

## **Canterbury Earthquake – Some Advice for Vendors and Purchasers of Real Estate in Canterbury**

### **1. Advice for those considering a purchase or sale of real estate**

Before signing any new Agreements for Sale and Purchase of Real Estate in the Canterbury region, we recommend that you contact us to discuss what conditions should be included in the Agreement. This is important for both vendors and purchasers.

The Banks and other lenders have updated their requirements for new lending on properties in the Canterbury region and are requiring a number of reports from professionals such as structural engineers, geotechnical engineers and valuers, as well as confirmation of full replacement insurance before any new lending will be approved.

Some properties may appear to be unaffected by the recent earthquakes but it is still important not to rush into any new Agreements for Sale and Purchase as there may be damage to the structure of the building or underground that is not immediately obvious to the untrained eye. We are able to assist you with drafting appropriate conditions to add to an Agreement for Sale and Purchase which will ensure that your interests are protected whether you are a purchaser or a seller.

### **2. Insurance**

If you are considering purchasing a property anywhere in the South Island, you need to ensure that you will be able to receive appropriate insurance for the property before agreeing to purchase it. We understand that there is currently a hold on all new insurance for properties north of Dunedin and so this is important for those considering purchasing property, not only in Canterbury, but all over the South Island. Without adequate insurance, you will not be able to get finance to purchase a property, if this is required. Please contact us if you are considering purchasing property in the South Island.

### **3. Advice for vendors and purchaser who have already entered into Agreements for Sale and Purchase prior to 22 February 2011**

It is most likely that your Agreement for Sale and Purchase will be on a standard form such as that produced by the Auckland District Law Society ("ADLS Agreement"). This standard form contains a clause that covers risk and insurance in the event that the property being sold is damaged after the Agreement has been signed, but before the possession date. In the ADLS Agreement, this is covered in clause 4.

The crucial point to be considered is whether or not the property is untenable on the possession date.

If the property is wholly untenable on the possession date then a purchaser has the right to cancel an unconditional Agreement. In order to determine whether or not a property is wholly untenable, a purchaser may need to have a structural engineer view the property as part of a pre-settlement inspection in order to assess damage to the property. In some cases, it will be obvious that the property is wholly untenable. However, a property may have structural damage or damage underground that may render it wholly untenable. Reports of structural engineers and geotechnical engineers may be required to determine this.

If a property is partly damaged but is not wholly untenable on the possession date then clause 4 of the ADLS Agreement provides that the purchaser must complete the purchase but with a reduction in the purchase price which is equal to the reduction in value of the property. In these cases, reports from engineers and a registered valuer will be required in order to determine what an appropriate reduction in the purchase price should be.

If the Agreement you have entered into is still subject to conditions, then you may wish to require further reports on the property before you confirm the Agreement unconditional. You are legally required to act reasonably in cancelling any Agreement. From a practical perspective, the first step should be to request from the vendor an extension of the confirmation date in order to allow you time to have appropriate reports completed on the property which will enable you to make your decision around confirmation. Please note, if your Agreement is conditional upon finance, the major banks have already changed their requirements for approving lending in the Canterbury region. You will need to find out what your lender's requirements are going to be and whether you are able to meet those requirements before you can confirm any Agreement.

4. **Please note:**

The earthquake of 22 February 2011 has caused unprecedented damage in the Canterbury region and this is an extremely stressful time for many property owners. If you have entered into an Agreement for Sale and Purchase of Real Estate or are considering entering into an agreement, please seek legal advice before making any decisions. Please keep communication as open as possible with other parties involved and be patient while appropriate professional reports are obtained as we help you work through the issues that may be involved.

**Disclaimer**

This fact sheet contains general advice which is intended to be used only as a guide. Please contact us for legal advice specific to your situation.