

Understand what you're signing

ALAN KNOWSLEY
LEGAL MATTERS



When you enter into a contract you are bound by the terms, so it is very important that you understand what the terms mean before you sign.

Too many people sign up without even reading the contract, let alone understanding the terms.

In one recent example a business owner sold his air conditioning business to a buyer, who obtained the exclusive right to market, distribute and sell the air conditioning units.

The parties entered into an agreement for sale and purchase. After the sale transaction had concluded, the buyer sued the seller, claiming that the air conditioning units were defective and unfit for purpose because they leaked.

By signing the standard Agreement for Sale and Purchase of a Business, a seller gives a number of warranties to a buyer.

These warranties include that at the time the buyer takes possession of the business, the tangible or physical assets are in good operational order and condition.

Sellers should ensure they know what warranties they are giving to the buyer before signing the agreement for sale.

In this case the buyer's claim was successful. The leaky units were not fit for purpose and so were unsaleable to the public.

The seller was liable to pay damages to the buyer for breach of warranty.

Sellers should ensure they know what warranties they are giving to the buyer before signing the agreement for sale and that what is promised by the warranties can be supplied.

In another example a trustee of a family trust took out a substantial bank loan to buy a business and wanted the loan secured by an existing mortgage over her home.

The home was owned by the family trust, so the bank requested a guarantee from the trustees of that family trust.

Sometime later the borrower defaulted on her loan repayments, and the bank relied on the



Ensure you know what you're signing before you put your name on the bottom line.

PHOTO: 123RF

guarantee from the trustees to have the loan repaid.

The trust was forced to sell the home, but even this was not sufficient to repay the debt to the bank. The bank then tried to pursue the trustees personally.

Fortunately, the trustees had signed guarantees which limited their liability to the assets of the trust. As there had been no fraud or misconduct by the trustees, they were not required to personally repay the bank.

Trustees are often asked to sign a lot of trust paperwork, and do not always review the content

thoroughly before signing.

Where trustees provide guarantees they should ensure that they are not agreeing to be personally liable.

Otherwise they risk having their personal assets used to recover debt despite not having been involved in their personal capacity.

Another classic example is people who sign the agreement to buy a house before getting it checked by their lawyer.

It is then too late to insist on additional clauses to protect the buyer such as a builder's report,

finance, insurance or P testing.

Before signing important documents it is a good idea to get expert legal advice to ensure you understand the effect of what you are entering into.

Signing an agreement without understanding its content could result in substantial costs and hassle later on.

Column courtesy of Rainey Collins Lawyers phone 0800 733 484, raineycollins.co.nz.

If you have a legal inquiry you would like discussed in this column please email Alan on aknowsley@raineycollins.co.nz