

TITLE BOUNDARIES

In a perfect world, there are two other checks that should be carried out but in our experience never are. The first is to commission a private detective to find out what your new neighbours are like. For example do they have noisy parties?

The second would be to have a surveyor check the physical boundaries to ensure that they match the legal boundaries. Sometimes, in older areas such as Ponsonby, titles are "limited as to parcels" which means that the boundaries aren't defined or guaranteed. We recommend that such titles should be rectified by way of survey and in our experience this is quite slow (several months) and expensive (about \$4,000). We also recommend that you proceed very carefully with a purchase if the title is limited as to parcels. Land is very valuable and we are aware of a recent case where an owner gained an additional 25 m². At current values near the city this could be worth \$50,000.

Often fences are not exactly on boundaries and it would come as a shock if your neighbour insisted that the fence be replaced on to the legal boundary in the event that it wasn't in the correct place. This could cost access to your property. Live hedges grow towards the sun and over many years could move from their original start point. Old houses were not as strictly controlled as to the distance of side front & rear yards and what appears to be a side yard that gives vehicle access may prove to be too narrow if the neighbour insists on fencing the legal boundary. To add salt to the wound you would have to pay half the cost of the new fence! Remedies range from difficult to costly and impossible.

CROSS LEASES

In the 1970's it became popular to subdivide the old larger sections. Owners found that the simplest way of doing this was to jointly own the land and grant one another leases for the footprints of the dwellings. These became known as cross leases.

Composite titles are issued for these properties defining the share in the freehold and the registered lease. This means that each owner has a share (e.g. ½ if there are two houses) in all of the land, and all the owners then lease each dwelling to the particular inhabitant. These titles have been around for 40 years or so and seem to work well. They have their pitfalls, which we shall refer to below. One of these is that while usually in residential zones a property owner may conduct a home business, standard cross leases forms do not permit this. Because of the greater proximity of living, the leases give owners greater control over one another's activities such as noise.

Building Consent issues are greater with cross leases because the title plan defines the "footprint" of each dwelling and any alteration made to the footprint must not only have building consent and Resource Management Consent but also the consent of all the owners of the other dwellings on the title.

A surveyor must resurvey the changed footprint and amend the survey plan, and all the owners and their mortgagees must consent. The leases must surrendered and redone. We have rectified such a defect involving 4 properties on a cross-lease and the legal fees and survey costs for all parties were about \$16,000. In such a situation it is best to see whether other owners have defects to their titles and share the cost.

This is a very expensive and complicated process and the main defect of cross leases. Much of the infill housing in Auckland has been developed by cross leases and many have offending alterations. Some may have building consent or be signed off without the survey and legal requirements completed. There is also the restriction in the lease document that the property is to be used for residential purposes only. While the local authority planning rules may permit a home occupation, the lease prohibits that – so no working from home unless all the other owners agree!

The High Court has ruled in a recent case (*Ko & Kim v. Chamberlain*) that a cross lease may be partitioned. This means that an owner can apply to the court for a separate title. While this may sound appealing the downside is that the lease disappears (as it merges with the freehold) and the cross lease owners are left without the protections they had in the lease. So be aware that if you are purchasing a cross lease property that you could be faced with a partition order from the court for separate titles and lose the protections you have with your neighbours that are enshrined in the lease. In a perfect world, these would be recorded by way of covenants on the titles so that they continue but apparently the Court does not have the power to do this and this will have to be tidied up by legislation somewhere down the track if the partitioning neighbours cannot agree. We have not heard of this happening other than this case.

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