



# PURCHASING A VESSEL – BUYER BEWARE

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Recent articles in this magazine dealt with issues of faulty vessel construction and design. The quality of the vessel is one of the issues which could cause problems for purchasers when buying a vessel. In this article we look at a selection of issues that can arise with a vessel purchase. For a purchase of any size we would naturally recommend that a lawyer be used to draft and settle the purchase contract to provide as much protection as possible.

Firstly there is the issue of whether the vendor is actually the owner of the vessel. For commercial vessels this is usually straight forward if they are registered on the ship's register. However for unregistered pleasure vessels the issue can be more problematic. You should seek some proof of ownership such as insurance documentation or the like. As part of the settlement process you would be wise to obtain a signed bill of sale from the vendor as bills of sale are generally accepted as evidence that title has passed and therefore the bill can be useful in proving to any subsequent buyer (or your bank) that you own the vessel.

You need to ensure that the vendor passes clear title to you. Therefore you should check whether there are any secured charges, such as mortgages, over the vessel. For registered vessels you can check with MNZ to see what charges are

registered on the ship's register. If the vessel is under 24 metres you should check the Personal Property Securities Register (PPSR) to see what charges are registered against the vessel or its equipment.

In the past there may also have been issues with what were referred to as romalpha or retention of title clauses which applied to the vessel or any of its equipment. These clauses could preserve ownership in the item with the company which had supplied the equipment until the vessel owner paid for it. If the vessel owner failed to make payment then the supplier could reclaim the equipment under the retention of title clause, even on occasions where the equipment or vessel had been on sold. These types of arrangements must now be registered under the PPSR to be effective and accordingly PPSR searches should eliminate much of the risk associated with these charges. If any charges are registered over a vessel you should ensure they are removed before you take title.

Some purchasers can be concerned that their new vessel might later be arrested for debts owed by the vendor. Certain types of debts give rise to maritime claims against the vessel in addition to personal claims against the debtor. However the right to pursue a claim against the vessel for most of these debts is extinguished with a change in ownership so generally this should not be an issue for a purchaser. Having said this a limited class of debts, referred to as maritime liens, can survive a change of ownership leading to a claim against the vessel even when it is owned by a new owner which has no obligation to pay the debt personally. Maritime Liens include crew wages and salvage claims. Accordingly it would be useful to get an express declaration from the vendor that there are no outstanding claims against the vessel.

In addition to the above legal problems there are also the usual issues of ensuring that you are buying a safe quality vessel fit for its intended purpose. Issues can quite often arise at a later date if the new purchaser tries to transfer the vessel from private to commercial use and is confronted with their obligations to bring the vessel within the safe ship management system.

One of the practical measures a purchaser can take is to review any existing survey documentation. You should be aware this will not provide you with a great deal of legal protection because it is highly unlikely that the vendor's surveyor would have any liability to you as a purchaser, even if they have carried out their work negligently. The other option of course is to get your own surveyor to carry out a pre-purchase inspection. Some surveyors are reluctant to carry out this role because of concerns about exposure to negligence claims if they accidentally miss a defect in a vessel. This risk can be controlled by a limitation of liability provision in the contract with the surveyor.

There are a medley of other issues you may well have to consider during your purchase, including those relating to vessel documentation and confirmation as to what equipment is to be sold with the vessel. If you need further advice on these aspects you should contact a maritime lawyer or an experienced vessel broker.



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