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Dear Client:

You have raised some important issues to be considered in the purchase of your first home. I will address them in order of your inquiry.

Mt. Diablo: I would need more information as to why Mt. Diablo is mentioned, but here are some items which you should inquire about. Mt. Diablo is a public park. Is the property a means of access to the park? You mention that you know all about prescriptive easements. Therefore you should know that these can apply to the public as well. Has there been an easement dedication to the public by prior owners allowing public access to the park over the property? If so this easement will transfer with the land. Is Mt. Diablo an active volcano? You should inquire as to its nature.

Easements and natural hazardous conditions may affect the marketability of your property in the future.

You have two additional easements in gross across the land for public utilities: PG & E and the Sonoma County Water Agency. You note that these cross the front and back of your property. PG & E will have an exclusive easement and you may not use their easement for your own purposes. This easement may be apportioned as it is an exclusive easement. The water agency easement may or may not be exclusive. If nonexclusive you may be able to simultaneously use the easement as long as you do not interfere with the easement holder's use.

The location of the water and PG&E easements raise concern for the access to your land or future use. Are there existing structures or utilities on the land? You as the servient tenement may originally be able to choose the location of the easement if there are no currently existing structures, however since the easement is already in existence you would have to get agreement for the two utility companies as to any change in location.

The other concern for access to the property is the location of the driveway. You think it is partly

on the neighbors land. You need to accurately determine its location and search in the records for any prior recorded easements if the driveway is on their property. you are knowledgeable about prescriptive easements and adverse possession. If you wish to assert either of these in gaining a recorded easement or title to the driveway property you should inquire as to the length of time of the driveway's existence so that you can tack prior owner's use to meet the statute of limitations requirements.

The incomplete kitchen remodel raises issues of warranty of quality. Is the remodel being built with workmanlike construction or in a workman like manner? Will it be fit for its intended purpose?

There is an additional risk of a mechanic's lien which may not surface until after you have acquired title to the property and will relate back to the date of commencement of the project. At the least you should have conditions written into the sales contract regarding the kitchen remodel completion, quality and payment of the contractor's and mechanic's liens. Title Insurance is a must to protect you against some of these risks, but you should know that some title insurance may not cover mechanic's lien or you may pay more for this coverage.

All of the above encumbrances( easements), and encroachment of the driveway affect marketability of title and are sufficient to make the property unmarketable.

Deed: A General warranty deed is the preferred type of deed to request. It warrants against title defects created by the grantor and all predecessors. There are 6 covenants of title covered: The first 3 are Present covents and will be breached at the close of escrow if at all. the statute of limitations will begin to run at this time. They include seisen: the warranty that the grantor is the owner of the property; right to convey: the warranty that the grantor has the right to convey/ transfer title; the warranty against encumbrances: this would include the easements and any liens at the time of conveyance as well any encumbrances. The last 3 are future covenants which are breached you are actually or constructively evicted form the property. The future covenants include: Warranty: the grantor promised to defend against any other claimants to title; Quiet enjoyment: a waranty that you possession will not be disturbed by one with superior title to the property; Further assurance: the grantor will execute whatever documents or conveyances are necessary to perfect title. If seisen or right to convey are breashed at the close of escrow you may have a right to damages of full market price or partial of the breach is partial. If the warranty against encumbrances is breached, damages may be what is required to remove them if removable or abatement of contract price to reflect the fair market valuse with the encumbrance as to value without. Damages can only be acertained on actual or constructive eviction in breach of the future warranties. if completly ousted you cannot receive more than what the grantor received plus interest or what you paid, whichever is less. Note that this applies to predecessor/remote grantors as well and if you have an action against a remote grantor you can only receive what they paid, which may be considerably less than what you paid.

Note that prior knowledge of encumbrances will not affect your rights under the general warranty deed.

You must record you deed in order to protect your title. This should be done immediately upon receipt at the county recorder's office and will require notarization at that office. Failure to record immediately may result in someone recording before you and potentially obtaining superior title. Your rights may be affected as to whether you are a bonafide purchaser for value without notice. If you have notice that someone else might have a claim to title, that will affect your status. You may have actual notice, constructive or recorded notice, or reason to be

supicious about the title the grantor has by inspection of the property or conversation with the ones in possession in which case you have a duty to make further inquiry.

If you have further questions regarding these issues, please arrange to meet with me and we can discuss these points in further detail.

Sincerely,

Attornry.

**END OF EXAM**