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Common Traps Real Estate Agents Employ Through Clauses And Conditions About Inspections

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Despina Priala explains some of the common issues that creep into contracts of sale for properties

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HAVE ONE
INCOME
WHEN YOU
COULD
HAVE TWO**

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Question: I was recently warned by a friend that when real estate agents draw up contracts for properties they will often water down a buyer's normal rights with special 'conditions' about building and pest inspections. I'm keen to purchase a fairly old property I can renovate, so this is a big issue for me. What are the common traps real estate agents employ through clauses and conditions about inspections?

Answer: The first thought that entered my mind when I read this question was why would anyone sign a contract without first obtaining legal advice. So many buyers sign a contract of sale that is prepared by the agent, sometimes without giving any thought to whether a solicitor should look at and advise on the contract, assuming the agent will 'get it right'. This is a major mistake when buying property.

Yes, agents are accountable for any misdoing or perhaps mistakes or errors that may be made along the way, particularly when the contract is prepared by them, but the fact is agents are not solicitors. In my professional opinion, the best people to prepare contracts of sale are solicitors experienced in property matters. Buying and selling property can be a complicated affair and parties should always be properly represented.



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In property transactions, the solicitor has a role and the agent has a role, and these roles are quite different. However, the roles complement each other, and solicitors and agents need to be able to work together for the client at the end of the day. I always recommend to my clients that either I prepare the contract myself or they have the agent forward me the draft contract of sale to peruse and advise on

before it is signed.

In the past, I believe agents were reluctant to do this because it was assumed a sale would be lost with the 'delayed time' spent having contracts reviewed, as opposed to getting a buyer to sign on the spot. This was particularly the case if the sale occurred over the weekend, a time when solicitors are generally not available.

Any good and prudent solicitor will discuss these matters first with their client (if there is an opportunity to do so), and then with the agent concerned to form an understanding from the outset that any contract is to be viewed first before signing and will be viewed without delay by the solicitor. Certainly, this is how I approach any transaction when I am given the opportunity.

With this important background information, it is now time to answer the question put before us. If agents are employing 'tactics' to water down a buyer's rights under the contract or at law that are enforceable (if this is possible), the best way to minimise or avoid this is to always have a solicitor who is experienced in such matters review your contract before signing.

Once you sign a contract of sale you are committed to purchase (or sell as the case may be) the property based on the conditions contained in the contract. This step is vital to any buyer who wants to ensure their rights under the contract and at common law are protected and preserved. (This is equally so for sellers to ensure they are not committing to unreasonable buyer conditions and/or due dates.)

In relation to pest and building conditions in contracts, the standard terms contained in residential contracts in Queensland, for example, already provide for buyer protection, and any waiver or change to these in a contract should be heavily guarded. The problem is a buyer may not know when this occurs, which is why buyers should always see a solicitor first before signing.

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