



Buyer Beware: Due Diligence and Buying Rural Property in Queensland

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Thinking of buying a rural property in Queensland? It is important to consider these issues when contemplating such a purchase. This is the first part of our three part series of articles on purchasing rural property in Queensland.

What the title search won't tell you

Queensland does not have a central database where a single search details rights, restrictions and responsibilities associated with a particular property. For example, title searches do not identify potential issues surrounding rural property transactions and the nature of what is being bought. This means that a buyer has the complex and expensive task of carrying out searches with different Government Departments and local authorities to obtain relevant information about a property.

A title search will tell you the identity of the registered owner of a property, the real property description, and whether there are any registered interests impacting the use, enjoyment, or security of the property.

The title search is only the starting point for buyers and must be considered with other searches and enquiries regarding the property, condition, and use. Where there are registered interests on title such as an easement, a dealing search is necessary to understand and advise how that interest affects the property or rights and obligations that will be assumed by the buyer on transfer of title. Unless an issue relates to a registrable interest in land, the issue won't be recorded on the title search.

Buyers needs to be made aware of the information available, and what searches and enquiries they can conduct. Money spent on searches is money well spent, but the local Government planning and development websites and other Government



websites are also invaluable resources for general information.

Rural Property Factors

There are many issues for a buyer to consider when purchasing rural property including, but not limited to:

- Inclusions and equipment such as tractors or machinery;
- Fencing requirements for keeping of cattle and livestock;
- Whether there is permitted land clearing and/or vegetation;
- Fire risk and relevant overlays;
- Chemical residues, livestock and plant diseases, noxious weeds and animals;
- Survey of the property to determine boundaries (may be difficult due to size);
- Permitted, current, and intended land use;
- Permits to occupy;
- Access to property, roads and licencing;
- Registered and statutory easements;
- Water entitlements, licensing and allocations;
- Stock Routes;
- Ministerial consent requirements;
- Cultural heritage and native title;
- Waste services including whether there is an on-site sewage treatment system;
- Mining impacts; and
- Road reserves.

Due Diligence

As Queensland is a 'buyer beware State', it is crucial for a buyer to do its due diligence by conducting full and complete searches

before purchasing. It is important that buyers are aware of the searches available, as well as the ramifications of those results and risks in proceeding without investigation. Sufficient time, attention and consideration should be given to these investigations as seller warranties may be insufficient or unable to be enforced if the warrantor has no assets to satisfy a claim.

Searches

When conducting searches as part of the due diligence process, consideration must be given to the timing of ordering and receiving the search results as turnaround times can vary anywhere from a few minutes to several weeks, depending on the search. If a buyer has a special condition allowing for due diligence, the searches will need to be ordered and returned all within that timeframe to allow them to carefully consider the results and determine whether further investigations are necessary.

The other potential issue here is the accuracy and reliability of the results from these searches. For example, a contaminated land register search will only show a result if the issue has been notified with the Department. There is also the possibility for user error, for example, the person issuing the search result could make a typographical error or mistake when completing a search request. It may also be advisable for a buyer to arrange as many on-site inspections or assessments as possible to ensure the accuracy of the findings as opposed to computer generated results only.

Just because a buyer conducts searches, does not provide an automatic termination right unless the buyer can prove material prejudice based on the results, or if they have the benefit of a due diligence condition. This is why it is crucial that buyers ensure they have the benefit of a due diligence condition in the contract before signing, to conduct their due diligence before (or immediately after) entering in to a contract and to obtain legal advice before signing a contract.



Risks of No Due Diligence

Should a buyer choose to proceed with the purchase of a rural property without conducting searches or a full due diligence, it is possible that they won't receive the full benefit of the property or some aspect of it. Relying on a Seller's disclosure can be risky, particularly where they themselves are uninformed, and where the parties have different intentions for use (e.g. cattle versus crops). Lack of investigation and understanding won't assist a buyer if something goes wrong.

It is important that care and consideration is given to these matters to ensure a successful outcome for all parties. Every rural transaction differs, and the list of potential variables is endless. While there are common elements to these transactions, it is important that buyers obtain professional legal and financial advice very early in the transaction or prior to entering in to a contract.

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