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BUILDING REPORT CONDITIONS UNDER THE NEW AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

So you have found the perfect property. Now what?

This is of course just the first step in a property purchase. When putting in an offer there are lots of factors to consider. The main ones being:

- How much should I offer?
- When do I want to settle?
- What conditions should I have in the Agreement?

Obviously the answer to the first two questions is a decision for the buyer, often depending on the type of sale, the time frames involved and any other interest in the property.

When it comes to conditions, each buyer tries to put in the best looking offer (especially if there are multiple offers) while at the same time ensuring they have the opportunity to undertake the necessary property checks to make sure the property is up to scratch.

One such condition is a builder's report which, particularly with the increase in number of leaky homes, is becoming an important check in the property purchase process.

The standard clause in the Auckland District Law Society Agreement for Sale and Purchase of Real Estate 9th Edition 2012 provides that a purchaser has 10 working days from the date of the contract to obtain a satisfactory report. The report must be prepared in good faith by a suitably qualified building inspector and access to the property is allowed for this purpose (subject to the rights of the Tenant if it is not owner occupied). If after obtaining the report the purchaser decides not to go ahead with the purchase, they must immediately provide the vendor upon request with a copy of the report.

This clause can be selected by circling the builder's report option on the front page of the Agreement. By using this standard clause, issues may arise if the Agreement is

cancelled and a written report is not obtained. Take for example Kath and Larry. They put in an offer for a first home purchase which was accepted. The offer was subject to them obtaining a satisfactory builder's report using the standard clause in the ADLS form.

Kath asked her grandfather to have a look at the property for them. While he is not a suitably - qualified building inspector, he does have some experience in the building industry due to working at building sites over the years. He has now retired.

After a thorough inspection of the property, Grandad found several issues including a hole in the roof (which in turn has caused water damage) and sinking of two of the piles at one end of the dwelling. After hearing how much this would cost to fix, Kath and Larry decided it wasn't worth proceeding and wanted to keep looking for their dream home.

They instructed their solicitor to cancel the Agreement on this basis. The vendor then requested a copy of the report which resulted in Kath and Larry having to instruct a certified builder to undergo a further inspection of the property (at their expense) and provide them with a written report highlighting the same issues that Kath's Grandad had alerted them to.

This could have been avoided if instead of using this standard clause, Kath and Larry added their own clause in the Agreement which did not include a disclosure requirement.

Submitting an offer to purchase or accepting a sale offer can sometimes be a daunting process. We are only too happy to help if you would like us to review any offers for sale and purchase before submitting/accepting these.

20 MINUTE FREE

**WANT to review your Family Trust structure?
THEN call us and take advantage of our 20 Minute Free interview**