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Barristers & Solicitors

NEWSLETTER – SPRING 2009

WELCOME!

This is our second newsletter for 2009.

In this newsletter we have a varied range of interesting topics tailored to the current issues we all face. If you wish to discuss any of the topics further then please contact your usual advisor directly.

We hope that you find this newsletter useful and informative. We always appreciate any feedback you may have, about either our service to you or our newsletter.

All the best for the remainder of 2009 and we look forward to being of continuing service to you, your family and your business.

Regards
Philip Sewell and Brad McDonald

PRE SALE CHECKS CAN BE USEFUL

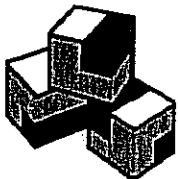
Some of the problems which people selling houses encounter can be avoided, if addressed at an early stage.

When we are aware of clients planning to sell, we ask questions and try to identify areas which might cause problems. A common example is with cross-lease titles where there have been additions (e.g. terrace closed in, sun room). If we are aware at the start (and if the selling agent is co-operative) special clauses can be added to try to reduce the problems which might occur later.

It is annoying for everyone (and expensive!) to encounter these problems half way through a sale contract.

If you are considering selling and your property has some unique features (or possible areas of difficulty) please give us a call so we can talk it through. You should also talk to your skilled and trusted Land Agent.

Also related to the idea of "let's sort it out before we try to sell" is the pre-sale building report. If there are potential areas of difficulty about your house (e.g. some borer infestation, unpermitted alterations or maybe just an old house), it might be useful to have a Builders' Report ready to show prospective purchasers. This may add an extra cost at the start, but it may also avoid unnecessary expense and complications later.



MEMBER
**PROPERTY
LAW SECTION**
New Zealand Law Society

NEW REINZ AGREEMENT FOR BUYING AND SELLING PROPERTY

You may have read in the National Business Review or elsewhere that the Real Estate Institute of New Zealand has launched a new agreement for buying and selling property in New Zealand.

We understand that the agreement will be made available to real estate agents in New Zealand for use over the forthcoming months.

For over twenty years, the buying or selling of property in New Zealand has been recorded using a standard agreement produced jointly by Auckland District Law Society and the Real Estate Institute of New Zealand.

The agreement is now in its 8th edition having been improved over the intervening years to take account of changes in the way in which property is bought and sold in New Zealand and to take account of changes in the law over that time.

The ADLS/REINZ 8th edition Agreement is tried and tested. It has been the subject of many court cases in which its provisions have been scrutinized and upheld. It has been taught in our law schools and been the subject of much academic commentary.

In summary, the ADLS/REINZ 8th edition Agreement has a proven track record, its provisions are easily understood and it helpfully regulates the way in which practitioners deal with each other and third parties through the course of a sale or purchase of land. It is a "no surprises" agreement.

On the other hand the new REINZ agreement introduces new concepts, rules of interpretation and time frames which may be unexpected, particularly if you have previously bought and sold property using the ADLS/REINZ 8th edition Agreement.

If you are planning to either buy or sell property in the near future, please contact us for legal advice **prior to signing any agreement**. In most situations, we will advise the continued use of the ADLS/REINZ 8th edition Agreement until such time as the provisions of the REINZ agreement become well known, judicially interpreted and well settled. This may take a considerable period of time.

Don't be persuaded by the use of the plain English format of the new agreement. Plain English wording can be just as problematic as complex legal wording, particularly where the agreement has not had the benefit of many years of use. Please be aware that all agents have access to both forms of agreement so asking to use the old form should not present any difficulty or delay in the buying and selling process.

Please contact your usual advisor if you have any further queries about this matter or you require any further detailed information.

VISIT US ONLINE www.godfreyslaw.co.nz

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MORTGAGEE SALES

In the current tough economic climate many people are defaulting on their mortgages. In the last year there has been a record increase in the number of mortgagee sales in New Zealand. While to many people a mortgagee sale appears to be an opportunity to get into the property market at bargain prices, there are risks associated with purchasing at a mortgagee sale which can turn a bargain into a nightmare. It is important prior to bidding on a property at mortgagee sale that you are aware of the risks and pitfalls.

We strongly recommend that you become familiar with the mortgagee's form of agreement for sale and purchase before making an offer to purchase. The form of agreement is normally significantly amended from a standard form agreement for sale and purchase and it is designed to give the mortgagee maximum protection. A mortgagee normally has the opportunity to cancel the sale and has a wide exclusion of risks that are usually taken by a vendor in a voluntary sale. Further to this many of the standard rights normally afforded to a purchaser are removed under such an agreement.

These are some of the key factors that a purchaser should be aware of before buying at mortgagee sales:

1. There is no guarantee of vacant possession of the property;
2. The Mortgagee has the right to cancel the agreement;
3. The vendor warranties are removed;
4. Chattels are not included in the sale;
5. Risk of damage passes to the purchaser immediately; and
6. The agreement is normally unconditional in all respects.

Due to the risks involved, purchasers normally make a deduction on the price they are willing to pay at a mortgagee sale. As you will no doubt have seen lately there are a lot of situations where mortgagors have removed chattels and damaged the property prior to settlement. It is most important that you are well aware of the risks involved at purchasing at mortgagee sales. We suggest that if you are considering buying a property at a mortgagee sale you contact us to discuss the same prior to making any offer. Please contact your usual advisor at Godfreys.

PAYMENT METHODS

We are pleased to advise that we now accept payment via the following credit cards; MasterCard and Visa.

You are also able to make payment to us via our Eftpos facility located at reception for your convenience.

Important: This newsletter is not legal advice. Clients should not act solely on the basis of material contained in this newsletter. Items herein are general comments only and do not constitute or convey advice per se. As well, changes in Legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas referred to. This newsletter is issued as a helpful guide to clients for their private information.

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HAVE WE GOT YOUR NAME AND ADDRESS RIGHT?

If we have mis-spelt your name or have your address details incorrect, could you please amend them below. Then simply detach this form and return to us, or email admin@godfreys-law.co.nz

Contact Name: Mr/Mrs/Miss/Ms

Preferred First Name(s)

Last Name

Post Address: _____

Telephone No: _____

Area Code

Facsimile No: _____

Area Code

Email: _____