

PropertySpeaking

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LAWYERS | NOTARY PUBLIC

Welcome to our final edition of *Property Speaking* for 2017. Inside we have articles that will be useful for property owners, potential purchasers, landlords and hosts for online accommodation platforms.

To talk further about any of these topics, please don't hesitate to contact us – our details are above.



Speak With Us Before you Sign the Agreement

Don't be like John

Buying a house is known to be one of the most stressful times in your life ... often the pressure can be on to make a snap decision and put an offer on a property that you've only had a quick look around. As the Agreement is likely to be one of the most important documents you ever sign, make sure you talk to us first just so you know what you're getting yourself in for.

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Being an Airbnb Host You have significant obligations to a number of parties

In our Autumn/Winter edition (No 24) we discussed the tax aspects of being a host with Airbnb or other online accommodation platforms. With the Christmas holidays coming up we thought a reminder would be useful if you're an existing host (or you're thinking of letting your house/room) about obligations to your lender, insurer and local authority.

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"Just tick the box here, here and here if you need finance, a LIM report and a builder's report".

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This is a question often overlooked when buying your home. How do these these both work?

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Speak With Us *Before* you Sign the Agreement

Don't be like John

Buying a house is known to be one of the most stressful times in your life, and competing with other would-be purchasers in a heated property market doesn't help the stress levels.

Often the pressure can be on to make a snap decision and put an offer on a property that you've only had a quick look around. As the Agreement for Sale and Purchase of Real Estate is likely to be one of the most important documents you ever sign, make sure you talk with us first just so you know what you're getting yourself in for.

It's acknowledged that the 'cleaner' an offer is the more appealing it is to the vendor. We often hear of buyers feeling compelled to make an offer subject to few, or no, conditions. Once the agreement is signed both parties have legal obligations that include using their best endeavours to satisfy any conditions, and failing to do so can prove costly.

Auctions

If you're looking at buying a property at auction, any bid you make above the reserve will be an unconditional offer. At the fall of the hammer, you are legally obliged to

purchase the property on an unconditional basis if you are the highest bidder.

There's nothing we can do if there is an issue with the title *after* the auction, so it is vital that you get in touch with us *before* auction day so we can research the property. We can look over the title and assess the auction pack to ensure that the property is in order.

Solicitor's approval clause

Don't be fooled into thinking that there will always be an 'out' by inserting a 'Solicitor's Approval' clause into the agreement. There is a common misconception that these clauses are as good as a 'due diligence' clause, and that if you change your mind you can simply tell us not to approve the agreement.

We are limited to only disapprove an agreement if there are genuine legal issues, mostly associated with the form of the agreement or the title to the property. Our hands will be tied if you've simply made a bad decision or changed your mind.

A horror example

John Robinson (not his real name) made an offer on a property only subject to solicitor's approval. The offer was immediately accepted without any negotiation between the parties. Over the weekend John started to get cold feet – he believed he had paid too much for the property. This was later

confirmed by a subsequent valuation at the request of John's bank; the property was valued at \$20,000 less than the offer. John didn't want to proceed with the purchase at that price. Unfortunately there was nothing his lawyer could do, as the form of the agreement and the title to the property were in order.

John had been pre-approved by his bank well above the purchase price, but the bank was only prepared to lend John 80% of the valuation. The extra money John had planned to spend doing up the property had to be put towards his 20% deposit, but it was fortunate that he did have sufficient funds to settle. It would have been a different story if John had been relying on being lent more from the bank.

The first his lawyer heard about John's purchase was when a copy of the signed agreement was sent through by the real estate agent. Had John been in contact with his lawyer before making an offer they could have ensured a more informed offer was submitted.

Don't be like John. If you're considering buying property, make sure you talk to us at the earliest opportunity to let us know your plans. Not only can we talk you through the process and help make it a little less stressful, but we can also ensure you are not locked into obligations that you can't satisfy. ■



Being an Airbnb Host

You have significant obligations to a number of parties

In our Autumn/Winter edition (No 24) we discussed the tax aspects of being a host with Airbnb or other online accommodation platforms. With the Christmas holidays coming up we thought a reminder would be useful if you're an existing host (or you're thinking of letting your house/room) about obligations to your lender, insurer and local authority.

Before becoming the host-with-the-most with phenomenal reviews, it is important that not only do you understand the IRD's requirements, but also that you are aware of your obligations to other 'parties' involved in what is your accommodation business.

We have set out some key points to check with your lender, insurer and local authority.

Your lender

Income: Positive reviews from your guests are well and good, but your lender is more interested in positive income flows,

especially if you are looking to finance your next project(s) and considering additional expenditure on your property.

Loan to value ratio (LVR): In October 2016, the Reserve Bank tightened regulations on major banks that restricted their lending to no more than 80% of the purchase price for an owner-occupied property; it dropped to an LVR of 60% for purchasing an investment property. The impact of this will be apparent when you speak to your bank for any new lending against your property or restructuring your loans, and it may be that you cannot borrow more until you have a larger amount of equity across your properties.

How do you ascertain what is an investment property? One bank defined this as a property occupied by someone other than the owner for more than six weeks in a year.

Insurer

Occupancy: You should always inform your home and contents insurer if there are changes to the occupancy of your property. Not only does this include hosting Airbnb visitors, but you should also notify your insurer if you're either away from your property for some time (that overseas trip!) or if you have house-sitters.

The usual precautions apply for when you have strangers in your house –

secure your valuables, give your visitors a separate alarm code and so on.

Claims: Always make sure you are familiar with your policy document. Besides the above information on occupancy, there may be hidden loopholes that insurers can use to avoid claim payouts. For example, contents policies can include terms such as 'additional excesses' or 'refusal of cover' if you have not resided in your home for more than 60 days.

Also, if your house is damaged multiple times by your visitors, your insurer may consider these as separate claims with individual excesses.

Local authority obligations

We talked with some local authorities on their visitor accommodation policies and the impact they have on homeowners' rates. These policies differed significantly. They did, however, each have the same primary objective of placing an increased rates obligation on homeowners who have a higher use of public utilities such as water/transport.

To give some context to our discussions, we list Auckland and Queenstown as examples of two major Airbnb/BookaBach hubs.

Auckland. Auckland Council imposed a 'targeted accommodation rate' from 1 June 2017 that is factored into the annual

rates levy. A property transitions from residential to commercial when occupied by visitors, rather than the owners, for 90-plus days in a year. Resource consent for visitor accommodation is determined on a case-by-case basis. Although the website does not provide much information about the rate, you can find information [here](#) about how to have the accommodation provider rates remitted.

Queenstown. The Queenstown Lakes District Council provides clear guidelines [here](#) regarding the requirements for resource consent, and whether hosting activities trigger a rates increase of at least 25%. It also requires letting homeowners to register as a homestay or holiday home when certain criteria are met; you can find that information [here](#).

We want to stress that the above information may differ from the policies of your own particular lender, insurer and local authority. Before registering your room or rental on Airbnb or other similar accommodation providers, check your property purchase documentation and talk with your local authority about any limitations on these activities.

If you have any further questions or concerns, be sure to consult with us before you host your first guest. ■



Property Briefs

Current tenants selling their business – what it means for a landlord

If you are a commercial building owner, you will at some point come across a situation where your current tenant wants to sell their business. Tenants often forget to talk to their landlord about them consenting to the new business owner.

When a business is sold, the current tenant is obliged to seek the landlord's consent to assign the lease to the incoming business owner. The landlord usually has 10 days to approve the new tenant.

As a landlord, do you know what to look for? How can you be sure that the new tenant will pay their rent on time, and will look after and care for your asset as well as the previous tenant has done? The short answer is – you can't really. However, there are some steps you can take to gather as much information as you can on the new tenant. You should:

- » Obtain a credit check on the incoming tenant and any guarantors
- » Ask to see copies of their business plan and financial statements (if available), and
- » Check to see if they own any other property.

You can refuse consent to the assignment on reasonable grounds. However, landlords often feel they have no choice but to agree; you have every right to take time to do some due diligence on a new tenant. If you're unsure what you can ask a possible incoming tenant, do talk with us. ●

Ticking the boxes on Agreements for Sale and Purchase – be careful

"Just tick the box here, here and here if you need finance, a LIM report and a builder's report".

You'll likely have heard this if you have ever bought a property. You'll have been advised that you require some conditions to protect you while you make an application for finance, arrange for



your builder to inspect the property and to obtain a LIM from the local authority.

The standard Agreement for Sale and Purchase form provides perfectly good and well-established mechanisms for those conditions to operate. But how much did you really understand when you just 'ticked the box'? Were you expecting that you could only raise issues in a builder's report that were substantial enough to be considered 'objective problems'? Did you know that you would have to provide a copy of the report if you raised issues you wanted raised? Did you know that you couldn't simply walk away from the contract if you found a few things in the building report that you just didn't like?

What about finance? Were you aware that if you didn't make a reasonable effort to obtain mortgage finance that you might be in breach of the terms of the Agreement? Did you realise that if you did make an effort and only managed to obtain finance on terms which you didn't quite like, you could be stuck with the terms of that finance offer?

The standard wording in the Agreement for Sale and Purchase imposes a much stricter obligation than most purchasers realise. If you have a specific need to manage conditions on your own terms, then you will need our help to draft those conditions so you don't unwittingly get caught out. ●

'Joint tenants' or 'tenants in common' when buying?

This is a question often overlooked when buying your home. It is, however, a common situation when two people are buying a property together. Let's take an example to show how these both work.

If you're buying a house together, many will assume that you're in a relationship and, therefore, would want the property purchased jointly, using the 'what's yours is mine' approach. If this is the case, a 'joint tenancy' is appropriate. The effect of owning property in this way is simply that if one of you dies, the property passes to the other by what is known as the 'right of survivorship'.

However, if you both want to protect your own investment in the property for whatever reason (you may be friends and not in a relationship, for example) and don't want it to instantly pass to the other person on your death, you will need to obtain some advice on owning the property as 'tenants in common'. This means that your share would be recorded as a proportional ownership on the title and your share in the property would pass to the beneficiaries of your estate as outlined in your Will.

In each case, you should discuss with us which form of ownership is most appropriate for your situation. ●