

PRESENTERS



Barbara McDermott, Norris Ward McKinnon, Hamilton

Barbara has over 25 years' experience in general legal practice advising clients on a wide variety of matters with a particular focus on property transactions – buying and selling rural, business, commercial and residential properties.

She is also a Property Law Section Accredited Specialist of the New Zealand Law Society and has written articles on property and general legal matters for farming publications for 10 years.



Gill Whinray, Norris Ward McKinnon, Hamilton

Gill is an Associate in the firm and Fellow of the New Zealand Institute of Legal Executives, with over 30 years' experience in residential property work including, buying and selling residential property, building contracts, refinancing, Unit Titles and Cross Leases.

She has a large client base and her extensive experience means Gill is exceptionally well qualified to provide practical advice to her clients.

The statements and conclusions contained in this booklet are those of the author(s) only and not those of the New Zealand Law Society. This booklet has been prepared for the purpose of a Continuing Legal Education course. It is not intended to be a comprehensive statement of the law or practice, and should not be relied upon as such. If advice on the law is required, it should be sought on a formal, professional basis.

Cover and text stocks used in this publication are from Forestry Stewardship Council certified mills, manufactured under the environmentally responsible paper manufactured environmental management system ISO 14001, using pulp from well managed forests and other controlled sources.

CONTENTS

1. INTRODUCTION	3
REASONS FOR EXPRESS WARRANTIES	3
DAMAGES AND CANCELLATION	4
OTHER CLAIMS	4
WARRANTIES AND UNDERTAKINGS.....	4
SUMMARY OF CHANGES MADE IN TENTH EDITION	4
RELEVANT DATES	4
<i>Warranties applicable at date of agreement</i>	5
<i>Warranties applicable at date of settlement</i>	5
<i>Warranties applicable on or after settlement</i>	5
<i>Warranties applicable at date of agreement and date of settlement</i>	5
<i>Warranties applicable at date of supply</i>	5
ADDITIONAL WARRANTIES.....	6
2. NOTICES, DEMANDS, CONSENTS AND WAIVERS – CL 7.1	7
NOTICES, DEMANDS, REQUISITIONS AND OUTSTANDING REQUIREMENTS – CL 7.1(1).....	7
CONSENTS AND WAIVERS – CL 7.1(2).....	8
3. KNOWLEDGE AT DATE OF AGREEMENT OF POSSIBILITY OF PROCEEDINGS – CL 7.2	11
4. WARRANTY AS TO OPERATIONAL AND NON-OPERATIONAL ITEMS – CL 7.3	13
WARRANTY UNDER NINTH EDITION	13
CLAUSE 7.3(1)	13
NON-OPERATIONAL ITEMS – CL 7.3(1).....	13
OPERATIONAL ITEMS – CL 7.3(2)	13
5. ELECTRICAL AND OTHER INSTALLATIONS FREE OF CHARGES – CL 7.3(3)	15
6. RATES, WATER RATES AND CHARGES – CL 7.3(4)	17
7. ALLOWANCES IN SETTLEMENT STATEMENT – CL 7.3(5)	19
8. CONSENTS FOR WORKS – CL 7.3(6)	21
BUILDING PERMITS AND CONSENTS	21
VENDOR’S KNOWLEDGE	21
RELATIONSHIP BETWEEN WARRANTY AND LONG STOP PROVISION IN THE BUILDING ACT.....	22
UNPERMITTED WORK	22
UNIT TITLES.....	22
WHO IS THE “VENDOR” FOR THE PURPOSES OF THE WARRANTY?.....	22
9. BUILDING ACT WARRANTIES	25
OVERVIEW OF BUILDING ACT REQUIREMENTS	25
BUILDING ACT WARRANTY (CL 7.3(7)) – PROPERTY INCLUDES ALL OF BUILDING.....	25
BUILDING ACT WARRANTY (CL 7.4) – PROPERTY INCLUDES PART ONLY OF A BUILDING.....	26
BUILDING ACT CASES	26
BUILDING ACT WARRANTIES – PRACTICAL CONSIDERATIONS.....	27
10. CONSENTS OR WAIVERS SINCE DATE OF AGREEMENT CL 7.3(8)	29
11. NOTICES, DEMANDS RECEIVED AFTER DATE OF AGREEMENT – CL 7.3(9)	31
12. CHATTELS TO BE UNENCUMBERED – CL 7.3(10)	33
13. VENDOR’S WARRANTIES ON AND AFTER SETTLEMENT – CL 7.5	35
14. CLAIMS FOR COMPENSATION – SUBCLS 10.1 AND 10.2(1)	37
GROUNDS FOR CLAIMING COMPENSATION EXTENDED	37
CANCELLATION	37
THE GROUNDS FOR CLAIMING COMPENSATION	37
<i>Breach of any term</i>	37
<i>Misrepresentation</i>	38

<i>Breaches of s 9 or s 14 of the Fair Trading Act 1986</i>	38
DETERMINING CLAIMS FOR COMPENSATION	41
CLAIMS AFTER SETTLEMENT	41
15. ZERO RATING – CL 14.0	43
COMPLETE AND ACCURATE PARTICULARS AND PROFESSIONAL ADVICE ESSENTIAL	43
ZERO RATING	43
CLAUSE 14.0	44
POINTS TO NOTE ABOUT THE GST PROVISIONS	45
GST CASES	46
<i>Y & P Limited v Wang</i>	46
<i>YL NZ Investment Limited v Ling</i>	47
<i>Holdaway v Ellwood</i>	47
16. SUPPLY OF GOING CONCERN – CL 15.0	49
17. SOME MISCELLANEOUS MATTERS	51
ENFORCEMENT BY NOMINEE	51
RELATIONSHIP BETWEEN SATISFACTION OF CONDITIONS AND WAIVER OF WARRANTIES	51
18. PRACTICAL STEPS	53
19. FINAL COMMENTS	55
20. APPENDIX 1 – THE TENTH EDITION	57
21. APPENDIX 2 – SUMMARY OF CHANGES TO THE VENDOR WARRANTIES MADE IN THE TENTH EDITION	77
VENDOR’S KNOWLEDGE OF POSSIBLE PROCEEDINGS	77
PURCHASER’S RIGHT TO CANCEL AND CLAIM COMPENSATION	77
THE PURCHASER’S OBLIGATION TO SETTLE	77
CHATTELS, PLANT EQUIPMENT, SYSTEMS OR DEVICES	77
TARGETED RATE	78
CLAIMS FOR COMPENSATION	78
GST WARRANTY – DWELLING AND CURTILAGE	78
ZERO-RATING	78
22. APPENDIX 3 – EXTRACTS FROM BUILDING (SPECIFIED SYSTEMS, CHANGE THE USE, AND EARTHQUAKE-PRONE BUILDINGS) REGULATIONS 2005	79
23. APPENDIX 4 – EXTRACTS FROM CONTRACT AND COMMERCIAL LAW ACT 2017 AND FAIR TRADING ACT 1986	81
CONTRACT AND COMMERCIAL LAW ACT 2017	81
FAIR TRADING ACT 1986	81