

WOOD BORING BEETLE (CLAUSES) UNDER THE MICROSCOPE

We recently came across an instance where the beetle clause in a deed of sale required the seller to provide a certificate confirming that the property was free of only the European house borer (*Hyloxypterus bajulus*) and the Longhorn beetle (*Oxypleurus nodieri*). On inspection however, parts of the property were found to be badly infested with another wood destroying insect. What were the obligations of the seller in these circumstances?

Unfortunately for the Purchaser, the Seller was able to walk away scot-free. The deed of sale did not make him liable to carry out any remedial work for infestation by any beetle other than those mentioned in the contract, and the seller had been blissfully unaware of this latent defect until the inspector came around. That meant that he was able to rely on the voetstoets clause to avoid liability.

What comes out of this? Well, firstly, give attention to the beetle clause in your deed of sale and if you include it, make sure it does its' job. The ambit should include not only the 2 "traditional" beetles mentioned above, but also any other wood destroying insects. Secondly, be aware that beetle free certificates are not like the other certificates of compliance that we include in our deeds of sale in that a beetle certificate is not required by law. The parties are quite entitled to exclude the beetle clause, and this should be done if the property has no risk of beetle infestation. Many properties, especially those in sectional title blocks, are built with little or no wood, and the wood used nowadays is specially treated to eliminate the risk if infestation. If you don't delete the beetle clause when selling a property like this, you are just wasting the seller's money.