



YOU AND YOUR PROPERTY

BY RESIDENTIAL PROPERTY LAWYER
MICHAEL HOFMANN-BODY

Our property lawyers are often asked to represent both parties in a transaction. The common basis of this request is it keeps costs down and speeds up the transaction. The most common scenario where we are asked to assist both parties as with the transfer of a property is taking place between family members. On the face of it, this sounds sensible. Unfortunately, we can't do it. This article is intended to set out some of the reasons why.

The first reason why we cannot act for both parties is the New Zealand Law Society strongly dissuades us from acting for both buyers and sellers. The specific rule is “a lawyer must not act for more than one client on a matter in any circumstances where there is more than negligible risk that the lawyer may be unable to discharge the obligations owed to one or more of the clients”. The Law Society controls and regulates the practice of the profession of law in New Zealand. If the above rule is breached, the Law Society could sanction the lawyer for the breach of the rules. In addition to the sanction, the lawyer may be publicly identified and a monetary fine imposed.

Second, being on both sides of a residential conveyancing transaction is not good practice. Our job as lawyers is to represent one party to the exclusion of all others. As soon as we have a second client, that duty

is compromised, most especially if there is even a slight possibility the parties' interests are not aligned. The Law Society will allow lawyers to act for both parties in a transaction but as soon as there is a difference of opinion between the parties about any matter, no matter how trivial, the lawyer is placed in a position of conflict and can no longer act for either party. This renders the lawyer impotent and immediately the conflict is identified, neither party is adequately represented. Both parties are then put to the cost and effort of finding new solicitors which will likely result in additional costs and delays.

If we form the view there is a “negligible” chance of a conflict, we can act for both parties. A simple example of this would be the transfer of your family home to your company or trust. The persons controlling each of the parties are likely to be identical and there is no potential for conflict as a result. We are only comfortable acting for

both parties in a transaction where there is a commonality of control such as in the previous example. It is our view that any other situation has the potential for conflict and our clients would only be well represented if each party is represented by one solicitor throughout the transaction.

The problem with the negligible test is it is always measured with hindsight. While many conveyancing transactions will happen smoothly, all it takes is a minor disagreement to put the parties in conflict. Some common examples include, a chattel is not in working order or settlement, not all keys are available for the property, some building work was not consented or a hitherto unknown problem with the title is identified. All of these issues have the potential to cause conflict.

Sometimes we are asked if we can appoint two separate lawyers in our firm to act for each party. The suggestion will often be, it is possible to act for both parties if a “Chinese



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wall” (an unfortunate and archaic term) is used as an information barrier between the lawyers. This is, in my opinion, a contrived nonsense. The suggestion that two solicitors within one firm have not and will not share information is always open to attack and the appearance undermines any suggestion the parties are separately represented. As soon as something goes wrong, the solicitors will, no doubt, be accused of not acting impartially.

Third, your property lawyer’s role in buying or selling a property includes providing independent advice, knowing your personal circumstances, and acting in accordance with the law to protect your interest. If we are attempting to act for both parties it will be impossible for us to act loyally and confidentially for either party.

When our firm identifies a potential conflict we will discuss the conflict with you and where possible refer one party away to another competent lawyer who will provide advice that will protect the other party to the transaction. We will work closely with the other legal advisor to resolve any issues and collectively ensure a smooth and trouble-free transaction for both parties but each party will be getting their own advice.

At HomeLegal we believe this only way we can represent a client to a professional standard is by acting for one party and one party alone. Hopefully this article helps you understand why.

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

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I'm Sold on Sally!

HOW TO CHOOSE THE RIGHT AGENT FOR YOU



BY SALLY SAUNDERS

We all know how it goes... The minute there is the slightest sniff out there you may be looking to sell your property you suddenly have every real estate salesperson within 20km knocking on your door saying “Pick me, pick me”.

This is especially so in times such as now when listings can be as scarce as hen’s teeth. Agents are hungry for your business so will make proposals they hope “you just can’t refuse” in order to secure your business. As in all walks of life there are several ‘character types’ in the business of Real Estate and if you have ever sold or looked to buy property you will no doubt have come across one or more of the following – the flashy, the dog with a bone, the MIA (missing in action), the pushy, the promiser of the moon, and I truly hope and trust you have come across one or two of the good guys (or girls). All of these have their positive (and negatives) and I hope I can help make it a little easier for you to decide on which agent you would like to work with.

The right agent can get you in or out of a home smoothly. A bad one can bring you substantial headaches that cost you your time and money.

Points to consider when engaging an agent to sell your property for you:

1. Do they have local knowledge of your area in terms of recent sales?
2. How experienced are they?
3. If in a team, how much of the listing agent will you get to see?
4. Visit an open home of the possible agents you are considering using
5. Is the agent a good communicator?
6. Are there past clients of the agent to whom you could have a chat?
7. How sound is their marketing recommendations?

8. It’s not **ALL** about the lowest commission. (A good agent will negotiate the highest sale price for you, not just get it sold)
9. What is their mind set? Do they focus on the negatives or the positives?
10. What are their negotiation skills like?

SOME THINGS OUR CLIENTS APPRECIATE WHEN WORKING WITH MYSELF AND COLLEAGUES AT CUMMINGS KILGARRIFF & CO.

1. Honest, open communication - even when the results are not as they would have hoped for.
2. The ease and simplicity of our systems. We get the property on the market and sold without the stress and upheaval usually associated with selling your home.
3. They appreciate we understand and respect that it is a huge privilege for us to be invited into a client’s ‘home’ (such a private, personal space) to discuss everything from childhood memories, family functions to bathrooms, finances and future plans.

For Us: The real joy and success comes when we can assist clients to move on to the next phase of their lives by providing a service that leaves them a raving fan and referring us to friends and family.

Lastly..... Wherever possible, choose an agent you **know, like and trust**, it will make the selling experience a much more anxiety free, enjoyable and successful process for you.

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