signature of cardholder

Date

 / /

What happens then

Consumer Affairs Victoria will process your application. You may be contacted for further information.

If the form is completed correctly and all necessary documents attached, processing time is on average 2 weeks.

You will be notified of the outcome by letter.

Privacy

Consumer Affairs Victoria is bound by laws that protect your privacy concerning the collection, use and disclosure of your personal information. Where you do not provide the information required by this form, we may refuse or be unable to process this transaction. We may need to disclose your personal information to other State and Commonwealth agencies. You can request access to your personal information by contacting us. Our privacy statement is available at www.consumer.vic.gov.au

