

"Baseball is a game where a curve ball is an optical illusion, a screwball can be a pitch or a person, stealing is legal and you can spit anywhere except in the umpire's eye or on the ball"

Loans, language, loss and health

MODERN DEFINITIONS OF LOANS AND BORROWERS

- "no-doc loans" - the lenders require nothing from the borrower except loan and security agreements.
- "subprime" - the borrower has imperfect financial health.
- "stated income" - the lender accepted the borrower's statement of income without verification.
- "liars loans" - the borrower told the lender what the lender wanted to hear.
- "ninja" - the borrower had or has no income, no job and no assets.
- "scratch and dent loans" - a good subprime loan that went bad, also known as "floor models" (much handled merchandise).
- "retranch" - (French for recut) bundling scratch and dent loans together and selling at a discount to an investment company who on-sells the package to investors thus spreading any loss. The investors "lose their shirts".
- "arm" adjustable rate mortgage - these can "explode" when interest rates go up, hence an "exploding arm".
- "upside down" - a mortgage securing a loan that exceeds the value of the house.
- "drama pricing" and "trauma pricing" - to dramatically drop the price of a property to achieve a sale.

Feel better now? I bet you don't. The above are relatively recent banking terminology and acronyms. No wonder the global financial markets are in a tangled mess.

Staff Changes at Haigh Lyon



WELCOME TO:

Rochelle Munro joined Haigh Lyon in April. After graduating from Victoria University in 2000 Rochelle worked in two provincial medium sized firms in the areas of property and commercial law, including conveyancing, trusts and estate planning, business acquisitions, leases and company matters. She then spent 4 years working in London in a mixture of both private practice

and in-house roles with a focus on commercial contract drafting and negotiations. We are very pleased to welcome Rochelle to our team and glad she decided to settle in Auckland.



FAREWELL TO:

Regretfully we farewelled Michelle last month. Michelle left Haigh Lyon to enter into the specialised area of insurance law. We wish Michelle all the best in her career move.



The Purchaser of your Property Defaults – What To Do?

Should you have the misfortune to find that you have sold your property to a purchaser who defaults i.e. does not settle the purchase on the settlement date, you first need to consider the provisions of Clause 9 of the Eighth Edition 2006 (2) Law Society and New Zealand Real Estate Institutes form of Agreement for sale and Purchase. Apart from sales by auction, most Agreements for Sale and Purchase are on this form.

Clause 9 provides that before you as the aggrieved vendor can issue a settlement notice, you must be ready willing and able to settle yourself.

Clause 9 further provides that if the purchaser fails to settle the purchase before the expiration of the twelfth working day, excluding the day the notice was served on the purchaser, the vendor may:

- a) Sue the purchaser for specific performance i.e. obtain a Court Order requiring the purchaser to honour the purchasers obligations under the agreement.
- b) Cancel the agreement by notice and either:

Forfeit and retain the deposit up to 10% of the sale price.

Sue the purchaser for damages.

Damages in this case will include any loss on re-sale provided that the re-sale is made within one year of the expiration of the settlement notice, interest for late settlement and outgoings paid on the property such as rates and insurance premia.

Any surplus money arising from a re-sale may be retained by the vendor.

The powers reserved to disappointed vendors by the Eighth Edition Form of Agreement are generally considered to be adequate and appropriate. Sadly not infrequently the vendor who has had to issue a settlement notice find that the defaulting purchaser is not worth "powder and shot". Particularly where only a modest deposit is offered and settlement is deferred beyond what might be regarded as the norm, time spent on researching and verifying the financial resources of the purchaser before the offer is accepted, could well be time well spent.

Warning About Leases

The Property Law Act 2007 has made changes to property law with effect from 1 January 2008 that anyone dealing with non residential leases should know about.

Six of the key changes dealing with agreements to lease/commercial leases:

1. The Act removes a Landlord's right to take possession of a tenant's belongings and sell them for unpaid rent, commonly called distraint.
2. Under the old act, leases of less than 3 years duration did not have to be in writing to be enforceable. The new Act spells out that only newly defined "short term leases" do not need to be in writing. A "short term lease" is defined as being for a term of 12 months or less, and starting no later than 20 working days after the lease contract is entered into.
3. Previously the law was open for contracts about land (including leases and agreements to lease) being signed by a person other than the actual parties to the contract. Under the new Act the documents must be signed by the contracting parties.
4. The old act provided that where a Landlord's consent was required by the Tenant the Landlord could not

withhold consent unreasonably. The new Act goes further and provides for damages to be recovered from the Landlord if it is found that the Landlord has withheld its consent unreasonably.

5. It is established law that if a Tenant assigns a lease to another party, the original Tenant continues to remain liable to the Landlord. The new Act now makes it clear that if the Landlord and the new Tenant had agreed to change the terms of the lease, ie renew or increase the term of the lease, then the original Tenant will not be liable beyond the provisions of the original lease.
6. Previously the old act allowed a Landlord to cancel a lease for non-payment of rent without notice to the Tenant, if the rent had been arrears for 14 days or more. The new Act requires the Landlord to give a Tenant notice of an intention to cancel for non-payment before the Landlord is entitled to cancel. The Tenant must be given at least 10 working days notice to pay the rent before the Landlord is able to cancel the lease.

Most of the provisions in the new Act, including those mentioned, apply to all leases, whether they were entered into before or after 1 January 2008.



Some additional thoughts:

- (a) It is now even more important for all parties that any assignment of the lease or any changes to the lease are recorded in writing.
- (b) Agreements to lease are legally binding. Don't assume that an agreement to lease is merely a preliminary.
- (c) It is always wise to contact us before signing any lease document.

The Squeeze on Sonja

Senior Solicitor, Sonja Palinich began playing the accordion at age 9. She holds a teachers Diploma in accordion and music theory and is an Associate of the Institute of Registered Music Teachers. As well as being an accomplished performer, Sonja has many years of teaching experience and is regularly called upon to adjudicate at national competitions.

Sonja is now a member of the New Zealand Accordion Association Committee and is the Public Relations Officer for the Coupe Mondiale World Accordion Championships which are due to be staged in Auckland from 25 August to 29 August 2009 at the Bruce Mason Theatre in Takapuna. The last time New Zealand hosted this event was in 1980.

This competition is a showcase for top international accordion performers and is run on International Music Competition Guidelines. Players will compete in various classes combining both seriously refined music and entertainment categories. Several New Zealanders will feature in this competition with competitors in all categories. There is real potential for a New Zealander to take out the top spot.

This will be a unique opportunity to see international accordion players at the top of their game and dispel any myths as to the accordion's capabilities and place on the world music stage. Tickets are available through Ticketmaster.



A mortgagee sale occurs when the house owner is in arrears in payments due under a loan secured by mortgage over the property. Where these arrears are not remedied within a certain period of time, the lender (known as the mortgagee) exercises the power of sale contained in the terms of the mortgage.

As the recession bites, there are an increasing number of mortgagee sales occurring. We are getting a number of inquiries about the process and potential problems of buying at mortgagee sale.

Mortgagee sales often present an opportunity to purchase a new home or investment property at a reduced price. However buying at mortgagee sale involves a number of risks. These include:

- The mortgagee will not guarantee possession - it is the buyer's problem to get the owner out.
- There are sometimes issues in obtaining clear title to the property. It is important to check the title just prior to signing contract papers to ensure there are no prior mortgages or caveats which will not be discharged on registration of the transfer of ownership.
- The mortgagee will not guarantee that fixtures and chattels will be included in the sale. We are aware of instances where the disgruntled owner has removed items such as the stove, hardware and lights from the dwelling. The buyer is not entitled to compensation from the mortgagee if this occurs.
- Risk in the property often passes to the highest bidder at the auction. This means that if the property is damaged between the auction and settlement date, the buyer will still be obliged to complete the settlement. The buyer will need to arrange appropriate insurance cover to mitigate this risk.
- The mortgagee does not always agree to apportion outgoing on the settlement date, meaning that the successful purchaser has to pay any outstanding rates, body corporate levies and other outgoing.
- The mortgagee will not provide warranties that the dwelling has been built with a permit, and that the property complies with applicable laws.

There are often other issues specific to the property. If you are considering buying at a mortgagee sale it is imperative you contact us for advice prior to signing up.

“A legal kiss is never as good as a stolen one”



Enduring Powers of Attorney

Late last year law changes came into effect that significantly altered the process for setting up an enduring power of attorney ("EPA"). The purpose of these law changes was to reduce the ability of people appointed as attorneys from taking advantage of their position to benefit themselves. It is still possible to set up a standard form of EPA, but there are now several optional provisions that must also be considered. Although at first glance the new procedure is more time consuming and more costly, it is a more thorough and rigorous process that should create total peace of mind for the person giving the power (the "donor").

The new optional provisions that must be considered include:

- whether to place conditions and restrictions on the attorney's power;
- whether to appoint a successor attorney to take over in the event that the initial attorney's appointment ceases;
- whether to stipulate that the attorney must consult with person/s other than yourself when acting on your behalf, and in relation to what matters;
- whether to stipulate that the attorney must provide information relating to the exercise of his or her powers to person/s other than yourself when acting on your behalf, and in relation to what matters;
- whether to specify a particular health practitioner to assess your mental capacity, should the need to do so arise;

and in relation to property only:

- whether to appoint more than one attorney and whether to specify that they must act jointly or can act alone;
- whether to prohibit your attorney executing a will for and on your behalf if you lack the capacity to do so; and
- whether to prohibit your attorney from benefiting personally i.e. by recovering out-of-pocket expenses or professional fees from your property.

The other major change relates to witnessing requirements. The witness to the donor's signature must be independent of the attorney/s. This means that in the typical case of a husband and wife giving powers of attorney to each other, we must send both parties away to separate lawyers/registered legal executives for independent advice. We can witness the parties' signatures in their capacity as attorneys, but not as donors.

Although these changes initially seem very complicated, if time is taken initially to consider your options, it can still be a relatively simple process.

For more information on Enduring Powers of Attorney please contact us and request a copy of our Client Information Sheet.



Don's turned 60!

COMPETITION:

Tell us Don's three vices (hint they all start with C)
First five correct entries win a Haigh Lyon umbrella!

1.
2.
3.



Then



Now