



LEGAL CONSIDERATIONS

ABSENT DEEDS

There are many legal factors to consider before buying a plot of land. The most common problem that can occur is where the deeds have been lost and, whilst it can be quite obvious just who owns what, there is no way to prove it. On the face of it this might seem an impossible situation, however, the best solution is to obtain Statutory Declarations from the vendors and from other associated parties and neighbours. With these, it is then possible to obtain a Defective Title Indemnity Policy, which is effectively a single premium insurance policy, usually costing no more than a couple of hundred pounds.

PRESCRIPTION

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In England & Wales this is referred to as Adverse Possession and in Scotland it is referred to as Prescription. It takes an inordinately long time to establish and it may mean that a plot, rather than having an absolute title, is offered with a Possessory title. The most common occurrence of this is where a vendor has moved the fence over to take in some overgrown or unused land at the side. The main plot will then be offered with an absolute title and the acquired bit, with a Possessory title. If you are offered land with a Possessory or incomplete title you should make certain that there is a single premium indemnity policy in place to cover the eventuality of an absent owner turning up to dispute your occupation.

The premium for this policy is usually the responsibility of the vendor.

TIPS

- If deeds are missing it is essential to obtain some form of insurance
- It is possible to gain title over land you do not own, but make sure the correct paperwork and procedures are followed
- It is important to gain public access from your plot legally
- If a ransom strip is present on your land, make sure all efforts are made to find the proper owner



ACCESS TO PUBLIC HIGHWAYS

It is obviously vital to establish that there is sufficient vehicular access and that access is available to a public highway, either directly or by means of a private driveway or right of way. These rights should be noted in the deeds of the land but there are instances where they are, for one reason or another, missing. There are also instances where it is fairly obvious that the property, maybe in company with several other properties, clearly enjoys access; yet no legal rights or ownership over the access can be established. The simple solution is, once again, the single premium indemnity policy, with or without statutory declarations to back up the claim.

The twenty year rule that is generally accepted means that if you can prove that a property has enjoyed unencumbered and uninterrupted access over land for a period of twenty years or more, a legal right of way is capable of being established. These are known as Prescriptive Easements.

CAVEATS

- The right must have been obtained without force, secrecy or permission.
- The right must attach its benefits to the land.
- Use must be continuous, although a break of up to one year is allowed.
- Access must not be illegal
- It cannot be established over railway land, waterways land, Crown land or highways land.

RANSOM STRIPS

Ransom strips are small strips of land dividing the plot from an access. They are sometimes quite apparent on the ground but at other times, their existence can only be established by careful measurement or by detailed study of the plans. They can go unnoticed by solicitors if there is no reference to them in the deeds or in the Land Registry details. If there is any suspicion that a ransom strip might be in existence, do not ignore it. If a ransom strip is in place then it is the result of a deliberate policy to either gain from land's eventual development or prevent it in some way. Investigate it thoroughly and discreetly.

If it is obvious and the owner of the strip is known, then you have no alternative but to open negotiations with them.

Unfortunately, you might well find that the price of their agreement equals up to one third of the value of the plot. If your investigations do not reveal the owner then it is just possible that the original intentions have either lapsed or been forgotten over time. However, they do still exist, and you will need to take out an indemnity policy to cover for the eventuality of someone coming along and claiming ownership.

PLANNING PERMISSION CONDITIONS

Planning permissions can also impose conditions regarding access. The most common of these is the requirement for visibility splays at the junction of a driveway with the public highway. Check that these are available within the confines of the plot. If they are not, and if the visibility splays cut across land outside your proposed ownership, then it may be necessary to come to an agreement with the adjoining owners that the land will be kept free of any obstruction above 1.1 metres in height. Effectively this creates a ransom and the value of that ransom could well be one third of the uplift in the value of the plot. Make sure that it is the vendor and not you that pays for this.