

# STATEMENT BY A VENDOR OF A SMALL BUSINESS

## *Estate Agents Act 1980 Section 52*

### Form 2, Regulation 7, Estate Agents (General, Accounts and Audit) Regulations 2008

#### Introduction

For the purposes of Section 52 of the *Estate Agents Act 1980* a small business is a business in which the goodwill, plant, equipment and fittings being sold have a total price of \$350,000 or less.

This Statement contains 5 sections:

- Section A – Important information for vendor
- Section B – Important information for purchaser
- Section C – Business information
- Section D – Vendor's Business Operating Report
- Section E – Vendor's declaration
- Section F – Acknowledgement of receipt by the purchaser

In this Statement a person who is seeking to sell a small business is referred to as a 'vendor' and a person who is seeking to buy a small business is referred to as a 'purchaser'.

#### Section A—Important information for vendor

A vendor must sign this Statement.

- 2 A vendor or their estate agent must give the purchaser or their representative a completed and signed copy of this Statement before the purchaser or their representative:
- (a) signs the contract OR
  - (b) pays the deposit

with respect to the sale of a small business.

- 3 The financial and accounting information in the Business Operating Report in Section D must:
- (a) cover the trading of the business for the last two accounting periods, unless the vendor has not owned the business for that long, and
  - (b) be certified by a practising accountant as being in accordance with the vendor's books of account and as being true and fair.

Item 2 in the Business Operating Report in Section D lists the people who are practising accountants for the purpose of this Statement.

- 4 An accounting period is a financial year; or a continuous period of 12 months or if a particular accounting period was changed for book-keeping purposes that period may be treated as an accounting period.
- 5 A single asterisk, (\*), means strike out the item if it is not applicable.

#### **WARNING TO THE VENDOR**

If this Statement is incomplete or inaccurate, the purchaser may avoid the contract provided they do so within three months of signing the contract and have not already taken possession of the business. If a purchaser avoids a contract on these grounds, the vendor must repay any money paid by the purchaser under the contract. A vendor who fails to give a purchaser or their representative this Statement or gives a Statement that is incomplete, is liable for a fine of up to 10 penalty units.

#### Section B—Important information for purchaser

Section 52 of the *Estate Agents Act 1980* requires that a purchaser of a small business or their representative be given a completed and signed copy of this Statement by the vendor or their estate agent. The purpose of this Statement is to notify the purchaser of certain particulars concerning the trading and financial position of the business to be acquired.

- 2 The information contained in this Statement does not replace due diligence undertaken by the purchaser. It provides key financial information which will assist the purchaser to identify those matters where further information and documentation is required. At a minimum, the purchaser should ask the vendor to provide copies of:
- the Balance Sheet and the Profit and Loss Statement for the business for the last two accounting periods
  - the most recent Tax Assessment by the Australian Taxation Office for the business, and
  - any quarterly Business Activity Statements (BAS) prepared for the business since the end of the last financial year.
- 3 The purchaser should consider seeking expert advice to assess and interpret the information contained in this Statement and other information provided by a vendor with respect to the business.
- 4 The purchaser may also consider:
- arranging a trial period before the settlement date during which they have the right to attend the business to observe its operation. Such a period provides an opportunity for the purchaser to gain experience with the running of the business, with the vendor's assistance. Whether or not a trial period is appropriate will depend upon the nature of the business, and
  - appointing an accredited stocktaker to assess the stock at hand for the business.

- 5 The purchaser should ensure that the contract for the sale of the business has warranties with respect to assets, stock and the business accounts.
- 6 If the vendor purchased the business from a previous owner who only operated the business for a short time, the purchaser should ask the vendor to also provide a copy of the Statement by a Vendor of a Small Business with respect to the previous sale of the business.
- 7 Where the sale of the business is to include the sale of land, a disclosure statement with respect to the land will be given to the purchaser or their representative in accordance with section 32 of the *Sale of Land Act 1962*.

**NOTICE TO THE PURCHASER**

The purchaser may avoid the contract if information in this statement is inaccurate or incomplete and is entitled to a full refund of any moneys they have paid under the contract

**Section C—Business information**

**1 Vendor**

Name

Address

  

Postcode

Telephone number

Email

**2 Vendor's agent**

Name

Address

  

Postcode

Telephone number

Fax

DX number

Email

**3 Business details**

(a) Name

Street address

  

Postcode

Postal address

  

Postcode

Telephone number

Fax

DX number

Email

(b) Description of the business

(c) The vendor has carried on business for a period of

\*years\*                      months\*                      weeks

commencing on

(d) The vendor has carried on business at the present location for a period of

\*years\*                      months\*                      weeks

commencing on

(e) The business is conducted from premises that are \*owned/\*leased by the vendor.

If the vendor is the owner of the premises in which the business is being conducted, the premises \*are/\*are not being sold with the business.

(f) The normal trading hours of the business are:

Monday to Friday:

Saturday:

Sunday:

(g) Members of the vendor's family or other persons \*worked/\*did not work in the business and \*were/\*were not paid wages.

Payments made to family or other associated persons have been included in \*Item 3/\*Item 7 in the Business Operating Report in Section D.

## Section D— Vendor's Business Operating Report

The figures in this Statement relate to the business being sold and are prepared on an \*accrual/\*cash accounting basis.

Note: Accrual accounting is the method whereby revenue and expenses are recorded in the period in which the entitlement to income and costs are incurred, even though they may not have been received or paid.

Cash accounting means that revenue and expenses are recorded in the period in which the money was receipted and paid.

1 Business operating report		
	Accounting period A	Accounting period B
(The figures for the most recent period should be in column B)	From _____  To _____	From _____  To _____
Number of weeks of operation		
<b>1 TOTAL GROSS INCOME OF BUSINESS</b> [Include in the calculation of this amount income from all sources such as goods and services provided, commission, etc]	\$	\$
Average per week	\$	\$
<b>2 GROSS PROFIT for the business</b> [Total Gross Income of Business (Item 1) less the cost of goods/services provided]	\$	\$
Gross Profit [Item 2] as a % of Total Gross Income of Business [Item 1]	%	%
<b>3 TOTAL OPERATING EXPENSES</b> [Include in the calculation of this amount all expenses directly related to operating the business]	\$	\$
<b>4 NET PROFIT for the business</b> [Item 2 less Item 3]	\$	\$
<b>5 FINANCING and other costs applicable to the business</b>	\$	\$
<b>6 DEPRECIATION and AMORTISATION</b> [On motor vehicles, plant, equipment, chattels, etc, used for business purposes. Attach depreciation schedule where items are to be transferred with the business]	\$	\$
<b>7 PERSONAL EXPENSES and outgoings of the present vendor</b>	\$	\$
<b>8 ADJUSTED NET PROFIT to present vendor</b> [Item 4 less (Item 5 plus Item 6 plus Item 7)]	\$	\$
<b>FURTHER CONSIDERATIONS – ASSET QUALITY</b>		
1 Business debts		
Trade debtors (owed to business) at end of accounting period B		\$
Less provision for doubtful debts		\$
NET DEBTORS		\$
2 Contingent liabilities		
Itemise other matters that could impact upon the owner's equity in the business as at the proposed settlement date. This includes any liability that runs with the business, for example, an adverse planning or environment ruling affecting the operating precinct of the business or a taxation dispute or other litigation concerning the business if it is a corporation.		
_____		\$
_____		\$
_____		\$
_____		\$

## 2 Certification of Business Operating Report by practising accountant

I, (print practising accountant's name)

of, (print practising accountant's address)

  

Postcode

Telephone number

being a (please tick the relevant box)

- registered company auditor with the Australian Securities and Investments Commission, OR
- Member of CPA Australia or the Institute of Chartered Accountants in Australia, OR
- Member or Fellow of either the National Institute of Accountants or the Association of Taxation and Management Accountants, OR
- Fellow of the National Tax & Accountants' Association Limited.

declare and report that the accounting and financial information set out in the Business Operating Report is in accordance with the books of account of the vendor and is true and fair to the best of my knowledge and belief, and make additional comments:

  

Signature of practising accountant

Date

### Section E—Vendor's declaration

The vendor declares that:

(a) since the end of the last accounting period in Column B of the Business Operating Report:

- (i) circumstances have arisen or practices have been adopted that \*have/\*have not affected the gross profit of the business, and
- (ii) no circumstances adversely affecting, or likely to adversely affect, the conduct of the business have arisen, except the following:

  

(b) the information in this Statement (including the Business Operating Report) is accurate and complete.

Signature of vendor

Date

### Section F—Acknowledgement of receipt by purchaser

The purchaser acknowledges receipt of this completed Statement by the vendor of a small business

I, (print purchaser's name)

of, (print purchaser's address)

  

Postcode

Signature of purchaser

Date