

Illegal works are unfortunately becoming an all too common occurrence in conveyancing transactions.

Section 52A of the *Conveyancing Act 1919* (NSW) provides that the Vendor warrants that "there is no matter in relation to any building or structure on the land (being a building or structure that is included in the sale of the land) that would justify the making of any upgrading or demolition order or, if there is such a matter, a building certificate has issued in relation to the building or structure since the matter arose"<sup>1</sup>.

As a result a Vendor must disclose any illegal building works undertaken on the property throughout the history of the building. Even if the Vendor did not do the work and was not aware of the illegal building work the Purchaser still has the right to RESCIND the Contract without penalty at any time up to settlement.

This has implications for both Vendors and Purchasers:-

1. *Vendors*

You must advise your solicitor if there are any illegal building works on your property at the time the property is first put on the market for sale. If you are unsure whether all approvals have been obtained then you should obtain a copy of the approval records from Council, at that time.

Any illegal works should either be rectified prior to a sale or disclosed in the sale Contract so that the Purchaser's right to rescind is removed.

It is best to know if the issue can be fixed, and if possible fix it. If it cannot be fixed then at least the nature and extent of the problem is known. It is becoming more common for Purchasers to inspect Council records so it is likely that they will find the issue anyway.

2. *Purchaser*

All Purchasers should obtain a copy of Council's approval records to ascertain what works have been approved and to confirm that the works have been completed in accordance with the approval.

This is not only important for their purchase of the property but also for any future sale.

If you know or suspect that alterations or building works have been undertaken to the property which may not have been approved by Council then you should advise your solicitor so they can advise you of your options, and the consequences of any non-disclosure.

*The information contained in this article is of a general, non-specific nature and should not be relied in place of your own individual legal advice. This information may not be appropriate for your particular circumstances and you should contact a solicitor before acting on any information contained in this article.*

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<sup>1</sup> *Conveyancing (Sale of Land) Regulations 2005* sch 3.