

New standard form Sale and Purchase Agreement Mortgagee sales and “best price”

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New standard form Sale and Purchase Agreement

The Ninth Edition of the form of REINZ/ADLSi agreement for sale and purchase of real estate will be released shortly.

The current Eighth Edition 2006 (now at revised version 4) evolved to account for changes in the law, such as, the Property Law Act 2007, e-dealing, claims for compensation (following *Property Ventures Investments Limited v Regalwood Holdings Limited* [2010] 3 NZLR 231), the Unit Titles Act 2010 and the introduction of the compulsory zero-rating regime for GST on sales of land.

There have been a number of developments reflected in the new Ninth Edition, but only a few of major significance, such as:

- Having to effect remote settlement and pay settlement funds in accordance with the Property Transactions and Edealing Practice Guidelines (requiring that settlement funds be paid by way of the Same Day Cleared Payment system);
- The inclusion of a standard building report condition;
- In the case of unit titles, a requirement for the deposit to be held by the stakeholder until the purchaser's rights of cancellation under the Unit Titles Act 2010 have been exhausted.

This commentary gives a general overview of the topic covered and is not intended to be relied upon as legal advice.

Mortgagee sales and “best price”

There have been record numbers of mortgagee sales in recent times. However, there has seemingly also been an increased appetite or facility by mortgagors to challenge mortgagees in terms of their “best price” obligations.

That is, there has been a rise in the number of cases recently brought under section 176 of the Property Law Act 2007. Under section 176, a mortgagee owes a duty of reasonable care to current and former mortgagors, covenantors, and subsequent mortgagees and encumbrancees to “obtain the best price reasonably obtainable”.

To discharge this obligation, process is paramount for mortgagees. For example, obtaining a registered valuation and marketing appraisals from reputable agents, undertaking an appropriate marketing campaign, and highlighting any material feature, such as, a resource consent that might run with the land.

If you would like further information on any of the above please do not hesitate to contact Richard Hatch, Property Partner.

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