

RAINEY COLLINS LAWYERS

Good practice tip: drafting building report conditions – don't let yourself get caught out

Linda, an experienced Real Estate Agent, was acting for Jamie and Sandra who were selling a villa in a seaside suburb of Wellington. A young couple, Mark and Alice, fell in love with the property and were keen to make an offer. They instructed Linda to include a building report condition, as well as finance and title conditions, and signed an Agreement for Sale and Purchase that night.

Three days later, after they had a building report completed on the property, they sought to cancel the Agreement based on some severe leaks in the roof of the property that had been noted in the report.

The vendor's lawyer challenged them on their purported cancellation as the building report condition read "... a satisfactory report from a Registered Master Builder" and the vendors were aware, and had informed their lawyer, that Mark and Alice had not used a Registered Master Builder to complete the report. It transpired that Mark and Alice had not read the condition properly, and had not had it explained to them, and had not proceeded to use a builder who was a Registered Master Builder.

It is vital that conditions in Agreements for Sale and Purchase comply with the purchaser's (and in some cases the vendor's) instructions and that the conditions are explained to the purchasers and vendors. The wording of conditions can have unintended consequences.

In the above scenario, as the condition provided that the report was to be from a Registered Master Builder, then any attempt to cancel the contract based on a report from any builder or inspection company that was not a Registered Master Builder may be invalidated.

As agents you should check with purchasers as to whether they have any preferences for the type of builder or inspection company they intend to use to complete their building report and should amend the wording of any standard condition to accommodate this. It is not necessary to use the words "Registered Master Builder" as there are other suitably qualified persons who may undertake inspections. Current best practice would be to require that any inspection is completed in compliance with the New Zealand Standard for Residential Property Inspections (NZ54306:205). If you as agent insert additional clauses it is essential that both the vendor and the purchaser understand any requirements or particular limitations that relate to a clause.

Although it may be simple to cut and past your agency's standard building report condition into an agreement you should carefully consider the wording of the clause before it is inserted. In particular, you should have regard to the parties' requirements. It may be relevant at that point to refer the purchasers to their solicitor to take more specific advice.

In the above example, luckily there were two extra days available in the time frame given for confirming the condition, and the purchasers were able to get a short report from a Registered Master Builder that was very similar to the original report. The purchasers could therefore cancel under the particular condition on that basis.

However, this should serve as a timely reminder to all agents to understand the implications that clauses have for both vendors and purchasers, and ensure that agents provide adequate disclosure on the detail of any agreement, and/or ensure that adequate legal and other advice is sought.

Claire Coe is a Property Lawyer with Rainey Collins Lawyers. She invites comments and feedback to ccoe@raineycollins.co.nz or PO Box 689, Wellington, or by telephone on 0800 RCW LAW. For further articles of interest across a wide range of legal subjects please visit www.raineycollins.co.nz. Rainey Collins is based in Wellington, looking after the needs of private clients, businesses, and a wide range of organisations across the whole of New Zealand.