Have you Suffered Loss over a Pre-Purchase Inspection Report?

It is extremely important for any prospective purchaser to undertake enquiries and due diligence prior to purchasing a property. Pre-purchase inspection reports are crucial to ascertain the condition of a property and can usually be commissioned at a low cost. It is frustrating for any purchaser to find out that the property they have just bought has defects present which were not noted in the pre-purchase inspection report. It is common that you do not get what you pay for in relation to these reports. Many people ask the question whether the purchaser has any legal recourse in pursuing the author of a bad pre-purchase inspection report. Well, of course it's dependent on the facts of the case.

THE AUSTRALIAN STANDARD 4349

The Australian Standard 4349 sets out the minimum requirements for inspection of and preparation of inspection reports on buildings and associated works by a suitably qualified inspector in order to provide advice regarding particular technical aspects of the property. The Australian Standard outlines the following requirements (this is a non-exhaustive list):

- The inspection shall comprise visual assessment of the property to identify major defects and to form an opinion regarding the general condition of the property at the time of inspection.
- The inspection shall cover all accessible areas.
- The inspection shall comprise visual appraisal and limited assessment of serviceability.
- Limitations that are reasonably expected to be present or that reasonably may occur shall be identified.
- The inspector shall appraise building elements, including structural elements, for the presence of defects
- Major defects, a general impression regarding the extent of minor defects and any major defect that is an urgent and serious safety hazard are significant items to be reported.
- The building shall be compared with a building that was constructed in accordance with the generally accepted practice at the time of construction and which has been maintained such that there has been no significant loss of strength and serviceability.

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- Where applicable, the inspector shall include a recommendation for further inspection by a specialist inspector.

It must be noted that the Australian Standard is not mandatory and advertised compliance with the Australian Standard could further water down the standard.

A prospective purchaser must be aware that there are limitations of pre-purchase inspection reports which are usually set out in the report noted as disclaimers which should be read carefully as these usually limit the liability of the company/person preparing the report.

LEGAL RECOURSE

If a pre-purchase inspection falls short and does not report on crucial matters and you have bought the property in reliance of the pre-purchase inspection report and have suffered a loss, you may have recourse against the pre-purchase inspector, pre-purchase inspecting company and/or the author of material advertising the inclusions of the pre-purchase inspection and report (such as a website) in the following ways:

- Breach of contract.
- Misleading and deceptive conduct.
- Negligence.
- Breach of section 60 of the ACL.

Although not heavily apparent, the following guiding principles have been established by way of case law:

- Authors of pre-purchase reports must exercise care in carrying out their inspections: *Cate Doosey v Nigel Walsh & Complete Building Inspection Services Pty Ltd* [2017] NSWDC 8.
- Owners can recover damages where a building consultant has been negligent in preparing a pre-purchase inspection report: *Cate Doosey v Nigel Walsh & Complete Building Inspection Services Pty Ltd* [2017] NSWDC 8.
- In order to recover compensation, the owner must prove that there is a causal link between the failure to report the defects and the losses suffered by the owner: *Maurer v Seabrook Pest Control & Seabrook (General)* [2005] NSWCTTT 441 (9 June 2005).
- There is difference in opinion as to how the correct measure of compensation is to be determined, which include:

  (a) the loss of opportunity that the owner would have had to raise the issue with the vendor at the time of the purchase and either withdraw from the sale, or negotiate a better purchase price: *Maurer v Seabrook Pest Control & Seabrook (General)* [2005] NSWCTTT 441 (9 June 2005);

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(b) the cost to rectify the defects that should have been identified by the inspector: *Belgrove v Eldridge* [1954] 90 CLR 613; or

(c) the owner arguing that they would not have entered into the contract if not for the negligent report, in which case, being the loss in value of the house.

KEY TAKEAWAYS

Owners are often disappointed when they discover defects at a later date that they believe should have been able to have been identified by the inspector. However, it is very difficult to establish at a later date what the inspector saw and/or should have probably seen at the time particularly if the inspector was only able to undertake a visual and non-invasive inspection.

There are limitations to many pre-purchase inspection reports and these must be read carefully along with any disclaimers throughout the contents of these reports, as they will limit the liability of the author making the report.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

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