

The New REINZ Agreement for Sale and Purchase

For more than 20 years most real estate sales and purchases have been documented on a standard agreement for sale and purchase that was produced by the Auckland District Law Society and the Real Estate Institute. The Real Estate Institute has just produced its own form of Agreement for Sale and Purchase which is now available to real estate agents and we expect will quickly become the form preferred by real estate agents when documenting real estate transactions.

The Real Estate Institute promotes the form as a "plain English agreement" which buyers and sellers will more readily understand. The new Real Estate Institute Agreement adopts a new format with standard terms set out in a booklet known as "Section B", which would apply to all transactions, together with one of the three forms of Section A which set out the specific terms of the agreement for a standard contract, an auction or tender.

There are many significant differences between the new Real Estate Institute Agreement and the old Agreement. There are changes to the process in dealing with conditions in the contract. Some clauses in the new agreement are more seller friendly, but many are more buyer friendly. Importantly, the new agreement includes a compulsory mediation clause if there is a dispute.

We believe that the old agreement is preferable: lawyers are very familiar with it, it has been tried and tested, regularly amended and well litigated over the years to the point where it now provides certainty to buyers and sellers.

The practical reality however is that use of the new form is likely to become widespread. We wish to alert our clients to the fact that in the early stages of its use the people who enter into the agreements will be "guinea pigs" and until the terms are tested in litigation there is likely to be significant uncertainty as to the interpretation and effect of a number of clauses in the new agreement and its use could potentially increase conveyancing costs.

We strongly urge our clients to consult us prior to signing the new form of agreement in order that we can advise in relation to some quite significant departures from past practice and can have the opportunity of drafting amending clauses if that is considered desirable.

The old form of agreement is still available for use and where possible we believe that our clients should request that real estate agents use that form until the terms of the new form have been tested through the courts.

Contact Tony Walker, Partner on 303 9916, Sarah Edmondson, Associate on 303 9915 or Margaret Dick, Registered Legal Executive on 303 9925 for further information.