

Earthquake Canterbury

A guide to Earthquake Damaged Properties

I HAVE ENTERED A CONTRACT TO BUY A HOUSE THAT MAY HAVE BEEN DAMAGED BY THE EARTHQUAKE.

If you have entered a contract to buy or sell a house it is most likely to be on the "Agreement for Sale and Purchase of Real Estate" Eighth Edition 2006 (2). You should be able to see if this is the contract you are using by looking at the top of the front page.

This letter provides some basic advice if you have signed this contract and sets out the steps that you should take if you are buying a house that may have been damaged in the recent Canterbury earthquake.

If you have signed a different contract this advice may still be relevant as other contracts may have similar or identical provisions dealing with damaged properties.

Although this advice is focused primarily on the rights and options of purchasers it applies equally to sellers as it is important that any seller knows what the purchaser's options are. We recognise that you may well be a purchaser under one contract and a seller under another.

The first thing to do if you are buying or selling a house that may have been damaged by the earthquake is to start communicating with the other party and also have insurers, engineers, builders and property valuers involved.

An open dialogue through our firm will be the best way to deal with what may well be a very difficult situation.

MY CONTRACT IS STILL SUBJECT TO CONDITIONS. WHAT CAN I DO?

If your contract is subject to a builder's report or subject to finance then you may well be able to cancel the contract. Your builder's report will likely

reveal some damage and you may use this as a basis to not proceed with the contract.

However, you must act reasonably if you cancel for this reason.

If the contract is conditional upon finance then your bank may well refuse to lend you money or not lend you enough money to buy the property. If this is the case then you may be able to cancel the contract on the basis that you cannot obtain finance.

It must be noted that not all conditions will give you the option to pull out of the contract, for example a contract subject to solicitor's approval or a LIM Report.

If you wish to pull out of a conditional contract then you should discuss this with us and before discussing it with the agent.

I HAVE AN UNCONDITIONAL CONTRACT. WHAT ARE MY OPTIONS?

Clause 4 of the agreement covers risk and insurance. The clause sets out the process for dealing with a property that has been damaged after the contract has been signed but before the possession date.

The key issue to be considered is whether the property is untenable. This depends on whether the property as a whole has been rendered unfit for the occupation and use of someone assumed to want the property for the same purpose as the purchaser.

Whether a property is untenable will vary depending on individual situations, but it is important to note that untenability generally relates to the whole of the property. Some cases will be clear cut. If the property is to be demolished it will obviously be untenable. However, if only part of the property has suffered serious damage, but the

remainder of the property is in reasonable repair it may not be untenable.

To help decide whether the property is untenable you should have a builder/engineer attend your pre-settlement inspection to determine whether there has been any damage and if so the likely cost of repair. You will also need to assess the damage to any chattels that are being bought and sold. Assessing the cost of repair may require one or more revisits with other experts. All parts of the property will need to be inspected and consideration should be given to what damage may have occurred underground.

If the property does not appear to have been damaged then a report to that effect should be obtained from the engineer/builder. This may prove to be of value should there be a future claim against an insurer or third party who may try to mitigate a claim by attributing damage to the earthquake.

If the property you are seeking to buy is untenable then you have two options. One is to cancel the contract. If you do this you will be entitled to a refund of your deposit. It is important to note that you cannot cancel the contract until the possession date so if the property is made tenable by that time you will not be able to cancel. If you think you might cancel the contract then you should let the seller know this as soon as possible so that they can prepare themselves for this and so that they do not spend the deposit.

The other option is to still buy the property. If you do this you will either pay a reduced purchase price (the reduction being the amount that the seller's insurer will pay them for the damage to the house) or pay the full purchase price on the basis that the seller's insurer will pay for the property to be repaired for your benefit.

Obviously you and the seller will need to talk with the seller's insurers if you choose this option. In either case you will need to be satisfied that the insurer will in fact pay and that the payment will be sufficient to meet the costs of the repairs.

You will also need to be satisfied that your insurer will insure the property, that your bank will still lend you the money to buy a damaged property and that you can obtain all Council consents needed to undertake the repairs.

If the house is tenable then you do still have to buy the house. However, you will be entitled to a reduction of the purchase price. The reduction will be based on the amount by which the damage lessens the value of the property. Deciding on this value may be the subject of some disagreement, but there are guidelines for dealing with these situations and we are able to assist you.

If you have unconditional contracts to sell one property and buy another and one of the properties is damaged then you should contact us to discuss how one contract will impact upon the other.

SUMMARY

This advice provides only a simplified and general picture of the issues you face if you have a contract to buy an earthquake damaged property. Each case will differ. An open and early dialogue between the lawyers for all parties will help resolve issues quickly. You should note that the seller may well be facing significant hardship as a result of the damage to their property (they may have an unconditional contract to buy an undamaged house or they may not receive enough money from you to discharge their mortgage from a reduced sale price) and this will influence their dealings with you.

We encourage you to contact us to discuss how you should proceed.

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