

Hard Case ▶ Janice Hughes

Buying in to a successful sale

Right, everyone's had time to give the old grey matter a bit of a rest over Easter, so let's rip straight into it with a little spot test.

The Latin term, *Caveat Emptor*, translates to:

- A. A primal professional who made their living emptying waste from cave dwellings
- B. A cavern-like landmark at a place called Emptor
- C. Or, a flash way for English speakers to say: "Let the buyer beware"

Well done – I hope. *Caveat Emptor* is a well-worn phrase that underscores the importance of potential buyers doing their homework before agreeing to any purchase – and living with the fallout if they don't.

Janice's Lesson Number 1: This term has something of a poor cousin, which should, by rights, also be common parlance – but, unfortunately, it's not. *Caveat Venditor:* **Seller** beware.

The misconception, especially around real estate transactions, is that risk, by and large, falls with the buyer and, once the deal's done and dusted, any nasties rest with them, period. And, where buyers have not done there due diligence, certainly that can be the case.

What's not so clearly understood is that a signature on a sale and purchase agreement may mean the property has changed hands, but some liabilities can, in fact, stay firmly with the vendor ... for years.

Caveat Venditor

An expensive lesson for some sellers in recent years has been around leaky buildings. An earlier version of the standard sale and purchase agreement stated in the warranty fine print that the vendor must have complied with the Building Act, under which the Building Code dictates that all homes be water tight for 50 years.

Some erstwhile owners who built homes and sold under those terms – and in many cases, unwittingly – are being sprung for massive costs, after their former homes sprung some serious leaks.

Janice's Lesson Number 2: While that particular warranty has been written out of later incarnations of standard sale and purchase agreements, it serves a striking, and topical, example of some of the whopping contractual comebacks vendors – often unknowingly – sign up for.

Vendors' mindsets can be concreted around getting the best price, and getting it lickety split. For the most part, buyers are wary about buying a lemon, so tend to beat a timely path to their legal advisor's door. Unfortunately, many vendors aren't quite so proactive in seeking advice, largely because they're unaware they, too, can face lemon-like consequences long after the ink's dried. Good, timely legal input, coupled with some targeted due diligence, is the key to stopping things turning sour.

Selling self-help

Aside from the lasting implications of certain warranty clauses, vendors commonly strike avoidable problems during the sale process. Again, your lawyer can guide you, but there's a lot of scope for a little self-help, too.

BEFORE you put your property on the market, one of your first ports of call should be the council to seek the property file. Included in this is your home's floor plan. Now, it's time to play "spot the difference". Unfortunately, at this point, quite a number of homeowners find themselves suddenly playing "one of these things is not like the other".

Janice's Lesson Number 3: If there are any omissions on the floor plan – commonly the likes of a lean-to, a fireplace ... or even entire rooms – chances are you have an illegal addition or renovation on your hands ... and, likely, a problem to sort out. It may be the work hasn't been signed off, so doesn't have that all-important Code of Compliance, or it could be a consent was never sought, either by you or a previous owner, in the first place.

But, glass half full, far better to discover that now and have time and options up your sleeve, than have a potential buyer break the news mid-negotiation. Depending on the situation, remedies – and the final bill – vary, ranging from organising a building inspector's inspection and verification the work passes muster to ... well, trying to sell the property with its "little extras, sans consent" or, alternatively, under the council's guidance, bringing the addition up to consent-able scratch.

Where there's smoke ...

Fireplaces are a common classic. The good news is, because there aren't generally any hidden structural aspects that need to be inspected, if it complies, you may, at the council's discretion, be able to secure a Certificate of Acceptance – and legal status for the fire. And, to the bad news ... with new air pollution rules, even if the fire was installed brilliantly some



years ago, it mightn't meet today's "clean air" standards ... and, thus, burn all hope of a consent.

Even if you're not thinking of selling at the moment, but you're not sure if alterations you – or previous owners, for that matter – carried out have the right council ticks of approval, get it sorted now. Time and time again I've seen how good intentions to finalise, or even obtain, consents have given way to months ... and then years ... and, finally, come sale time, to a most inconvenient and costly headache.

Janice's Lesson Number 4: Again, as an incentive to get cracking, just remember, historic work might have been done to the letter of the law in its time, but if no consent was sought, it may be subject to modern-day – and often different – rules.

The longer you let it slide, the more slippery the slope will probably be, especially come sale time.

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.