

# Common problems with house sales

**ALAN KNOWSLEY**  
LEGAL MATTERS



We are often asked to advise on sales of houses and the problems that can arise.

One concern is to ensure that the seller (vendor) is not in breach of the warranties they give as to building work.

When a vendor signs an agreement for sale and purchase, they warrant among other things that they have not completed any works to the property that required council consent without obtaining such consent, and that they have obtained a Code Compliance Certificate for any work.

If a purchaser discovers that works had been completed without council consent or that there is a missing Code Compliance Certificate, then the purchaser is entitled to compensation for a breach of the warranty.

If it comes to light that the seller has either completed works to the property without consent (when council consent was required) or has completed works but not obtained a final Code

Compliance Certificate, then further enquiries need to be made.

The vendor will need to make enquiries with the council to ascertain what they need to do to enable them to obtain the necessary certificates to certify the works comply with the relevant building consent. Once this has been obtained, a specific vendor warranty should be included in the further terms of sale.

The warranty should outline what work has been completed, what the vendor is still required to do in order for council to certify the works, what the vendor proposes to do to remedy this, and a timeframe for the remedy e.g. the settlement date.

It may also involve recording the settlement date to be a certain number of days after the Code Compliance Certificate is issued.

Disclosing the issue and remedy of the same to purchasers early (as part of the further terms of sale in the agreement for sale and purchase) will avoid potential issues and/or delays later on in the transaction.

Vendors and purchasers should always be encouraged to take legal advice where there is an outstanding issue such as the absence of a Code Compliance

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Another common occurrence is changes to an agreement for sale and purchase after execution.

Often after an agreement is signed further negotiations are carried out between the vendor, purchaser and agent.

It is worthwhile noting that such negotiations do not make the current agreement invalid. They also do not generally mean that a new agreement and/or a variation of an agreement need be entered into.

The most common changes to an agreement include the deposit amount; the settlement date;

requirements for vendor to remedy issues raised by builder's inspections; early possession; and/or personal rental arrangements between vendor and purchaser.

If the vendor and purchaser negotiate any changes to the agreement after execution they should advise their legal representatives as soon as practicable.

The representatives can then record the agreed changes to the agreement by way of an exchange of written communications.

The parties may also want to get advice on any changes before they agree to them.

In some circumstances a vendor or purchaser's legal representative may insist on a replacement agreement for sale and purchase.

If this occurs, it is vital that the earlier agreement is properly cancelled.

**Column courtesy of RAINEY COLLINS LAWYERS phone 0800 733 484**  
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