

In brief from
RAINEY COLLINS
LAWYERS
AGENT CARE

Special Edition

WELCOME to the Agent Care edition of Rainey Collins' newsletter

17 November 2009

A Landmark Date For All Real Estate Agents

The parts of the Real Estate Agents Act 2008 that come into force on 17 November 2009 will significantly alter the working environment for all Real Estate Agents. From 17 November 2009 the Real Estate Agents Authority (REAA) will be responsible for all licencing and disciplinary matters. There will also need to be changes to the way Agents conduct their business.

In this special edition of Agent Care we focus on the new Professional Conduct and Client Care Rules for Agents. We consider these rules to be a key part of the new era for Agents. It is very important that all Agents are familiar with and understand these rules (obtainable from the REAA website). Meeting the standards contained in the rules will be a "key reference point" for disciplinary matters (see Rule 3).

The fundamental importance of disclosure

The rules make disclosure to both buyers and sellers fundamentally important. They include a requirement to not "withhold information that should by law or fairness be provided to a customer (purchaser) or client (vendor)." There is also a requirement to disclose known defects in a property to buyers. Where it appears likely that a property may be subject to hidden or underlying defects the Agent must either:

- Obtain confirmation from the vendor that the property is not subject to the defect; or
- Ensure that the buyer is informed of any significant potential risk.

Agents are required to communicate regularly and in a timely manner with vendors and ensure that appraisals given are in writing. Written explanations are required as to certain aspects of Agency Agreements. In relation to both Agency Agreements and Sale and Purchase Agreements, Agents need to:

- Ensure that vendors and purchasers are aware that they can obtain independent advice; and

- Provide them with an opportunity to do so before signing. Agents are required to inform vendors entering a sole agency that if the vendor has already entered an Agency Agreement the vendor could be liable to pay full commission to more than one Agent.

An Agent must have a vendor's consent in writing before disclosing any confidential personal information relating to that person. Agents must also ensure that both vendors and purchasers are aware of in-house complaints procedures and their rights to make a complaint to the REAA.

How are Agents to meet their disclosure obligations under the rules?

For disclosure to purchasers, we consider that Agents will be able to meet their disclosure obligations by preparing, for each property that they market to buyers, a disclosure document/information memorandum that will be based on information that the Agent obtains from the vendor. The disclosure document will include information relating to:

- The **title** to the property including any known defects in title. If the title, based on the Agent's knowledge and experience, is of a type (e.g. cross-lease) that may be subject to a defect, then include written confirmation (obtained from the vendor) that there are no title defects or disclose the risk. There should be a recommendation that purchasers take legal advice about title;
- Information about the **buildings** or other structures on the land, including any known defects in the buildings or structures. If the property, based on the Agent's knowledge and experience, is of a type that may be subject to hidden or underlying defects, then provide confirmation that there are no such hidden or underlying defects (ensure this confirmation is obtained from the vendor) or confirm the existence of the risk. Include a recommendation that prospective purchasers take their own expert advice about buildings or structures on the land;

Continued on next page...

Your Guarantee

When buying or selling residential property we provide a risk free guarantee. We guarantee that your 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.



CLAIRE COE



RONETTE DRUSKOVICH



FINTAN DEVINE



JAMES JOHNSTON

RAINEY COLLINS LAWYERS

Tel (04) 473 6850 | Level 23 Vodafone on the Quay
Fax (04) 473 9304 | 157 Lambton Quay
DX SP20010 | PO Box 689
www.raineycollins.co.nz | Wellington 6140

To receive future editions of In Brief
If you are not on our mailing list and would like to receive future editions of In Brief, phone Maureen
on 04 473 6850 or email mharris@raineycollins.co.nz

You can unsubscribe in the same way if you do not want to receive future copies.

© Copyright. 2009. Rainey Collins Lawyers. All Rights Reserved.



- Information held about the property within the scope of **territorial authorities** including any known defects or likely defects. There is a wide range of information held by local and regional authorities and purchasers need to be informed of the ways in which they can obtain information from the local authorities. Known defects must be disclosed and if there are risks of defects either disclose the risk or obtain confirmation from the vendor that no defect exists;
- Relevant matters affecting the **neighbourhood** in which the property is located. Though such information may not be a "defect" in the property, it could be considered information that should "by fairness" be provided. Purchasers should also be encouraged to make their own enquiries about the area in which the property is located and directed to resources for obtaining this information (for example, the local authority district plan);
- There may be information about the **vendor** that is relevant to the purchaser. For example, it may be relevant that the vendor is a developer who may have a number of properties for sale within a development. Where information may be considered confidential it must not be disclosed without obtaining the vendor's prior consent;
- Information about the Agent, the agency, the agency's **in-house procedures** for dealing with complaints and information about the REAA and the right to make a complaint to the REAA;
- The disclosure should be **authorised** by the vendor and should be provided to prospective purchasers in such a way that they have a reasonable opportunity to take legal and other technical advice.

Disclosure to vendors

Disclosure to clients or potential clients (vendors) is also required prior to signing up vendors on Agency Agreements or Sale and Purchase Agreements.

The rules require Agents to provide written appraisals prior to entering Agency Agreements with vendors. It makes sense

that the disclosure obligations are met at the time of providing the written appraisal. Disclosure must be made to vendors in respect of the following matters:

- **Commission** and how it is calculated (including an estimate of the commission);
- The **marketing** to be carried out and the cost of that marketing (including the right not to agree to that marketing);
- That further information about **Agency Agreements** and contracts is available from the REAA and how to access that information;
- Confirmation that the vendor can seek and may need legal or other technical **advice**, with a reasonable opportunity to do so;
- If the vendor is signing a **sole Agency**, confirmation that if the vendor has already signed another sole Agency full commission may be payable to more than one Agent;
- Information about **in-house procedures** for complaints. Each Agency must ensure that there are written procedures for dealing with complaints and dispute resolution;
- Information about the right to **complain** to the REAA.

Disclosure in writing

Although the rules do not require that all information be supplied in writing, it is our strong recommendation that this is best practice and should be adopted by all Agents for disclosure purposes.

We would further suggest that, when collecting information from a vendor to fulfill purchaser's disclosure, the Agent keep a written record of the disclosure questions asked and have the vendor sign that they are a correct record of information provided. This way if there is a later question as to the extent of the Agent's knowledge, there is a clear record in support of the information provided.

We can assist Agents and Agencies with the new requirements.

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.

Return Address: PO Box 689, Wellington



SARAH BLANEY