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23 February 2010

Vol 01/2010

## **CONNOLLY SUTHERS LAWYERS LEGAL ALERT BOATING - BUYING A BOAT IN QUEENSLAND**

### **Important issues for Boat Buyers**

The decision to buy a boat is not one that should be taken lightly. You may be surprised at the risks and responsibilities that come with boat ownership and the operation or use of boats.

As a boat operator you are required to keep your boat safe and to operate it in a good and seaworthy condition. The Queensland Government passed the Transport Operations (Marine Safety) Act 1994 and regulations as the laws in this State governing recreational or private use of what are described as 'ships'.

This Alert does not deal with the operational safety issues associated with boat use and for more detail in that regard you should visit the web site for Marine Safety Queensland (MSQ) for full details of the standards that may apply to your boat : [www.msg.qld.gov.au](http://www.msg.qld.gov.au).

Given that you have these responsibilities and will not want to put yourself and others at risk in the use of your boat, it is essential that in making your decision to buy a boat, you are confident of its seaworthiness and of your ability to operate it for its intended use.

### **What questions should you ask yourself when buying a boat?**

You may be familiar with the type of boat you are buying and have operated one for many years. If that is so you will be well ahead of most buyers because you will know what to look for and only be concerned to see that you get good title to the boat when you pay for it.

If you have little or no boating experience the best advice we can give you may be to first gain some experience in the area of boating you have an interest in so that you are able to make an informed decision about your selection of boat. There are numerous boating associations and clubs throughout Queensland that provide the beginner with an opportunity to gain this experience. Similarly there are magazines and books about every facet of boating that will help you make an informed decision.

So, in summary, the first considerations for you in making your decision to buy a boat are to know what you want, be confident of your ability to assess the boat's capacity to perform as required and to be sure that when you pay for the boat you get good title to it from the seller and value for the price paid.

### **What sort of condition is the boat in ?**

Boats come in all shapes and sizes and are made of many different materials. You could be buying a 'tinny' made of aluminium or a maxi yacht made of carbon fibre composites. The boat could be new, near new or very old. Whatever its characteristics you will want to know that it is value for money and that it is in the condition advertised.

If you are a committed 'boatie' it is very easy to fall in love with a boat and we all know that our vision can be somewhat clouded in these circumstances. What starts as an exciting family adventure can turn into a disaster if you fail to take simple precautions before making your decision to buy.

Boats are built in back yards and by Australian and overseas manufacturers. Some builders are household names known to us all and others may come and go with one model only. You should always have in mind that nothing lasts

forever and there will come a time when your boat will be put on the market for sale. Boats built by recognised boat builders are often described as 'production boats' and it seems to us that it is generally easier to sell a well known and respected production boat in good condition than it is to sell a boat built by an amateur in his back yard that may also be in a good and sound condition. That is not to say that the back yard boat is not as good as or perhaps better than the production boat but this may be an important consideration for you in making your decision to buy. In addition boat builders are, at least in this State, required to build to minimum Australian Standards. You may not have any similar assurance if the boat in question was built by a skilled amateur or overseas builder. There are all sorts of unknowns about seaworthiness and structural integrity that you may not be able to properly assess before making your decision to buy.

In short, you should seek advice and a written report from an independent expert. These are often called Marine Surveys and Valuation Reports and are prepared (after inspection of the boat both in and out of the water) by accredited marine surveyors or members of recognised State and Federal marine survey associations. Your insurer may require a report of this nature prior to providing you with insurance cover.

If the Broker or Seller gives you a copy of a report about the boat it should be viewed as informative only. Similarly accepting a recommendation of a boat surveyor or inspector from the Seller's broker or agent may not result in your obtaining a completely unbiased report. Make some enquiry of your surveyor to see that he or she has experience in the type of boat you are interested in. Get a fixed quote for the report that details what inspections are to be carried out.

In Queensland there is a Society of Accredited Maritime Professionals Inc that is linked to Maritime Safety Queensland. You might like to visit their site on the web as part of your enquiries: [www.sampq.asn.au](http://www.sampq.asn.au)

### **What should you look for in an inspection report ?**

Firstly the inspector must be suitably qualified and have experience of the type of boat that you are interested in buying. If you find a person of that sort, they may be able to advise you of characteristics of wear and tear that they have found in similar boats. Some boats have recognised failings that occur as they age and those may have occurred in your boat and have been repaired. You will want to know if this is so and, if the repairs have been done, that they have been done well.

If the boat is permanently moored in the water you will want an out of water inspection so that the inspector can ascertain the condition of the underwater parts of the hull. Seawater, metal, wood and fibreglass can all coexist under water provided that adequate coatings are applied and the boat is regularly maintained. Failure to do so and the effects of electrolysis can cause major damage to the hull structure and the boat's fittings both above and below the water.

If at all possible you should accompany the inspector when the inspection is carried out. You should insist on a written report. You will be expected to pay for the report 'up front' so make some enquiry about what you are going to get by way of report before you commit.

If the report is full of comments to the effect that the inspector was not able to inspect certain areas of the vessel because of its fixed structures you should ask whether the areas affected are high risk areas. For example an old wooden boat may have had a fibreglass coating applied as it aged and this may conceal structural weaknesses and rot that could be very expensive to repair and may affect the seaworthiness of the vessel. A competent inspector should be able to advise you of any risk of this nature.

You may find that the inspector or surveyor will exclude certain fixtures and fittings from the assessment . These may include major items like the engine and electronic or navigation equipment. You should ask if this applies to the proposed inspection and report about your boat. It may be necessary to have a separate test or inspection done for big ticket items like the boat's engine/s.

Reports of this sort are often expensive so it is important that you find out what you are going to get before you commit. Having said that, it is very small cost compared with what you might be confronted with if you buy a boat in a 'as is where is condition' and find after purchase that it has major costly defects that were not apparent at the time you carried out your inspection.

### **First steps in buying the boat**

The seller's agent, or broker as he is known in the marine industry, will want to you 'sign up' and commit to the purchase. By committing he may also want you to pay him a deposit. The Broker may suggest that he has a trust account. Accounts of these sort may not provide you with adequate protection for your money in the event that the

Broker 'goes broke' or does something dishonest so be careful in making your enquiries. If you are simply asked to pay the money to the Broker's business account that should be regarded as high risk.

There is no problem in your signing a contract to buy a boat before you have carried out a thorough inspection without a marine inspector of your choice provided that;

- the contract recognises this; and,
- is expressly subject to an inspection being carried out; and,
- you being satisfied with the inspection within a fixed period say 14 days; and,
- you should be entitled to make your determination about the condition of the boat at your sole discretion and,
- if you are not satisfied with the inspection results you should have a right to terminate the contract and to a refund of the deposit paid.

#### **What conditions or terms should be included in a boat sale contract.**

There are a number of essential issues that should be dealt with in a Boat Sale Contract including;

- Seller's full name/s and addresses;
- Buyer's full name/s and addresses;
- Full description of the boat sold including an inventory of its gear and accessories;
- Price and deposit;
- Subject to satisfactory inspection report;
- Subject to Buyer obtaining a satisfactory finance approval to complete the purchase (if required);
- Right to terminate and refund of deposit paid if finance refused or inspection report unsatisfactory;
- Title and property will not pass until the price is paid in full
- Seller owns the boat and is able to sell to the Buyer;
- Boat will be free of any encumbrance, maritime claims or charge on delivery and completion;
- When and where will settlement take place;
- Any warranties as to fitness and condition should be clearly stated;
- Risk for loss or damage to the boat remains with the Seller until completion

#### **What enquiries should you make about the Seller's title to the boat ?**

If the person who sells you the boat does not own it he cannot pass title to you so it is important that all possible enquiries are made to ensure that you are dealing with the owner of the boat.

Whilst a person may own a boat he or she may have taken out a loan to buy the boat that may remain outstanding and be secured by some sort of charge like your house mortgage. These are generally called 'encumbrances'. There is no problem if this is so provided that at settlement the person or company having the benefit of the charge gives you a release to allow clear and unencumbered title to pass from the Seller to you.

Recreational boats may be registered as Australian Ships under the provisions of the Shipping Registration Act 1981 and if operated in Queensland are required to be registered with Queensland Transport.

If your boat is registered as an Australian Ship that should be stated in the Contract and the relevant legislation provides a title system not unlike the house title system we have in Queensland where the owners name is recorded on a Certificate of Registration and any encumbrances have to be registered on the Register. It is fairly unusual for small recreational boats to be registered as Australian Ships.

If your boat is not an Australian Ship it may be registered in Queensland. The fact that the registration appears in the name of the Seller does not necessarily mean that he or she owns the boat. Queensland registration is not a title registration system. Enquiries about registration may be made to : [www.msq.qld.gov.au](http://www.msq.qld.gov.au)

The Queensland Government operates an online system called REVS that permits you to find out if a person owes a debt related to a boat. Enquiries about this and the benefits afforded to buyers of boats by the system can be found at the following web address : [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au)

### **Do I need a lawyer when I buy a boat ?**

It is fair to say that the issues that arise and the risks attendant on buying boats increase proportionately with the size and price of your boat. If you are buying a old wooden dinghy for \$100 then clearly the answer is "no". If, however, the purchase represents a substantial financial commitment it may be in your interests and minimise your risk if you seek and obtain professional legal and financial advice before committing to the purchase.

We have been providing Queenslanders wishing to sell and buy recreational and commercial boats with advice of this sort for many years.

This Alert does not apply to the sale or purchase of commercial or charter operated vessels in Queensland. Whilst the issues that apply in those circumstances are similar to recreational use vessels there are other important considerations that are not dealt with here.

### **Need more information?**

Please call us if you require more information about boating law in Queensland.

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