

IN BRIEF  
RAINEY COLLINS  
AGENT CARE

**Welcome** to the Agent Care Edition of Rainey Collins' newsletter.



Jane Stevenson

## Correctly Signed Agreements ... Don't Get Caught Out

A failure to check the proper signatories to an Agreement for Sale and Purchase could end up costing you dearly.

Trevor and Alison were parties to a sale and purchase agreement that went unconditional. However, just before settlement date it was discovered that Trevor was only one of the owners and therefore was not the only vendor signature required on the agreement. For there to be a valid agreement the other owner's signature was also required. At the 11th hour the Real Estate Professional tried to get the signature, but the other vendor refused to sign and declared that the agreement was invalid. He was right, and Alison lost the property she had contracted for.

### What Are The Consequences For You?

This kind of mistake has potentially disastrous repercussions for you. Not only will you lose your commission on the sale and tarnish your business reputation, but you are also likely to face disciplinary measures from the Real Estate Institute of New Zealand, and possibly a lawsuit.

The new President of REINZ has pledged to be much tougher on those Real Estate Professionals who don't maintain high standards of conduct, acknowledging that, "the privilege of self-regulation ... carries a responsibility." Failing to ensure that an agreement is correctly signed is negligent and can be expected to result in referral to the Real Estate Agents Licensing Board which may cancel or suspend your licence, and impose a fine of up to \$5,000.00.

Failing to exercise due care and skill could also result in an action in negligence being taken against you for compensation for any financial loss the purchaser or the vendor may have suffered, including the loss of a chance to profit.

### Covering Your Bases

To cover your bases you need to ensure that:

- You know who all of the parties required to sign the agreement are. This includes knowledge of whether there is more than one vendor who must sign, as well as checking to confirm that the person signing actually has authority to act in the case of a company or a trust. Remember: (a) with a company, two directors are required unless it is a sole director company, and (b) with a trust, all trustees must sign; and
- The agreement is in fact correctly signed by all the parties involved. Remember: where a person is signing as the owner's attorney this should be stated under the signature. Signatures by fax are permitted as long as a fax clause is included in the contract, but the same need to ensure the signature belongs to the right person still applies.

Simply check these two details. You can avoid a mistake with potentially far-reaching implications.

### Our Guarantee

When buying or selling residential property we provide a risk free guarantee. We guarantee that our clients will be absolutely delighted with our service. If our service lets them down in any way we will fix the problem promptly at our cost.



James Johnston

## Cleared Funds

Developments in the market are changing the way we do things and we are now expected to settle all property transactions using cleared funds. This includes paying sale proceeds to our clients in cleared funds. To achieve this, we now require you to pay balances of deposit to us in cleared funds.

Cleared funds include bank cheques, electronic bill payments and same-day cleared payments by electronic banking. Cleared funds do not include personal or company cheques or direct credits to our trust account.

Please change to payments in cleared funds to keep our mutual clients happy and avoid lengthy and inconvenient delays waiting for the bank to clear funds before they can be paid out.

## Eighth Edition Agreement for Sale and Purchase

An Eighth Edition has been released and should be made available by the end of February. We will report further in our next newsletter, but we understand the main changes relate to use of cleared funds in settlements, improved clarity around vendor warranties and the GST provisions, and the inclusion of a limitation of liability for independent trustees of a trust.

## Your Feedback ... Our Responses ...

Thank you for your feedback regarding our Agent Care edition. Here are some handy tips:

### Handy Tip #1 ... Extra Time for a Trust or Company

Watch out for those transactions where the purchaser is a Trust or a Company yet to be formed. In our experience, it is sensible to allow extra time between confirmation and settlement dates, to enable these entities to be created. We suggest an additional 5 working days in normal circumstances.

Often people forget that, in order to grant a mortgage in favour of a Trust or Loss Attributing Qualifying Company, the bank will need more documentation than they do for a standard mortgage. For example:

- For a Company, the bank will need the certificate of incorporation and details of directors and major shareholders;
- For a Trust, the bank will need a copy of the Trust Deed showing the trustees and details of their addresses.

Where the information is immediately at hand that is good. However, in a number of instances, the standard length of time between confirmation and settlement won't be enough, which means the lender of the money will not pay out and the settlement of the property may be delayed. This results in your client being charged penalty interest on a daily basis until settlement occurs ... and suffering unnecessary stress.

We recommend that the best way to avoid needless cost and anguish is to add additional time (usually a few extra working days) to enable the additional paperwork to be completed by the bank. This will ensure a smooth settlement for all parties.

### Handy Tip #2 ... Release of Keys

Remember that a Real Estate Professional holds keys on the vendor's behalf and has a legal duty to protect the vendor's property pending settlement. Often keys can be made available pre-settlement with the vendor's consent for purposes such as measuring rooms in the home. Where this occurs, the Agent must ensure they are returned. The last thing you want is potential liability for any damage to a property alleged to have occurred during unauthorised key access.

## 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 Jane Stevenson or email Sarah Edwards on [sedwards@raineycollins.co.nz](mailto:sedwards@raineycollins.co.nz) with any questions or ideas you may have.



Sarah Edwards

# RAINEY COLLINS

## L A W Y E R S

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