

PROPERTY TRY BEFORE YOU BUY

The standard REINZ/ADLS agreement for sale and purchase of real estate allows the purchaser one right of inspection prior to the settlement of the transaction. The wording states that such inspections are to be requested in writing but rarely is this carried out. Purchasers simply call the real estate agent and arrange a time to visit at the property.

Most purchasers wait until the last day prior to settlement to have this inspection whereupon they walk about the property turning on taps, lights, checking the shower works, and that the toilet flushes.

Most of the time, purchasers find nothing wrong with the property and settlements proceed without any problems.

What happens if the purchaser finds a problem, like one of the stove elements does not work?

Well, nothing!

The purchasers can complain about this all they like. There may be no remedy in the agreement for them to force the vendor to fix this problem. Further, there is no right for the purchaser to retain funds or defer settlement until the problem is fixed.

The purchaser must complete settlement in full and then try suing the vendor for the expense in fixing the problem. We say 'try suing' because all the vendor needs to say is that the element hasn't worked for some time and indeed wasn't working at the time the agreement was entered into. The purchaser may not be able to prove that is not the truth. Buyer beware or 'caveat emptor' is alive in kicking and these instances.

It is paramount that purchasers do their property checks before they sign the agreement or have a clause stating that the vendor warrants that all chattels will be in good working order at settlement. If problems are found, the purchaser can then successfully request the vendor fix them.