

VACANT LAND – BUYER ADVISORY

The following Advisory is intended to briefly address some of the practical and legal issues that can arise in the purchase of vacant land. What follows is a summary of a few of the more important issues – however, it is by no means exhaustive. Your real estate broker is not an expert in water law, zoning, environmental issues, easements, etc. and you should secure your own independent expert(s) when purchasing vacant land. Caveat: This Advisory is not intended to be a complete summary of all issues, does not constitute legal advice, and should not be relied upon in lieu of securing legal advice from one or more experts.

As a part of your due diligence in making a decision to purchase vacant land, you may wish to consider contacting neighbors in order to learn about the subject property as well as other nearby properties.

1. BOUNDARIES, ENCROACHMENTS AND FENCES: Vacant land consisting of acreage may have been surveyed at some point in time. If so, the buyer should review the survey and if there are any questions or concerns raised by the document, it should be reviewed by an expert. Encroachments (i.e., where other property or structures cross over a boundary line) are not uncommon with large parcels of land. Buyers cannot necessarily rely upon the location of a fence (especially an old fence) as representing the legally described boundary line contained in the deed. If in doubt, the buyer should consider having a new survey before finalizing the purchase. Continuous occupancy of land can give rise to certain legal rights to the occupant, so it is important that this issue be discussed with the seller and anyone else familiar with the history of the property. (Note: An owner's policy of title insurance does not insure the buyer against legal claims of ownership or use arising in third parties over the lapse of time.)

2. ACCESS AND EASEMENTS: Is there legal access into and out of the property to a public road or highway? If the access is privately owned by a third party, is there legal access allowed by an easement or other legal means? Has a document providing access, such as an easement, been duly recorded and has the easement ever been surveyed? Is the survey recorded? Sometimes private access roads allow others to use them as well. If so, the buyer should make sure they know the exact location of the easement, that it is legally described in writing and properly recorded, and that the obligations for sharing the cost of maintenance, repair, insurance and other related expenses are covered. The buyer must make sure that the purpose of the easement is clearly defined and that it is adequate to meet the buyer's intended purpose. Are there any limitations on use of the easement? Does it appear that there are any unauthorized users of any private access roads? If so, those unauthorized users could acquire certain legal rights by continuous use over a long period of time.

3. ZONING, ENVIRONMENTAL / CONSERVATION / GOVERNMENTAL LIMITATIONS, DEED RESTRICTIONS, ETC.: Buyers should make sure that there are no recorded or public limitations or restrictions that will interfere with or negatively impact the intended use of the property. Buyers should verify the zoning, visit the local building department, and review all recorded limitations and use restrictions. This is where an expert land use consultant can become very important.

4. SOIL CONDITIONS, BURIED UNDERGROUND STORAGE TANKS, CONTAMINATION: Some vacant land can contain fill or debris that will need to be removed from the property, depending upon intended use. Prior use of the land is important to know. Are there any contaminants, possible contaminants, underground storage or fuel tanks (abandoned or not) located in or on the property? Have there been any environmental studies performed? If not, should one or more studies be made a condition of purchase? Use of a good soils engineering and environmental consulting companies may be appropriate before purchase.

5. WATER RIGHTS, SOURCES, WELL: Buyers should not purchase vacant land unless and until they have thoroughly satisfied themselves that they are aware of all sources of water for irrigation, potable drinking water, and that the owner has established and properly registered all

necessary water rights. If there are one or more wells used for domestic water purposes upon acceptance of an offer to purchase the land, the seller must have the well(s) tested for certain contaminants, such as bacteria, coliform, arsenic, etc. (See, ORS 448.271.) Water flow of all operating wells should be tested. Buyers should confirm whether all work to construct, alter, abandon or convert a well has been properly permitted. For more information, buyers should check with the Oregon Water Resources Commission and the Water Resources Department. (See also, ORS Chapter 537.)

6. FLOODING, DRAINAGE, NATURAL DISASTERS: Does the property lie in a floodplain or floodway? Has the buyer reviewed a floodplain map? Has the buyer spoken to the local jurisdiction regarding any history of flooding? Is the land near a river or other body of water? Have there been any natural or manmade disasters affecting the land, including settling or shifting ground? Is the property located within a drainage district? Are there any drainage easements? Have the easements been recorded on the public record? A close review of the preliminary title report will tell the buyer what documents have been recorded on the property. If there is a legal right affecting use of the property, it should be recorded and appear on the preliminary title report.

7. SPECIAL ASSESSMENT BASED ON USE: Is the property specially assessed due to its current use (e.g., farm, forest or other)? If buyer intends to continue that use and take the benefit of the current tax deferral, he/she should carefully verify before closing that the property is not in danger of disqualification for the special assessment or that buyer's intended use will not jeopardize its current tax status. Loss of a special assessment status could result in a recapture of the prior deferred taxes.

8. UTILITIES: Are public utility services available such as sewer, water, electricity, and telephone service? If so, the buyer should determine where all underground utilities are located. If there are any private utilities on the land, how old are the systems and what condition are they in? Have repairs ever been necessary and if so, are there any records of them? Was all work permitted where required? Has a percolation test ever been performed on the property? What about the location and condition of any drainfields, septic or other sewage systems? Where appropriate, identifying the location, type and condition/repair of the private utilities may have to be made a condition of purchase.

9. PRIOR AND EXISTING USE OF THE PROPERTY: What is the buyer's intended use for the property, e.g., the raising of crops or cattle? Has the land ever been put to that use before? If so, has the use ever been changed? Is the buyer's intended use restricted or limited in any way? Is the land located near any industrial or commercial facilities or operations that may have an environmental impact on the property (e.g. sound, odor, vibration, or contamination on or under the land)? If there are any abandoned structures on the property, will they have to be removed because of prior drug manufacture or for other reasons, such as an attractive nuisance for trespassers or children?

10. VERIFICATION OF APPROVED USES: Prior to purchasing vacant property, the buyer should verify all approved uses. If residential construction is intended, will fire protection be available? Vacant property can be subject to certain land use laws: Prior to purchase buyers should: (a) Check with the appropriate city or county planning department to verify that the property is a lawfully established lot or parcel; (b) Verify that the approved uses are consistent with buyer's intended use, and (c) Inquire about the rights of neighboring property owners, if any, pursuant to all applicable laws.

11. CONCLUSION. Buyers of vacant land have a responsibility to perform their own due diligence in order to ensure that their intended use is legally permissible and economically feasible. Land use laws, zoning and other regulations can change in the future, and buyers should be sure to find out if any such changes might be enacted in the future which could negatively impact their intended use. This includes checking with the appropriate governmental agencies, departments, and planners, and possibly hiring an independent expert consultant.