



**SEPTIMUS JONES & LEE**  
**SOLICITORS**



## **Don't get caught out**

When a person sells property to another, they are required to provide certain written information to you, as the purchaser, when entering into a Contract of Sale. This written information includes a Vendor's Statement, which discloses specific information about the property to you. If a signed Contract of Sale does not include a proper and precise Vendor's Statement, you may be able to get out of the contract at any time up until settlement.

In addition to the information included in the Vendors' Statement, vendors must not knowingly conceal a material fact from you. A material fact is a fact about the property which might be important to you in deciding whether or not to buy land, or whether to buy the land for a certain price. Speculation or gossip would not be considered a fact; however, an opinion by an expert could be a material fact in certain circumstances.

There are two types of material facts: those which an everyday person would consider material; and those which are specific to you.

You should consider what facts or issues about the property may cause you concern, or whether there is anything which is of particular importance to you for the property, and ask the agent or vendor specific questions which relate to these topics. For example, if you intend to construct a pool in the backyard, you should ask if the backyard is appropriate for pool construction.

The vendor may not know the answer to all your

questions, so you still need to satisfy yourself about the property. However, if the vendor knows of a specific issue with the property, then it would be wrong for them to knowingly conceal that fact from you, now that you have asked them about it. Looking at our example, if the vendor knows of a reason that could make pool construction difficult or impossible for you, they must tell you.

Accordingly, when inspecting a property, it is important that you ask the right questions. Our Material Fact Checklist on the next page provides you with a range of questions which might be relevant to you, and which you could ask of the vendor.

Of course, we are happy to review the contract and Vendor's Statement before you sign a contract. If you would like assistance in identifying issues that might be specific to you we can assist you to tailor additional questions to be asked of the vendor.

If the vendor's response is not satisfactory, either because they don't know the answer, or their answer indicates that you may incur increased cost in the future, or you may not be able to use the property as you had intended, we can attempt to negotiate with the vendor before the contract is signed for special conditions to be included in the contract or perhaps a reduction in the price.

Ultimately, you are trying to find out as much information about the property before you sign a contract. If you ask questions, the vendor must not conceal the answer from you so ask about anything relevant to you!

# Material Fact Questionnaire

## What to ask the vendor or their agent

Are you aware of any:

- 1** Leaks in the roof or structure of the buildings?
- 2** Leaks in pipes including water, gas, in slab heating, hydronic heating?
- 3** Structural defects or deficiencies including stumping?
- 4** Loss of water or leaks in the swimming pool (if any) and is the pool filter pump and other equipment in working order?
- 5** Defects in the electrical wiring or any need for rewiring? Has all electrical work been carried out by a qualified electrician?
- 6** Pest infestation including termites, rodents and possums?
- 7** Deficiencies in the water pipes including low water pressure for the locality?
- 8** Cracked or broken stormwater or sewerage pipes?
- 9** Rising damp or mould?
- 10** Asbestos which is not easily visible, such as under tiles, in the crawl space under the buildings or buried?
- 11** Combustible cladding used in the premises?
- 12** Petrol or diesel tanks underground?
- 13** Any appliances which do not function normally or at all including kitchen appliances, hot water systems, air conditioning, solar electrical system?
- 14** Any encroachments onto the title or a boundary dispute?
- 15** Building work which has been carried out without approval including without a building permit or planning permit or which is otherwise illegal?
- 16** Repairs carried out on any buildings which do not comply with current building regulations?
- 17** Pesticides or other chemicals having been used or stored on the property which may have contaminated the soil?
- 18** Neighbours who are noisy in a manner exceeding what would be expected in the locality?
- 19** Planning permits or applications for planning permits affecting neighbouring properties?
- 20** Connection of the property to the NBN and, if so, the manner of connection eg FTTN, FTTP, hybrid co-axial cable?



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