

Hard Case ▶ Janice Hughes

Vendor vigilance

One of the best rewards of penning a column like Hard Case is the feedback – especially when the advice really hits home, and recently, that happened again ... quite literally.

Regular readers will recall last month's piece centred on Caveat Venditor (seller beware, for the uninitiated), debunking the misconception that, in real estate transactions, risk largely falls with the buyer.

This prompted a client, who had just put his family home on the market, to give me a quick, peace-of-mind call. I went through my usual checklist of considerations, and one or two issues came up that had the potential to impact on any sale agreement.

I was able to advise on checks and balances he could implement to offset problems, but said crunch time would come when an offer appeared on the table – and he should contact me again, BEFORE signing anything.

Janice's Lesson Number 1: It was a 10-minute conversation that paid big dividends a couple of weeks later when my client put in a hurried call to me. He had a real estate agent suddenly standing in his lounge holding a rather attractive offer, and, naturally, no-one wanted to lose this deal.

Real estate transactions often take on a life of their own. Invariably, it's high-pressure stuff ... and there's no set time schedule. In short, you have to be primed for a myriad of eventualities to descend at any random moment.

Signing with confidence

Because I had all the necessary background, I was

able to immediately direct my client to the relevant contractual clause that needed to be changed to protect his interests. Let me tell you, five little words can make one heck of a difference.

It's not uncommon for vendors to venture way, way down the transactional route before seeking advice. And, unfortunately, by that stage, sometimes irrevocable mistakes have been made. This is a classic example of how a little forethought – in this instance, two calls totalling less than 20 minutes – can make the going a whole lot easier and mitigate risk.

Janice's Lesson Number 2: If we take a step back in the sale process, vendors have a raft of opportunities to make confident and informed choices along the way. All it takes is a little homework and organisation.

Private sales are relatively rare, so selecting a real estate agent is an important first step. In our neck of the woods, we're pretty much spoiled for choice when it comes to experienced and long-serving agents. Often, different agents specialise in particular property markets, both in terms of location and style.

Do your research. You want to find the right agent for your property, under the right terms – the first contract you'll likely sign when selling your home is with your agent.

Agents work on a percentage-of-the-sale commission basis, though tend to also include a set fee component, too. These rates can be negotiable. For obvious reasons, agents prefer an exclusive arrangement – you list your home with them, and them alone. That often works in the vendor's

favour, too, but if you're putting all your selling eggs in one basket, you need to be confident in what you're signing up for.

The nitty gritty

Contractually, how long will you be tied to the agent? What will they do to sell you property? How many buyers do they have on their books looking for a property similar to yours? On average, how long does the agent take to sell? And, importantly, what will they do to promote your property – will there be a snazzy billboard ... print advertising ... a website presence?

Janice's Lesson Number 3: In your costings, you also need to factor in that many agencies now charge for at least some of the marketing; what bills, over and above the agreed fee, are you likely to be facing?

You need to discuss with your potential agent, too, the best mode to sell your property – options include tendering, auctions and good old-fashioned negotiating, be it with a published price, or not.

Price, essentially, is where real estate begins and ends. Your agent is likely to bring their colleagues through your property and, from there, factor in their feedback in recommending a market price.

For a few hundred dollars, I don't think you can go past the added, independent perspective a registered valuation brings – especially considering the vagaries of the current market. I have seen unrealistic expectations – on both sides of the sale process – brought quickly into line with a valuation; they can be invaluable in terms of managing your own expectations, and those of the other party.



Hidden costs

If you currently have a home loan, don't forget mortgage implications. As soon as the thought of moving on arises, check in with your bank – will you have to break the terms of your loan? If so, how much will it cost? If you're buying elsewhere, what finance would you be eligible for and, depending how the settlement dates pan out, would you qualify for bridging finance?

Janice's Lesson Number 4: In talking later to the client mentioned at the start, he confessed he probably wouldn't have thought about seeking legal advice so early on in the sales piece, had he not taken heed of Hard Case. I can tell you, from experience, he's not alone. No vendor wants their real estate house of cards to come tumbling down – a timely tête-à-tête with your lawyer lays a wise foundation to avoid unnecessary problems.

Janice Hughes is AWS Legal's resident partner in Wanaka. Please remember that this information is designed as a general guide and should not replace specific legal advice on a particular issue.