

## RED ZONE CONTRACTS RELEASED: IMPORTANT INFORMATION FOR PROPERTY OWNERS

We have now had the opportunity to review the contracts for the Crown's acquisition of residential red zone properties in the Christchurch and Kaiapoi areas. There are three different contracts, which deal with:

- where an owner elects to sell their property for the rateable value of the land and all improvements on the land, and assigns the benefit of all insurance and EQC claims to the Crown ("Option 1");
- where an owner elects to sell their property for the rateable value of the land only and retain the benefit of all insurance claims for improvements ("Option 2A");
- a special contract for unit title and cross lease developments where insurance is jointly held and owners elect to sell for land value only and retain the benefit of all insurance claims for improvements ("Option 2B").

The contracts are based on the standard Auckland District Law Society form of contract with a number of special conditions. The form of contracts has been finalised and there will likely be no ability to negotiate changes to the terms and conditions.

We have highlighted below some of the important points that you need to know when assessing your options, and provide a summary of your rights and obligations under the contracts. You will also receive a summary of the process and contracts with your offer letter.

### The Next Step

The first letters of offer from the Crown to property owners in the residential red zone are being sent on Friday, 19 August 2011. These offers are being made to owners in the red zone who were insured at the time of the earthquakes and have completed a consent form (allowing the Crown to access your EQC claim and insurance claim details). The consent forms were posted out to owners by CERA. If you have not received a consent form you should let your lawyer know as soon as possible.

### Choosing an Option

You have nine months from the date of the letter of offer to make a decision as to which option you would like to select. This will be an important step and we suggest that you take professional advice before accepting any offer. We are not financial advisers under the Financial Advisers Act 2008 so are not able to give financial advice, however we are able to recommend an authorised financial adviser who you can contact to discuss your options. There are a number of issues to be considered when selecting which option is right for you.

### Signing of Offer

Once you have decided which option you would like to take, your lawyer will access and prepare the appropriate contract to suit the option you have chosen. As part of this process you will need to select a settlement date.

### Settlement Date

The settlement date must be at least four weeks after the Crown has received the signed offer from you, and must be before 30 April 2013.

There is an online booking system which your lawyer will be able to access to book a settlement date for you. This will be on a first come, first served basis and there will be limits to how many settlements the Crown will process each day. If you know now which option you would like to take, and want a fast settlement, we suggest that you contact your lawyer as soon as possible to discuss and arrange an early settlement date.

Under the contracts, settlement can be delayed by the Crown for a number of reasons, including where full information has not been provided by owners, or there has been a breach of any terms of the contract.

Vacant possession of your property must be given on the settlement date. If your property is rented you will need to give appropriate notice to vacate to your tenants under the Residential Tenancies Act.

### **Deposit**

A deposit will be paid to you only if the settlement date is more than six weeks after the date of the contract. For settlements occurring at least six weeks after the date of the contract a deposit will be paid being 50% of the purchase price, or \$50,000.00 whichever is less;

The deposit will be paid to your lawyer's trust account and can be paid out to you (or your bank if you have a mortgage). The deposit will be paid as soon as reasonably practicable once all information has been received from the EQC, your insurer and your lawyer.

### **Purchase Price**

The purchase price will be set by the latest Rating Valuation (RV) for your property, and may be subject to deductions under the terms of the contracts.

Deductions will be made from the purchase price for:

- a. EQC payments made to you;
- b. Insurance payments made to you;
- c. Underinsurance (see below).

The EQC excess will not be deducted, however any private insurance excesses will be deducted from the purchase price. Deductions will not be made for payments you have already received where those payments have already been used for repairs to your property, provided that proof of the costs of such repairs is able to be provided.

### **Challenges to the RV**

The Crown is anticipating a small number of challenges to the RV of properties, and these will only be accepted on the following basis:

- a. if there was an error of fact in relation to the most recent RV (i.e. the incorrect land or dwelling area is recorded); or
- b. if there is consented building work that was completed after the most recent RV which is not reflected in the RV.

There will be a process to follow if such challenge is to be undertaken and your lawyer can help with this.

### **Settlement**

If you select Option 1, on settlement all of your rights under any EQC and insurance claims will be assigned to the Crown. If Option 2 is selected all of your rights under any EQC land claim will be assigned to the Crown and you retain all other rights in respect of any improvements insurance.

## **Insurance**

You should maintain your insurance policies for the property (and keep paying any premiums due) up until settlement, except where your insurer has refused to reinsure upon expiry of a policy.

## **Underinsurance**

Deductions may be made if your property is underinsured. This may apply if:

- a. you have insured your house for the area less than the actual area of the property;
- b. you have insured for less than the RV of the property.

There will be no deductions where underinsurance is below a certain threshold. This can be a complex issue and your lawyer will be able to clarify whether this will apply to you.

## **Chattels and Fixtures**

You may remove chattels from your property on settlement, subject to any claims over those chattels by your insurer. Any chattels left in your property on settlement can be taken by the government without payment to you.

You are not entitled to remove fixtures from the property but there is a process to be followed should you wish to seek the Crown's consent to removal of certain fixtures. This should be discussed with your lawyer.

## **Unit Titles and Cross Lease Properties**

There are special rules for unit title and cross lease properties where there is common ownership of parts of the land and buildings and where there are jointly held insurance policies. These rules should be discussed with your lawyer. One point to note is that if property owners in these situations want to take up Option 2, all other owners must also pursue this option.

## **Costs**

Under the contracts, the Crown will pay half of your legal costs for the sale of your property up to a maximum of \$750.00 plus GST for "Option 1" and \$500.00 plus GST for "Option 2" purchases.

## **Provision of Information and Access to your Property**

You are required to provide the Crown or their agents access to your property upon reasonable notice being given. You are also required to provide the Crown with all information relevant to any insurance or EQC claims or details or any other information that they may consider to be relevant.

## **Mortgagee and Other Charge Holders**

Your lawyer will need to make arrangements with your mortgagee (usually a bank) in relation to discharging any mortgages on the title. Anyone else with an interest registered on the title (such as a caveat or chargeholder) will also need to provide the releases to your lawyer for settlement to proceed.

## **Seek Advice**

This is a general summary of the red zone acquisition procedures and contracts only. It is not a substitute for legal advice. We strongly recommend that you seek legal advice before agreeing to any options or signing any documents.

**For more information please call our property law specialists:**

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