

9 September 2009

Dear Client

New REINZ Agreement for Buying and Selling Property

1. You may have read articles in the New Zealand Herald and the National Business Review recently about a new agreement for buying and selling property that has been prepared by the Real Estate Institute of New Zealand (**new REINZ Agreement**). This new agreement is now, or shortly will be, available to real estate agents in New Zealand for use on sales and purchases of land.
2. We have carefully assessed the relative merits of the new REINZ Agreement with those of the standard form sale and purchase agreement that has been in use in New Zealand in various forms over the past 20 years (**8th Edition Standard Form Agreement**). We are of the view that the negative features of the new REINZ Agreement strongly outweigh its benefits, and for that reason we recommend against using the new REINZ Agreement.
3. There are many reasons why we have reached this conclusion. One of the most important is the loss of a tried and proven form of agreement. For over 20 years, the buying and selling of land in New Zealand has been recorded using the 8th Edition Standard Form Agreement (and its earlier editions) produced jointly by the Auckland District Law Society and the Real Estate Institute of New Zealand. This agreement is now in its eighth edition, having been regularly revised and improved over the intervening years to take account of changes in the marketplace and changes in the law over that time. As a consequence, the 8th Edition Standard Form Agreement is tried and tested, and has been the subject of many court cases in which its terms have been considered and upheld. It has been taught in our law schools and has been the subject of much academic commentary and legal texts.
4. The universal acceptance of the 8th Edition Standard Form Agreement means that lawyers acting for you on a sale or a purchase understand its terms without having to read each clause very carefully, and this has greatly assisted in increasing the speed, and reducing the cost, of conveyancing. It has also meant that comparatively few problems result in Court proceedings given the number of agreements that are based on its form.
5. In comparison though, the new REINZ Agreement introduces new concepts, rules of interpretation and timeframes which may be unexpected, particularly if you have previously bought or sold property using the 8th Edition Standard Form Agreement (or its predecessor editions).
6. Another issue of concern is that the wording of many parts of the new REINZ Agreement are inherently ambiguous such that some clauses are not easily understood. This will have the effect of increasing the ability for parties using that agreement to enter into disputes. These are likely to be both time consuming and expensive.

7. The new REINZ Agreement also seeks to alter the delicate balance between the interests of the vendor and the purchaser. One of the positive qualities of the 8th Edition Standard Form Agreement was that while it was grounded on the longstanding principle of "buyer beware", it was also fair in its application of that principle. For example, purchasers still have the benefit of a title requisition clause, and standard and well accepted warranties about Resource Management Act and Building Act issues. The new REINZ Agreement however favours the purchaser over the vendor to a very marked extent. In the words of a leading specialist in the area, the new rights created in favour of the purchaser are "*... so ambiguously drafted and open ended, they create significant exposure (in some cases, seemingly almost unlimited) for a vendor entering into an agreement.*"
8. Our advice to you then is that if you are planning to either buy or sell property in the near future, you should call us for legal advice before signing any agreement. In most situations, we will recommend the continued use of the 8th Edition Standard Form Agreement until such time as the provisions of the new REINZ Agreement become well known, judicially interpreted and well settled.
9. We strongly urge you not to be persuaded to use the new REINZ Agreement. All agents have access to both forms of agreement, and accordingly requiring the use of the 8th Edition Standard Form Agreement should not present any difficulty or delay in the buying and selling process.
10. Please contact Robert Clark or your legal adviser if you have any queries about this issue or if you require any further information.

Yours faithfully
SIMPSON WESTERN



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