



SOLICITORS

BUILDING INSPECTIONS AND STATUTORY REQUIREMENTS

Many people undertake renovations to a property in the hope of increasing their capital. You should be aware that depending upon the type of improvements you may be required to obtain approvals from the Local Council, the Building Services Authority and a number of other statutory authorities. Failure to obtain such approvals may allow a prospective purchaser to "wriggle out" of the contract at the last minute.

When a solicitor is conducting a conveyance on behalf of a purchaser it is very rare that he ever inspects the property. All searches effected are done through the appropriate Government instrumentalities and in the case of our firm by answers to questionnaires which are submitted to our client during the course of the conveyance.

The answers to searches and the answers to these questionnaires do not always reveal whether improvements have been effected or whether those improvements have had the requisite statutory approvals.

The only way to ascertain this is by means of a compliance search. A compliance search is not merely a building inspection but is also an inspection of the plans of the improvements and alterations to see whether they comply with the Council records and requirements which existed at the time the improvements were effected.

Some Local authorities do physically conduct compliance searches and will readily provide details of all final inspections that have been done (or not done as the case may be). Others will merely make available a list of building approvals that have been granted. This of course does not necessarily tell us whether the building has actually been constructed as per the building approval or not.

Various builders are now carrying out building inspections although it should be noted that not all are prepared to assume the additional responsibility of guaranteeing the compliance of the construction with any Council approvals. Purchasers should be very careful to ascertain what information they are receiving in their builders report. If the inspection is to cover compliance checks then the builder should be specifically instructed of this fact.

You should also specifically instruct your builder if you wish to have the property inspected for white ants and termites. Some Builders will do this in their normal inspection but you should be aware that pest inspection is normally regarded as a separate issue from a Building inspection and the inspectors have separate training and licensing requirements.

When selecting a building inspector, you should ensure that they carry a suitable "professional indemnity policy". The reason for this is self evident. If the builder omits to advise you properly and you suffer loss then your claim against the builder is backed up by the insurance company's ability to pay rather than merely the builder who may be operating under a limited liability company and have no substantial assets.

The Building Services Authority ("BSA") provides that any improvements carried out by a non-registered builder or

owner builder to a value of more than \$6,000.00 will prevent the vendor from being able to enter into a contract for sale or even offer the property for sale for a period of six years after the work is completed unless certain approvals and disclosures are made.

You will all be aware that the cost of tradesmen can escalate what initially would appear to be a simple job to a cost well in excess of the \$6,000.00 threshold imposed by the Act. When calculating the threshold the Act also includes a value for labour even if you have done the work yourself and not had to pay a labour component. You must therefore include both labour and material costs in your calculations.

Obviously the Act does not provide for such maintenance items such as painting but may include amongst other things alterations to walls, foundations, heating, ventilation, water supply, drainage and sewerage. A lot of these items are also covered under the requirements of the local Council. You should realise that you may need to obtain approval from both the Council and the BSA.

I have been carrying out searches of the BSA on behalf of clients since I commenced practice however the BSA search (similar to the Brisbane City Council Building approvals search) merely discloses whether any registrations or applications have been lodged with the board. You will appreciate of course that an application may not have been lodged because one may not have been necessary. It is equally likely, however, that approval may have been necessary but never even applied for and thus would not show up on the search.

The question of statutory approvals and the fulfilment of statutory requirements will often depend upon what improvements have been effected and when. The rules regarding the building of swimming pools have varied over the years. Provided a pool complied with the by-laws existing at the time that the pool was built there is no need for an approval even though that pool may not now comply with the current day building requirements.

It should also be noted that swimming pools do not require approval under a certain litreage. Again the approval size of a pool has varied over the years and an unwary buyer may find themselves with a non-complying pool.

Regardless of when the pool was built or what size the pool is all pools - even some ornamental ones - fall under the auspices of the Local Government Act and are required to be suitably fenced.

Once again I would advise a home purchaser to be wary of the corollary to Murphy's Law

**THOROUGH INSPECTION AND SEARCHES
CAN OFTEN REVEAL
THAT THE HOUSE THAT JACK BUILT
IS REALLY "JERRY BUILT".**

The information contained above is of a general nature. Should you have more specific enquiries then you should seek legal advice and not rely solely on this information.