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A Guide for the use of Clients or Potential Clients of the Firm

BUYING A HOME

General Information and Disclaimer

The following notes are designed to be a checklist of issues to consider when considering the purchase of real estate.

Most of the points are common sense but should be addressed at the point you begin inspecting properties.

The explanation of the legal work involved in the conveyancing process is intended to clarify for the consumer the work his or her solicitor has to do during the transaction and is set out as the usual logical progression of a typical purchase transaction.

These points are not intended to be exhaustive. Nor are they intended to replace professional advice which should be sought to take into account individual circumstances.

PRACTICAL HINTS ON WHAT TO LOOK FOR WHEN BUYING A HOME

1. PRIORITIES

- Establish your priorities (i.e. I suggest that you make up a wish list in order of importance to you).

2. OUTGOINGS

- Ask the real estate agent or owner for details of council and water rates.

3. LIGHT

- Be conscious of the amount of light in the property. If lights are on at the time of inspection, turn them off to gauge this in actual daylight. Ideally you should visit the property at different times of the day before committing yourself.

4. NOISE

- Be conscious of the noise level inside the property and open windows to gauge the level of outside noise coming in. Is the property near a church, school or on heavily used transport routes or near shopping centres where noise could impact on your lifestyle?
- Flush the toilet and turn on the tap in the kitchen sink to see if any of the water pipes make a loud knocking noise. If so it may be prudent for a plumber to advise on the amount required to rectify this.

5. PHYSICAL ASPECTS OF THE HOUSE

- As the purchase of a house is a major investment, we suggest that at the very least a structural report and a pest report should be obtained before you are committed to the purchase. We can organize a written report for you covering both these areas from quality tradesmen for an overall cost of between \$600.00 to \$800.00 depending on the location and nature of the property.
- Are there seepage problems in carports or garages in the lower part of the building or underground? Damage to the paint work on your car may be expensive to repair.
- If the house is near the sea or a lake consider the effect on your car and the house (and even on your clothes and zippers) of salt spray.
- Look carefully at the location of the house having regard to wind and rain. Exposure if the house is on high ground and the potential for heat trapping and water problems if the house is on low ground or near natural or artificial water courses, should be taken into account.

6. VIEW

If there is a view (which will naturally increase the price) is it possible that the view might be obstructed at some time in the future thereby devaluing the property?

8. TITLE

Legal title or ownership of a house and/or land can be recorded under:-

- a) the Torrens system of land ownership registration; or
- b) the Old System under individual transaction documentation (rare); or
- c) under the Crown Lands Act; or
- d) Company title.

Old System title relies on the collection of all dealings with the land which forms a “chain” of ownership from a point in time thirty years ago.

As Old System title involves an examination and comparison of each dealing in turn, it involves a great deal more work on the solicitor’s part and therefore can be less attractive to potential purchasers. Torrens title on the other hand shows only the last dealing on a centrally registered certificate and title is guaranteed by the State.

Company title means that you are buying shares in a company which owns the land. It presents some challenges for a Purchaser, particularly in terms of the rules of the company and also finding a Lender who will agree to lend against the shares. You may find that additional security property or guarantees are required and that the Lender does not put as much of a value on this type of ownership as it does on Torrens Title.

Crown land purchases have special features including the consent of the Government to the transfer.

If the title to the property is qualified, this means that the title is in the process of conversion from the Old System to Torrens title. In most cases, unless the time period for conversion has almost expired, it will be necessary to examine the title to qualified title properties as if they are Old System.

Sometimes a title will show that it is “Limited”. This means the Registrar General has not identified the boundaries of the land and will need a survey or subdivision plans to establish this. As this may be expensive, its implications need to be examined before negotiations on price begin.

If in doubt, ask the owner or real estate agent which type of title is involved. It will be apparent from the contract to us if they don’t know.

Please note that an estate agent must have a draft contract available before listing any property for sale.

THE LEGAL ISSUES INVOLVED IN BUYING A HOME

The legal work in the purchase transaction will include the following:-

- i. Negotiating the terms of the contract. This is the crucial step in the process requiring detailed knowledge;
- ii. A search of the title to the property to ensure that the vendor owns it;

- iii. An examination of an existing survey to correctly identify the property you have inspected to ensure that it matches the legal title to the property you are buying. If there is no existing survey, you may consider not proceeding further with the purchase until a fresh survey of the property is obtained and examined. In a buyers market you may be able to negotiate a contribution to the cost of this report from the Vendor.

Apart from identifying the property a survey should also disclose any non-compliance with the Local Government Act in regard to the rules required to be followed during construction; whether the buildings on the land encroach onto adjoining properties or easements and also whether neighboring building encroach onto the land being purchased. Compliance with any restrictions on the use of the land imposed by previous owners should also be covered by the survey.

All of the above will have legal ramifications requiring advice in the circumstances, including recommendations about the need if any to obtain a clearance from the local council (a Building Certificate under S.317AE of the Local Government Act);

- iv. A drainage diagram to show the position of sewer and water pipes and connections;
- v. A certificate from the local council in regard to zoning and related matters (a 149 Certificate);
- vi. A report on whether any government authority has plans to resume the whole or any part of the property for community purposes;
- vii. A report on whether there are any charges imposed by government or semi-government authorities which will need to be paid or adjusted by the vendor before completion;
- viii. Detailed questions about the vendor's ownership of the property and knowledge of matters which might impact on the prudence of completing the purchase;
- ix. Advising of the best method of funding the purchase and satisfying the requirements of any financier involved in the transaction;
- x. Attending to the payment of the government stamp duty (or tax) on the contract and, if applicable, the mortgage securing a financier's loan;
- xi. Arranging the final settlement of the balance of purchase moneys including adjusting rates and taxes between vendor and purchaser, completing the formal transfer of ownership and notifying relevant government authorities of the change;
- xii. Advising an adequate insurance for the property arising out of the enquiries conducted between exchange of contracts and completion including the correct level of insurance. It is important to note that subject to special individual circumstances, the risk of damage the property is carried by the Vendor until completion of the transaction.

Please don't hesitate to contact us (details at the top of this brochure) should you have any queries.