

**REAL ESTATE TRANSACTIONS
INFORMATION FOR PURCHASERS**

**MJHC LEGAL
LAWYERS**

Superannuation · Property · Wills · Commercial

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Thank you for instructing MJHC Legal to act on your behalf in the purchase of your property. I provide the following information to answer some of the queries you may have in relation to your purchase. The following details give brief guidelines only and it is not intended or possible for this or any document to cover all of the issues and questions that can affect property transactions. The Information sheet has a focus on residential/domestic purchases but some of its contents apply to commercial, business and other property purchases.

It is the aim at MJHC Legal to provide personal service and to be available to answer any queries raised by my clients. Therefore, should you have any further queries which are not answered by the following notes please do not hesitate to contact my office as I will be pleased to give you further advice.

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DISCLOSURE OF MATERIAL FACTS

A Vendor and selling agent has a positive obligation to disclose material facts about the property which would be important to a potential Purchaser in deciding whether or not to buy property at all or to buy the property only at a certain price. Knowingly concealing a material fact from a prospective Purchaser can result in a significant monetary fine or imprisonment for a Vendor and/or selling agent.

A fact that an average, reasonably informed Purchaser with a fair-minded understanding of the property market would genuinely regard as material in their decision to buy is a material fact. A fact about the property which is known by a Vendor and/or selling agent may be a material fact which is important to a specific Purchaser even though that fact may not be important or of significance to other prospective Purchasers. This could be because of the specific questions about the land asked of the Vendor and/or selling agent by the specific Purchaser and/or because the specific Purchaser informs the Vendor and/or selling agent of the intended use of the land.

Some information about a property may only be known to the Vendor and may not be known to potential Purchasers even if they have personally inspected the property. The obligation to disclose material facts by a Vendor is to ensure a Purchaser makes a fully informed decision before they buy a property.

The Director of Consumer Affairs has published a Material Facts Guideline which, amongst other things, gives general examples of material facts about land which are known to a Vendor and/or selling agent but which may not be obvious to a potential Purchaser. These include but are not limited to circumstances where:-

- prior tests or investigations have revealed (or the vendor or agent otherwise knows of) a defect in the structure of the building, a termite infestation, combustible cladding, asbestos (including loose-fill asbestos insulation) or contamination through prior uses of the land,
- the underlying cause of an obvious physical defect is not readily apparent upon inspection (for example, whilst a large uncovered crack in a wall would be obvious to a purchaser upon inspection, the underlying reason for the crack, such as defective stumping, may not);
- there has been a significant event at the property, including a flood, or a bushfire,
- there is a history of pesticide use in the event the property had been used for horticulture or other agricultural purposes,
- there are restrictions on vehicular access to a property that are not obvious during a property inspection (such as truck curfews or where access is via an easement that is not apparent on the Certificate of Title or plans),
- facts about the neighbourhood surrounding the property which may not be immediately apparent upon inspection (such as sinkholes, surface subsidence, development proposals) that would likely affect the use and enjoyment of the property to a greater extent than the usual disturbances and inconveniences of occupying land of the kind and in the local area of the land being sold,
- building work or other work done without a required building permit, planning permit or that is otherwise illegal,
- the property during the current or previous occupation has been the scene of a serious crime or an event which may create long-term potential risks to the health and safety of occupiers of the land, such as:
 - extreme violence such as a homicide
 - use for the manufacture of substances such as methylamphetamine, or
 - a defence or fire brigade training site involving the use of hazardous materials.

Generally, material facts will not be concealed from Purchasers if they are disclosed:-

- in marketing material or information statements; or
- in a section 32 statement or contract of sale; or
- on a physical inspection of the property where they are clearly visible; or
- by specific disclosures made to particular purchasers in the course of negotiations; or
- before the start of a public auction.

It is important to understand that a Vendor and/or selling agent are only required to disclose material facts which are known to them. A Vendor is not required or expected to carry out tests and investigations of the property to determine if there are any unknown problems that ought to be disclosed save as required to prepare a Vendor's Statement.

Unfortunately, it will still be necessary for a prospective Purchaser to perform 'due diligence' in relation to all aspects of their purchase despite the obligation imposed upon a Vendor and/or selling agent to disclose material facts. A failure to disclose by a dishonest Vendor will still result in you purchasing a property that you might not otherwise have purchased had the material fact been known.

PRE-PURCHASE REVIEW

For most, the purchase of a property will be the single most financially significant event during a lifetime. Due to the legal, financial and related consequences of signing a contract, MJHC Legal recommends that a pre-purchase review of all available documents be completed prior to a Purchaser signing. You should not sign a 'off the plan' Contract or a Contract containing Vendor's Special Conditions and/or containing a large quantity of documentation without first having the documentation reviewed by my office. You may also need to consider:-

- Material Facts disclosed by a Vendor
- Finance approval
- Purchaser substitution (nominations)
- Purchasing at auction
- Owners Corporation
- Lease/Tenancies
- Building Inspections
- GST issues
- Soil Testing
- Pest Inspections

- Swimming pool or spa registration
- Pool or spa fence barrier compliance

See next panel dealing with Special Conditions that should be included in a Contract for the benefit of a Purchaser. See also the panel dealing with buying 'off the plan'.

SWIMMING POOL/SPA FENCE

All pools and spas are required by the Building Regulations to be fenced to improve pool and spa safety. Since **1 November 2020** it has been mandatory for property owners to register their pool or spa with their local council. When a pool is registered, council sends the owner a notice informing them of the 'as constructed date' which determines the pool fencing/barrier standard which is to apply and the latest date by which the owner must lodge pool barrier fencing compliance certificate issued by a building surveyor or building inspector. An inspection and pool barrier fencing compliance certificate is required every four years.

Before signing any Contract of Sale, a Purchaser should make enquiries of the selling agent and the owner about pool registration and pool barrier fencing compliance. If the pool or spa is not registered and/or the fencing barrier does not comply with the Building Regulations, a special condition must be inserted in the Contract of Sale requiring pool or spa registration and/or the fencing barrier to be compliant before completion of the purchase. Unless there are Special Conditions in the Contract of Sale, the obligation to fence the pool or spa is on the purchaser not the vendor. If a pool or spa is not registered and you become the owner, you can become liable for an on the spot fine of approx \$330.00 or a penalty of up to \$1,817.40 if an infringement notice is issued by council.

SELF CONTAINED SMOKE ALARMS

All dwellings are now required by Building regulation 707 to be fitted with a self contained smoke alarm. If the dwelling is not fitted with an alarm, a Purchaser is required to fit an alarm within 30 days of becoming the owner. Unless there are special conditions in the contract, the obligation to fit the alarm is on the Purchaser not the Vendor. If your dwelling does not have a fitted smoke alarm I suggest you talk to the local council about the requirements.

PURCHASER SPECIAL CONDITIONS

If an offer to a Vendor is submitted by you, it will be in the form of a Contract of Sale recently introduced under the Estate Agents (Contracts) Regulations 2008. The content and structure of this new form of Contract is very different from previous forms of Contracts of Sale with which you may be familiar. This new form of Contract of Sale attempts to include all of the terms and conditions that are applicable to a sale and purchase of real estate in the one document.

Even though a considerable effort has been made in drafting the terms and conditions in this new form of Contract. In my view, it does not adequately cover all of the terms, conditions, issues and concerns that should be addressed in a Contract of Sale. The offices of MJHC Legal have prepared a number of 'standard' Special Conditions which should be included in any offer you make to a Vendor to protect your interests as a Purchaser if you have not already signed the Contract of Sale.

Unfortunately, a Purchaser is not always in a position to insist on the terms and conditions of sale and purchase. Offers and acceptance are subject to negotiation. Some of the Special Conditions that I recommend may not be acceptable to a Vendor. What is acceptable to include or exclude from a Contract will often depend on the nature and circumstances of the property being purchased and the circumstances of the sale and purchase. It may be necessary to include 'specific' Special Conditions to a Contract of Sale because of the specific nature of a property being purchased or circumstances of sale and purchase.

Subsequent parts of this information sheet will deal with issues or concerns for which a Purchaser Special Condition has been prepared.

COOLING OFF

The Purchaser of a house has certain rights to avoid the Contract or 'Cool Off' in certain circumstances. The cooling off period is three (3) clear **working** days from the time that the Purchaser **signs** any contract not when the Vendor accepts your offer. If you feel you wish to cool off, and if this right is available to you, you should contact me immediately.

A minimum \$100.00 or 0.2% of the purchase price (which ever is more) is forfeited if you choose to cool off. The Sale of Land Act provides that the forfeit amount is deducted from any monies that you have paid to the selling agent by way of a preliminary deposit or deposit in full. The Act provides no mechanism for the Vendor or selling agent to recover the forfeited amount from a Purchaser if there are no monies held by the selling agent. A selling agent will often ask a Purchaser to pay a nominal amount as a 'holding deposit' when a Contract is first signed by a Purchaser if the full deposit is not to be paid at the time the Contract is signed by the Purchaser.

You may want to cool off as a result of one or more of the topics set in this Information Guide. Of course, there is nothing to forfeit if a pre-purchase review is conducted of the documentation before anything is signed and paid. You will, however, incur the legal costs associated with a pre-purchase review.

It is highly recommended for a pre-purchase review to be conducted rather than relying on the 'cooling off' period to end your contract for the following reasons:

1. Once signed, you have made an emotional commitment as much as a legal one. Even though there may be 'legal' reason for not proceeding, your Vendor will be relying on your emotional commitment to proceed.
2. The 'cooling off' period evaporates because the documentation is not sighted by MJHC Legal until after the cooling off period has expired. Vendor's Agents particularly, seem to hold on to contract documents for some time before forwarding them.

3. There are several non-legal considerations that affect a purchase and which may not be capable of being addressed within the cooling off period.
4. The cooling off period may not be available to you. For example the cooling off rights are not available if:
 - 4.1. the property is farming land (>20 Ha),
 - 4.2. the property is used for commercial or industrial purposes,
 - 4.3. the property purchased 3 business days before or after auction.

PROPERTY ENQUIRIES

Although the Vendor's Statement provides some details about the property it does not disclose the following matters:

1. whether the land is flood prone
2. whether the land is filled or suffers from any other latent defect
3. whether the land is polluted or contaminated
4. whether any buildings or structures on the land breach any council building requirements or are built without permits
5. whether there are any defects or problems with any buildings and fittings on the property (eg leaky roof, white ants, heating equipment not functioning etc)
6. whether there are any development proposals in the surrounding area which may affect the property.

These matters are normally not disclosed by the rate and planning certificates either. You need to make your own enquiries about these matters including enquiries at the local council as to whether there are any development proposals affecting the area. These enquiries are best made prior to signing a contract.

FINANCE

If you are borrowing to purchase, it is highly desirable that your Contract is expressed to be subject to finance. If you purchase without a 'finance clause', you must be absolutely confident about your ability to borrow all of the funds required to complete a purchase and/or have sufficient funds from your own resources if a lender is unable to lend you as much as you might otherwise want. Be aware of the limitations of pre-approvals by banks and other lenders as they are not an absolute guarantee that the bank or lender will lend you the pre-approved amount. For example, pre-approval by a lender for the purchase of a dwelling is usually given on the presumption that the property will be zoned residential. A lender will not usually lend more than 70% of land value if the zoning is not residential.

If your Contract is expressed to be subject to finance, this means that the Contract is not binding until you have obtained finance. Usually, a deadline will be set to obtain finance and unless the Vendor is informed that your finance has not been obtained, you will be deemed to have obtained the finance even if your finance application has not been processed by your lender or, worse, even if it is refused.

You should immediately apply for finance and should make all reasonable efforts to obtain finance before the deadline. Most Vendors will agree to the finance deadline being extended but it is critical that such a request be made before the finance condition expires. **If you cannot obtain finance approval by the deadline or if your finance application is refused, please notify my office immediately.** If you are borrowing, it is highly desirable that your Contract of Sale only requires you to pay the deposit (other than a preliminary or holding deposit) until you have obtained loan approval.

BUYING 'OFF THE PLAN'

Buying off the plan means buying a property before it has been built or completed. Many large apartments and townhouse developments are sold in this way. Whilst many promoters, developers and selling agents highlight the advantages of buying off the plan, not unexpectedly, the disadvantages of doing so are not highlighted. You should not sign a Contract to buy off the plan without having it first reviewed by my office.

Buying off the plan is not straightforward and it is not a typical domestic conveyancing transaction. You will incur higher conveyancing costs when you buy off the plan. The increased costs associated with buying off the plan can, of course, be offset against the substantial transfer duty savings that is one of the advantages that is available to those types of transactions. Specific issues associated with buying off the plan can and will only be addressed by examining the Contract documentation that is prepared by a developer.

The problems for a Purchaser buying off the plan fall into the following categories:-

- the Vendor only has 'concept' or design drawings and no detailed specification for what is to be built. Often there is only a display unit. A Purchaser is in effect buying sight unseen.
- a Contract of Sale is usually prepared by a Vendor on a 'take it or leave it' basis.
- the terms of sale are significantly weighted in favour of a Vendor. The only 'get out' clauses available to a Purchaser are the limited opportunities provided under the Sale of Land Act and Subdivision Act.

- Purchasers do not know what they have really bought until the works have been completed. The Contract is worded in such a way that there are almost no opportunities for a Purchaser to complain if there is any difference between expected results and the actual result.
- construction problems may delay delivery. Contracts rarely include penalties for late completion.
- there is no Domestic Building Works Insurance for an apartment or unit that is part of a multi-story building.

BUYING AT AUCTION

For consumer protection reasons, the laws relating to the conduct of auctions sales has been regulated. All auctions are required to be conducted in accordance with Public Auction Rules which the auctioneer must disclose prior to the auction. Dummy bids are not permitted. A Vendor bid may be placed but must be disclosed at the time it is made.

At an auction sale, you are unlikely to have the opportunity to 'negotiate' the terms of your purchase. You are expected to purchase on a 'cash basis' - that is you will not be permitted to make your purchase conditional on obtaining finance. You are expected to sign a Contract of Sale containing the Vendors terms of sale and which will be available for inspection prior to the auction. The special conditions contained in the typical auction sale contract are heavily weighted in favour of the Vendor. There are usually several conditions that a Purchaser would not accept in any other circumstances. You do not have any 'cooling off' rights on an auction purchase.

For these reasons, it is highly desirable that before you attend an auction sale:

- a pre-purchase review is conducted of the auction contract documentation;
- you are in no doubt that you have the funds to complete the purchase; and
- you are satisfied about the condition of the property and other aspects as outlined in this Information sheet.

OWNERS CORPORATION

Your purchase may require you to be a member of an Owners Corporation. This will often arise in multi level developments/apartments and multi unit developments where there are common areas such as foyers, driveways and gardens.

If your property is affected by an Owners Corporation it is a requirement that information about the Owners Corporation is disclosed in the Vendor's Statement. If the information is not provided, you will have a right to end the Contract at any time before settlement.

Owners Corporations do impose additional costs and responsibilities for you as an owner. Whilst Owners Corporation fees can often be a small amount, in some instances they can be a substantial cost of ownership. Although many properties are affected by Owners Corporation requirements, there are some clients of MJHC Legal who will not purchase a property with an Owners Corporation involved due to bad experiences that can arise from poor administration of the Owners Corporation, disagreement with other owners in the Owners Corporation and the annual costs imposed by the Owners Corporation.

If the property you are purchasing is affected by an Owners Corporation, you should read carefully the information that is provided in the Vendor's Statement about the Owners Corporation. You will need to make your own additional personal enquiries to satisfy yourself that the Owners Corporation is properly run and that your Vendor is not selling the property because the Owners Corporation is going to require a substantial financial contribution from all owners towards an expense that is known about but which is not yet required to be disclosed within an Owners Corporation Certificate contained in the Vendor's Statement.

Although there is a requirement at law for an Owners Corporation to operate and comply with owners corporation legislation, not all of them are operating Owners Corporations. This could have significant legal and financial implications for you if, for example, public liability insurances have not been continuously maintained by the Owners Corporation as required by law. For example, after you become an owner you can be personally liable for an injury or damages claim that arose prior to you becoming an owner if was no public liability insurance in place.

LEASES/TENANCIES

If the property you are purchasing is presently tenanted, you need to be aware if the Vendor is providing you with **vacant possession** or you are purchasing **subject to lease** ("subject to receipt of rents & profits"). This should be disclosed in the contract. This can have significant consequences for you if you want to be an owner occupier or an investor.

Although in practice the lease details are often disclosed in the Vendors Statement, there is **no** legal obligation to do so. If there is a tenant, you should sight the original signed lease/tenancy agreement. You must ask the selling agent to provide you with a photocopy of the entire lease/tenancy agreement – often significant alterations or variations are made to the standard or common form leasing agreements. A complete copy must be provided to me.

If you are purchasing **subject to lease** under the Contract of Sale there is no automatic entitlement to end the Contract if for whatever reason the tenant vacates the property before settlement. The offices of MJHC Legal have a recommended Special Condition that should be included in a Contract that permits a Purchaser to end the Contract should the tenant vacate the premises prior to settlement.

If you are purchasing a residential property with vacant possession but there is a tenant who is yet to vacate the dwelling, some care needs to be taken by both Vendor and Purchaser to ensure that any required period of notice to be given to tenant to vacate will expire before the settlement date. Although it will nearly always be a Vendor's problem to resolve, it is not helpful or convenient for you as a Purchaser if you are planning to take possession of a property on the settlement date but which cannot occur because

the tenant has not physically vacated. A Vendor should provide for a settlement period of about 90 days with the right to settle earlier by agreement when the premises become physically vacant.

BUILDING WORKS

In addition to the rate and planning certificates I can also apply for building approval details from council in respect of the dwelling and other structures. The application costs range between \$51.92 to \$155.76 and will give details of any building approvals granted and whether final inspections have taken place. However even if the certificate shows that the Vendor has not had final inspections on any structures, in the absence of any special conditions to the contrary, **the Vendor is under no obligation to arrange a final inspection or to meet any requirements that the council makes.** Further the council may do a physical inspection of the property and should there be any illegal structures (structures built without permits) on the property, the council may issue a notice against the property. Any notice issued after the Contract date (unless the Contract specifies otherwise) is your responsibility and you must pay to meet compliance.

Between 1st August 1997 and 12 June 2006, building approvals were **not required for building works less than \$5,000.00 in value** (inclusive of labour costs). Conditions apply and an Owner was meant to comply with the requirements set out in the then Table 1.6 of the Building Regulations 1994. From 13 June 2006, the Building Regulations 1994 were replaced with the Building Regulations 2006 and building permit requirements are now based on the scope of building work rather than the value of work, implying the need for garages, car ports and pergolas to have a permit. A Vendor is required only to disclose in the Vendor's Statement the building approvals that have been obtained. **The Vendor is under no obligation to disclose building works for which a building approval was not obtained but for which an approval should have been obtained.**

Consequently, there may be building work on the property of which the Council has no knowledge or record. You will need to consult with the local council regarding the technical provisions that apply to any building works carried out on the property and whether a building approval was required. Although building approvals may not have been required, there is still an obligation for building works to be structurally sound and comply with siting controls but you are unable to enforce this requirement unless the contract otherwise provides. In the absence of any special condition in the Contract, you will assume responsibility for those works.

Despite the implications for you as a Purchaser, I believe that it is better to know if there are any building works issues associated with the property. In addition, a building approval certificate should disclose whether or not in the previous 7 years any building works have been carried out by an owner builder which will have home owner warranty insurance implications. I will apply for a building approval certificate unless you request me not to do so. If you do not wish me to obtain such a Certificate, **please notify me in writing.**

BUILDING INSPECTIONS

The usual property enquiries will **not** disclose whether there are any serious building defects in any dwelling or building on the property. Unless your contract contains special provision for warranties (which is not usual) about the fitness or suitability of improvements made to a property, the principle of **caveat emptor** or buyer beware still applies subject to a Vendor's obligation to disclose material facts.

In a real and practical sense, if you are purchasing a house what you really are doing is purchasing a piece of land which just happens to have some improvements upon it. Whether the improvements are sound or not is not usually a condition of the purchase. Every home will have some minor problem and not all homes have serious defects. Nevertheless, you do not want to be the Purchaser who buys someone else's problems. Also, with the explosion of DIY home renovation and improvements, there is an increasing risk of buying defective work. Consequently, I believe that it is prudent to obtain a building inspection report to ensure that there are no defects in a building and that the Building Code has not been breached.

It is always prudent to make a purchase conditional upon obtaining a satisfactory building inspection report, if you have not already obtained one prior to signing the contract. Even if it is not a condition of your purchase, it may be possible to vary the contract to include an appropriate special condition. This might be achieved by advising the Vendor's agent that you will exercise your cooling off rights, if you have any, unless the special condition is included. The offices of MJHC Legal have a recommended Special Condition making the sale subject to obtaining a satisfactory building inspection report.

Alternatively, if there is no special condition dealing with a building inspection but there is a condition dealing with your loan approval, you should consider obtaining a building inspection report before your loan has to be approved. If there is a serious defect and you decide that you do not want to proceed with the purchase, your lender is unlikely to approve your loan if your lender is made aware that there is a serious building defect.

The cost of a building inspection report will vary but you can expect to pay between \$260.00 to \$460.00 depending on the location of the property. I can provide you with the names of suitably qualified consultants who can provide you with an inspection report.

SOIL TESTING

If the property is vacant land on which you intend to build, it is recommended that you obtain a soil test to determine soil classification and whether the land is affected by fill or rock. The results can impact on design, construction and costs. For other property, it may be desirable to test for contaminants. For rural land it may also be desirable to test water as well as soil.

If you are building a home, your builder will be required to provide a soil test to obtain a building permit. It may only be at that time you become aware of the additional building costs you will incur because of soil issues.

You should either:-

1. obtain a soil test prior to signing contracts, or
2. make the purchase conditional upon obtaining a satisfactory soil test.

You should discuss your requirements with MJHC Legal, prior to signing any contract. The offices of MJHC Legal have a recommended Special Condition making a purchase conditional upon obtaining a satisfactory soil test report.

HOME OWNERS WARRANTY

A house built within the past 7 years should have home warrantee insurance against certain defects to the dwelling. Home warrantee insurance should also apply to extensions or improvements built by a builder within the past 7 years if those works cost more than \$12,000.00. The insurance has limited application and can only be regarded as a 'last resort' as the cover only applies when the builder has died, disappeared or is insolvent. If those conditions are not satisfied, you will have to pursue the builder personally for any financial loss caused by the builders failure to rectify or compensate for defective or complete work.

Owner-Builders who are selling a property have additional obligations imposed upon them by law. It is highly desirable that a pre-purchase review be conducted before signing any contract with such a Vendor.

GST ISSUES

The purchase of a home will **not** usually have GST implications. GST will be payable if you are purchasing a 'new residence' and your Vendor is a builder/developer and the sale price is **not** inclusive of GST. In that case 10% GST may be added to your purchase price unless the contract states the margin scheme applies. If the margin scheme applies, a lesser amount of GST is payable. The application of the GST Law can be complex. You should ensure that if your purchase price is expressed as "plus any GST" that there are no unexpected GST issues. For example, if you purchase a property from a builder/developer you may have to pay GST even if the builder/developer has owned the property for several years. Under the GST Law, the property will be regarded as a 'new residence' until first sold by the builder/developer.

Where land is acquired on a GST free basis for residential development, additional warranties and indemnities may be required in the Contract of Sale to protect a Purchaser from unexpected liabilities. Amendments were introduced in December 2008 to GST Law dealing with the application of the margin scheme and Purchasers intending to develop and sell land under the margin scheme need to take advice on their GST position prior to signing a Contract of Sale to acquire land.

You will pay GST if the sale price is expressed to be "plus GST" and an exemption is not available. If you are registered for GST, you may be able to claim the paid GST as a tax credit.

In addition to the sale of residential property, GST is not payable if:-

1. property is sold as a 'going concern'
2. the property sold is farming land,

and special rules are observed.

A lesser amount of GST may be payable if the margin scheme applies.

The application of the GST Law can be complex. If you are registered for GST, you cannot claim GST paid by you if the margin scheme is applied by your Vendor. It is also important that you understand that if the margin scheme applied when you purchased, you are required to apply the margin scheme when you sell.

NOMINATION OF SUBSTITUTE OR ADDITIONAL PURCHASERS

It is possible for Purchasers to purchase a property "and/or nominee" with the intention of adding an additional or substituted Purchaser after the contract has been signed. This is often known as exercising the nomination clause. It is important that you understand that exercising a nomination clause can effectively create two dutiable transactions which means that **two lots of duty is to be paid** on what people only regard as a single purchase. It is critical that any nomination clause is exercised on the basis that the nomination satisfies State Revenue's Office requirements so that the nomination is exempt from duty.

If a named Purchaser in the contract may not be the ultimate or only Purchaser by reason of a desire or need to exercise a nomination clause, you should contact my office to discuss the requirements prior to a contract being signed.

OTHER DUTY IMPLICATIONS

If GST is payable on your purchase and the price in the contract is not expressed as "inclusive of GST", duty is calculated on the price **plus** any GST.

Also, the State Revenue Office presumes that in the absence of an express clause in your contract, where more than one person is noted as Purchaser, all of the Purchasers will be registered on title with an equal share in the property. If the transfer of land reflects an unequal proportion of ownership there may be additional duty payable on the transaction. **If there is a possibility that you will not be registered as equal owners, please contact my office to discuss the implications before you sign the contract.**

LAND TAX

A property purchased as your principal residence will not have any land tax issues as it is exempt. Other property purchases may have land tax implications. Land tax is calculated on the unimproved value of the land and the amount that you pay as an owner depends on the value of other land that you own and which is aggregated for land tax purposes. No land tax is payable if the total taxable value of all your land is below the threshold of \$250,000.00.

Property purchased by a trust is subject to a land tax surcharge and the additional ownership costs can be significant. There are a

few exemptions to the land tax surcharge but the law is complicated. You should obtain advice from MJHC Legal about land tax issues before purchasing a property in the name of a trust.

If the property you are purchasing has land tax assessed against it, an adjustment at settlement will be made on the basis that the property is the only property owned by your Vendor. This is known as a 'single holding basis'. Land tax will be apportioned even though the property may not be assessable when you become owner unless a special condition is included in the Contract for your benefit that the land tax will not be apportionable.

ABSENTEE OWNER SURCHARGE

If you are liable to pay land tax on Victorian land you own, an absentee owner surcharge applies if you meet the definition of absentee owner. The absentee owner surcharge is an additional amount that applies over the land tax you pay at general and trust surcharge rates.

You will be an absentee owner if you are not an Australian citizen or an Australian permanent resident and:-

- do not ordinarily reside in Australia, and
- you were either absent from Australia:-
 - on 31 December, or
 - for more than 6 months in total in the calendar year.

Absentee owners may be individuals, companies or trusts. There are some exemptions to the absentee owner surcharge but the law is complicated. You should obtain advice from MJHC Legal about absentee owner surcharge issues if you are not an Australian citizen or an Australian permanent resident and you are not intending to reside in Australia for more than 6 months in each calendar year.

If you are an absentee owner at 31 December in any given year, you must inform the State Revenue Office before 15 January of the following year using the SRO's online absentee owner notification portal. Once you have notified the SRO that you are an absentee owner, your land tax assessments will include the absentee owner surcharge until you then notify the SRO that you are no longer an absentee owner. An absentee owner will be liable for penalty tax on the absentee owner surcharge amount of land tax assessed if the absentee owner fails to notify the SRO of their status as an absentee owner.

THE FEDERAL ANNUAL VACANCY FEE

Since December 2017, the Australian government introduced a vacancy fee for foreign owners of residential dwellings. Foreign owners of residential dwellings in Australia are required to pay an annual vacancy fee if their dwelling is not residentially occupied or rented out for more than 6 months in a year.

A Vacancy Fee Return must be lodged every year by foreign owners of residential dwellings. A return must be lodged each year even when the dwelling has been occupied or made available for rent. The Vacancy Fee Return must be lodged with the ATO within 30 days of the end of each vacancy year. A vacancy year is each successive period of 12 months starting on the occupation date for the dwelling which will typically be the settlement day.

Foreign owners of residential dwellings may be liable for an infringement notice or a civil penalty if they fail to lodge a Vacancy Fee Return on time or fail to keep records that are relevant to their liability for vacancy fees. These records are required to be kept for at least 5 years after the end of each vacancy year.

VACANT RESIDENTIAL LAND TAX

Vacant residential land tax applies to homes in inner and middle Melbourne that were vacant for more than 6 months in the preceding calendar year. This tax is different to land tax, the absentee owner surcharge and the federal annual vacancy fee. The vacant residential land tax is assessed by calendar year and the 6 months do not need to be continuous.

Vacant residential land tax only applies to vacant homes in the following council areas:-

Banyule	Bayside	Boroondara	Darebin	Glen Eira	Hobsons Bay	Manningham	Maribyrnong
Melbourne	Monash	Moonee Valley	Moreland	Port Phillip	Stonnington	Whitehorse	Yarra

The rate of vacant residential land tax is set at 1% of the capital improved value (CIV) of taxable land. For example, if a vacant home has a CIV of \$900,000.00, the tax will be \$9,000.00.

If you own a property that was vacant for more than six months during a calendar year, you must inform the State Revenue Office before 15 January of the following year using the SRO's online vacant residential land tax portal. Once you have notified the SRO of the vacancy, your land tax assessments will include the vacant residential land tax until you then notify the SRO that the property is no longer vacant. An owner of vacant residential land will be liable for penalty tax on the vacant residential land tax amount if the owner fails to notify the SRO of the vacancy.

PROPERTY SERVICES

The Vendor's Statement should disclose whether services such as water, electricity, sewerage etc are connected. If services are connected that means that the services are provided to the property. Many Vendor's Statements also disclose whether services are also available to the property which means that they can be connected to the property but there will be some cost and physical connection implications. If a service is not connected and there is no disclosure about availability, you will need to make enquiries

with the service provider before signing any Contract to ensure that services are or can be made available and that the cost of availability/connection is not financially prohibitive. However, you should not presume that because a service is immediately available adjacent to or near your property that it can be conveniently and inexpensively connected, particularly in rural areas.

CAVEAT

Your interest in the land is not registered until settlement. If you wish, a caveat can be lodged on the title which gives notice of your interest as Purchaser and prevents any other dealings being registered.

The cost is approximately \$199.00. To save costs, some Purchasers do not require caveats to be lodged on normal 60 day settlement but is, nevertheless, a prudent step to protect your interests as a Purchaser. I recommend that you do so. If you have a lengthy settlement date, however, I strongly advise that a Caveat be lodged. If you are purchasing under terms or on a very long settlement, it is imperative that a caveat be lodged. Please advise me immediately, should you wish me to lodge a Caveat on your behalf.

ADJUSTMENTS

At settlement, I will adjust the rates and outgoings in respect of the property so that effectively you will bear the burden of rates only from the date of settlement. Councils now require all rate for the current rating year to be paid at settlement even if they would not normally become payable until a later date. Accordingly, in most cases your rates will be paid at settlement in advance for the rest of the current rating year.

PROPERTY LOCATION AND BOUNDARIES

The general conditions of the Contract that you sign provide that a mistake in the description, measurement or area of the land does not invalidate the sale and that you may not make any objection or claim compensation for any misdescription. Consequently, prior to signing the Contract, you should check all the measurements shown on the Title Plan/Plan of Subdivision to ensure that the property and all its fences are correctly located. If you have any doubts about the measurements of your land, you may wish to engage a licensed surveyor who should be able to check the measurements for you properly. A surveyor's fee for doing this will probably be around \$250.00.

If fences are not located correctly on Title boundaries, possessory rights arise in relation to the encroachment by a neighbour's property into the Vendor's property or the Vendor into the neighbour's property, whichever is applicable. This is known as adverse possession. If the fences have been in place for in excess of 15 years and a Vendor has 'lost' property to an encroaching neighbour, it may not be possible to realign the fences unless the neighbour agrees. Under the General Conditions of the new form of Contract of Sale, a Purchaser is not permitted to claim compensation for any deficiency in area or measurements.

The offices of MJHC Legal have a recommended Special Condition that negates the application of the General Condition save that a Purchaser accepts measurements and dimensions of the fences have been in place for in excess of 15 years. However, the recommended Special Condition will require modification if measurements or dimensions of a property are important for future use by a Purchaser. For example, local council planning requirements impose minimum allotment sizes for dual occupancies or further subdivision. Alternatively, a Purchaser must satisfy themselves about measurements and dimensions of a property before signing the Contract.

MANNER OF OWNERSHIP DISCLOSED ON TITLE

Joint ownership (usually the choice of couples) means that if one owner dies the property is automatically passed to the surviving owner irrespective of what the Will of the deceased owner says. Each owner must also have an equal share.

Ownership in common means that each owner's share is owned entirely by them and can be left to whoever they like in their own Will. The surviving owner does not receive the deceased owner's share unless the deceased owner leaves it to the surviving owner in his/her Will. **Owners under this system can have unequal shares but unequal ownership must be noted in the Contract to avoid adverse duty implications.**

If you wish to own the property in a manner different to that shown on the transfer, please notify me and I will amend the transfer.

INSURANCE

The property will normally remain at the risk of the Vendor until settlement. Many people, therefore, choose not to take out their own insurance until settlement. It is possible, however, that circumstances could arise in which the Vendor's insurance may not adequately cover any losses or damage, and I recommend that you take out house insurance immediately.

If you are obtaining finance, your lender will require to be shown on the insurance policy as mortgagee and will require the insurance before settlement.

FINAL INSPECTION

You have the right to inspect the condition of the property and the chattels (if any) at any reasonable time during the period of 7 days preceding the settlement date to confirm that they are still in the same condition as when you signed the contract. This may be arranged with the Agent. I urge you to conduct such inspection and ask that you notify this office should you have any queries as a result of the inspection.

Whilst many Vendors are 'house proud' and cooperative, it is important to understand that a Vendor is under no obligation to provide you with any assistance concerning the operation of improvements and chattels on the property. You will need to make arrangements with the selling agents and the Vendors so that you are provided with sufficient information to operate such things as security/alarm systems, home automation systems and automated gardening/irrigation systems. The offices of MJHC Legal have a recommended Special Condition requiring a Vendor to explain how such things as the security or home automation systems operate and to provide written instructions or operating manuals before settlement.

KEYS

Usually keys are left with the Estate Agent to be collected by yourself immediately after settlement. If this unsuitable alternative arrangements can be made.

INCOME AND CAPITAL GAINS TAXES

You should be aware of the potential tax liability in relation to your purchase. Any profit made on the resale of the property will generally be taxable unless the property is to be used as your principal residence.

An acquisition or disposition for Capital Gains Tax is assessed as at the date of the contract, even if settlement does not occur until some time later. If you have any queries about Capital Gains Tax or Income Tax please call my office or consult your accountant.

ELECTRICITY/GAS/TELEPHONE

While I will attend to the adjustment of rates and land tax in respect of the property, you will need to arrange for the connection, reconnection or transfer of all services including gas, water, electricity and telephone. These should be arranged with the appropriate authorities well in advance. It will usually be necessary for your Vendor to 'cancel' their services so that final readings can be made by the service provider and to allow the service provider to reconnect or transfer the service into your name.

REMOVALIST

I suggest that you make arrangements for a removalist as soon as possible. Most people wish to settle on a Friday and for that reason most removalists are fairly heavily engaged on Fridays.

OTHER MATTERS

Some of my clients use a property transaction as an opportunity to discuss their other financial and property arrangements with me as well as reviewing their Will and other family personal documents. I would be happy to discuss with you my range of other legal services.

I hope the above details will provide some assistance to you. Of necessity, matters are only dealt with briefly. I again point out that I am here to assist you any way I can and I would be happy to discuss any aspects of your purchase or any other matters with you.