

# No more **buyer** beware

**Changes to real estate laws have resulted in more complexity for both buyers and sellers.**



Partner, Tony Woodhouse has spent some time recently presenting to a nationwide group of real estate agents the changes to the industry brought about by the new Real Estate Agents Act 2008.

The 2008 Act came into effect late last year and was partly in response to public criticism of the Real Estate Agents' industry, and partly because of perceived weak responses from the industry's own disciplinary procedures for dealing with errant agents.

The new Act includes a new independent authority to oversee the industry, along with licensing and disciplinary functions – the Real Estate Agents Authority ("REAA").

These changes are important to everyone involved in buying or selling property. Here are some useful points.

#### **Specifically for residential sales:**

- the vendor must be given an approved guide (*this contains information designed to inform and protect consumers*) for agency agreements as well as a marketing plan, including a realistic appraisal of price and estimate of commission payable based on the appraisal;
- both the vendor and purchaser must be given an approved guide in relation to sales transactions;
- sole agency agreements are subject to a one day cooling off period.
- Sole agencies can apply only for a maximum 90 days.

#### **For all transactions:**

- agents must disclose the source and amount of any rebates they get for any expenses/disbursements (e.g. for advertising) that are not passed on to the client. If these are not disclosed the agent can't recover those expenses from the client;

- there is a code of professional conduct produced by the REAA, which is available on the REAA website. This code requires, amongst other things, agents to act in good faith and deal fairly with all parties engaged in a transaction (i.e. not just their own client). They must not mislead a customer, or withhold information that by "law or fairness" should be provided to a customer or client;

#### **And a point of fundamental importance to sellers and buyers alike:**

##### **Sellers can't rely on caveat emptor - buyer beware.**

There's been some public debate on this. An agent must now disclose known defects to a buyer where it is likely (based on an agent's knowledge and experience) that land may be subject to hidden or underlying defects (e.g. homes built in the leaky homes era). The agent must either obtain confirmation from a vendor that the land is not subject to defect, or ensure the buyer is informed of any significant potential risk so that they can seek their own expert advice. An agent must not act for a client who directs the agent to withhold information of this type.

Agents will now, typically, require clients to fill out a form when entering an agency agreement which will cover a number of matters including the disclosing of any defects.

Care should be taken by clients completing that form.

Whether you are an agent in the industry, or a client buying or selling property, the new laws will take some time to "bed down". If you have any questions about the new regime or code of conduct, please contact Tony Woodhouse.

# New REINZ Sale and Purchase Agreement

A plain English Agreement for Sale and Purchase of real estate was produced by the Real Estate Institute last year. The form is very different from the terms and conditions in the standard Auckland District Law Society/REINZ form of Agreement for Sale and Purchase that has been in use, and been generally accepted, for many years.

The new "plain English" REINZ form has been subject to considerable criticism, including that it is in fact, far from "plain English" and is in many instances more difficult to follow than the ADLS/REINZ form. It is also seen to be a buyer friendly form.

We are yet to see a contract using the new REINZ form, and our understanding from the Institute is that it isn't widely used yet (partly because the Institute has advised its members that it will be updated).

Nevertheless, the form is available to real estate agents and it is possible that it could still be used on any transaction.

We do not recommend clients use this new form, whether they are buying or selling.

It's too late after it's been signed to change any terms of the contract. So, as always, talk to us before entering any agreement relating to buying or selling property.

## NEXT ISSUE

### Social media and you?

Are you aware of all the implications of Twitter, Facebook and social marketing on you or your organisation. Do you know that it is increasingly common for staff to post information or comments about their workplace? What can an employer do?

Some implications and tips on how to manage social media will feature in our next issue.



## Blue Chip Litigation

Our head of litigation, Brent O'Callahan, led a successful bid last year on behalf of a developer to confirm the validity of over \$70m of apartment sales in the face of the Blue Chip collapse. Our client developer had taken over a project where the apartments had been sold down through Blue Chip. It emerged that buyers had entered into financial arrangements with Blue Chip in addition to agreeing to purchase a unit. The question was whether those arrangements, which Blue Chip could not perform, invalidated the apartment sales. Buyers also suggested there had been breaches of the Securities Act. The developer won on all counts after a lengthy trial.

## Freeholding Beaumont Quarter

Our property team, along with support and advice from our consultant John Carter, have in three months, achieved the freeholding of 258 apartments across 9 lots in a conveyancing marathon that achieved a number of firsts, including the first time the LINZ computer registration system had been overloaded by a set of dealings.

Those in the firm not involved in the transactions have watched in awe as the team, led by Associate Linda Yee, co-ordinated owners, multiple mortgagees and countless documents to free the Beaumont Quarter owners of their ground lease obligations. Industry experts say that Beaumont Quarter is now the most desirable open space apartment complex in downtown Auckland.

## New Zealand Law Journal Appointment

The New Zealand Law Journal is the foremost New Zealand legal journal, published and edited by Lexis Nexis who are appointed by New Zealand Council of Law Reporting to edit and publish the New Zealand Law Reports.

We have accepted an appointment to write a bi-monthly four page column covering developments in the law, as they occur, of particular relevance to lawyers engaged in transactions and business law. Our articles will be appearing on our website at [www.carterslaw.co.nz](http://www.carterslaw.co.nz) with a slight delay from their publication in the New Zealand Law Journal.