

THE CHANGING FACE OF REAL ESTATE AGREEMENTS

Who today has the courage to enter into a standard Real Estate Institute/Law Society approved form of agreement, conditional only upon such traditionally standard matters as finance?

In recent years doubts about watertightness, structural integrity and compliance issues have made purchasers wary about entering into anything other than a conditional agreement (virtual option) giving time to the purchaser to check out these matters.

Those promoting professional standards for the Real Estate Institute have for some time been reminding Institute Members that they would be ill-advised to comment to prospective purchasers that a building was "sound" or there was "not a cent to spend".

On the other hand, these same Members are aware that their silence in some cases may constitute a misrepresentation, and if they are aware of faults which are not, or might not, be apparent on a reasonable inspection of the building, they may have a duty to bring these faults to the attention of a prospective purchaser. This will be the case where, for example, silence would amount to tacit approval of a purchaser's observation regarding an aspect of the property.

We are told that one real estate office includes a building inspection approval clause in all residential sale agreements, except where the purchaser wishes it deleted.

Building approval clauses are taking on various forms. Some give the purchaser the right to cancel the agreement if the report is in any way unsatisfactory to the purchaser. Others provide for dissatisfaction to be shown in good faith by the purchaser, requiring the purchaser to give written notice of the matter(s) complained of, allowing the vendor to give consideration to rectifying the defects specified. Only upon the vendor's refusal to rectify will the purchaser have the right to cancel.

And what of the standard of the reports being obtained?

Some clients are finding that there is often a need to get two reports after first receiving a report which appears to be extravagant in its recommended remedial requirements; often in respect of matters which are not truly ascertainable until part of the structure is dismantled. Recently, one client obtained two reports - one estimated a cost of around \$100,000 to rectify matters which were not visible and another where the builder estimated a sum of \$30,000 to satisfy that particular builder's findings. How can this range of figures assist the truly genuine purchaser?

Finding certified builders to produce such competent building reports may not be easy. Furthermore, many such builders prefer to err on the side of caution, being aware that liability could shoot home to them should it be proven in the future that some matter had been overlooked.

Obtaining and considering reports and what action needs to be taken all takes time - a lot longer than the traditional 14 days for satisfying such conditions as finance. Because the real estate agent is acting for its principal vendor the problems resulting from misrepresentation apply to vendor clients and therefore the question of whether or not to insert or accept building approval clauses in agreements or other similar appropriate clauses may have consequences for both vendor as well as purchasing clients.

For most, the ownership of a family dwelling is financially the most significant contract entered into during a lifetime. We believe that it is no longer a simple matter of getting hold of a standard form and filling in the gaps, signing and moving forward from there. The contract needs to be thought about by both parties having regard to the circumstances surrounding the particular property and the modern day issues which have changed the face of the real estate agreements and consequences which can stem from an unsatisfactory agreement.

Clients thinking of selling or purchasing any property, residential, commercial or industrial should contact their Fortune Manning relationship partner before proceeding to sell or purchase

