

Rural Land Settlements

(inhouse seminar)

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Stages

- Stage 1 – Contract Negotiations
negotiate the contract with the land owners.
- Stage 2 – Special Conditions
All ZYX contracts are subject to Board Approval, Evaluation and Due Diligence.
Some ZYX contracts have also been subject to other special conditions such as:
 - Converting the land from leasehold to freehold;
 - Exercise of a put and call option deed; and
 - Land Sales Act exemption being obtained.

Stages

- Stage 3 – Titles Office Documents

We are responsible for preparation of Titles Office documents:

- Transfer
- Lease

- Stage 4 - Settlement

Settlement usually occurred in Queensland which involved engaging an agent. It is important to perform a check search on the day of settlement and request the agent check the hardcopy paper CT for any mortgages or securities.

Due Diligence

- All ZYX purchase contracts were subject to due diligence investigations – the results of these investigations were usually required within a short period of time (e.g. within 14 days of the contract being signed)
- Most searches conducted were similar to those carried out for a conveyance, however there were some issues that arose that were unique:
 - Road Reserves
 - Sugar Access Rights
 - Road Licences
 - Land Sales Act Exemption

Reservations

- A reservation is an area reserved to the State (excluded from a title) for a public purpose under section 23 Land Act. E.g. road, railways, esplanades.
- Most common one: road reservation
 - Fixed road reserve
 - Floating road reserve
- May affect freehold, leasehold title and deed of grant in trust.

Road Reservations

- Fixed road reserve
 - fixed location
- Floating road reserve
 - undefined location “floating”
 - why floating not fixed? Unforeseen future road requirements, pattern of development cannot reasonably anticipated.

How to ascertain if there is a road reserve on title?

- Not shown on title search or dealing search
- Need to do a survey plan image search BUT
- HARD TO SEE whether there is one or not.

Fixed Road reserve

- Defined location
- Registered owner has no interest in the reservation area
- Only the State may deal with the reservation
- Trespass to land if:
 - growing crops, grazing stocks, fencing or obstructing the reserved area.
- How can the State find out?
 - Usually someone informs the DNRW.
- Consequence:
 - Penalties up to \$30,000.00 + costs to restore to previous conditions.

Fixed Road reserve –Cont'd

- Need to apply either a Land Act Permit to occupy, road licence or lease OR
- Buy the road reserve from the State (i.e Purchase a reservation in title)

Floating road reserve

- Undefined area
- Owner may use the whole land including reservation (no trespass)
- No interest in the reservation
- Owner can sell the whole property to third party w/o State approval
- HOWEVER, issue arises when apply for subdivisions
 - If there is an existing floating road reserve on title, then subdivision plan will not be registered until DNR & W authorised
 - Need to extinguish/purchase the road reserve by making application to DNR & W(S23A Land Act)

Floating road reserve- cont'd

- DNR & W needs to
 - consult government depts eg. Main Rd, QR whether intention is to use the road reserve in future
 - Consider native title issues
 - Consider public policy
- If reserve no longer needed, the Governor in Council may sell all part or all of the land in the reservation to the registered owner (s24 Land Act)
- Owner pays market value of the reserved area (S25 - Unimproved value)
- Unimproved value disregard commercial value of any improvements to the land (s434 (2) Land act)
- Once road reserve extinguished, subdivision application will be considered by Council

Floating road reserve- Cont'd

- Hard to identify
- Long application process to purchase the reserve: 12-18 months which delays the subdivision process
- Extra cost – pay for market value of land
- Lessons learnt re road reserve?
 - Do DD, have detailed look at the plan & advise client
 - If it's fixed reserve, make sure client knows the exact location of reserve, otherwise the client may trespass on State land and be fined and asked to meet costs of removing improvements.
 - If floating road reserve, should re-negotiate contract price.

Sugar Access Rights

- Sugar Access Rights are granted under the *Sugar Industry Act 1999 (Qld)* and are recorded as an Administrative Advice on the title.
- Can be granted by consent between the parties or through the Land Court where no agreement can be reached.
- Can provide one of two things:
 - Cane railway easement; or
 - Permit to pass
- How do you know which type of access right applies to the property?

Sugar Access Rights

- Order a copy of the imaged document using the dealing number on the Title Search.
- The imaged document will contain any conditions in relation to the granting of the rights and a copy of the easement.
- Problems with Sugar Access Rights?

Road Licence

- A road licence provides the licensee with the right to exclusively use a road that is owned by NRW.
- ZYX entered into a contract to purchase several lots from the seller but was unaware there was a covenant registered over Lot 2 stating Lot 1 and 2 **must** be transferred together with the accompanying road licence.
- Road licence details are obtained by carrying out a title search using the lot and plan number for the road licence.

Road Licence

- Details provided in the imaged document include:
 - Specific description of the area covered by the road license;
 - The purpose (if any) for which the road license is granted;
 - Any conditions imposed by DNRW (e.g. prohibiting the Licensee from erecting anything other than fences on the land).
- Road licenses can be cancelled, voluntarily surrendered or transferred.

Transfer of a Road Licence

- An application to transfer a road license must be lodged with DNRW by the registered licensee, their agent or solicitor.
- Requirements to transfer road license:
 - Consent to Transfer Application Form;
 - Application Fee;
 - Evidence to show all rent has been paid
- The transferee must also complete a statutory declaration to be submitted with the application stating awareness of the condition of the land, any conditions which must be complied with and the annual rent payable.
- Form 18 – General Consent is then issued by DNRW consenting to the transfer of the road license.
- The General Consent must be lodged with the Transfer and Form 24 at the Titles Office for registration.

Land Sales Act 1984

- Objectives of the Act:
 - Facilitate property development in Qld
 - Protect consumers' interests in property development
 - Ensure proposed allotments & lots clearly identified
 - Most common provisions:
 - restriction on selling- seller must hold a development permit prior to entering into agreement with purchaser(s8)
 - Identification of land (s9)- seller must provide disclosure plan, disclosure statement, survey plan for proposed allotment

Land Sale Act – Cont'd

- When will the Act apply:
 - Qld properties only
 - Not apply to large transaction (sale or purchase > 6 allotments)
 - May apply for exemption

Land Sales Act - Part 2 Exemption

- Exemption may be sought under s 19(1) Land Sales Act when parcel of freehold land subdivides < 5 allotments
- Both parties must enter into agreement that Land sales Act exemption will apply
- Who can apply for the exemption:
 - seller ; or
 - purchaser with seller's consent ; or
 - A person identified under the Land Sales clause in the contract

How to apply for exemption

- Written application to Office of Fair Trading including:
 - Copy of contract
 - Full description of existing land
 - Copy of registered survey plan
 - Reason for application
 - No. of proposed allotments
 - Copy of proposed subdivision plan
 - Which exemption wants to apply eg. Ss 8, 9
- Must apply within 30 days from the date that the purchaser entered into contract to purchase proposed allotment (S19)

Land Sales Act exemption –cont'd

- Most common provisions sought for exemption:
- S8 - restriction on selling
- S9 - identification of land
- Why apply for exemption
 - Most ZYX contracts are rural farming so the farm house dwelling will be useless to them.
 - Farm house can be sold back to the original owner by way of subdivision of part of the land (proposed allotment).
 - S8 & S9 exemption allow ZYX to settle the purchase contract first then engage surveyor to draw plans and apply for subdivision. More flexible & no need to provide disclosure statement or plan