

Terrace End Law.

TITLE REPORT

Title

If the ADLS Agreement has been used then if you have any concerns in relation to the Title these must be addressed within 10 working days from the date you signed the Agreement. The requisition period expires on that date. Please raise any queries that you have with me as soon as possible, but ideally before the Agreement becomes unconditional as not all matters of concern can be requisitioned.

Boundary

Please pay particular attention to the boundaries to your property and if necessary have the boundaries checked to ensure that they align with the legal boundaries. If you cannot locate the survey pegs you would need to engage a surveyor to verify location and accuracy.

Different Types of Title

There are various different types of Title some of which I have summarised below.

- (a) **Freehold/Fee Simple Title:** These are the most common form of Title in New Zealand and without question they are the preferred form of Title. Subject to any restrictions on a particular Title such as easements, land covenants, leases, Council consent notices and the rights of a mortgagee the owner of a fee simple Title is generally free to do what they wish with the property so long as they comply with the requirements of the local authority. This is not the case with other forms of Title where the interests of third parties (eg co-owners) must be taken into account either via a lease or via a body corporate.
- (b) **Leasehold Titles:** With leasehold Titles the interests of the fee simple owner are separated from the interests of the Leasehold owner (occupier). The owner of the fee simple is often a Local Authority, State Owned Enterprise, Maori and occasionally private enterprise. The owner of a leasehold Title generally purchases the improvements on the Title and then has a lease of the property. If the Title to the property that you are purchasing is leasehold, it is important that you check and satisfy yourself as to the term of the lease, annual rental, frequency of rent reviews, rights of renewal and other terms and conditions.
- (c) **Unit Titles and Body Corporate (also known as Stratum Estates):** Unit Titles are created by the Unit Titles Act 2010. These are generally units in larger complexes or apartments in multi-storey buildings. If the Title to the property that you are purchasing is a Unit Title you need to check the Unit Plan and satisfy yourself as to the location and dimensions of the Principal Unit and any Accessory Units. I recommend you contact the Manager of the Body Corporate and ask for a copy of the Minutes of the last Annual General Meeting together with a copy of the rules of the Body Corporate and that you carefully review these. I also recommend that you ask the Manager if there have been any problems with the operation of the Body Corporate or with the complex

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itself. These enquiries may alert you early on to any problems that you would otherwise not be aware of. The rules of the Body Corporate will often be the statutory rules created by the Act which you can view on www.legislation.govt.nz. If they have been amended the amendment will be noted on the Title. We can procure a copy for you upon receiving your request to do so.

The new Act has now imposed on the vendor the need to provide a purchaser with a pre-contract disclosure and if the Agreement becomes unconditional, must also provide a pre-settlement disclosure statement. In addition, a purchaser may request an additional disclosure statement, although there are strict timeframes for doing so, and, the seller may ask the purchaser to pay all reasonable costs incurred in providing that.

- (d) **Cross Leases:** Cross lease Titles are largely a creation of the 1970's and 1980's and are generally used for smaller blocks of flats. They are in fact a composite title. Depending on the number of flats in the complex the owner of a cross lease title will have an undefined share of the underlying fee simple/leasehold Title for the whole complex together with a lease for a term (usually 999 years) of the flat itself. In addition there will often be a common area for rights of way and services and an exclusive use area. If the Title to the property that you are purchasing is a cross lease title, it is important that you check the location and dimensions of the flat. If they have changed from when the Title was created (perhaps by an extension or addition of a garage or carport) then the Title could be defective and you need to let me know. You also need to check the lease itself in relation to common areas and exclusive use areas and satisfy yourself that the lease is in order.

Different Types of Interests

- (a) **Easements:** An Easement is a right for one party (usually a neighbour) to carry out some form of activity over another property (again usually a neighbour). Occasionally easements are in gross, ie in favour of a non-neighbour, eg a Local Authority. Other terms used with Easements:
- (i) “*Servient Tenement*”: This is the land over which or through which the Easement passes.
 - (ii) Title says under the heading “*Interests*” that the land in the title is subject to Easement. This means that this title is the Servient Tenement and therefore that this title is subject to an easement, ie the easement passes over or through the land in this Title.
 - (iii) “*Dominant Tenement*”: This is the land that enjoys the benefit of the Easement.
 - (iv) Title says under the heading “*Interests*” that this land is “*Appurtenant to Easement*”. This means that this Title is the Dominant Tenement and therefore enjoys the benefit of the Easement.

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- (b) **Land Covenants:** The purpose of a Land Covenant is to limit or restrict the owner of a property as to how they can use the land/property and for controlling how future owners both develop and maintain the land. They are particularly common in modern green fields subdivisions. Most are expressed in negative terms, ie what a landowner cannot do. Some are expressed in positive terms, ie what a landowner must do. Most Land Covenants are in favour of neighbouring property. Some are in favour of a party that is not a neighbour.
- (c) **Council Consent Notices:** These are registered by the local authority over a Title to alert a party with an interest in a property, eg a Purchaser that Council has specific requirements in relation to a property. For example, requirements in relation to say “waste water systems” and say “vehicle crossings” as well as other potential matters. The purpose is to ensure the Purchaser is informed in regards Council requirements in respect of such matters when they search the Title. If a Purchaser is intending to build on a property the Purchaser should still contact the Council direct and ensure they are fully aware of Council requirements. There may be additional requirements not disclosed in the Consent Notice.
- (d) **Fencing Covenants:** Fencing Covenants are typically registered by the developer of a subdivision in their favour so that a future owner of the property cannot call upon the developer to share in boundary fencing costs while the developer still owns the property adjoining. If the property you are purchasing has a Fencing Covenant registered against the Title as well as an unfenced boundary or a boundary fence requiring replacement or maintenance, please advise so we can check the implications of any Fencing Covenant registered against the Title. Fencing Covenants automatically expire 12 years following registration.

If you have any queries or concerns regarding your title please let us know. We would be pleased to consider them for you and give you any further advice you require before you proceed with this transaction.