

PROPERTY LAW

A NEW ZEALAND INVESTOR'S GUIDE

Know the facts – avoid the traps!

Tony Steindle



EMPOWER LEADERS PUBLISHING

*To my friend and business partner Megan Williams,
and the enthusiastic and loyal team at Steindle Williams Legal.*

© 2007 Tony Steindle & Stellaview Ltd
All rights reserved.

Contributing editor: Peter Aranyi
Design and production by Peter Aranyi
Cover design by Jon Evans, Aotea News
Author photo by Jeff Brass
This first edition 2007
Printed in New Zealand

National Library of New Zealand Cataloguing-in-Publication Data

Steindle, Tony, 1966-.

Property law : a New Zealand investor's guide : know the facts,
avoid the traps! / Tony Steindle ; contributing editor Peter Aranyi.

Includes index.

ISBN 978-0-9582746-1-6

1. Real property—Law and legislation—New Zealand. 2. Land
tenure—Law and legislation—New Zealand. 3 Real estate
investment—Law and legislation—New Zealand I. Aranyi, Peter,
1958- II. Title.
346.9304—dc 22



Empower Leaders Publishing Ltd
PO Box 38 226 Howick, Auckland, New Zealand
in association with Empower Education Ltd
+64 9 535 2415 • www.EmpowerLeaders.co.nz

Contents

ACKNOWLEDGEMENTS	
1.	What a lawyer can do for you 1
2.	Signing up to buy a property 4
3.	Contract conditions, and how to escape a contract 10
4.	Strategies for negotiating agreements 15
5.	Titles 20
6.	The Building Act and LIM reports 30
7.	Resource Management Act 42
8.	Real estate agents 50
9.	Selling property 55
10.	Misrepresentation (and lies!) 61
11.	Legal structures — property and tax efficiency 65
12.	Residential tenancies 82
13.	Commercial leases 89
14.	Buying commercial property 100
15.	Buying vacant land and building on it 110
16.	Building contracts 115
17.	Subdividing and developing land 128
18.	Buying off the plans 139
19.	Purchasing property with others 147
20.	Neighbourhood disputes 153
21.	Special types of property 157
22.	Succession planning and administration 166
23.	Traps 170
	CONCLUSION 176
	ENDPAGES 178
	INDEX 181

23

Traps

Traps are an inevitable part of the property game, whether buying or selling. The more you as an investor know of the law, tax, building issues, and other aspects of the game, the less likely it is that you'll fall into a trap. But if you do, it's important to learn from the experience.

You can also learn from the experience of others. This chapter gives some examples of real-life problems—shared in the hope that you don't end up facing them.

Lack of research

This is the most common way to fall into a trap, especially for those new to the property market who are disposed towards being trusting. *Always* independently verify important facts conveyed to you by a seller or their agent—doing this gives you added security, and will help you avoid pitfalls.

A friend of mine purchased a house from his ex-partner. He'd lived in the house and didn't think it necessary to get a LIM or a building report. During later renovations, he found the building's foundations were badly defective. Remedial

work cost \$20,000. Even a cursory building inspection by an expert would have revealed this defect. The work became the buyer's problem with no claim against the seller.

In another case a client of mine was pressured into signing an unconditional purchase. The housing market was very strong at the time, and he was led to believe the ten day waiting period for a LIM would cost him the opportunity to buy the property. Later during house extensions, he discovered unstable land around the house (which would have shown up on the LIM report!) He was up for considerable costs.

Con artists

Be very wary of attending free or discounted seminars on 'property investment' when the presenter or their organisation also offers attendees the opportunity to buy investment properties or participate in an investment promoted by the presenter.

I've seen many of these "hot deals" cross my desk as clients seek my advice. Examples include:

- Where investments are presented as 10% or 20% below an "independent market appraisal". In one case the so-called independent market appraisal was by someone *paid by the promoter* who was *not* a registered valuer. Therefore their 'appraisal' was of no use in funding the purchase — and was actually wrong! This is common.
- So-called investments where you pay "only \$1,000 down" with settlement in a year or two while the value of the property "continues to rise". These arrangements often give the party who is paid the \$1,000 deposit the right to caveat the title to other property you own — the cost of this service is generally included in the purchase price. It would be better instead to borrow a full 10%

deposit and buy at a more realistic price. Also, even the registered valuations on these properties can be unreliable if the promoter shops around for the highest valuation, especially if the valuer bases their assumptions on forecast rentals that are unrealistic. More often than not these properties are sold *above* market price to pay the promoters' fees. It's another case of, "There's no such thing as a free lunch."

- Investors who were offered the chance to buy apartments and 'share in the development profit'. To get this benefit, the investors had to guarantee bank borrowings and take all of the risk on the development—but the promoter had control of it *and* an entitlement to management fees ahead of the investors. Also, the property was valued and sold on the basis of the high rental returns it was predicted to achieve, but it transpired that those returns were based on short-term rentals—which was a use not permitted by the local council, thus reducing the actual value of each unit. The result of all of this was each investor was obliged to purchase an apartment at more than 50% *above* market valuation. Ouch!
- Offering overseas sections at a price of \$120,000, where their estimated value is supposedly \$250,000. You have to wonder why someone would sell sections at such a 'low' market price.

Not all promoters of property sales are disreputable—the above examples are simply to illustrate that some are, and you should go in with your eyes open. Take care. My advice in every case is to always engage *your own* lawyer and accountant—not those recommended by the promoter. Even if they're not in the promoter/developer's pocket they

may quite unintentionally be biased towards supporting the promoter to gain future business.

Always check the name and reputation of a property promoter. Ask questions and search the internet and through several websites that host forums on property investment matters. Current popular websites include www.propertytalk.com and www.landlords.co.nz.

Selling to (or buying from) a one-off company

Watch out if the entity buying the property is a shelf company with little in assets. The use of companies as purchasers has become more common, and often these are set up just for a particular project. A developer client of mine sold a commercial property to such a company. The purchaser paid a small deposit and the vendor allowed them to move in before title was finalised. When it came to settlement the purchaser had changed their mind. They forfeited the deposit — which wasn't even enough to cover the agent's commission. There was no point in seeking to recover losses against the purchaser as it was a \$100 company with no assets.

I have seen this same issue arise when acting for a purchaser. The agreement became unconditional for the purchase of a unit in the apartment block, and later the developer claimed that construction costs had risen so the purchase price would increase. There was no right to do this under the contract, but the seller was a \$100 company which did not even own the land yet. The capital gain was greater than the increase in purchase price so my client decided to agree to the price rise.

Forgetting about development levies

Development levies are charged by council when you build on a property, to meet the costs of council infrastructure such as sewerage. Some local authorities impose them, others don't. In some cases simply adding an ensuite bathroom to a master bedroom will trigger payment of a development levy.

Because these development levies are a reasonably new impost they are often forgotten. You need to budget for them and factor them into the purchase price or predicted cost of your renovation.

Not realising that a development has occurred

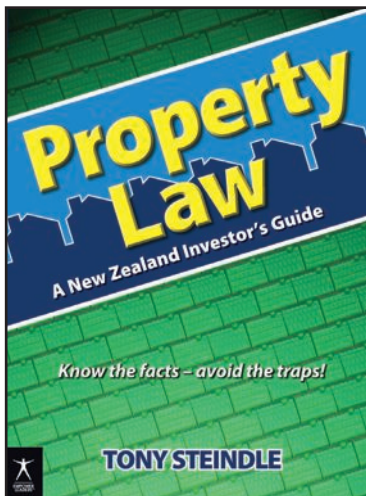
Several years ago I acted for a client who had a 'near miss' on this issue. The family inherited a farm with sweeping coastal views, which was able to be subdivided. It was purchased in the 1950s for what was then market price. Based on the potential to subdivide, the land was worth in the order of \$10 million. There would be costs for subdivision and works—something like \$2 million—and the family was confident of selling all sections for \$13 million. The way they calculated it, they'd achieve a development profit of \$1 million, on which they expected to pay tax. What they didn't realise was that the taxable profit would be almost *all* of the \$13 million since for tax purposes, the profit was the difference between the sale price of \$13 million and what the land was purchased for in the 1950s (next to nil). By selling that land to another entity for \$10 million (with no tax on the capital gain) the family was able to reduce the 'profit' to just the \$1 million they intended.

The other aspect they had not realised was that as owners of this property in their own name, carrying out this development would have tainted any investment properties they acquired in the future. They personally would be classed

as developers. If they purchased property in their own names and later sold it, any profit would be taxable as a result of the association with the farm subdivision. Nasty.

Despite all the care and caution in the world, traps will occur — the best we can do is reduce their likelihood.

A good defensive measure is to talk and talk and talk. Early in the process, talk things through with your professional advisors. Discuss your overall concept for a deal, and all the issues associated with a property and what you intend to do with it. It is surprising the number of times that a general chat about a property will bring these issues to the forefront. For that I reason I believe that the safest approach is to treat your lawyer as *more* than just the person dealing with the mechanics of the property transaction. Tell them about the property and what your objective is, and ask their advice.



Order your copy now!

Property Law
— A New Zealand Investor's Guide
by Tony Steindle

\$34.95 incl GST

Get your copy of this essential book from
www.EmpowerEducation.com

or by calling 0800 66 22 55
(International +649 535 2415)