

Best Practice Guide

Property Information Packs

This Guide has been prepared jointly between the Property Law Section of the New Zealand Law Society and the Real Estate Institute of New Zealand to assist lawyers and real estate licensees in addressing some of the practical difficulties that may arise from the Real Estate Agents Disciplinary Tribunal's decision in *LB and QB v The Real Estate Agents Authority & Li* [2011] NZREADT 39. In that decision the Tribunal commented:

"We consider that a licensee, upon taking instructions for a sale of a property, should search its title, or have some competent person search it for the licensee, and be familiar with the information gained from such a search. In this case it would have also been necessary to search the content of a transfer shown as containing a restrictive covenant. Such a search is not a difficult task to carry out or arrange. Similarly, the licensee should ascertain such matters as zoning and compliance with town planning regulations or Council requirements. We do not accept that a licensee can simply regard such matters as within the realm of a vendor or purchaser's legal adviser. Licensees should be familiar with and able to explain clearly and simply the effect of any covenants or restrictions which might affect the rights of a purchaser. This is so whether that purchaser is bidding at auction or negotiating a private treaty" [18]

In the opinion of the Property Law Section of the New Zealand Law Society and the Real Estate Institute of New Zealand:

A. Real Estate Licensees at the time of obtaining a new listing should:

1. Obtain a copy of the certificate of title for the property and use it to verify the information on tenure, ownership, legal description and property description in the listing document to ensure that they match the information on the title.
2. Establish whether or not there are interests or restrictions on the title such as covenants, caveats, easements etc., that should be brought to the attention of the potential purchasers of the property.
3. Discuss these with the vendor client and recommend that an information pack be obtained from the vendor's lawyers which you, the agent, can organise with the client's authority.
4. Advise the client that their lawyers' provision of the information pack involves legal costs the amount of which varies depending on the work involved.

If vendors object to this idea, then real estate licensees should:

1. Inform purchasers of this situation and recommend that the purchasers should obtain their own independent advice from their lawyers preferably before they make any written offer; and
2. Remind the purchasers of their right to make their offer subject to a lawyer's approval clause or due diligence provision. An example of such clause can be found in REINZ Useful Clauses Booklet 2011 on page 7.

B. Lawyers upon receipt of request for an information pack should:

1. Contact the vendor client to confirm instructions to provide an information pack. The client should, at that point, be advised that the provision of the information will involve legal costs.
2. Provide an estimate if requested in accordance with Rule 9.4 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008. The necessary client care information required under these Rules should be provided at the outset.

3. Provide the information pack to the vendor client and the client's real estate agent in a timely manner to avoid any delays with the marketing of the client's property. The client should be informed of any likely delay.
4. Include a disclaimer in the information pack. A form of disclaimer is set out below. It may be modified as a vendor's lawyers consider appropriate.

Disclaimer

This Information Pack ('Pack') has been prepared at the request of the vendor. It may not contain all the information that a prospective purchaser may wish to have.

The information contained in this Pack has been prepared in good faith, but neither the vendor nor their lawyers have any responsibility for the accuracy of any part of this information. To the extent that a recipient relies on any of the information contained in this Pack, the recipient does so at their own risk. Neither the vendor nor the vendor's lawyers will be liable in any way for any incorrect or incomplete information in this Pack, and no recipient will have any claim against the vendor or the vendor's lawyers arising from any information contained in or omitted from this Pack.

If a vendor's lawyers consider that it is undesirable to provide an information pack, they are free to advise their client accordingly.

C. An information pack should contain:

1. A recent search of the certificate of title together with copies of documents relating to any interests registered against the title that will not be discharged on settlement.
2. Copies of other relevant documents which do not appear on the title – e.g. Body Corporate Rules, leases, etc.
3. A recent LIM report.
4. Any other information which is requested or authorised by the vendor and considered appropriate.
5. A brief commentary on any salient aspects of the material referred to above, together with (if desired) a statement that prospective purchasers should obtain any further advice from their own lawyers.
6. Where the property is held on unit title, the pre-contract disclosure required by Section 146 Unit Titles Act could be included.

D. When passing the information packs to prospective purchasers, real estate licensees should:

1. Explain to purchasers that the information pack was provided by the vendor's lawyers and that the purchasers should obtain advice from their lawyers before making an offer.
2. If the information pack does not include a LIM then remind the purchaser of their right to make their offer subject to a LIM condition.
3. Be careful about adding anything to the information provided by the vendor's lawyers, because if false or misleading information is provided by a licensee, Rule 6.4 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules could apply. If it is considered that the material in an information pack may be inaccurate or incomplete in any respect, then this matter should be addressed. It may be desirable to raise the matter with the vendor's lawyers and, if necessary, have them amend or augment the material in the information pack.
4. If desired, include with the information pack a disclaimer along the following lines:

Disclaimer

The material in this Pack has been provided by or on behalf of our client. It is made available by us in good faith. However, to the extent that a recipient relies on any of this material, the recipient does so at their own risk. We will not be liable in any way for any incorrect or incomplete information in this material and no recipient will have any claim against us arising from any information contained in or omitted from this material. A prospective purchaser should obtain advice from his or her own lawyers before entering into any Agreement for Sale and Purchase.