



Leaky homes

Background

There has been considerable publicity over recent months about the problem of houses which are not watertight – commonly known as “leaky building syndrome”. There can be a number of causes for this, including:

- Incorrect installation of monolithic cladding systems
- Inadequate construction of design features which do not allow for proper deflection or drainage of water
- Inadequate administration by councils and the Building Industry Authority (the latter having been set up under the Building Act 1981 to monitor the implementation of building standards)
- A failure by the building industry to deliver the additional level of care and skill required for modern building systems
- The use of untreated framing timber which is susceptible to rotting if moisture penetrates the outer building frame

What do you do if you own an affected property?

If you observe signs of cracking, staining or discolouration either on the exterior or interior of your property, then a weather tightness specialist consultant should be engaged to assess the damage before undertaking any repairs. The consultant will be able to advise you as to the likely cause of the damage which, in turn, will enable you to assess what remedies are available to you.

Weather tight homes resolution service

The Weather Tight Homes Resolution Service was established pursuant to the Weather Tight Homes Resolution Services Act 2002 to assist home owners whose properties are affected by leaky building syndrome. The purpose of the Act is to provide access to “speedy, flexible and cost effective procedures” for assessment and resolution of claims. Despite this, it appears that in practice building owners are dissatisfied with the service and the high costs associated

with pursuing claims. This dissatisfaction has resulted in the formation of several action groups to try and address the problem.

How to avoid buying a leaking home

If you are purchasing an existing property, then arrange for a professional inspection of the house to be carried out by a qualified and experienced inspector. The relevant professional or trade organisations include:

- Building Officials Institute of New Zealand
- Building Research Association of New Zealand Accredited Advisors
- Institution of Professional Engineers New Zealand
- New Zealand Institute of Architects
- New Zealand Institute of Building Surveyors
- New Zealand Institute of Quantity Surveyors

If you are constructing a new home, then make sure the design takes into account the issue of weather management. This includes:

- Adequate drainage
- Using a design which ensures rain cannot enter the building through eaves or other features
- Adequate ventilation so that water which leaks inside cladding can dry if it cannot drain away
- The use of materials which are suitable to the environment for the area in which you are building

Make sure you obtain guarantees from the cladding installer, system manufacturer and your builder. In addition, check your builder is a member of Master Builders or the Certified Builders Association of New Zealand.

Conclusion

In an effort to prevent further problems of buildings affected by leaky building syndrome in the future, the Building Act 2004 introduced stricter compliance procedures for the building industry. However, the problem is set to continue for some time in respect of buildings constructed prior to that Act coming into force and prospective purchasers should be aware. ●

Selling your home – the agent's commission

If you are using a real estate agent to sell your house then you will have to pay a fee to the agent for their marketing services and the associated costs involved with finding a purchaser for your home.

How much can I expect to pay?

The Real Estate Agents Act 1976 does not state how much real estate agents can charge for their services or what method of charging they should use. Most agents charge on a commission basis. However, some companies may charge a flat fee which is calculated as a percentage of the purchase price.

There seems to be a slight variation among the real estate agencies but generally the commission charged for selling a residential property is a base fee of \$400.00 plus 4% of the sale price of the property up to \$250,000.00 and a percentage fee of 2.5% on that portion of the sale price which exceeds \$250,000.00. GST is also payable on the fee.

The amount of commission charged does not all go to the agent of the seller. Half of it belongs to the real estate agency. If there is more than one agent involved in the sale of the property then the commission is split 3 ways with the real estate agency receiving 50% and the remaining 50% being split between the listing agent and the agent who introduces the purchaser receiving.

Sale by auction

If you elect to sell at auction then there may be an extra fee in addition to the commission. The cost of a sale at auction varies between the agencies depending on what package is being offered but the fee charged may include marketing fees, advertising flyers as well as the cost of the auctioneer. These auction packages can range from between \$300.00 to \$1,200.00.

Is the agent's commission negotiable?

The commission is owned by the real estate agency so the individual agent is not always in a position to negotiate the commission. Agents will obviously be reluctant to reduce their fee but nevertheless, it is possible to negotiate a fee.

Agency agreements

An agency agreement is the agreement between the real estate agent and the seller of the property. The Real Estate Agent's Act states that if an agency agreement is not in writing, then the agent cannot demand payment of a fee or commission.

A written agency agreement protects the public to some degree by making sure that people understand their relationship with the agent. It may also prevent disputes between agents as to who is responsible for the sale and who is entitled to commission. The amount of

commission paid depends on what the agency agreement says.

Before signing an agency agreement, make sure you read the terms and conditions carefully and be certain of what you are contracting the agent to do, particularly if advertising and other costs are payable in addition to the commission. ●

General agency or sole agency?

Sole agency (sometimes referred to as exclusive agency) is where the seller chooses only one agent to sell the house. General agency is where the seller chooses several agents to sell the house. It is therefore important that you are very clear with your real estate agent as to the type of agreement you wish to sign and make sure that the agency agreement does correctly record your intention.

This was illustrated in a recent decision of the High Court – Radburn v Property Brokers Limited. In that case the seller signed an authority which gave the agent a sole agency for one month. The seller's intention was to reserve his right to sell the property privately once the sole agency agreement had expired but unfortunately, he did not delete the following words from the agency agreement

"... thereafter this agency shall be a general agency on the general agency terms set out below."

The seller did put a line through the next paragraph headed "General Agency Terms". However, the court ruled that this was not sufficient to cancel the general agency and that the general agency had continued after the sole agency had expired. The judge reached this conclusion by looking at both the conduct of the parties as well as the terms of the agency agreement.

If in doubt as to the meaning of the terms and conditions contained in an agency agreement, contact your solicitor before signing.

Nothing succeeds like succession planning

So you are bullet proof. You are a self-made man or woman and your business is flourishing. You put in the many necessary hours to build your business and may have family involved to assist you. You have used your own skills and expertise to be a leader in your field of endeavour. You control your own destiny – or so you think...

Thinking ahead

Consider where you wish to be in the next ten to twenty years. For example, when do you want to retire? Will you be able to realise sufficient capital from your business to generate an income, which will in turn enable you to spend the later years of your life doing the things you were not able to whilst running your business? Succession planning is all about addressing these issues and putting things in place to avoid problems in the future. It will pay dividends later if you take the time to plan ahead now.

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The elements of a succession plan

As a first step, you need to consider how to structure your business so that it offers the greatest protection to you, your family and any others you may wish to provide for. This may involve the formation of companies and/or trusts as vehicles to own and operate the business and its assets. Your lawyer and accountant will be able to provide advice on the most appropriate structure for your business and how to achieve your goals while assisting with the implementation of your succession plan.

Your health is an important factor to consider. You need to plan for the eventuality of illness, which may prevent you from working full time or even part time. If your business cannot function effectively without you then you will need insurance to bridge the gap.

In the event you are overseas or otherwise unable to make important strategic and operative decisions for the business someone will need to be appointed to make these decisions on your behalf. In the event of your death, you will need to consider the most appropriate person to assume control of your business. Both of these eventualities may be covered by a business plan, power of attorney and/or a will.

If you have family members involved in your business, the tricky question then arises as to how best the interests of those family members who are involved can be balanced against those who are not. Once decisions have been made then they should be recorded in your will. If you have a family trust, then a memorandum recording your wishes should be prepared.

Remember, it is never too early to begin planning succession issues. ●

Explaining powers of attorney

Any individual may give another a power of attorney to manage his or her affairs pursuant to the Personal Protection of Property Rights Act 1988 ("the Act").

The Act provides for two types of powers of attorney:

1. An enduring power of attorney as to property

This confers upon the person who is appointed ("the donee") the right to act in respect of all the property affairs of the person he or she is appointed by ("the donor"). Alternatively, it can be restricted to certain types of property. For example, a person who is intending to be absent from the country may wish to appoint an attorney to negotiate the sale of a specific asset such as a house or company shares and the power of attorney would therefore be restricted to those assets only.

2. An enduring power of attorney in relation to personal care and welfare

This confers upon the donee the right to make decisions concerning the personal care and welfare of the donor of the power of attorney.

It can be particularly useful in the case of elderly people who wish to appoint family members to make decisions concerning the sort of care they should receive.

However, there are certain matters which are specifically excluded. For example, the donee cannot refuse consent on behalf of the donor to any standard medical treatment or procedure intended to save life or prevent serious damage to health.

In both instances, the donor may stipulate that the power of attorney is not to be revoked even if the donor becomes mentally incapable.

Who should you appoint?

Given the wide powers that the donee of a power of attorney can exercise on behalf of the donor, it is most important that if you are considering appointing an attorney then the proposed person should be someone whom you implicitly trust. You should know them well enough to be confident they will carry out your wishes and generally deal with your property and personal affairs in a manner that you desire.

Only one person can be appointed at any given time as an attorney for personal care and welfare but two or more can be appointed to deal with property. In that instance, you should consider whether they should be appointed jointly (which means both attorneys must act together) or jointly and severally (which means they can act either together or separately).

A power of attorney may be revoked at any time by the donor giving written notice to the donee. However, if you wish to do this it is prudent to inform your bank as well as any other third parties who may have dealt with your attorney. A power of attorney is also revoked on the death of the donor.

A power of attorney can only be used for a property owned by the donor in their personal capacity. It cannot be used to deal with property in which the donor has an interest in another capacity, for example as a trustee of a trust. Furthermore, it can not be used to authorise the donee to act on the donor's behalf in his or her capacity as a director of a company.

Do you need a power of attorney?

A power of attorney is useful particularly if you are travelling or living overseas and wish to ensure there is someone available to deal with your affairs in your absence. It is also useful in case of illness or mental incapacity.

However, before appointing an attorney, careful consideration should be given as to whether it is appropriate to give the donee general power to act on your behalf or restrict it to specific matters only.

The appointment of an attorney is an important step and you should always seek advice from your solicitor before signing a power of attorney. ●

Body corporates – what are they and how do they work?

Developments involving unit titles are becoming increasingly popular as more and more people elect to live in apartments or town house developments, particularly those located in inner-city areas. These developments can take the form of clusters of town houses, terraced housing or low and high rise apartment blocks. A body corporate is made up of all of the owners in a unit title development.

Unit Titles Act

Body corporates are governed by the provisions of the Unit Titles Act 1972. The Act allows for the subdivision of land into units so that each unit is owned by an individual owner and common property is owned jointly by all of the owners.

The Act sets out rules for the use and management of both the Units and the common property. If you are considering purchasing a property with a Unit Title, or you already own one, then you should be aware of your obligations as a member of the body corporate.

Costs

The cost of maintaining the common areas and the external structure of the building is the responsibility of the body corporate whereas the cost of maintaining the internal buildings are for the cost of the individual owners.

A body corporate will therefore levy a charge on an annual basis to cover the cost of maintenance of common areas. The body corporate is also responsible for insuring the whole development and indeed this is one of its most important functions. These costs are shared on a proportionate basis by the individual owners.

Rules

A body corporate also makes rules in relation to the development as a whole. There are standard rules set out in the schedule to the Unit Titles Act but these can be amended to suit the individual requirements of particular developments or from time to time as the owners may decide. You should be familiar with the matters contained in the rules as these are important in the event of any conflict or disagreement between individual owners and/or the body corporate.

Secretary

A body corporate must appoint a secretary to oversee administration. This can be one of the owners of the units or, in the case of larger developments, a professional firm is often appointed.

The secretary is responsible for convening meetings of the body corporate, preparing minutes, effecting insurance, collecting levies and paying accounts as well as other administrative tasks. If a professional firm is appointed a management fee will be payable and the cost of

that is added to the charges collected from the owners by the body corporate.

If you are considering purchasing a property which is part of a unit title development, it pays to make enquiries as to how the body corporate is run and the charges which are levied as in the case of larger developments, these can sometimes be quite significant.

So long as they are properly run, body corporates are an extremely effective way of managing property and minimising the maintenance headaches and hassles that can be associated with home ownership. ●

Landonline

Landonline is an online service used by surveyors, lawyers and other professionals. It provides access to the electronic land titles register, maintained by Land Information New Zealand, and enables a registered user to search certificates of title, lodge title dealings and survey data.

Landonline has been introduced gradually over the last few years. However the Government has recently announced that the electronic lodgement of all land title transactions and survey plans will be compulsorily phased in by 1 July 2008. This means that all dealings in land will be registered electronically and there will no longer be any paper based dealings.

One of the principal benefits of electronic registration is that all information is processed in real time. This means that information held on the register is always up-to-date and the processing of dealings is faster and easier. ●



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