

SEARCHES IN A RESIDENTIAL PROPERTY PURCHASE

An important part of a lawyer managing the conveyance for a purchaser of residential property are due diligence searches. These searches are necessary because they determine whether the seller owns the property and has the right to sell it, whether the seller has complied with their disclosure obligations under the contract, as well as any other factors that may affect the purchaser's decision to purchase the property.

When acting for either a purchaser or a seller, Bywaters Timms will always carry out a title search of the property. There are a range of further searches we perform when acting for a purchaser when appropriate to the circumstances, as well as other searches a purchaser may choose. We discuss with our clients what searches are appropriate for the particular property and don't just do "the standard searches".

STANDARD SEARCHES FOR A PURCHASE

Title Deed

A title search is undertaken when acting for either a purchaser or a seller because this will establish whether the seller is the registered owner of the property. It will give a description of the property which we then compare to the details recorded in the contract – it is important to identify any errors in a contract at an early stage because these can affect a bank being ready for settlement and preparing property transfer documents later in the conveyance. A purchaser may be entitled to terminate the contract if there is a material defect in title.



This search will show any encumbrances registered on the title. These may include:

- Whether the seller has a mortgage on the property. This must be removed prior to settlement.
- Any easements recorded on the title. This will allow the purchaser to see whether someone else, such as a utility company, has the right to use portions of the property for access, electricity, drainage etc.
- Covenants registered on the title. This will reveal whether there are any restrictions as to the use of the property, for example building size restrictions.
- Other information recorded on the title, which may include any registered leases, caveats, by-laws or administrative advices.

Registered Plan

The Registered Plan will show the lot number, area of the property and the location of any encumbrances such as easements. It is standard procedure at Bywaters Timms to send a copy of the Plan with the lot being purchased highlighted to the purchaser, and request the purchaser to initial the Plan and return it to us. This allows the purchaser to verify that it is the correct piece of land intending to be purchased.

We also check to ensure that the area of the land is the same as stated on the contract so that the purchaser will get what they are contracted to purchase.



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Personal Properties Securities Register

A search of the “PPSR” will determine whether anyone holds a security interest over goods or chattels included in the property being purchased. This is important because a seller is obligated to sell a property free from all encumbrances. If a registered security interest is not removed prior to settlement, the purchaser may be entitled to terminate the contract.

Land Tax

It is important to know whether a property is subject to land tax. This search will show if there are any arrears on land tax and the amount owing. If land tax is owing, it may pass on to the purchaser, therefore adjustments should be made to the figures payable by the purchaser at settlement to ensure outstanding land tax is paid.

Rates and Inspection of Records

A rates and inspection of records search will disclose the costs of rates for the property, and whether any rates are paid or remain in arrears. This information is important for the calculation of settlement figures, because rates are paid in advance for the quarter. The seller is liable for the rates up to the day of settlement, and the purchaser from settlement onwards. Rates charges do pass to the purchaser so it is imperative to ensure rates are paid.

This search may (with some councils) also reveal the location of drains, sewerage and water mains, and where the house connections are located.

Water Meter

This search involves a reading of the water meter prior to settlement and will show whether water consumption and water/sewerage access have been paid or remain outstanding. Water and sewerage access is paid quarterly in advance, unlike water consumption. This information is important for the calculation of settlement figures, because the seller is liable for the payments up to the day of settlement, and the purchaser from settlement onwards.

Again, these charges may pass to the purchaser so searches need to be checked carefully.

Property Notices

If any property or building notices have been issued by the council or related authority requiring work to be done on a property prior to the contract date, and the seller has not complied with the notice, a purchaser is entitled to terminate a contract. However, if these notices have been issued after the contract date, then the purchaser will be responsible for complying with them.



Bankruptcy/Company Search

If the seller is an individual, a bankruptcy search is carried out, but if the seller is a company, we perform a company search. These will show if the seller is bankrupt or being wound up, which if they are, will affect their ability to transfer the ownership of the property to the purchaser. This may entitle the purchaser to terminate the contract, although not always. A trustee in bankruptcy or liquidation may take over the sale.

Main Roads

This search will show whether there are any existing government proposals or future interests to resume part of the property for main roads, railways, busways, cycleways or airports. If the property is adversely affected it may entitle the purchaser to terminate the contract.

Flood Report

This search will provide a report about flood risks for a property, but won't provide a basis for the purchaser to terminate a contract. It will show the sources of potential flooding and paths for the flow of that water, past flood levels and the chances of future flooding.

OTHER SEARCHES FOR A PURCHASE

Building Records

This will show whether alterations to the house including extensions, decks etc have received council approval. This may influence the purchaser's decision to terminate the contract on the basis of an unsatisfactory building report, although under the contract the purchaser is not entitled to terminate unless a property notice has issued.

Queensland Building Services Authority

If work was undertaken on the property by a licensed contractor, this search will show whether the work is covered by BSA Home Warranty Insurance. This search is only conducted if the building is under 6 years old.

Contaminated Land Register

This will show whether exposure to hazardous substances has been registered on the property. This may be through past industrial use such as the property being used as a mine or dump, or military use where there may be unexploded bombs. If this is undisclosed by the seller, the purchaser may be entitled to terminate the contract.

Town Plan

A town plan will show the zoning for the property, which may be useful if the purchaser plans to redevelop the property. A recent case in Victoria involved the sale of an old warehouse which had been converted to a home. After settlement it was discovered that the property was not able to be used as a home. Town Planning searches can be very important in this type of situation.



Heritage

If the property is an older property then it may be recorded on the Heritage Register, which may impose restrictions on the property. This may entitle the purchaser to terminate the contract.

Energex

This will notify the purchaser whether power is connected to the property under normal tariff conditions or it may have conditions such as minimum usage which is common in rural areas if it is not connected. The search will outline the conditions for connection. It will also detail underground power cables running through the property. If there is a material easement undisclosed by the seller, the purchaser may be entitled to terminate the contract.

Powerlink

This will provide information on any major power lines nearby, and the authority's future interest in the property, easements and transmission lines. If there is a material easement undisclosed by the seller, the purchaser may be entitled to terminate the contract.

QLD Rail

If the property is located near a railway, this search will reveal whether any rail work is expected. This may entitle the purchaser to terminate the contract if work will significantly adversely affect the property.

Telco

Some purchasers may want to know whether there are major telecommunication cables passing through the property. This search will provide cable layout plans where available.

Body Corporate Records

If the property is a unit, the purchaser will want information regarding levies, by-laws, lot entitlements, insurance and details of the management and letting agreement or special levies. A purchaser may be entitled to terminate a contract if this reveals that the seller has breached a warranty.



Survey

This must be organised by the purchaser, and will involve a surveyor attending the property to determine whether the area and boundaries of the land are correct, and whether there are any encroachments onto or from the land, for example a neighbour's shed built over the boundary of the property. It can reveal mistakes or omissions in the description of the property such as unregistered easements. If there is a material defect to the property, the purchaser may be entitled to terminate the contract.

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