

in brief from
RAINEY COLLINS
LAWYERS
AGENT CARE

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Welcome to the Agent Care edition of Rainey Collins' newsletter

The New REINZ "Plain English" Form of Agreement

For many years the form of agreement used in practically all conveyancing transactions has been the various editions of the form of agreement jointly produced by the Real Estate Institute of New Zealand (REINZ) and the Auckland District Law Society (ADLS) (the existing form). REINZ has now produced new "Plain English" forms (the new form) with the specific purpose of making the agreements easier to understand. We note some of the major differences between the two forms.

"Section A and Section B" Rather Than One Contract

With the existing form the terms of the contract are set out in the general terms of sale that form part of the agreement signed by the parties. These general terms of sale are in very small type using a technical "legal" language to describe the parties' obligations.

The new form separates the standard clauses (Section B) from the document that sets out the particulars of the agreement (Section A).

The standard clauses are in a bigger print and the clauses are broken up into manageable sizes using "Plain English" to describe the parties' obligations. It appears that it is not essential for the parties to sign Section B or for section B to be part of the signed document but both parties must receive a copy of Section B.

Title

In the existing form a process for the purchaser to object to the title for the property is included in the general terms of sale. If the agreement is not made conditional on title approval a purchaser still has the right to raise objections to the title.

The new form would make every contract conditional on approval of title within ten working days of the agreement being signed unless the title clause in the agreement is amended or deleted.

LIM Reports

In the existing form the purchaser indicates by circling "yes" or "no" on the front page of the form whether the purchaser will obtain a LIM report for the property. If the purchaser chooses "yes", the

purchaser has five working days from the date of the agreement to order the LIM report and a further ten working days to make any objections arising out of the LIM report.

The new form retains the purchaser making the choice as to whether to obtain a LIM report and, if the purchaser does so, the agreement is conditional for 15 days on the purchaser obtaining the LIM Report.

Finance Condition

The existing form contains an option on the front page for the purchaser to make the agreement subject to finance. For practical purposes (at least in Wellington) the front page is rarely used for the finance condition. It is usual for a separate special condition to be included in the agreement when finance is required.

The new form contains an option for the purchaser to choose whether to make the agreement conditional on obtaining finance. It is still possible for the purchaser to write their own finance condition and in that case the condition in option A for finance would be deleted.

Building Reports

Under the existing form if the purchaser wishes to make the agreement subject to obtaining a building report then a separate condition must be included in the agreement. Vendors are often not told the reasons why a property has failed a building report and this causes frustration for vendors.

The new form attempts to remedy this situation by providing a process for the purchaser to notify the vendor of defects identified by the building report and to provide the vendor with an opportunity to remedy those defects.

The new form provides an option at part 2, clause 4 for a purchaser to elect making the agreement conditional on obtaining a building report.

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Tenancies

The existing form does provide on the front page for tenancy details to be included where a property is sold subject to a tenancy. If the purchaser wishes to make the agreement subject to approving details of the tenancy, a separate condition must be included in the agreement.

Under the new form at part 2, clause 5, tenancy details would be included and the agreement is conditional on the purchaser approving all details of the tenancy. The timeframe is within five working days after the later of signing the agreement or the buyer receiving a copy of the tenancy agreement.

Approving Conditions in the Agreement

Under the existing form the general terms of sale set out a process for dealing with objections to title and the LIM. This involves notifying the vendor of the defects objected to and allowing the vendor an opportunity to agree to remedy the defects. For all other conditions, if a purchaser is dissatisfied with a report or is unable to obtain finance, the contract can be cancelled by notice to the vendor.

Under the new form, purchaser objections to the title, the LIM report, the builder's report and tenancy conditions must be notified to the vendor with the opportunity for the vendor to remedy any defects notified. Both vendor and purchaser must carefully observe the process for giving approval or consent as set out in clause 14 of the standard clauses.

Deposit

The existing form provides for the deposit to be paid to the vendor or the vendor's agent and allows the vendor to cancel the agreement for non payment of the deposit on giving the purchaser three days notice in writing.

Under the new form the deposit must be paid to the vendor's agent unless the agreement is unconditional. If there is no agent the deposit must be paid to the vendor's lawyer.

When an agreement is unconditional the deposit can be paid direct to the vendor. The vendor still has the right to cancel the agreement if the deposit has not been paid on three days notice in writing to the purchaser.

Unit Titles

Under the existing form the vendor must provide the purchaser with a Section 36 Certificate and Body Corporate insurance details five working days before settlement. If the vendor fails to do so the purchaser can defer settlement.

The new form of agreement requires the vendor to provide the Section 36 Certificate and insurance details only two working days before settlement.

Changes To Terminology

In keeping with the Plain English approach of the new agreement there are many changes to terminology in the new form of agreement. Some examples are:

- Chattels are now described as household items;
- A vendor is now a seller and a purchaser is a buyer;
- Undertakings are now promises;
- Interest for late settlement is now interest on overdue payments;
- Objections are now problems.

How the new "Plain English" form of agreement will work in practice remains to be seen.



RONETTE DRUSKOVICH



CLAIRE COE

Need Help?

We are happy to field calls of a general nature to answer those little queries that come up from time to time, or to accept ideas for an issue you would like covered in our next edition.

We value your feedback and invite you to call us on 0800 RC AGENT (0800 722 4368) and ask for Fintan Devine, or email Sarah Blaney on sblaney@raineycollins.co.nz with any questions or ideas you may have.



SARAH BLANEY