

IN BRIEF
RAINEY COLLINS
AGENT CARE

WINTER 2007

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



Sarah Edwards

Prevent Nasty Surprises ... Avoid Uncertain Settlement Dates

A number of agreements for sale and purchase state that the settlement date is to be on the issue of either (a) title or (b) a code of compliance for a new property under construction. To avoid frustrated purchasers, we suggest you warn them of the issues that can arise from including a provision that makes timeframes for settlement uncertain.

This was illustrated recently when clients purchased a cross lease property. After entering into the agreement it was discovered that alterations had been carried out that extended the dimensions of the house outline, which in turn created a defective title. The title was then requisitioned. The vendor agreed to address the issue by depositing a replacement flats plan. This meant settlement was delayed until a new title issued. We managed to negotiate possession pending settlement for a reasonable rental but six months later there was still no title and - most significantly - the pre-approved interest rates on our client's finance had risen twice. Needless to say they were very frustrated. So were the vendors who were carrying bridging finance pending receipt of their sale proceeds.

There is no certainty as to how long the wait may be once documents have been sent to Council and to Land Information NZ. Although we had pre-warned our clients of possible delays, we find many are unaware of how long it may take to resolve title or code of compliance issues. With rising interest rates, a delay in settlement can be a nasty and very costly surprise. While you cannot control the timeframe, we find clear pre-warning goes a long way towards reducing frustration for the parties. In this case, if the defect had been discussed with the vendor pre-marketing it might have been rectified before the property went on the market. Alternatively a sunset clause could have been included in the Contract providing the purchaser with compensation, such as free rent, if title had not issued by a certain date.

Update ...'Buyer Enquiry Over' (BEO) Advertising

Since our last update, the High Court referred the Whitehead Commerce Commission prosecution back to the District Court for reconsideration. This was on the basis that "...a 90% test does not apply to price guide advertising". The High Court found that the District Court had overstated the 90% test (a) representing 'the Australian approach' and (b) that the advertising 'would have been within acceptable limits in Australia'.

The Judge also found that a BEO figure could be misleading if it was below the price at which a vendor would accept an offer. Each case would depend on its facts and in particular whether the vendor had specifically stated they would not consider offers below their asking price. We await with interest the results of this reconsideration and will continue to keep you posted.

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

Reform of the Real Estate Agents Act 1976 ... The Government's Preferred Options

You will no doubt be aware that the Ministry of Justice recently released a Public Consultation Document outlining the Government's Preferred Options for Reform of The Real Estate Agents Act 1976. A tight submission period of six weeks was provided which has already expired.

The fundamental objectives of the reform include:

- Ensuring real estate services offered for reward are offered only by suitably licensed persons;
- Ensuring those licensed meet strict eligibility criteria including "good character" and appropriate qualification requirements;
- Providing an effective disciplinary process, independent of industry control, for breach of rules of conduct;
- Providing consumers with effective avenues of redress for loss from a breach.

From our initial review of the discussion paper we think the following aspects require further consideration:

- How broad the industry may become with property managers, share brokers, investment bankers who sell businesses and even valuers providing a package to buyers potentially requiring licensing;
- The need to ensure that regulation both (a) covers all aspects of the industry and (b) ensures a level playing field amongst all of those who are involved in property-related transactions;
- The actual process that will be adopted for complaints. Will the Agent concerned first be given an opportunity to address the complaint themselves before it goes to the Independent Authority?
- The potential costs of implementing some of the suggested reforms and where those costs might fall.



Claire Coe

Your Feedback ... Our Responses ...

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

Handy Tip #1 ... Time for LIM Approvals

If purchasers want their LIM reports to be of maximum use, be sure to remind them to request it as soon as the Agreement for Sale and Purchase has been signed. The agreement provision provides 15 working days to obtain and approve it.

Councils take up to 10 working days to issue the LIM. If the purchaser waits the whole 5 days after signing to request the LIM, they may not have sufficient time to review it properly before the condition expires.

Handy Tip #2 ... Confirmation Dates and Times

We recognise it is common for separate conditions in Sale and Purchase Agreements to have different confirmation dates, but confirmation is a much smoother process where the conditions fall due for confirmation both on the same date and at the same time. We are finding some contracts have a 4pm deadline attached to one condition, but not to the other conditions in the same contract. A uniform approach in our view is sensible and simpler for all.

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 with any questions or ideas you may have.

RAINEY COLLINS

L A W Y E R S

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