
New standard sale and purchase agreement

27 November 2019 marked the release of the latest version of the commonly-used agreement for sale and purchase of real estate.

While the new version released by Auckland District Law Society Incorporated and Real Estate Institute of New Zealand Incorporated is intended to be easier to read and incorporates some useful changes, the most significant changes relate to the vendor's warranties, compensation claims by purchasers, Good and Services Tax and toxicology reports.

The agreement introduces a new standard warranty given by vendors that, at the date of the agreement, the vendor has no knowledge of any fact that might result in legal proceedings (including referral to mediation or arbitration) other being brought in relation to the property. This is a broad warranty, and vendors will need to consider whether anything exists that might give rise to proceedings before they enter the agreement.

The procedures for a purchaser to claim compensation now include a two step process in situations where the vendor disputes the purchaser's claim to compensation. Previously, a vendor could pressure a purchaser into settling for the full amount as the consequences for the purchaser for failing to settle would be significant if the purchaser was later found to be wrong. The new agreement allows for the dispute about the purchaser's right to claim compensation to be dealt with in advance of determining the interim amount to be withheld on settlement, but does not deal with the substantive claim.

The GST provisions have been updated to protect the vendor where the agreement provides for a GST-inclusive price with the expectation of a zero-rated sale, and the purchaser changes its status before settlement so that the vendor needs to account for GST from the purchase price. This is intended to ensure that the vendor does not lose out due to the purchaser's actions.

A new optional condition has been inserted which allows for the agreement to be entered into conditional on the purchaser obtaining a satisfactory toxicology report. The purpose of the report is to test contamination from the preparation,

manufacturing or use of drugs with specific reference to methamphetamine. The report must be completed objectively and in good faith, and must be in writing.

The finance clause has also been amended so that the purchaser is able to select what financial institution the purchaser wants to seek funding from. If the purchaser seeks to avoid the agreement for non-satisfaction of this condition, the purchaser must give the vendor reasonable evidence confirming that finance is not available.

There remains no standard solicitor's approval as to title condition, valuation condition or due diligence condition. Purchasers (and vendors) should therefore consider adding other conditions before signing an agreement.

The new agreement for sale and purchase coincides with the release of the New Zealand Law Society's Property Transaction Guidelines, which were developed with the assistance of [Julian Smith](#), from Greenwood Roche.
