

YOU AND YOUR PROPERTY

BY RESIDENTIAL PROPERTY LAWYER
MICHAEL HOFMANN-BODY



The recent case of *Walters trading as Walters Law v Hyde* (Decision of October 10, 2011) highlighted the warranty provisions contained in a standard ADLS Agreement for Sale and Purchase. This form of agreement is used in more than 90 per cent of residential property transactions and is widely perceived as the industry standard. All sellers (and for that matter buyers) need to be aware of the warranties contained in the ADLS Agreement for Sale and Purchase. Those warranties include:

1. That the Seller has not received any notice or demand or has knowledge of any requisition or outstanding requirement from a local government authority or other statutory body, pursuant to the Resource Management Act 1991, from a tenant of the property or from any other party relating to the property.
2. That the Seller has not given any consent or waiver that directly or indirectly affects the property which has not been disclosed to the buyer.
3. That the chattels will be delivered to the buyer in their state of repair as at the date of the Agreement.

4. There are no charges over any electrical installations or chattels.
5. That there are no arrears of rates or water rates in respect of the property.

Further, where the seller has completed any work or arranged for any work to be completed on the property the seller warrants that the works have the requisite permit, resource consent or building consent, that the works were completed in compliance with the permits or consents and (since 1992) a Code Compliance Certificate has issued for the works. It is interesting to note a seller does not warrant that the work of previous owners complies with these obligations.

The Seller is deemed to repeat the first and second warranties again on the settlement date.

Historically a breach of warranty only allowed a buyer to seek damages from a seller. However, the Regalwood decision of last year changed the legal landscape. Buyers are now entitled, under certain circumstances, to make a claim for compensation prior to settlement. Provided the correct processes are followed, an amount can be set aside and held pending resolution of any dispute relating to an alleged breach of warranty.

While the *Walters Law v Hyde* case

primarily related to whether or not the solicitor for the buyers had been negligent in failing to advise the buyers of their rights in respect of the warranties, the case highlights the need for sellers to be aware of their obligations to a buyer on sale. If they are aware of any notices or demands pertaining to the property they are obliged to bring these to the buyer's attention. Examples of such demands include:

1. a decision of the local authority to check all stormwater and sewerage drains and notifying owners that in the event the local authority required remedial works that the seller would be responsible for paying for those works;
2. notices advising that a swimming pool is non-compliant; or
3. notices that work completed pursuant to a consent has not complied and remedial works are required.

If the seller is given any notice or demand in the time between signing the Agreement and the settlement date, they are also obliged to bring this to the attention of the buyer.

As noted earlier, buyers are entitled to receive chattels and the property in the same state they were at the date the Agreement

Continued on page 10...



HomeLegal

Taking care of the detail

We make buying and selling a home easy

When buying or selling your home you need to know that the detail has been taken care of - efficiently and professionally.

HomeLegal is a team of specialist property lawyers. You can be assured HomeLegal will provide the highest quality advice and service backed by years of experience in property law.

We care about getting it right - first time!



For more information contact HomeLegal today on 0508 HOMELEGAL

HomeLegal is a division of Gillespie Young Watson

www.homelegal.co.nz

...continued from page 9

was signed. This means if any damage is caused to a property between the time a buyer signed an Agreement and the time they settle the purchase, the responsibility is on the seller to rectify that damage. Further, if a chattel (for example a dishwasher) was in a working state at the date the Agreement was signed and subsequently breaks down, the seller is obliged to provide a replacement chattel of a similar value.

In my experience, contracts can be frustrated by the seller's lack of documentation relating to works they have completed. Anyone who is contemplating works on their property should always ensure the works are appropriately consented. This will avoid difficulties at the time of sale. Buyers may use the absence of consents and Code Compliance Certificates as an excuse to negotiate a reduction in the price as they will be assuming the risk of the non-complying works.

Buyers should always be aware of their rights and ensure they adequately check any property they are proposing to purchase at the time they make their offer so they can be confident in their purchasing decision.

"If you would like a copy of previous articles on property written by Michael email him on michael@homelegal.co.nz."

Michael Hofmann-Body is a principal of specialist residential property lawyers HomeLegal, Westfield Tower, Lower Hutt. For more information see www.homelegal.co.nz

HomeLegal is a division of Gillespie Young Watson.



specialist caterers for all events

weddings – funerals – conferences
parties – corporate – cocktail

p. 5666 555
e. reka.dowse@xtra.co.nz
www.cafe-reka.co.nz

Long-time Lower Hutt Law Firm Gillespie Young Watson is a strong supporter of the Arts – and is a major sponsor of next year's *ShapeShifter* Sculpture event as part of the International Arts Festival – so it was no surprise they chose to host their annual Client Christmas function at the Dowse, where guests were able to spend time viewing the Wallace Art Awards exhibition.



Shelley and Graham Thomas contemplate the work that went into Paramount winner Akiko Diegel's entry *Cure 2011* made from dispirin packets fashioned into bulldog clips.



Gail and Gavin Malcolmson and GYW Law Partner David Butler.



Arlene and Phil Wheelans.



Guest Speaker Phyllis Mossman, Victoria University Art History Lecturer and ANZ Art Consultant brought the 2011 Wallace Awards to life for guests.



Tony McNeil with Ian and Kathleen Hutchison.



Vibrant Hutt Editor Leigh Sutton with John and Elizabeth Anderson, owners of Stokes Valley New World.



James Walshe, Sam Walker and Amy Fraser.



Pauline and Alan Hewson with Kevin and Deborah Hislop.