

# Property

This chapter has information for people whose properties were affected by the February 2009 Victorian bushfires. It also has information for people who were buying and selling properties affected by the bushfires.

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## Buying and selling property

**I paid a deposit on a house before the fire. The house has burnt down or was damaged by the fires. What can I do?**

### Ending the contract

If the house was destroyed or damaged so much that you cannot live there before settlement, you may want to end the contract and get out of the sale. You need to give notice in writing. Do this before settlement of a cash contract or any earlier possession date that is in the contract. You must give this written notice to the seller (or their lawyer/ conveyancer) within 14 days after you become aware of the destruction or damage to the house.

The seller can make a claim on their own insurance policy to repair or rebuild the destroyed house. The seller must also give you back any money you had paid them and you must give back any documents such as titles and transfers. This only applies to residential properties that are unfit to live in.

There are a lot of decisions to be made if you want to end a contract. Get advice from a lawyer or a conveyancer.

### Continuing with the purchase

If the property is damaged but you can still live in it, you may want to go on with the sale. It is up to the seller to fix and pay for the damages that need to be repaired. You have the right to ask the seller to repair the house so it is restored to the way it was when you put a deposit on it, as required under the contract of sale. You can delay settlement until the repairs are done.

From the time when you signed the contract to when you take possession of the property, any insurance policy that the seller has will also benefit you, unless you have separate coverage. There are some exceptions to this. For example, you may have changed this in your contract of sale or you may have deleted

or changed the term that means the property is transferred in the same condition, except for wear and tear. Check your contract and find out the details of the seller's insurance and the level of cover they have.

**I want to sell or rebuild a jointly-owned property that was affected by the bushfires. The other owner does not want to sell. What can we do?**

If you are one of two owners and you want to do anything with your jointly owned land (for example, lease, sell, repair or renovate), you and the other owner both need to agree to it. Check first to see if you made any agreement with the other owner about how to divide property as this may address the issue.

If you cannot agree, you may need to apply to Victorian Civil and Administrative Tribunal (VCAT) for a decision to be made. VCAT runs more informally than a court but can help resolve your dispute, make decisions that must be obeyed and order damages to be paid.

VCAT will usually allow you to sell the property and then you can split the proceeds with the other owner. VCAT does not usually allow for the physical division of the land. For more information, contact VCAT on their Bushfire Information Line on 1800 001 099 or email them about bushfire-related issues at [vcat@vcat.vic.gov.au](mailto:vcat@vcat.vic.gov.au) with the words 'Bushfire priority' in the subject header.

Your mortgagee/lender might also get involved and have a say in how the insurance money is spent.

**I need to update the title to my property as I lost my partner, the co-owner, the fires. What should I do?**

If you own the property as a joint tenant, the property will automatically pass to you, and you can make an application to the Registrar of Titles. They will issue a new certificate with you as the registered owner of the land. You can do this yourself or instruct a lawyer to do so. For more information, read Your Guide to Application by Surviving Proprietor produced by the Department of Sustainability and Environment. This publication is available on their website at [www.dse.vic.gov.au](http://www.dse.vic.gov.au) ( click on 'Property, Titles and Maps > Land Titles > Forms, guides and fees' and look under 'Guides > Other'). Fees for changing title where a co-owner has died in the February 2009 Victorian bushfires have been waived. Let the Registrar of Titles know about your situation. Include this information in your statutory declaration (explained in the guide) and advise the Registrar of Titles office when you submit your application.

If you own the property as tenants in common, your partner's share will be dealt with under their Will's or estate's administration. Get legal advice. For referral to a lawyer that can advise you as a tenant in common or a joint owner wishing to change title, contact the Law Institute of Victoria. **See** 'Where to get help' for details. **See** also the Wills and estates chapter for information on estate administration.

**I made an offer to buy a property but it was then destroyed or damaged. Can I withdraw from the offer?**

Yes. You can withdraw your offer by writing to the seller or to their estate agent but you must do this within three business days of making your initial written offer.

If the house is destroyed or damaged so much it is unfit for you to live in, you may still have a right to end the contract of sale after the three-day 'cooling-off' period has ended (even if the seller has accepted your offer). If the house is unfit to live in you may also have a right to get back your deposit. Get advice from a lawyer or a conveyancer about this.

### **My property was burnt down or damaged and I have now got an offer for it. What should I do?**

It is important that you take your time to consider the offer and that you get advice from professionals about how much your property is worth. Talk to local estate agents, conveyancers and other property experts.

If you have already accepted an offer and are concerned about the value, contact Bushfire Legal Help on 1800 113 432 or Consumer Affairs Victoria on 1300 558 181.

### **Property used as security**

#### **My destroyed property was used as security for the loan on another property I bought. What happens now?**

A property which has been used as security for a loan acts as a protection for the lender if you default (miss repayments) on the loan. If the property was damaged, you still need to make regular loan repayments. Usually you need to tell the lender as soon as possible about any damage to the property that was being used as security.

In most cases, the lender has standard expectations for the property being used as security, for example, the lender will have required that you have insurance on the property. If the property is damaged or destroyed, the lender will then require that you pay them any insurance money you get. After this happens, you and the lender will work together to use that money for repairs, replacement and rebuilding. You can expect that the lender will take control of any negotiations with the insurer. Not all arrangements work like this though. Check the terms of your mortgage document.

If the destroyed property was not insured, the lender might want to work out again the security for the loan and could require you to give more security or repay the loan. They might want the loan paid in full or in part.

### **Property damaged by public authorities**

#### **Part of my property was destroyed by the Country Fire Authority during fighting the bushfires. Who pays for the repairs?**

Because the Country Fire Authority is a public authority it does not have to pay for any damage caused during fire fighting activities. This is not the case if the damage was done on purpose by the public authority or because of its negligence. Get legal advice if you think this was the case. **See** 'Where to get help'.

If you have fire insurance, this damage will be covered. Collect evidence as soon as you can to give to the insurer. Photographs and a written timeline of what happened may be useful.

### **Building, renovating and trades work**

#### **I would like to change a building contract that I entered into before the bushfires to make my house more fire-proof. Can I do this?**

You may be able to do this but check first about permits that may be required for the extra work. You can call the Building Commission on 1300 360 320 to find out about permits and other requirements. You can also speak with your building surveyor about this. If you do not know their details, check your original building permit or ask the local council for a copy. To find your local council's contact details visit the Local Government Victoria website at [www.localgovernment.vic.gov.au](http://www.localgovernment.vic.gov.au) (click on 'Find your local council').

Ask your builder to explain the extra work, any costs or impacts involved and request that they put this information in writing. It is important that you get written information about how the extra work is different from your original plans.

### **My property was destroyed or damaged during renovations or building and I owe money for completed work. Do I have to pay?**

Yes. Your contract with the tradespeople (to do work on the house) remains in existence despite the bushfires. If the damaged property is insured, you may be able to claim on your insurance policy. The builder may also be insured for this work so check if their general construction insurance may cover the loss. Talk to your builder and ask to see a copy of the contract if yours was destroyed in the fires. **See** the 'Insurance' chapter for more details on insurance claims.

## **Trees**

### **I need my neighbour's trees cut down or branches removed because they are unsafe and are a fire hazard. What can I do?**

There are many things to think about when trees need to be cut down. For example, you might need a permit to remove trees or branches. General law or council guidelines usually apply but check with your council before going ahead. To find your local council's contact details see the Local Government Victoria website at [www.localgovernment.vic.gov.au](http://www.localgovernment.vic.gov.au) (click on 'Find your local council').

You can cut down branches that hang over your property without your neighbour's permission but you do not have right to enter their property to do this. You must cut the branches in a way that does not cause damage to the tree. The cut-off branches remain the property of your neighbour, so check first if you neighbour would like to have the branches returned.

You may be able to enter your neighbour's property to cut down trees if there is obvious and immediate danger. For example, if the tree is likely to fall down. You might need a tree specialist's (arborist's) report to prove this.

If the trees are causing physical damage to your property, you can apply to the Magistrates' Court for an order that your neighbour remove the tree. You may also be able to claim compensation for damages.

Usually the cost of removing trees is paid for by the owner of the property where the tree is growing.

### **My neighbour's tree fell on my property during the fires and destroyed the shed. What can I do?**

If you are insured, you can make a claim with your insurer. If you are not insured, you can apply to VCAT. You can also make a claim in the Magistrates' Court (or the Supreme Court if your claim is over \$100,000). The court can order that damages are paid to you, if you are successful.

### **What are the areas of the law that may be used for tree matters?**

A 'cause of action' is a fact that provides a reason for an area of law to be used in court. To be successful, you will need to prove a number of things. Even if you prove these things, you may not be successful. Always get legal advice about your particular situation. **See** 'Where to get help'.

For more information about causes of action in disputes about trees, [see](#) 'Appendix two – Trees and causes of action'.

### Other property information and help

#### **Fire control lines on my property have been damaged or destroyed. Who pays for their repair?**

The government is currently paying for the rehabilitation of fire control lines on your property to help stop or slow bushfires. Rehabilitation does not include replanting trees or other agricultural crops, other than pasture. For more information see the Department of Environment and Sustainability website at [www.dse.vic.gov.au](http://www.dse.vic.gov.au) (click on 'Fire and Other Emergencies > Fire Situation > Bushfire Recovery'). You can also contact your local Department of Environment and Sustainability office to report any damage.

#### **My waterline was damaged during the fires. Who pays for the repairs?**

Check with your insurer to see if you are covered for this damage. Also check your contract with the water supply authority to see if it contains any guarantee of supply or if it tells you what they will do to deal with repairs.

#### **Can I get help for livestock, pets or wildlife?**

Yes. For help for animals affected by the bushfires, visit the Department of Primary Industries website at <http://new.dpi.vic.gov.au/home> (click on 'What we do > Our key work areas > Emergency Management' and look at Bushfire Recovery).

#### **How do I know if my house is safe to live in?**

You should have your home inspected by a professional like a municipal building surveyor or a building inspector. Call the Building Commission for more information or check their website for details of registered building surveyors or inspectors. See also their 'Guide to safe return to your property' on the website. Tel: 1300 360 320 from Monday to Friday, 9 am to 5 pm and visit [www.buildingcommission.com.au](http://www.buildingcommission.com.au)

#### **How do I organise getting my house demolished?**

If your house has been completely destroyed or is unable to be repaired, have your home inspected by an insurance company and a building inspector before you get it demolished.

The building inspector will recommend one of the following:

- emergency demolition – if the building is unsafe
- demolition by your council – including the removal of rubble
- repairs or partial demolitions – if part of your house is liveable.

These recommendations must be forwarded to your insurance company before any action is taken.

Only registered building practitioners or a registered demolisher should carry out demolition works on your property. Do not do this work yourself. See the Building Commission's website at [www.buildingcommission.com.au](http://www.buildingcommission.com.au) for a list of registered building practitioners and demolishers.

### **I am going to rebuild. What do I need to think about?**

You should think of how you might like to re-build. You could use a master builder or an architect or be a owner-builder or project home builder. Before you begin, you should arrange for a site inspection to make sure your property is safe for rebuilding. Contact your local council or relevant government department about building codes and approval. To find your local council's contact details see the Local Government Victoria website at [www.localgovernment.vic.gov.au](http://www.localgovernment.vic.gov.au) (click on 'Find your local council').

When you decide to rebuild and if you decide to employ someone to rebuild for you, get a number of quotes and work out timelines to make your decision on who to use easier. Check the credentials of your builder and make sure they have a licence number. You should get legal advice before signing any contracts. Once your home is re-established, make sure you have adequate insurance.

Title boundaries of properties need to re-marked by a licensed land surveyor before any rebuilding can begin. To make sure property boundaries are accurately re-marked, all remaining survey control marks should not be disturbed or removed. For bushfire specific surveying information visit the Department of Environment and Sustainability website at [www.dse.vic.gov.au](http://www.dse.vic.gov.au) (click on 'Property, Titles and Maps' > Surveying – Victorian Bushfires Surveying Taskforce). Also contact the Office of Surveyor-General Victoria on 8636 2525 or see [www.land.vic.gov.au](http://www.land.vic.gov.au) (click on 'Surveying').

See also the Fitzroy Legal Centre's Law Handbook fact sheets on building or renovating and living in the community at [http://www.lawhandbook.org.au/fact\\_sheets/](http://www.lawhandbook.org.au/fact_sheets/)

### **What if I need help clearing my property?**

If you need help cleaning your property visit the Victorian Bushfire Reconstruction and Recovery Authority website at [www.wewillrebuild.vic.gov.au/clean-up-a-rebuilding.html](http://www.wewillrebuild.vic.gov.au/clean-up-a-rebuilding.html) or call the Department of Environment and Sustainability Bushfire Information Line on 1800 136 762. You can also call this number to register for a reimbursement for clean-up costs or do this at the website [www.wewillrebuild.vic.gov.au/clean-up-a-rebuilding/register-for-the-clean-up-or-reimbursement.html](http://www.wewillrebuild.vic.gov.au/clean-up-a-rebuilding/register-for-the-clean-up-or-reimbursement.html)

### **How do I get a new Certificate of Title?**

You need to complete an Application for a New Certificate of Title as well as a statutory declaration. You can get this application form in the booklet Your Guide to Replacing a Lost or Destroyed Certificate of Title, which is available at the Department of Environment and Sustainability website [www.dse.vic.gov.au](http://www.dse.vic.gov.au) (click on 'Property, Titles and Maps > Land Titles > Forms, guides and fees' and look at 'Guides > Other' on that page).

The completed application form and statutory declaration need to be sent to the Department of Environment and Sustainability with a copy of your photo identification. There is no cost for replacing titles lost when you are doing so because of the bushfires.

### **Can I get help with rates, stamp duty and taxes generally?**

Your local council may have made changes to rate payments for bushfire affected people. Ask them about this. The contact details of your local council can be found at the Local Government Victoria website at [www.localgovernment.vic.gov.au](http://www.localgovernment.vic.gov.au) (click on 'Find your local council').

The State Revenue Office is currently offering relief for those who lost their main residential home or non-commercial vehicle in the bushfires. You can also get help for payroll tax and land transfer duty. Contact the State Revenue Office on 132 161 (there is a special line for bushfire-related enquiries) or visit their website at [www.sro.vic.gov.au](http://www.sro.vic.gov.au)

The Australian Taxation Office is offering help and information for bushfire affected people and businesses. Contact their Emergency Support Infoline on 1300 304 975 or visit [www.ato.gov.au](http://www.ato.gov.au)

### Can I get help with architectural design to meet the new standards?

If you lost your home in the February 2009 bushfires, you can get help from the the Architects Bushfire Homes Service at no cost. The service is coordinated by the Office of the Victorian Government Architect, the Victorian Chapter of the Australian Institute of Architects and the Building Commission.

The service offers people access to a range of house designs and one free consultation with an architect. The house designs are tailored to be able to comply with the new Australian Standard for residential buildings in bushfire prone areas. The architectural designs also provide sustainability and amenity benefits.

People can register to participate in this offer by calling 8620 3866 or emailing [vic@raia.com.au](mailto:vic@raia.com.au)

For more information, visit

<http://www.wewillrebuild.vic.gov.au/clean-up-a-rebuilding/architects-bushfire-homes-service.html>

### Insurance

If you had a home insurance policy and know who the insurer is, contact them as soon as possible about the damage to your property. If you are not sure which insurer your policy was with or you do not have a copy of your insurance documents, contact the Insurance Council of Australia on 1300 728 228.

Get professional advice before making or accepting a claim. For more information, **see** the 'Insurance' chapter or contact the Bushfire Legal Help Insurance Unit on 1800 113 432.

### Fencing

**See** the 'Fencing' chapter for more information and visit the Department of Human Services website at [www.dhs.vic.gov.au/emergency/current-events/bushfire/financial-assistance](http://www.dhs.vic.gov.au/emergency/current-events/bushfire/financial-assistance) for information on fencing assistance.

### Financial help

**See** the 'Relief' chapter for more information

### Other useful Handbook chapters

**See** 'Fencing, 'Insurance' and 'Relief'.

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#### DISCLAIMER

The information contained in this chapter of the Bushfire Legal Help Handbook is intended to provide general information on legal topics, current at the time of first publication. The contents do not constitute legal advice, are not intended as a substitute for legal advice and should not be relied on as such. You should get legal advice in relation to your individual circumstances and any particular matters you may have.

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