

## Avoiding conveyancing traps – special conditions

Conveyancing is the process involving the transfer of legal title of real property from one person to another.

The conveyancing process is designed to ensure that the buyer obtains good and marketable title to the property together with all the rights that run with the property and is notified of any restrictions or rights in advance of their purchase.

For most people buying a property is the most significant transaction they will enter into in their lifetime, both from an emotional and financial point of view. There can be detrimental consequences if it is not done properly.

We can help you navigate the process and will ensure that you get good title to the property you are buying and that there are no restrictions on the property that you are not aware of before you buy.

### **Why do searches & enquiries?**

When buying a property there are some statutory obligations on the seller to disclose to the buyer certain things about the property before the contract is signed.

However, there is no obligation on the seller to tell you **everything** about the property or any of its defects and many enquiries about the property are not done until after the contract is signed or becomes unconditional.

The onus is on the buyer to undertake searches and enquiries to satisfy itself in relation to the property. The old saying “Buyer Beware” applies as the contract may not protect against adverse search results in all circumstances. Searches will help you to find out if the property is affected by any current or known future plans or licenses issued by government or by inclusion on any registers such as heritage listing or environmental management.

### **Mortgages or encumbrances registered on title**

A review of the searches attached to the contract is necessary to confirm that the seller actually owns the property and has the right to sell it to you.

Searches will also provide information about any **encumbrances on the title**.

Examples include:

- Mortgages registered against the property. Mortgages must be removed from the title before settlement.
- Easements to the local council or utility company who may have the right to use a portion of your property (possibly above or below ground) for things such as sewerage, electricity, telephones or gas.
- Restrictive covenants which affect how the property can be used. For example, a neighbourhood may have building size and design requirements.

### **Special Conditions – avoiding the traps**

Your lawyer can include special conditions in the contract, before it is signed, to deal with specific issues, not covered by the standard form contract, which may arise from searches or the property that you are purchasing (for example a pontoon may be attached to the property).

A special condition can provide a buyer with additional protection or rights in relation to adverse search results. For example the contract could be made subject to satisfactory searches, work to be completed or can oblige the seller to compensate the buyer as a result of adverse search results.

Where the contract has already been signed there is generally no opportunity to add special conditions. In some limited circumstances it may be possible to negotiate amendments to the terms of the contract if there is a cooling off period or while the contract is still conditional.

### **Examples of useful special conditions**

If a buyer signs a standard contract unaware of building or pest issues with the property there may be no protection if it is subsequently discovered that the foundations are sinking or the property is termite infested. If a building and pest inspection has been carried out before the contract is entered into and problems are discovered then there may be a possibility of addressing some or all of those problems in the contract.

If you are buying a property that requires repairs or maintenance then you may wish to make the settlement conditional upon the completion of specified work and a satisfactory inspection before you are ready to settle the purchase.

If there is a special condition in the contract a buyer may be able to delay or refuse to settle if the issues are not rectified.

If you need assistance with a conveyancing matter (either buying or selling) or would like more information please call us on (03) 9459 5764 or email [admin@rtlegal.com.au](mailto:admin@rtlegal.com.au).