

CHAPTER 3

PRE-PURCHASE INSPECTIONS

Many people obtain an expert inspection of a \$10 000 used car but fail to do the same for a \$500 000 second-hand house. As a result they may be forced to spend a large sum on rectification or, in some cases, attempt to resell the property to another buyer at a loss.

But there are still traps for those wise enough to order a building inspection—if you choose the wrong company or have unrealistic expectations of what a building report will tell you. And there is another ‘paper’ inspection that unit buyers should arrange.

DO YOU NEED A BUILDING INSPECTION BEFORE MAKING A PURCHASE AGREEMENT?

An Archicentre survey found that only 30–40 per cent of Australian homes are professionally inspected before purchase whereas in the United States the figure is more like 60–70 per cent. Are we too trusting or simply naive? Most sale contracts for existing homes have *caveat emptor* (buyer beware) clauses making the purchaser liable for any latent or patent defects; this is hardly surprising when you consider

PRE-PURCHASE INSPECTIONS

that many people sell their homes for much the same reason they sell second-hand cars—because they have some costly problem which is usually concealed or hard to detect.

Commissioning a professional building and pest pre-purchase property inspection (PPI) report before buying a new or existing dwelling makes extremely good sense *provided* that the inspection is thorough and competent. It should pick up all visually apparent significant building faults such as damp, structural termite damage, defective roofing, some structural faults, surface drainage issues and inadequate subfloor ventilation, to name just a few.

Being aware of these problems in a prioritised manner and having some idea of the likely cost of fixing them enables a property purchaser to make a more informed decision on what they should pay for the property. This is particularly important when buying at auction when, in the heat of the moment, passion can overtake commonsense.

Under a private treaty sale (see page 114), the bigger problems can often be used to negotiate a lower price. The real estate agent may not be aware of any patent (apparent) or latent (concealed) property defects, and probably wouldn't tell you if they were, so a building report becomes a very useful bargaining tool. Indeed, some industry insiders suggest that many agents are 'ignorant' of the property condition because of a fear of being sued for failing in their duty of disclosure to intending buyers.

Case study

Gillian and Wal made an offer of \$380 000, subject to a building inspection, on a single-storey terrace in inner-city Marrickville in Sydney. The building inspector found a problem with rising damp on one side and a subsequent report estimated the cost of remediation at \$20 000. Presented with the report, the vendor accepted a revised offer of \$360 000.

BUYING YOUR PROPERTY

WHAT SHOULD YOU LOOK FOR IN A BUILDING/ PEST CONSULTANT?

In some states anybody can call themselves a building consultant. You should spend sufficient time researching the skills and licensing of the person or company you propose using, and whether they carry professional indemnity and public liability insurance cover should their report prove to be negligent. Accepting the lowest price can be a real trap, and can and often does lead to incompetent inspection reports that omit significant building faults. There have been many cases of building and pest consultancy firms being sued for negligence and incompetence; there are even stories that some of these consultants have purchased the properties in question to avoid expensive litigation.

Case study

John, a high-powered banker type, had considered a number of multimillion-dollar properties and rejected them because of unfavourable PPI reports. He found another suitable property that was going to auction within two days but because his usual inspector was heavily booked John decided to use a large firm of building consultants which provided a part-written and part-oral report which basically gave the property the 'thumbs up'. Based on this advice, and contrary to his wife's wishes, John bought the house for over \$2 million.

Within a week of moving in Mrs John was complaining of foul damp smells and had noted that paint had peeled off the lower walls. John called in his usual building consultant to investigate. The consultant found that the original inspection firm was negligent as the property had massive rising, falling and penetrating damp as well as substantial subsurface drainage problems (it had been built into excavated rock), most of which were visually

PRE-PURCHASE INSPECTIONS

apparent. The cost of remedial works was likely to be \$140 000–\$200 000.

John decided, on legal advice, to sue the original consultancy firm for negligent and deceptive conduct for the sum of \$200 000 plus costs. After two years of waiting for the case to be heard the other side settled on the steps of the court. In hindsight John did not think his action was worthwhile given the large legal costs.

There have also been cases of buyers suing their lawyers for recommending a building consultant who missed major problems. This scenario can arise when consultants do not carry professional indemnity insurance on their work and the lawyers have failed to advise their clients that they as purchasers, not the vendors, are liable for any defects.

There are Australian Standards for the inspection of residential property, AS 4349.1 (inspections of buildings) and AS 4349.2 (timber inspection). Note that like all such standards these are the recommended *minimum* requirements. You should always ask whether the inspection report will be in accordance with, or better still exceed, the requirements of the relevant standard. If not, you'd do better to find another consultant.

The New South Wales and Queensland governments have decided that all building inspectors must be licensed.

Professional indemnity insurance is not compulsory, and provides consumers with a safety net in the event that a consultant makes a big mistake, or provides wrong advice. The insurance does not cover the client directly, but covers the inspector against claims for negligent inspections. When considering claims most insurers require that the 'negligent' report be in writing or that the consultant has kept a record of any verbal discussions. If a consultant offers a verbal report, such advice may not be covered by insurance and is best avoided.

Always check that your inspection consultant has current professional indemnity and public liability insurance, preferably is licensed

BUYING YOUR PROPERTY

and is a member of a professional association such as the Australian Institute of Building and so subject to professional disciplinary action and a code of ethics.

A good building consultant should be capable of providing a sample inspection report, possibly by email, to see if you are comfortable with the layout, the clarity of descriptions and the ease with which the report can be understood. Pay particular attention to the disclaimer clauses, usually located at the front.

Essential equipment for a standard building inspection includes a dictation unit, moisture meter, torch, 3.6-metre ladder, overalls, respirator, gloves, compass, spirit level and binoculars. The time taken to adequately inspect a property varies according to the type of inspection report, the size of the residence and the number of problems encountered; as a guide, however, you should expect nothing less than one hour for a building inspection and 30–45 minutes for a pest inspection. A good building consultant will spend considerably more time than this, writing up the report and discussing any areas of uncertainty with you once you have read it.

WHY DON'T AGENTS/VENDORS PROVIDE A PPI REPORT AS PART OF THE CONTRACT?

The groans of disaffected and unsuccessful buyers can be heard across the land on this issue, particularly when they have expended wads of money on multiple reports without actually buying a property.

The concept of the agent or vendor providing a PPI report for the sale property to all intending purchasers has been around for a long time and been considered by some states, as there could be big savings to consumers in having just one report completed and shared by all. In essence, most authorities have found there is a potential for conflict of interest and corruption if such a policy were to be adopted when the vendor is unlikely to be liable for the condition of the property under the contract and the consultant is not required (in many states) to be licensed and have professional indemnity insurance.

Nevertheless, a number of agents and building consultants have

PRE-PURCHASE INSPECTIONS

attempted to set up such a system. Unfortunately, what often happens when the consultant finds very unfavourable results is that they are put under pressure by the agent or the vendor to change their findings and present the property in a more favourable light. There are duty of disclosure laws which may bind the agent and possibly the vendor but the conflict of interest is still a strong temptation.

There are many instances of agents freely passing out building or pest inspection reports but as most indemnity insurers require that each PPI report be in the name of the person who paid for it, the consultant is only insured for the person whose name appears on the report. Some lawyers might argue that such reports are public documents and therefore might be used by any intending purchaser but it's a risky argument. Until such time as a government-approved system evolves where consumers are fully protected it is better to make your own inquiries. The ACT is an exception in that they have introduced legislation (Sale of Residential Property Act 2003) which makes it compulsory for the sellers of all previously occupied residences (except class A units) to provide both a building and pest inspection report with the contract for sale. The cost of PPI reports is expected to rise significantly (in the ACT), given the much increased liability of a single consultant's report to all buyers.

WHAT DO YOU NEED TO DO BEFORE BOOKING A PPI FOR AN EXISTING HOUSE?

As well as checking the consultant's insurances and licence there are a few practical steps you should take. You should ask the agent or vendor whether there is access to the subfloor and roof spaces because it is important that your consultant inspect these high-risk areas. The Australian standard requires that house access traps be a minimum 450 × 400 mm and that the area under timber floors has a minimum crawl space clearance of 400 mm, but diligent consultants will inspect areas with much less access.

If no access is provided written permission should be sought from

BUYING YOUR PROPERTY

the vendor for you to create access traps. Many consultants will cut in access traps for an additional fee.

Obtain a copy of the sewerage service diagram (or helio), which must be attached to the contract, and a survey of the property, and give these to your building inspector prior to the inspection.

WHAT ABOUT PREPARING FOR A PPI ON AN APARTMENT/VILLA/TOWNHOUSE?

The strata records inspection report (see page 43) should be provided to your building inspector so they have a better idea of what to look for based on historical defects, and can see if there is sufficient money in the sinking and administrative funds to cover any problems.

You should also ask the managing agent (or owners' corporation secretary) whether regular pest inspections have been undertaken on the building, and seek a copy of the latest report. If no pest inspections have been undertaken you should seriously consider engaging a pest consultant yourself as many multi-unit buildings have substantial pest problems.

In New South Wales all multi-unit residential buildings built since 2000 or which have had a council fire order placed on them are required to have an annual fire safety inspection. You should also seek a copy of this report.

Australian Standard 4349.1 is considered by many in the industry to be inadequate as, for instance, there is no requirement to remove ceiling or service-duct access panels and inspect the crucially important areas behind, nor is there a requirement to inspect any common areas other than those directly around the apartment. Try to find a consultant who will exceed the minimum standard in their inspection.

There are numerous examples of apartments where an earlier incompetent inspection report has revealed just a few surface defects but a subsequent inspection has uncovered many major faults.

Contrary to popular belief, a thorough inspection report for an apartment can be a lot more expensive than for an existing house, particularly if the apartment is new, you are buying off the plan or

PRE-PURCHASE INSPECTIONS

you wish to more fully inspect the common areas and more fully understand your future liability for special levies.

A thorough inspection should include checking the unit-separating walls and service pipes via access panels in the ceiling for fire safety purposes.

Many older apartment blocks have non-existent or inadequate fire safety services and while these normally require a specialist report, a good building inspector will provide some basic advice. This is important because the cost of any future rectification can be enormous.

DO YOU NEED A PPI WHEN BUYING AN APARTMENT OR VILLA OFF THE PLAN?

Many off-the-plan and brand-new property contracts are quite draconian from the buyer's viewpoint. They typically require that the developer (proprietor) or vendor be formally advised, in writing, of all building faults within a limited period (the 'defects liability period') which is usually 90 days after settlement. The proprietor is required to rectify the building faults within a 'reasonable time' after the expiration of the defects liability period.

It is now quite common for contracts to stipulate a maximum of one or two notifications of building faults (that is, the buyer gets only one bite of the cherry). Many contracts also stipulate that the proprietor will only fix those faults they deem 'reasonable', with little or no right to dispute their judgment.

Given this trend and the much-publicised inadequacy of current building standards it is vital that you undertake a comprehensive building survey report as soon as you take possession.

If done well, the cost of these reports is much higher than a standard pre-purchase property inspection because a good building inspector should report on the quality of work (although this is not required by the standard) and all apparent unacceptable building faults, plus request copies of warranties and certification documents.

The cost of such inspections is in the range \$395–\$1100 and they should include photographs. Again the cost depends on the size and

BUYING YOUR PROPERTY

complexity of the residence, the number of building faults encountered and the comprehensiveness of the report.

Remember, these reports are often required to support any home warranty insurance or litigation claim against the proprietor or builder.

WHAT SHOULD YOU GET FOR YOUR MONEY IN A BUILDING INSPECTION REPORT?

There are three main types of PPI report:

- a standard report for an existing residence
- a report for new residences
- a specialist or special purpose report.

The cost of a standard report can range from \$195 to \$550 excluding pest inspection, which is around \$195–\$285 more. The variance reflects whether the consultant carries the appropriate insurances, which are now expensive and difficult to obtain, and the amount of time spent making the inspection and writing the report.

Cheaper reports are commonly a standard format with ticks and crosses, often handwritten, with very little detailed explanation. This can make it difficult to properly understand the significance of the findings. This type of report should state any item which was *not* inspected and the reasons why, together with any recommendations for further investigation. Photographs are not usually included in a standard report, although their inclusion can often be very beneficial in understanding specific problems.

A good report summarises the findings, at the front, in a prioritised, concise and easily understood manner. The summary is the most important part of a standard inspection and should list all significant faults found and include an opinion as to the property's overall condition relative to similar buildings.

Question and answer type reports, where the purchaser is required to read the report and then ask the inspector specific questions, are best avoided as they place an unreasonable responsibility on the purchaser recalling the problems and having specialist knowledge.

PRE-PURCHASE INSPECTIONS

Many better consultants provide reports well in excess of the minimum standards which include an estimated cost of repairs.

WHAT WON'T YOU GET IN A STANDARD PPI BUILDING REPORT?

Contrary to the expectations of many consumers, there are many things you will not get in a standard PPI report. They include:

- estimates for the cost of repairs
- detection of illegal building work
- areas which could not be accessed, including timber stud walls, footings, concealed damp-proof courses, illegal stormwater connections to sewers
- latent (concealed) defects
- advice as to the type and causes of damp
- areas outside the consultant's expertise such as some site drainage issues, plumbing, electrical work, air-conditioning, pools and pool equipment, alarms, smoke detectors, intercom systems and many structural defects
- floor coverings
- operation of appliances and spas
- minor defects.

If your consultant is of large girth or not very enthusiastic and the access traps or ground clearances are below the minimum required, the report is likely to say that 'access could not be gained' to a particular area.

Most of the excluded items can be covered by a separate specialist report; a good consultant will recommend that you engage, say, an engineer if moderate to heavy cracking is found.

WHAT DON'T YOU GET IN A PEST INSPECTION REPORT?

Pest reports are usually so heavily weighted with disclaimers that it is often difficult to understand what exactly is being said. You should

BUYING YOUR PROPERTY

always ask your pest consultant to give a verbal report at the end of the inspection so you clearly grasp the findings.

Many people think that a 'clear' pest report means there is no termite damage in the building. This is not so. A clear pest report indicates there is no live or 'active' termite infestation. There may be plenty of dead ones, and extensive damage from previous infestations.

Termite damage really frightens buyers but there can be much worse faults. If you can establish that the damage is fairly limited it may become a great bargaining tool; however, many pest consultants will recommend that you have a builder determine which timbers are structurally defective. The vendors may not have been aware of the damage and may be so alarmed at finding out they may drop the price substantially in fear of not finding a buyer at all. A good building consultant should be able to estimate the cost of rectification; if the amount is not high it may not be good tactics to share this information with the vendor.

Case study

After many months of looking Andrew found the rural property he was searching for and before contracts were exchanged he told the agent he wanted to get a building and pest inspection. The agent suggested there was no need for a pest report because he could provide a clear report which had already been done. Andrew insisted on getting his own, which he did the day before contracts were to be exchanged. The building/pest inspector found extensive termite damage in the roof timbers which, since termites come from the ground, meant there would probably be similar damage right through the concealed areas of the house. Later Andrew discovered that the walls of some of the termite-damaged rooms had been cheaply replaced and the person who had organised these repairs was the agent. The eventual buyers of the

PRE-PURCHASE INSPECTIONS

house spent six figures rectifying the damage and lived in a major construction zone for seven months.

WHY SHOULD UNIT BUYERS GET A STRATA SCHEME SEARCH?

When purchasing an apartment, townhouse or villa which forms part of a strata plan, body corporate or company title you should obtain a search of the strata scheme records from a strata search company. This often gives clues to prior or current building problems and the funds available to fix them.

A strata inspection report costs \$180–\$550 depending on the size and complexity of the building and whether a prior inspection has been done. The quality of these reports can vary enormously and it is wise to ask your solicitor or the National Community Titles Institute (or state-based associated member organisation) for a recommendation. Again, check that the firm you engage holds current professional indemnity insurance as many don't.

A good report summarises the more significant findings, which should include prior building defects and complaints and, most importantly, the current monies in the sinking and administrative funds and any special levies that may be current. It should also give information on issues like pet ownership, insurance, any past or current disputes and the history of works in the complex.

Case study

The owners' corporation of a two-year-old harbourside apartment complex with leaking bathrooms and roofs commissioned a common area building defects survey which found very serious building defects and indicated that the cost of repairs could exceed \$10 million. When the owners were given the bad news many were

BUYING YOUR PROPERTY

concerned about word getting out and the value of their property decreasing, so they instructed their strata manager not to put the report on the strata records (it was locked away in the building manager's safe) so it could not be accessed by potential buyers. Some owners decided to sell instead of staying and fighting the builder or developer, leaving unwitting buyers with a bucketload of trouble. The case serves to show that strata inspection reports do not always accurately reflect a building's true condition.

You can carry out a strata records search yourself by making an appointment to go through the files of that particular development at the strata manager's office. A fee of about \$25 is charged. You will need a letter of authority from the agent or the unit/villa owner.

Unit owners and subsequent purchasers are usually responsible for maintaining anything they have installed themselves. If a strata search identifies that such work has been carried out on a unit you are likely to be liable for its maintenance upon purchase.

Case study 1

A New Year's Eve party in Western Australia was attended by a number of doctors and specialists at premises which had been converted into a residential strata complex. Thirty of the party-goers were on the balcony when it collapsed; four became quadriplegics and many were injured. The claim against the owners' corporation stands at \$30 million, far in excess of the public liability cover of \$10 million. The matter is yet to be resolved. (*Source:* <www.strata.com.au>)

Case study 2

In 1996/97 it was brought to the attention of the owners' corporation of a block of units in Sydney's north-west that a retaining wall needed repairs and in 1998 a quote was obtained for \$6400. As repair work was not carried out, in 1999 the neighbours took legal action against the corporation but because of poor communication this was not conveyed to all owners until May 2001. What originally started off as a relatively small problem has now escalated to repair costs of \$180 000 plus legal fees. Unfortunately for the owners' corporation they were insured through HIH Insurance, which collapsed soon after, and now may not obtain compensation. The matter was subsequently settled outside of court as both sides were concerned how their evidence might be interpreted. (Source: <www.strata.com.au>)

WHAT ELSE DO YOU NEED TO DO WHEN BUYING OFF THE PLAN?

You should always have a specialist off-the-plan lawyer review the contract and advise you on the proprietor's liability for building faults, the defects liability period, what constitutes an agreed building fault, how many defect notices are permitted and how long after written notification the faults will be fixed.

Many contracts say that the proprietor will fix agreed faults 'within a reasonable time' after the expiration of the defects liability period or settlement. But a lot of buyers have been left with unacceptable building faults 18 months after purchase. Your solicitor may be able to negotiate more acceptable contract terms, including withholding sufficient funds to cover the cost of any repairs until they are satisfactorily completed.

Arrange for a building inspection prior to settlement or during the

BUYING YOUR PROPERTY

defects liability period. Ask your building inspector to contact the principal certifying authority (PCA) to request the various ‘certificates of compliance’ for the building. (The principal certifying authority may be the council or an accredited private certifier whose job is to confirm that the building complies with council-approved plans and the Building Code of Australia, and is fit for occupation.) These certificates will enable your inspector to provide you with a more comprehensive report and give you some understanding about the likely performance aspects of the building in relation to acoustics, fire safety, waterproofing warranty and mechanical ventilation, for example.

At this point you should ask the proprietor to provide you with an ‘as-built’ plan of your unit showing the location of lounge rooms, bathrooms and kitchens in properties adjacent to your own to assist your building inspector. While proprietors are not compelled to provide these documents, if they genuinely believe their property has been well constructed they should oblige.

Also ask the proprietor or builder for copies of the all-important warranties covering such aspects as waterproof membranes, termite barrier treatments, air-conditioning systems and windows.