

In brief from  
**RAINEY COLLINS  
LAWYERS**

AGENT CARE

SUMMER 2011/2012

## ANNUAL TIPS EDITION...

- In this issue:
- Independent Trustees
  - Cleanliness on Settlement
  - LIM conditions
  - Companies signing
  - Building Line Restrictions
  - Christmas Dates

### Trusts do not need to have an independent trustee

We are often told by agents they find it difficult to tell whether properties are owned by trusts or not where there is no independent trustee listed on the title. We have also heard that many agents think that trusts need to have an independent trustee to be valid.

This is not the case. It is possible, and quite common, for a couple to be the only trustees of their trust.

It is recommended that people have an independent trustee for the sake of transparency and to have an experienced person assist with decision making.

If someone tries to challenge a trust in Court, having an independent trustee can help to show that the couple was not treating the asset as if it was their own property (rather than the trust's).

When arranging for vendors to sign an Agreement for Sale and Purchase, check whether the property is owned by a trust and that all trustees sign the Agreement. When dealing with purchasers, make sure you ask purchasers who are purchasing in a trust to let you know all the names of the trustees and again make sure all trustees sign the agreement.

### Our Guarantee

When buying or selling residential property we provide a risk free guarantee.

We guarantee that your clients will be absolutely delighted with our service.

If our service lets them down in anyway we will fix the problem promptly at our cost.

James Johnston  
Chairman of Partners



### No requirement in the Agreement for Sale and Purchase for a Property to be clean on settlement

Be aware that there is no provision in the Agreement for Sale and Purchase that requires a vendor to clean the property prior to settlement.

The vendor undertakes in the agreement that on settlement the chattels are delivered to the purchaser in the state of repair as at the date of the agreement and that the property is free of rubbish.

There is nothing in the agreement to say that the property needs to be cleaned to any particular standard.

If you are worried about the possibility that the property might be left in an unclean state, include a requirement for cleanliness as a condition in the further terms of sale.

### We welcome new clients

We can assist with any property related matters, big or small.

We also host regular property related seminars.

Check out our website  
[www.raineycollins.co.nz](http://www.raineycollins.co.nz)  
for more information.

### LIM Condition Circled on front vs Further Term of Sale

We often have Agreements come in where the LIM condition on the front page is circled and a further term of sale regarding the LIM report is added.

The interpretation condition in the Agreement for Sale and Purchase states "... if any inserted term (including further terms of sale) conflicts with the

general terms of sale the inserted term shall prevail".

Therefore if you circle "LIM required" on the front of an Agreement for Sale and Purchase, and then also write a LIM condition in the further terms of sale, the further term of sale is the condition that applies.

The same applies for title. If you insert title as a further term of sale and the purchaser confirms that condition, title cannot subsequently be requisitioned under clause 5 of the Agreement.



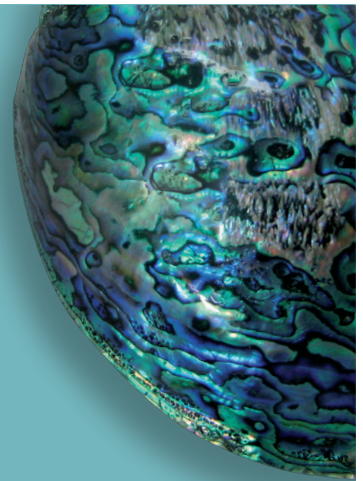
SARAH BLANEY

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## Don't get caught out – make sure Companies sign correctly!

Tim was one of the directors of a company that owned various investment properties. The company wanted to make an offer on a new property. Alan, a real estate agent, prepared the agreement and Tim signed it on behalf of the company, ignoring the fact that Tim wasn't the only director of the company.

Once the Vendors had accepted the offer, they heard through the grape vine that someone was prepared to make a better offer on the property than what had been received. Tim was shocked when the Vendor's lawyer sought to cancel the agreement based on the fact that it was incorrectly signed and therefore not a binding contract.

When you are having directors sign for a company, make sure you ask them how many directors need to sign documents. Generally most company's constitutions will say that two directors need to sign, but you should check with the director you are dealing with. If there is no constitution then the law says two need to sign. If a particular director says they are authorised to sign on behalf of the company, ask them to have the other directors confirm that is the case by email or by phone.

The last thing you want is for the other directors to come back at you for not investigating whether signing had been effected correctly or for you to lose your hard earned commission over an incorrectly signed agreement.

## Building Line Restrictions – do they still apply?

*A building line restriction is a restriction registered on a title which prevents the owners from building within a certain distance from the street front.*

In Wellington, building line restrictions no longer apply as the Council's District Plan includes the relevant restrictions on building. When a landowner applies for a building consent, the Council will check

whether those plans comply with the District Plan in relation to site coverage and proximity to boundaries and will not look to enforce building line restrictions.

## Christmas and New Year Settlement Dates

The Agreement for Sale and Purchase is clear regarding dates that are considered working days.

- The **last day** to settle in 2011 is **23 December 2011**.
- The **first day** to settle in 2012 is **6 January 2012**.

We hope this is helpful. Please remember the days between 23 December 2011 and 6 January 2012 are not "working days" when writing further terms of sale.

Please also note that Rainey Collins will be closed from **5:00pm on Friday 23 December 2011** and will reopen to assist with your legal needs from **8:30am on Monday 9 January 2012**.

The Partners and Staff of Rainey Collins would like to take this opportunity to thank you for your referrals throughout the year and to wish you a safe and happy Christmas and New Year.



CLAIRE COE

### Need Help?

We are happy to field calls of a general nature to answer those little queries that come up from time to time, or to accept ideas for an issue you would like covered in our next edition.

We value your feedback and invite you to call us on 0800 RC AGENT (0800 722 4368) and ask for Claire Coe, or email Sarah Blaney on sblaney@raineycollins.co.nz with any questions or ideas you may have.

Return Address: PO Box 689, Wellington