



THE LAW SOCIETY
OF NEW SOUTH WALES

FACTSHEET

WHAT TO ASK A VENDOR'S SOLICITOR

What to Ask a Vendor's Solicitor

The onus is on the purchaser to decide what degree of risk he or she is prepared to accept when buying a property, what enquiries the purchaser desires to make, and whether to incur the necessary expenditure before entering into the contract, or prior to settlement.

Depending on the information provided by a purchaser, and the information contained in the contract, there is no reason why the purchaser's solicitor could not obtain certain information. This includes a noxious weeds search, a Local Land Service stock and chemical residues search, a mining search and whatever information they require regarding the property.

The purchaser may be able to make some of these enquiries themselves, particularly with the local council. However, to ensure the purchaser can rely on the information it is best to obtain a formal search.

Upon receipt of instructions or advice from the agent or a client that a contract is on its way, a purchaser's solicitor should write initially to the vendor's solicitors seeking replies to pre-contract enquiries.

The Law Society of NSW has developed a set of standard requisitions on title for the purchase of rural property. These are available on the Law Society Shop's website.

Share farmed or leased properties

It is important for the vendor's solicitor to ask his/her client, at the time of obtaining instructions, whether the property or any part of it is share-farmed or leased. If there is a sharefarmer or lessee, there can at times be difficulties in obtaining vacant possession, especially if a crop has been sown or it is lambing season.

Solicitors practising in this area should have a good working knowledge of the *Agricultural Tenancies Act 1990*. They should obtain specific instructions from a vendor farming client as to whether any person other than the vendor is using the land and, if so, under what circumstances.

Many share farming/lease agreements are oral and are deemed to be a periodic tenancy from year to year. In those circumstances it will be necessary to give notice in accordance with sections 14(2) and/or 14(3) of the Act. If the sharefarmer/lessee has commenced ground preparation for a crop, the notice cannot expire until one month after the end of the cropping program. In some circumstances, it may be necessary to give more notice (see sections 14(4) and 14(5)).

Agricultural tenancies can be a complex area for the unwary rural conveyancer. Practitioners' attention is drawn to the case of *Hohn & Anor v Mailler* [2003] NSWCA 122. Hohn's case was not brought under the Act and nor were the decisions made with reference to the Act.

Briefly, the facts were the Mailler family purchased land that was subject to an agricultural lease. The lessee, Hohn & Anor, planted a crop of sorghum prior to the end of the lease. When the Mailler family harvested the crop, the lessee commenced legal action citing a "re-entry for harvest" provision in the lease.

The case turned on a point of construction under contract law and did not involve an interpretation of the Act. There are concerns about the implications of the decision upon leases and share farming agreements under the Act. Section 14 of the Act covers the termination of tenancies under the Act but does not currently make provisions for the situation where a fixed term tenancy includes a "holding over" provision.

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