

# SELLING YOUR PROPERTY



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The television programme "**Location, Location, Location**" highlights the traps waiting to snag unwary sellers and buyers. In this paper we will take you through the selling process so that you know exactly what to expect, what to ask and what you should do.




### See us first

Before you list your property for sale we strongly advise you to talk to us so that we can pass onto you the experience we have gained over many years negotiating on behalf of clients.

The following is an unsolicited letter from a client who made use of our experience:

***"Your service is outstanding and extraordinary. We appreciate the benefits that your experience gives us. Your knowledge and help provides us with vital support to enable us to proceed with the plans we have for our future."***

If you require our services outside normal office hours our contact numbers are as follows:

			
Tony Ivanson	520-5043	0274-950-320	
Pearl Butler	447-1977	0274-730-206	447-1977
Daniel Smith	478-9050	0272-115-458	

You can fax Pearl, outside office hours, to check any document you are asked to sign before you sign it.

At all times we are only a telephone call away. Your call could save you hundreds of dollars in fees and a lot of unnecessary stress.

### Selecting a real estate agent

Who you select to sell your property is the single most important decision you must make when you decide to sell your property. For this reason you should spend time in selecting your agent.

Most real estate mistakes happen for three reasons:

- Not having enough knowledge;
- Not thinking clearly; and
- Not having an agent who cares enough to help you avoid mistakes

### Knowledge

It is hard to avoid mistakes if you lack knowledge. Real estate agents have a huge advantage – they are the experts. The agents will tell you "***this is the way it is done***" and if it sounds plausible – as it often does – you will go ahead and do it. Often, all you have to do is ask a few simple questions. Check things out a little better. A bit more time, before you make a decision, can save you a lot of pain later.

### Thinking

***"I just didn't think of it"***, is what people often say when disaster strikes. Thinking prevents disasters and protects us from harm. The key to clear and accurate thinking is asking

simple questions.

### **Caring**

It is not home-sellers who have the problem with caring, it is the agents. Thousands of home-sellers give their homes to agents who only care about one thing – their commission. They do not care about their clients and they do not care about getting the best price.

The best decision you can make when selling your home is to choose the best agent. And the best agent is the one who really cares about you.

### **The most wanted person**

When you are thinking about selling, you are the most wanted person in real estate. Every agent wants to be the chosen agent who “**lists**” your home. Homes for sale are called “**listings**” – and to any agent, many listings means many sales.

### **The quote trap**

If you choose an agent purely on quoted price, you could make a huge mistake. Thousands of sellers have learned, from bitter experience, that the price the agents **quote** and the price they **get** are **different** prices.

But it is very hard to ignore some agents. When an agent, who is supposed to be a professional, says your home is worth a huge amount, it is very tempting. However, most sellers forget one vital fact – the agents are biased. If they quote you a price and their competitor quotes a higher price, they risk losing your business.

And if they lose, they don't get paid.

Agents who tell the truth often lose business to agents who do not tell the truth. This puts the honest agents in a terrible situation. If they tell the truth, they risk rejection. This is why they avoid the price and say “**It's hard to judge exactly. It depends on the market. Let's not put a price on it. Let's auction and see what happens**”.

### **The price issue**

Agents often say they do not know how much a home is worth. But, no matter what they say, they do know. They just do not want to tell sellers and risk losing the business.

If you ask for a quote on your home's selling price, many agents will either avoid or inflate the price. This is not like getting a painting quote. Remember, the agent is not the buyer of your home. He or she is the person who finds and negotiates with the buyer. What you are looking for is the best agent to sell your home.

It is similar to a job interview. The job description is: an agent you like who will get you the highest price possible and who will be honest with you.

The best question to ask an agent is: “**What will you do to get the best price for my home?**”

### **How to interview agents**

Always interview at least two agents. The only exception is an agent who is highly

recommended by people whose opinion you respect.

If you do not like either agent, call a third. Keep going until you find the best agent. If you have to interview a dozen agents, do so.

When you meet the agents, look at their personal presentation. Do they appeal to you? Do they seem like nice people? Listen to your instincts. Show each agent around your home. Watch their level of interest by seeing if they ask questions or make notes.

After the agents have seen your home, make them feel comfortable and then ask the question: ***“What will you do to get the best price for my home”***.

Some agents will say, ***“How much do you want?”*** or ***“What figure do you have in mind?”*** Do not answer these questions. You are conducting a job interview. Simply say, ***“Before we talk about a specific price, I would like you to tell me what your agency can do to get the best price for my home”***.

Do not be intimidated or allow yourself to be pressured into doing anything that doesn't feel right. It is your home and you are in charge. You have two ways of dealing with agents. For agents you like, ask them what they will do for you. For agents you don't like, just say, ***“I have another agent coming soon. Thank you for coming around. I will call you if I need you”*** and then move towards the front door. They will leave.

When you lack knowledge, agents can easily confuse or mislead you. When you have a valuation, read this paper and read Neil Jenman's book ***“Real Estate Mistakes”*** you will not be so easily confused or misled.

Australian Neil Jenman opened his own real estate office. Jenman did not like typical real estate methods and he offered his clients real estate sales with a difference.

Jenman's strategy worked. Other real estate salespersons were soon keen to learn the secrets of his success and so he became a fulltime teacher of his sales methods. Now Jenman is spreading the word through his book which offers sound advice for vendors and purchasers of real estate.

We have several copies of the book. If you would like to borrow a copy please telephone our receptionist.

### **Communication with a real estate agent**

When you list your property with an agent we advise you to impress on the agent the importance of keeping you informed. Having made the decision to sell it is essential for the agent to keep you informed about all enquiries for your property. If you are not at home when the agent calls with a prospective purchaser ask the agent to leave his/her business card. Agree on the frequency and time you require reports. This is particularly important when the market is slow. The fact that no business cards are left may simply reflect the state of the market. If on the other hand the agent presents an offer which is unacceptable and you ask the agent to go back to the purchaser instruct the agent to keep you informed about the reactions of the purchaser. ***Not knowing what is happening*** can be more stressful than not receiving an offer for your property.

## SALE QUICK CHECK LIST

In our experience many agreements for sale and purchase are either not completed correctly or, in the case of a conditional offer, do not contain all the information you require to assess the chances of the offer becoming unconditional. For example, a common condition is “**finance suitable to purchaser**”. If you do not know how much finance the purchaser requires the offer may be a complete waste of your time and you may miss out on an offer from a genuine purchaser. Some purchasers do not like telling the agent how much finance they require because they claim it is none of the vendor’s business. In our opinion the information is essential.

For these reasons ***we advise you to instruct the real estate agent to fax or email us a copy of any offer for your property before the agent presents the offer to you for your signature.***

### Commission and advertising charges

When you instruct a real estate firm to sell your property you will be asked to sign a listing agreement (see page 9 for further information). We strongly advise you to read the agreement ***before you sign the agreement*** to ensure the information recorded on the agreement is accurate.

***In particular check the rate of commission you will be charged and the amount you are required to contribute to advertising and marketing expenses.*** Although rates of commission charged by real estate firms are similar there are differences. If you know a rival firm charges less commission do not be afraid to negotiate the rate of commission with the agent.

### ***What we will do***

On receiving the offer we will check the offer and then immediately telephone you to discuss the offer.

### **We will check:**

#### ***1. Title***

It is important for the agreement to show the full legal description for your property. If, for example, your property is subject to an easement or other restriction it is important to include details in the legal description to make it clear to the purchaser that you are selling your property subject to the burden of the restrictions and so prevent the purchaser from objecting or requisitioning for the removal of the restriction.

#### ***2. Finance and special conditions***

Some special conditions are inserted for your benefit and some for the benefit of the purchaser. If a condition is for the benefit of the purchaser you must obtain sufficient information to satisfy yourself that there is a reasonable prospect of the condition being fulfilled. In our experience many real estate agents do not ask the purchaser the hard questions which will provide the information you require. If a condition is inserted for your benefit we will make sure that the condition meets your requirements.

### 3. *Chattels*

In our experience the schedule of chattels, which is set out on the front page of the standard agreement, is often incorrect. For example, you may wish to remove a light fitting which was given to you as a wedding present.

After our discussion, if any changes are required, we will send a fax to the agent giving details of the required changes and, if you are on fax or email, send you a copy of our letter.

#### ***What we advise you to do***

When the agent brings you an offer we recommend you to:

#### **1. Changes to the agreement**

Check that the agreement contains any required changes.

#### **2. Deposit**

Ask the agent to show you the purchaser's cheque for the deposit. In the case of a large deposit you may require the agent to obtain a bank cheque from the purchaser to minimise the chances of the purchaser stopping payment on the cheque. Do not sign the agreement ***until either the agent shows you the purchaser's cheque*** or you are satisfied the deposit will be paid. Payment of an adequate deposit is very important because it establishes the good faith of the purchaser and, if the agreement is unconditional, it can be forfeited if the purchaser defaults. In the event of the agreement becoming unconditional the agent will deduct the commission from the deposit which means that if a small deposit is paid you may receive little or no money and could even owe money to the agent.

Under no circumstances allow yourself to be pressured by the agent into signing the agreement if you are not shown the deposit cheque or you have any concerns about the arrangements made to pay the deposit.

#### **3. Purchase price**

If in the course of your negotiations with the purchaser, the price is altered, clearly indicate the final price. Read page 16 about alterations.

#### **4. Possession date**

If you have purchased another property take particular care to check that the possession dates in both agreements are the same.

#### **5. Alterations**

All alterations to the agreement must be initialled by all the parties to the agreement. Read page 16 about alterations.

## General matters

When you sign an agreement to sell your property there are two more important considerations.

### 1. Insurance

Your property and your chattels remain at your risk until the possession date. When you sign an agreement we strongly advise you to check that both your home and chattels are adequately insured.

### 2. Vendor warranties and undertakings

There are 14 general terms ("**the fine print**") contained in the standard agreement. Some are for your benefit and some are for the benefit of the purchaser. For further information we refer you to page 10 ("**When to consult us – vendor warranties**"). In particular we advise you to read general term 6 which sets out a wide range of vendor warranties and undertakings. Please contact us immediately if you cannot give any of the warranties or undertakings.

## Guaranteed free service

Our agreement checking service ensures you have all the information you require to make an informed decision and it's free. Just normal conveyancing costs apply. That's guaranteed.

***"Good judgement comes from experience"***

***"And experience?"***

***"That comes from bad judgement"***

### **WARNING**

An agreement for sale and purchase is a binding legal contract. Always read everything which is either typed or handwritten on the printed form. When in doubt ring us first. Your phone call could save you thousands of dollars and avoid a lot of unnecessary stress.

## Introduction to selling process

For most people selling their property is a very big event which causes conflicting emotions. Some of these will be positive and some will be negative. There is almost certain to be a bit of doubt as to whether you are doing the "**right thing**".

Much of the trauma can be taken out of the selling process by knowing what is likely to happen and getting prepared for it. The way you present and market your property can add thousands of dollars to its value.

The first point to remember is to **beware of the pressure of time**. Typical situations that create time pressure are:-



You purchase another property before you have sold your present home. If you watch the television programme "**Location, Location, Location**" you will be aware that viewers are advised to **sell first**. Some agents however will encourage you to buy first because buying a home is for most people a very emotional experience and having found your dream home it is easier for the agent to persuade you to reduce the sale price on your existing house because you will not want to lose your dream home.



You are forced to sell by the bank because you cannot keep up the payments.



A divorce settlement has to be arranged.



You are building a home and it is only partly constructed. You need to sell your present home to provide the money to finish the new one.



A job transfer has split the family. You have signed up to buy another property and must sell within a fixed time period.

Almost all the above situations can be avoided. It is risky to sign up for another property while your existing home is unsold, to commence building before you have an unconditional sale of your present home, or to leave it to the last minute before you realise you can no longer meet your mortgage repayments.

Avoid buying a home, even if you can afford to, if you intend to live in the new home before you have sold your existing home. The special intangible qualities about your existing home will vanish immediately the furniture goes, and in less than a month what was once a warm cosy home will degenerate into a cold empty home with a corresponding drop in value. The furniture will be gone and there will inevitably be marks on the wall and faded wallpaper where paintings were hung. There will be uneven patches of wear on the carpets as the worn trafficked sections contrast with the still new sections previously covered by the furniture. After a while the garden will either get a weary look from lack of attention or you will get weary from maintaining two homes. In a short period you could lose 10-20% of your selling price. Homes sell on atmosphere and the best way to achieve the right atmosphere is to sell it while you and all your furnishings are still in it.

## Setting the price

The average home changes hands every seven years. It will be a bit scary if you are a first time seller but remember your main objective is to sell your home on the most favourable terms to yourself.

After you have made the decision to sell, your next job is to find out the fair market price. In our opinion, the best way to do this is to:

- ◀ Carry out your own market research;
- ◀ Obtain a valuation; and
- ◀ Obtain advice from local real estate agencies.

## Market analysis

Unless you have to sell quickly, due to an unforeseen event, when you first think about selling your property we advise you to look over the competition because when you decide to sell your home it will be competing for the buyer's attention against all other similar homes for sale in your area. View any "**open homes**" that are similar to yours, look in the windows of local real estate firms, visit the web site for the Real Estate Institute and look at the "**for sale**" notices in the Herald and any specialised real estate publications. In this way you will build up a picture of the market. The more properties you inspect the better.

## Valuation

The next step may be to have your property valued.

A valuer is not biased about your home because a valuer has no financial interest in the value. You are naturally biased because you want the best price. The agents are biased because they want to be selected as your agent. And the buyers are biased because they want to buy for the best price. Valuers are the only people who are not biased – they get paid no matter how much your home is worth.

Valuers are highly qualified. Theirs' is a specialised field. But most important of all – from an accuracy point – a valuer can be legally liable for a mistake. Valuers are careful.

You too should be careful. You should have an independent valuer – not one who works in a local real estate office – inspect your home before you call an agent.

A valuation is a great investment for a home worth hundreds of thousands of dollars. It gives you powerful knowledge. It enables you to make plans based on facts not opinions of people who have a financial interest in the sale of your home. Every home should be valued before being sold.

Remember however that there is no such thing as an exact market valuation. Your property is worth what a willing buyer will pay and what you will accept on a particular day. The purpose of the valuation is to give you a realistic idea of what is achievable.

## Advice from local real estate agents

The final step is to contact the local real estate firms and invite them to come around. **Choose firms with highly visible offices in your area**, who have a high profile which you determine from the high number of "**For Sale**" signs and who advertise heavily in your local paper. These are the proven active real estate firms; they are most likely to attract buyers who may be interested in buying your home.

Tell the agents you are **thinking about** putting your home on the market and ask them to give you an idea of what is a realistic market price. **Do not let them trick you into setting the price. If they ask what price you want tell them you have no idea.** The agent will have a record of all sales in your area, and with the benefit of this information, you want the agent to give you an estimate of the value of your home. By quoting a price the agent is setting him/herself a target to achieve. You will also avoid what is known as "**vendor conditioning**" which is a process designed to beat down your expectations of what your home is worth. Remember that there are different price levels that range from the forced sale price at the bottom of the market, to the high price that sellers may claim they want if they are not serious about selling.

A good agent will quote a price range and not a specific price. For example, "**I believe this property is worth between \$135,000 and \$155,000**". When the agent gives you the price range **ask the agent to justify it by compiling a written market survey.** This is a document listing details of homes, similar to yours, that are currently on the market and details of similar homes that have sold. **Do not use an agent who will not provide a written market survey.** Because the property market is constantly changing ask the agent what changes have occurred in the market during the period covered by the market survey and, what in the agent's opinion, is the future trend of the market. **As a general guide the market survey should be limited to sales made within the previous three months.**

### *The asking price*

Having completed your market research, obtained a valuation and read the property appraisals provided by the agents you are now in a position to set the asking price for your home.

There are two dangers to avoid when deciding on the asking price. The first is "too high for too long" and the second is "too low for too many".

If the price of your home is too high, it could attract no interest. If you leave it too high for too long, buyers may wonder what is wrong with it.

If your price is too low you may attract too many buyers in the wrong price range.

Instead of giving you false hopes and "conditioning" you later, the best agents will clearly explain the best strategy to get you the highest price.

But remember that the highest price could be lower than the price you want. You cannot ask for more than the highest price, regardless of how this price compares with what you want.

## Do it yourself or use an agent?

Having decided on the asking price the next step is to decide whether to sell your property yourself or to engage an agent. An agent should be able to sell your home more quickly and at

a better price for the following reasons:-

1. The way to get the best price for your home is to expose it to as many potential buyers as possible. An agent has access to a continual stream of buyers who are attracted to the agency by its advertising. The only way a private seller can attract a buyer is by erecting a "**For Sale**" sign on the front of the property or by placing advertisements in various newspapers or on the Internet. These have a smaller impact than the on-going marketing of a top agent.

Another problem with advertising a home yourself is that you usually reach a stage where you have spent several hundreds of dollars on advertising, have still not found a buyer, and then have to start from scratch and make the decision again about using an agent, or spending more money on advertising.

2. Most buyers prefer to deal with real estate agents. It is a far less stressful experience to go to a real estate office and be driven around various properties for sale, than to have to knock on the door of a strange house and introduce yourself as a buyer.
3. An essential part of the selling process is the payment of a deposit by the buyer. Buyers know that a deposit placed in an agent's trust account is far safer than a deposit given to a stranger, and many are reluctant to hand over a deposit to a private vendor in case the sale does not proceed and they cannot get a refund of the deposit. This problem can however be overcome by arranging for the deposit to be held in the trust account of the solicitor acting for the seller.
4. It can be more secure to deal through a real estate agent. Although agents do not carry out identification checks on buyers they usually have a telephone number or contact address before they take buyers out looking. How do you know that the "private buyer" who knocks on your door is not a burglar checking out your home for a possible robbery? ***Be careful that any valuable chattels you own especially small items of jewellery that can be easily slipped into a pocket, are safely secured. It takes very little time for an experienced burglar, who is given the opportunity to rummage through drawers and cupboards.***

### **A private sale**

If you decide to sell your property privately we advise you to:

1. Set your price, identify which chattels you are willing to include in the sale and the chattels you may be willing to negotiate on. When setting the price ask for a little more than you want; most properties sell for less than the asking price.
2. Arrange for a professional signwriter to prepare the "**For Sale**" sign. Never say "**Inquire Within**" on the sign. Instead provide a phone number. This gives you control over when people can inspect your property. If you are planning to run open homes, arrange for the signwriter to make up some signs directing people to your property, similar to those used by agents, which you can place on the main roads near where you live.
3. Obtain a Land Information Memorandum (L.I.M.) from the Council. A L.I.M. is a report based on a search of the Council records. An increasing number of purchasers require a L.I.M. and by obtaining a L.I.M. you will be alerted to any adverse comments about your property which you may be able to remedy.

4. Prepare an information sheet for your visitors. The more professional the information sheet looks the better. The sheet should include all the major details about your property and the asking price. Identify the features which have made the property special and enjoyable for you, for example, all-day sun. Include a colour photograph of the property, a copy of the floor plan, a copy of the title and a copy of the valuation, if the valuation is similar to the asking price.
5. If you are asked about defects you must answer the questions honestly. Better still obtain a building report on the condition of your property. The report will identify outstanding maintenance before you begin to market the property. As with L.I.M.'s an increasing number of purchasers are insisting on obtaining a building report.
6. Ask all visitors to fill in a visitors book by inserting their name, contact phone number and their estimate of the value of your property. The more feedback you obtain about the value the better because the information will assist you to determine if you are asking a realistic price.
7. Consider each offer on its merits and whichever offer you prefer let us check it out **before** you make a decision. Do not sign anything until after you consult us.

### Using an agent

If on the other hand you decide to list your property with an agent the next question is "**which type of agency?**"

There are four basic listing methods:-



List the property with several agents (open listing)



Auction



Sale by tender



Give one agent a sole agency

Of the four method listing methods we recommend giving one agent a sole agency.

### Open listing

Open listing means you hire more than one agent to sell your home. The first agent to find a buyer at a price you accept is the agent you pay. The other agents get nothing.

The advantage with this method is that you are not committed to one agent. If your home does not sell, or if you sell it yourself, you owe nothing to anyone.

There are however two disadvantages with an open listing – and they are big ones. You are almost certain to have either a low priced sale or no sale.

### Low sale

The reason you receive a lower price with an open listing is that the agents are being paid to find a buyer before another agent finds a buyer. It's a race to get your home sold. The focus

is to get **any** price and persuade you to accept it before another agent finds a buyer. You may say that you will only sell with the agent who brings a buyer at the highest price, which sounds good, but it doesn't happen that way.

### **Buyers shop around**

Most buyers visit many agents. If they see your home in the window of more than one agent, the question they ask each agent is "**What is the lowest price you can get for this home?**".

The asking price may be the same with each agent but all it takes to ruin your chance of the highest price is for one agent to say, "**I can get it for you for less**". The same thing happens if you have two or three signs on your home. Aside from making a home look unwanted, having many signs encourages buyers to call all the agents. Again the buyers will look for the agent who can obtain your home at the lowest price.

This can't happen when you have just one agent because that agent is the only one who can sell your home. But the risk with having one agent is if the agent is incompetent, you are committed to using that agent. Hence the attraction of an open listing. You are free.

### **No sale**

With an open listing you may be free of obligation but you may also be free of buyers. You will get very lonely because most agents – and certainly the best ones – are almost certain to ignore your home unless the asking price is very low. The best agents will refuse to consider an open listing. They know it is not the right way to sell your home and they won't do it. The best agents will never do anything which is not in the best interests of their clients.

### **Auction**

An auction is the worst method of selling your home. It gives you a lower price and exposes you to tremendous risk. If you want advice about auctions, the last person to ask is an auction agent.

### **Shark bait**



In his book, "**Swim with the sharks without being eaten alive**", author Harvey Mackay says there are three types of people in business, the sharks, the shark bait and those who are shark-proof. In the business of auctions, home-sellers are prime shark bait. But, when they understand the dangers and know the truth about auctions, they become "**shark-proof**".

### **The obvious victims**

Thousands of auction victims know the pain of expecting their homes to sell for a high price, only to be forced into accepting a low price at the auction. These people are the obvious victims and they all tell a similar story "**the agent told me I'd get one price, but I got much less**". As one lady described it, "**Selling my home at auction was the worst experience of my life**". She was told that "**an auction would easily give her more than \$400,000**" but after weeks of pressure from the agent, she found herself selling for \$320,000 which left her more than \$100,000 short of the figure she expected. This lady is one of thousands of obvious auction victims. However, there are thousands of auction victims who are not so obvious.

### ***The hidden victims***

The hidden auction victims are those who sell their properties for more than the reserve price (the **lowest** price) but not for the highest price. These sellers **think** they received a good price but don't realise they did not get the **highest** price.

### ***Your number one aim***

The aim when selling your home is to get the **highest** price. At auction, the agents know your lowest price – that's the "**reserve**" - but they don't know the **buyer's** highest price ("**the BHP**"). If there are two buyers at the auction and they keep bidding **it seems** really good because the price keeps going up. But when one buyer reaches his or her highest price, the bidding stops and because no-one asks the highest bidder to pay more, your home may have sold for much less than it should have. It may not have sold for the buyer's highest price.

Auction buyers rarely pay their highest price. With auctions, the only people who always offer their highest price are the "**under-bidders**", those who miss out.

### ***The under-sell example***

Watch what happens and see how you, the seller, can be made to think you are winning, when you are actually losing thousands. Let's say your reserve price is \$350,000. At the auction, there are two genuine bidders. Bidder A has a highest limit of \$390,000. Bidder B has a highest limit of \$360,000. These are the two BHP's. Now ask yourself:

Which BHP do you want – the \$360,000 or the \$390,000? The answer is easy. You want the \$390,000. But with an auction, you are not likely to get it. When the bidding reaches \$350,000, your home is "**on the market**". It is about to be sold. The bids will probably increase in amounts of \$1,000. But when the price reaches \$360,000, bidder B's highest price has been reached. Bidder A then bids \$361,000 and your home is sold.

The price is \$11,000 above the reserve, but your home sold for \$29,000 less than buyer A would have paid for it and, like most hidden auction victims, you will never realise what has happened. You lose money because the focus of the agent is on the lowest price, instead of the buyer's highest. Had the agent been a skilled negotiator, the buyer's highest price would have been known **before** you sold and you would have received an extra \$29,000.

### ***Start high***

The only reason prices go up with auctions is because they start low. A basic rule of negotiation is **always start high**. It is much better to start **above** the price you want, rather than below the price you want. Auctions start low and that's where they finish – low. But no matter how high they climb, they almost always finish lower than if they had started high. One agent, who stopped using auctions said "**It was terrible to discover, after the auction, that a buyer was prepared to pay more money. In almost all auctions, the highest bidder would have paid more**".

The more the auction agent can keep the focus on a lower price, the more chance the agent has of selling it. And this is one of the main reasons agents like auctions – they start low which makes it easier to make sales.

For more information about the traps of selling by auction we refer you to Neil Jenman's book "**Real estate mistakes**".

## **Tender**

This method of selling has several advantages. These are as follows;

1. If you list your property with several real estate firms (an open listing) or you appoint one real estate firm (a sole agency) you will be required to list the price you require for your property. This immediately indicates to prospective purchasers the maximum price you expect for your property. It is almost unheard of for a purchaser to pay more than the list price and often the price is significantly less.

When you sell by tender you are not required to reveal the price you would like and as a result you may achieve a more favourable sale.

2. One of the main benefits advanced in favour of auctions is the sense of urgency an auction creates. It will encourage buyers who may otherwise procrastinate. A major disadvantage is that an auction requires purchasers to make unconditional offers.

The tender system, however, allows for conditional offers and this enables a prospective purchaser to make an offer conditional on finance. Selling by tender encourages negotiations whereas when a property is advertised at a specific price, there can be resistance to the price being changed. In practice, a tender identifies who is interested in your property and how much they are prepared to pay. If the offers are not acceptable you have the right to negotiate afterwards.

3. Finally, whereas at an auction prospective purchasers are visible to one another, under the tender system there is the added psychological factor of 'invisible competitors.' Prospective purchasers do not know how many other buyers there are for your property. Nor do they know the price the other buyers are willing to pay. The tender system encourages purchasers to tender their highest price for your property.

## **A sole agency**

Selling a home is a private and personal experience, filled with emotion. It can also be a nerve racking experience. But not if you have a good agent and your personal needs are the agent's priority.

In a sole agency you appoint one real estate firm to act for you and undertake to pay a commission if the agency sells your home. Done correctly, it is much more than just putting a price on your home and hoping it sells.

If you appoint a sole agent we remind you to check the commission rate the agent will charge.

## **The listing agreement**

When you have decided on the real estate firm and the method of selling you will be asked to sign a listing agreement.

The agreement records:

1. The listing price, the legal description of your property and all additional information required by the real estate firm to market your property. There is no standard listing agreement. It is important for you to read the information the agent records on the

agreement because an inaccurate statement or misrepresentation may give rise to the purchaser having a right to cancel the agreement or a right to claim damages.

2. The fee you will be charged. When considering the agency charges check what advertising the firm will pay. If necessary amend the agreement so that it clearly sets out what advertising/marketing the agent will undertake (for example the number and size of advertisements, photograph in the window, open days etc).
3. Whether you appoint the agency as sole agent with exclusive authority to sell or a general agency which enables the firm to charge if it sells or exchanges your property. If you give a sole agency check the expiry date of the agency.

A sole agency usually provides that on the expiry date the agency will continue as a general agency which in turn will continue until you give the agency 7 days notice cancelling the agency.

Alternatively, if you give a general agency it will continue until you give the agency 7 days notice cancelling the agency.

4. If your property is owned by two or more persons we advise all owners to sign the listing agreement. If for any reason an owner is not available to sign the listing agreement we recommend you to arrange for the absentee owner to provide written authorisation to someone to sign on his/her behalf.

A final word of warning. **Read the fine print in the agreement.** If there is anything you want clarified fax us a copy of the agreement and then give us a ring. Your telephone call may save you a lot of unnecessary anguish.

### **When to consult us - vendor warranties**

*Before you instruct an agent to sell your property we strongly advise you to consult us so that we can discuss your requirements.*

The standard agreement contains 14 general terms of sale - the fine print - and these terms contain a number of warranties on your part (term 6). If your property does not comply with any of the warranties, **in some cases, we can prepare a waiver clause for inclusion in the agreement.** The waiver clause will give the purchaser notice of whatever is wrong with your property, **for example, the fencing surrounding your swimming pool does not comply with the Fencing of Swimming Pools Act, or you are selling a flat and the external dimensions were altered after the surveyor prepared the flat plan attached to the certificate of title.** If the purchaser agrees to sign the agreement with a waiver clause the purchaser cannot require you to remedy the defect.

#### *Work requiring a permit*

The warranty which generally causes the most problems is warranty 6.2(5) which provides that if you have "**done or caused or permitted to be done on the property any works: (a) any permit, resource consent or building consent required by law was obtained; (b) the works were completed in compliance with those permits or consents; and (c) where appropriate, a code compliance certificate was issued for those works.**" In considering this issue please note that the warranty only applies to work **you** carried out. The warranty does not apply to the work carried out by a previous owner.

The Council cannot issue a retrospective consent or a code compliance certificate for work which has been carried out not in accordance with a building consent. If you have carried out any work for which you should have obtained consent it will be necessary to employ a Building Consultant who will inspect the alterations and prepare a report which, on payment of a fee, will enable the Council to issue a certificate of acceptance. If the work complies with the building code the Council will place the report on file and, provided the situation does not change, the Council will not take any action.

Depending on the nature of the work, in some cases, the Council may require a structural engineer to prepare a plan giving details of the work. If the work does not meet Council requirements you will be required to bring the work up to standard. Alternatively, the Council can require defective work to be demolished.

It is now common for a purchaser to include in an agreement a condition which provides for the purchaser to obtain a report acceptable to the purchaser from a building consultant. If such a condition is included the consultant is almost certain to identify any unauthorised work. We advise you not to sign an agreement, knowing there is something wrong, hoping that the purchaser will not find out.

#### *No knowledge of any requisition or outstanding requirement*

Another term to be noted is 6.1 which provides that you have not:

- (1) received any notice or demand and have no knowledge of any requisition or outstanding requirement:
  - (i) from any local or government authority or other statutory body; or
  - (ii) under the Resource Management Act 1991; or
  - (iii) from any tenant of the property; or
  - (iv) from any other party; or
- (2) given any consent or waiver which directly or indirectly affects the property and which has not been disclosed in writing to the purchaser.

### **Marketing programme**

After you have selected your agent and your method of selling, you must confer with the agent on the marketing programme the function of which is to get the right buyer through your door. Ask the agent for suggestions on ways to make your home more presentable. This usually entails attending to minor repairs such as leaking taps, faulty switches and touching up worn paint here and there. If you have a pet make sure that your home does not smell and that there are no droppings in the grounds. If you are after a quick sale, and you have dogs, consider putting them in a kennel until an agreement is signed.

It is important for the agent to give you a written report setting out what you are required to do and what the agent is required to do. Remember no commission is payable until a sale is completed, and so all the work carried out by the agent is at the agent's risk. You may be asked to pay for at least some of the advertising costs depending on whether or not you agree to a sole agency. Although large and frequent advertisements will not guarantee a sale they are more likely to attract buyers. McDonalds may not sell the best hamburgers in the world but if you were asked to name the best hamburger the chances are you would say McDonalds because of the effectiveness of its marketing programme.

Check the commission rate the agent will charge.

### **Advertising material**

The agent should prepare a schedule which will include the suggested advertising for your home, its cost, who will pay for the advertising, tentative dates to open your home for inspection and any other proposed action such as a brochure mail out.

***Instruct the agent to consult you*** about the wording of the advertisements/brochures. *If, for example, your sale price is \$450,000.00 do not agree to wording such as "\$450,000 or near offer" or "\$450,000 - vendor is willing to negotiate". If this wording is used, there is only one direction the price will go and that is down.*

Other examples taken from one real estate brochure advertising 16 properties for sale are as follows:

- Vendor transferred;
- Vendors Aussie bound;
- Estate – must be sold;

- Urgent sale needed;
- Abandoned do-up bargain; and
- Must sell – price slashed.

All of these statements have been used to generate enquiries, to indicate that the vendors definitely intend to sell and in some cases that there is a deadline. If the agent intends to use any such statements in the advertisements for your property the agent should explain why s/he intends to use the statements and you must decide if the advertisement conveys the message you want to prospective buyers.

While the agent, as the professional, will prepare the most appropriate advertising material to describe the selling features of your property ***it is your responsibility to ensure that the advertisements do not contain any misrepresentations***. For example, if you market your property as a home and income a building consent (permit) must have been obtained to construct a home and flat and the Council must have made a final inspection when construction was completed. In a recent court case the purchaser was awarded \$36,000 in damages because the size of the house was misrepresented.

### **For sale signs**

We have already noted that in order to get the best price for your property it is important to expose the property to as many potential buyers as possible. One of the most common methods used is to erect a **"For Sale"** sign. While you may prefer not to have a sign on your property by doing so you will limit the potential buyers to those persons who contact the real estate firm you have selected to market your property. While a good salesperson should know all the properties which are for sale in an area this may not apply to a salesperson from outside the area. For example, one of our clients gave a sole agency to a firm with an office in St Heliers. A salesperson from the firm's office in Remuera was showing a prospective purchaser another property in the same street as our client's property. The purchaser did not like the property but noticed the **"For sale"** sign on our client's property and asked to see the property resulting in a sale. Some prospective buyers prefer to deal with only one real estate firm and if your property is not listed with that firm you are limiting the number of potential buyers.

While a sole agency is very common most sole agents will come to an arrangement to share the commission if they are approached by an agent from another firm who has a client who wishes to purchase a property listed with the firm holding the sole agency. A sign will also attract a person who is simply driving past your property. Be aware however that a buyer who knocks on your door as a result of the agent's **"For Sale"** sign, is not a buyer you found yourself. If you select more than one firm to market your property be careful how many signs you allow. As we remarked earlier nothing looks more desperate than a property with a number of **"for sale"** signs on the fence.

### **Negotiating techniques**

When you sell your property you will have to negotiate. Large sums of money can be made by skilful negotiation and for this reason we invite you to read our paper on **"Negotiating Techniques"**. We also remind you to make use of the experience we have gained over many years helping clients.

### **On the market**

Having your home on the market is a trying experience. You have to keep it in pristine condition from dawn to dark because you never know when the agent will bring buyers along,

and there is the continual emotional strain of wondering **if** and **when** a buyer will make an offer. The agent should be your partner in this experience and so make sure you speak to the agent at least every second day to review progress and to discuss feedback. **Each time the agent shows a buyer through your home the agent should report back to you.** If you are out when the agent calls ask the agent to leave a business card. If the agent is not in regular contact, or if there is just no action, contact the principal of the agency to find out whether the problem is a lazy salesperson, a bad market or because your home has some undesirable features no one has mentioned to you. **It is important for you to get as much information as you can from the agent, particularly about the price, so that you can make an informed decision about any offers you receive.**

Remember that you have engaged the agent to sell your home and therefore leave the agent to answer the buyer's questions. **In our opinion it is better not to be present when the agent shows your home to a buyer.** Excuse yourself and leave the agent to conduct the inspection. Never apologise for the way your home looks. You are living in it, after all, and the buyers will understand that such things as housework, children's games, meal preparations and other such normal activities must go on. The main thing is to avoid an untidy home.

### **If your property does not sell - do not panic**

Having made the decision to sell do not panic if your property does not sell as soon as you expected. Do not be tempted to keep lowering the price in a desperate search for a buyer, price may not be the obstacle.

There are three pivotal factors in selling a property - price, presentation and promotion. It is back to these issues that you must go to re-evaluate your selling strategy. It is universally true that well presented homes which are strategically priced and carefully promoted tend to sell faster than more standard offerings. At the other extreme are properties which are priced out of the reach of their market, are unimaginatively promoted and less than well cared for. Quite rightly, these homes attract little interest and if your property has been on the market for longer than you expected, you must consider whether it is in one or more of these categories that you have missed the mark.

A small variation in your price or promotion and a rigorous examination of the presentation of your home could be all that keeps you from a successful sale. Have you got the price right? If you have set your price at the top of the agent's recommended range, you may just have priced yourself right out of the market. For example, the difference between an asking price of \$205,000 and \$195,000 may not seem a lot when looking at the big picture but to a potential buyer it can make all the difference in the world. If a buyer has decided not to view homes over \$200,000 the buyer will not see your wonderful home!

Presentation is an issue real estate agents find difficult to broach. Try and look at your home through the eyes of a stranger. For example, are there any signs of disrepair, peeling paint or water marks from condensation on the window sills. All of these signs will trigger alarm bells to the buyer, hypersensitive to any indication of underlying problems. Is the house tidy? Does it smell fresh? Smoking and pet smells can seriously undermine first impressions. In this regard it

is worth remembering that buyers are faced with a serious financial commitment and are actively seeking any negative aspects of your home that may help them negotiate the price downwards.

When you first look to advertise your property it all seems so very straightforward.

Advertisements in the Property Press and newspaper, photograph in the agent's window, for sale signs in your front yard and regular open homes. Advertising however is all about getting the message to the right people, the right people being those who will be attracted to your home and have the finance to afford it. Assessing these people sometimes requires both you and your agent to go the extra yard. For example, the majority of New Zealanders purchase conventional homes. If you own a very contemporary home the potential buyers for such a home make up only approximately 5% of the buyers. If you are competing in an area and price bracket where character homes are plentiful, you face major competition for buyers. In this situation, a for sale sign will not win the day and you will have to play smarter, rather than harder. Talk to your real estate agent and ascertain how you can use your promotion to access that 5%. Alternative options could include open homes mid week as well in the weekend and advertising in community papers which service the area where your potential purchasers may live. There are times when temporarily taking your home off the market may be advisable. If the market has slowed down, and you can afford to wait, it may be better to wait for an upturn in the market. Alternatively, the ability to wait things out and to not be reliant on an immediate sale can be a trump card in negotiations in a slow market.

While no one can claim to have a magic formula for selling your property a judicious mix of expertise, market information and enthusiasm will put you in the best possible situation to achieve your goals. There are a finite combination of factors when selling your home and an apparent lack of interest from buyers more often reflects a need to revisit your strategy rather than revise price alone and drop below your expectations.

## Deposit

It is advisable to require a deposit of 10% of the purchase price. The deposit is a sum given to establish the good faith of the purchaser and should be paid **before you sign the agreement**.

It is important because, if the agreement is unconditional, it is liable to be forfeited if the purchaser defaults. **Ask the agent to show you the deposit** which should be paid in cash or by bank cheque if you wish to avoid the possibility of the purchaser stopping payment of a personal cheque. Requiring immediate payment of the deposit reduces the likelihood of the purchaser changing his/her mind. Although a larger amount can be demanded extreme care must be exercised to prevent the court treating the amount as part payment of the purchase price rather than a deposit. Term 9.4[1][b][i] of the standard agreement must also be amended if you wish to retain more than 10% of the purchase price in the event of the agreement being cancelled.

If the agreement is conditional and only provides for payment of a nominal deposit when the agreement is signed **with the balance to be paid when the agreement becomes unconditional**, before you sign the agreement, instruct the agent that you require the balance of the deposit to be paid by **bank cheque** to avoid the 7-10 working days the agent's bank will require to clear a personal cheque. Also remember that the 7-10 working days is from the date the cheque is **banked**.

The agent will deduct from the deposit the agent's commission and you will receive the balance. If the agreement provides for payment of a nominal deposit (often only sufficient to pay the agent's commission) you may not receive sufficient to cover your costs if for any reason the purchaser refuses to settle.

**In terms of the Real Estate Act the agent must retain the deposit for 10 days from the date of payment of the deposit or until the agreement becomes unconditional which ever is the later.**

**If for any reason the purchaser delays payment of the deposit** the requirement for the agent to retain the deposit for 10 days is often overlooked. If the agreement is unconditional, but the 10 day period has not expired, the agent cannot give you the deposit without the written authority of both you and the purchaser(s). As we mentioned earlier always ask the agent to show you the deposit. If the agent has not obtained the deposit we advise you to delay signing the agreement until the deposit is paid.

You are entitled to the balance of the deposit immediately the relevant period expires and **we advise you to** collect the deposit from the agent or arrange for the deposit to be paid into your bank account rather than, **as is usual practice**, have the agent pay the deposit to us because we in turn will have to wait **five working days for our bank to clear the agent's cheque**. If the agreement does not become unconditional by the condition date and the agreement is cancelled the purchaser is entitled to a refund of the full amount of the deposit.

### **Signing the agreement**

The agreement must be signed by **all** persons who are named as either vendor or purchaser. If a party is not available to sign, for example lives outside Auckland or is overseas, but can be contacted by facsimile, then the agreement should include what is known as a "**facsimile condition**". This records that the parties agree that the transmission by facsimile of the agreement signed by one party shall, when signed by the other party and transmitted by facsimile to the first party, be conclusive that the agreement is binding on the parties. In all other cases a party who is not available to sign the agreement must either authorise someone in writing to sign on his/her behalf or the agreement must be signed by an attorney pursuant to a power of attorney. A copy of the written authority should be attached to the agreement. Where an attorney signs a certificate/declaration of non-revocation should be attached to the agreement stating that the attorney has been appointed pursuant to a power of attorney which has not been cancelled.

### **Take care the correct names are used**

If one or other party to the agreement is a family trust the trustees of the trust must be named in the agreement and not the name by which the trust is known. If it is necessary to enforce the agreement it is the trustees who must be named in the proceedings because a trust is not a separate legal entity. Because there is no public register of family trusts it can be difficult to find out the names of the trustees. Unfortunately, land agents often refer to a trust by its name and if you are the other party to the agreement it is important to instruct the agent to change the agreement to record the names of the trustees **before you sign the agreement**.

### **Alterations to agreement**

In the course of negotiating a sale and purchase it is common for an agreement to be altered. Take particular care to ensure that the alterations are initialled by **all** parties. The price is the term which is most frequently altered. To ensure that all alterations are agreed to we **recommend that you use a different coloured pen each time you initial an alteration to the agreement**. It is not uncommon for an agreement to collapse because in the heat of the negotiations the agent overlooks getting a party to initial an alteration and the party then has a change of mind and decides s/he does not want to proceed with the agreement.

### **Date the agreement**

When **all** terms are agreed the agreement should be dated by the last party to sign the agreement. This is most important because some of the general conditions in the agreement

have time limits which run from the date of the agreement.

### Further recommendations

The following advice will assist you to sell your property:-

**(a) Give the agent a copy of the title**

***Give the agent a copy of the title*** to your property and ensure that the full legal description, ***including any restrictions*** eg. a building line restriction, is shown on the agreement. If the full legal description and any restrictions are not included, ***the standard form of agreement allows the purchaser 10 working days from the date of the agreement within which to object to any restrictions on the title.*** If there is a restriction on the title it is advisable to provide the purchaser with details at the commencement of negotiations rather than sign an agreement and then have to wait for up to 10 working days, ie. 2 weeks to find out whether or not the purchaser objects to the restriction.

Unfortunately, in our experience, most land agents do not complete the legal description accurately. This is one of the most critical times in the selling process and it is in your interests to ensure that the full legal description is included in the agreement. If in doubt please consult us ***before*** you sign the agreement.

**(b) If you are selling a property on leasehold land give the agent a copy of the lease**

***If you are selling a leasehold property*** we recommend that you give the agent a copy of the lease.

Particulars of the lease must be included in the agreement for sale and purchase and it is essential for the lease details to be accurate. It is also useful to have the price at which the Trust Board will freehold the land (if this option is available) in case a prospective purchaser also wishes to buy the land.

**(c) Check all financial and special conditions**

***When you receive an offer check any financial or other conditions inserted in the agreement.*** Remember most conditions are inserted for the benefit of the purchaser. If you sign an agreement ("***the first offer***") which has little prospect of becoming unconditional it is unlikely anyone else will make an offer for your property until the first offer is cancelled. Conditions such as "***finance required by the purchaser***" should be refused because without an indication of the amount of finance required by the purchaser you cannot access what likelihood there is of the condition being satisfied.

***If you have any concerns about the offer consult us immediately. While the agent is your representative, and you pay the agents commission, some agents will place you under pressure to accept an offer which in normal circumstances you would decline.***

**(d) A counter offer**

If you receive an offer which is unacceptable the agent may encourage you to make a counter offer on terms you are willing to accept. The agent will then take your counter offer to the purchaser and if the purchaser accepts your counter offer there is a binding

agreement subject to such conditions, if any, contained in your counter offer.

When making a counter offer ***it is important to require the purchaser to notify you within a specified time as to whether or not the counter offer is accepted*** in case you receive another offer for your property. If no time limit is specified then your counter offer will remain open for acceptance by the purchaser within a reasonable time or until you give written notice to the purchaser withdrawing the counter offer. What is a reasonable time for acceptance will depend on the particular circumstances.

If you wish to make a counter offer a suggested condition is as follows:

*"This offer/counter offer [insert whichever is applicable] is open for acceptance by the purchaser delivering to the vendor a signed copy of the agreement together with a cheque in payment of the deposit by 4.00pm on the        day of        2009 [time being of the essence] at which time the offer/counter offer shall be deemed to be withdrawn".*

As a general rule we advise you not to sign a counter offer because if you reduce your price there is only one way the price will go and that is down. It is particularly important to realise that if the purchaser accepts your counter offer and communicates the acceptance to the agent you will be bound by the contract unless you include a specific provision in the agreement requiring the purchaser ***to notify you and not the land agent*** that the purchaser has accepted your counter offer. If you sign a counter offer and then receive another offer from a third party ***do not*** accept the offer without first establishing the precise situation regarding the outstanding counter offer.

**(e) A back up offer**

***If your property has been on the market for some time***, in order to encourage a purchaser, you may wish to accept an offer which is conditional on the purchaser selling, in which event we recommend that you include in the agreement what is called an ***escape clause***. Particular care must be taken with the wording of the escape clause. The clause included in the Real Estate Institute's book of useful clauses only enables you to accept ***an unconditional cash*** offer on terms no less favourable than the terms of the first agreement. *We advise you not to agree to this type of clause and recommend instead the following clause:-*

*"If, before this agreement becomes unconditional, the vendor receives another offer on terms acceptable to the vendor then the vendor may give the purchaser notice in writing advising the purchaser of the offer. If the purchaser does not notify the vendor in writing that this agreement is unconditional by 4.00pm on the third working day after the delivery of the vendor's notice (time being of the essence) then this agreement shall, without further notice, be deemed to have terminated and the deposit (if any) shall be returned to the purchaser".*

The advantage of this clause is that you can accept another offer, whether it is conditional or unconditional, including an offer at a lower price which you may be willing to accept if the offer is unconditional. The point is that you have complete freedom of choice whereas the Real Estate Institute's clause gives you a very limited choice.

In practice all back-up offers are conditional because the back up offer must include a special condition which provides that the second agreement is conditional on the cancellation of the first agreement. A suggested condition is as follows:

*"This agreement is conditional on the cancellation of the existing agreement on the property and the vendor agrees to take all necessary steps to cancel the prior agreement and not to grant any extension of the condition date".*

Take care to read the wording of the special condition used by the agent particularly if there is a significant difference between the sale price in the two agreements. For example, let us assume that the sale price in the first agreement is \$425,000 and \$400,000 in the second agreement. Because the second offer is unconditional you may be willing to reduce your price by \$25,000 so that you can get on with your plans. Alternatively, you may wish to negotiate with the first purchaser to see if you can agree on a price somewhere between \$400,000 and \$425,000. While you cannot allow the first purchaser more time any price above \$400,000 will make the first agreement a more attractive proposition. If you wish to negotiate with the first purchaser **do not agree to the special condition in the second agreement** including any words which prevent you from changing the terms in the first agreement. For example, do not agree to the clause including words such as **"the vendors undertake not to change the terms of contract on their existing agreement"**.

**(f) The standard chattels**

***The standard agreement includes the following chattels:- Stove, fixed floor coverings, blinds, curtains, drapes and light fittings.***

If any of these chattels are not included in the sale delete the chattel from the schedule.

You may be willing to include additional chattels in the sale, for example, a wastemaster or dishwasher. **Do not include these chattels in the listing agreement.** You can use these additional chattels as a bargaining tool before you consider lowering the price of your home.

**(g) Is the insurance cover on your property/chattels adequate?**

The general terms in the standard agreement provide that the property and chattels remain at your risk until settlement. In the event that prior to giving possession your property is destroyed or damaged and such damage is not made good by the possession date then, if the damage has rendered your property untenable and it is untenable on the possession date, **the purchaser may elect to cancel the agreement.** We therefore strongly recommend you to review the amount of your insurance cover and, if necessary, to increase the cover to the full insurable value of your property. Our service will particularly apply if you are considering purchasing another property. Under no circumstances should you sign an agreement to purchase another property until after you receive the money from your sale **unless your purchase is expressed to be conditional on your completing the sale of your property.** Without this condition, if your property is badly damaged by fire and the purchaser elects to cancel you will be left with a destroyed or badly damaged property, no contract of sale but an unconditional contract to purchase.

**(h) Selling an "in-fill" site**

*If your property has become too large and you decide to sell part of the land (called an "in-fill" site) or alternatively sell the existing house and build on the in-fill site consult us before the property is offered for sale.* The form of agreement required for such a sale

requires the addition of a number of clauses which vary according to the circumstances.

Many agents do not have the expertise to prepare the agreement.

We will co-ordinate the sale arrangements with the agent and surveyor and ensure that all necessary safe guards are included in the agreement so that settlement takes place at the earliest opportunity. ***A properly prepared agreement will save you time and money.***

**(i) If your property has a swimming/spa pool extra care is required**

***If your property has a swimming or spa pool*** the standard agreement contains a warranty that you are not aware of any requirement imposed by any territorial or government authority which has not been disclosed to the purchaser. If the pool does not comply with the new fencing requirements either erect fencing which complies with the new standards before the property is sold or instruct the agent to include in the agreement an acknowledgement that the purchaser is aware that the pool fence does not comply and agrees to purchase the property without approved fencing.

**(j) If your property is tenanted be aware of the rules which apply if the purchaser requires vacant possession**

The provisions of the Residential Tenancies Act 1986 imposes a number of obligations on a landlord, who is usually the owner. *First, Section 47 requires the landlord to notify the tenant that the property has been listed for sale. Second, Section 51 requires the tenant to be given 42 clear days written notice to terminate the tenancy after the sale becomes unconditional.*

The notice may be given personally, by post to the address for service provided by the tenant at the commencement of the tenancy or by delivery to the address for service by means of placing the notice in the mail box or by attaching the notice to the front/back door in a prominent position. If the notice is served by post, in the absence of any evidence to the contrary, it will be deemed to have been served on the fourth working day after the date on which it was posted.

If the requirements of Section 51 are not observed:

- (a) You will be unable to give vacant possession if the tenant refuses to go and will be unable to settle.
- (b) You will be liable to the purchaser for all reasonable costs and expenses occasioned by your default. These expenses can be substantial and may include motel charges, transport charges and storage charges for personal effects. If your property is tenanted we recommend that you consult us immediately you instruct the agent to sell your property so that we can ensure that the requisite notices are given to the tenant.

**(k) The boundaries of a "vacant residential lot" must be pegged**

You are not required to point out the boundaries to the property unless you are selling a vacant "***residential***" section in which event you must ensure that the property is pegged at the possession date.

(I) **The settlement date, but not necessarily the possession date, can be delayed in certain circumstances.**

If a new title is being issued for your property take particular care to read the following paragraphs.

Where a new title is in the course of issuing for your property and a search copy of the title is not obtainable by the 5th working day **prior to the settlement date** then settlement will be deferred to the 5th working day following the date on which a search copy of the title is obtainable. *For example, if you crosslease your property with a view to selling the house and building on the adjoining in-fill site a new title will be required for the house. Before you sign an agreement for the sale of the house you must ensure that the new title for the house will be available 5 working days prior to the settlement date.*

If you are not sure when the new title will be available instead of agreeing to settle and give possession on a fixed date **a safer alternative is to provide for settlement to take place 5 working days after a copy of the new title is delivered to the purchaser.**

Unfortunately, in our experience, many agents overlook this requirement and for this reason if you have any doubts contact us before you sign the agreement. It is also important to be aware of the difference between **the possession date** and **the settlement date**. As a general rule the two dates are the same. If, however, the agreement is not prepared correctly, as we have just noted, it is not uncommon for a vendor and purchaser to agree on a mutually convenient possession date, for example, 20 January, but overlook the fact that a new title is in the process of being issued by the Land Titles Office and will not be available until some date after 20 January. If this situation arises then in terms of general term 3.13 the purchaser is entitled to ask for possession but **is not required to pay the balance of the purchase price** until the settlement date, i.e. the 5th working day after a search copy of the new title is obtainable. If the vendor refuses to give the purchaser possession then **the vendor must pay the purchaser** either compensation for temporary accommodation or interest at the rate for late settlement. The purchaser is not required to pay the balance of the purchase price but must pay the vendor an amount equivalent to the interest earned or which would be earned on overnight deposits lodged with the purchaser's solicitors trust bank account on the unpaid balance of the purchase price during the default period.








Alternatively, if the purchaser requires possession of the property and the vendor is willing to allow the purchaser into possession then again the purchaser **is not required to pay the balance of the purchase price** but must pay the vendor an amount equivalent to the interest earned or which would be earned on overnight deposits lodged with the purchaser's solicitors trust bank account on the unpaid balance of the purchase price during the default period.

In our example we refer to a new title issuing in a crosslease development. New titles will also issue where a large block of land is subdivided into sections, where the co-owners of a block of units on leasehold land purchase the freehold and where the existing title is simply lost. If any of these situations apply to you, or you are simply not sure, then **consult us before you sign any offer to sell your property.**

### (m) A Land Information Memorandum [LIM]

Following the enactment of the Resource Management Act a council will provide what is known as a Land Information Memorandum (L.I.M.) ***which is a report based on a search of the council records. The Council does not inspect the property.***

The report covers the following matters:

-  Plumbing and drainage
-  Rates
-  Water billing
-  Special site features such as flooding and potential for subsidence
-  Issued consents and permits
-  Outstanding requisitions
-  Town planning information

It is common for a purchaser to obtain a LIM report and ***we advise you to obtain a LIM report before you offer your property for sale*** in case the report discloses any unforeseen matters which you can remedy.

### (n) A building report

We suggest that you obtain a building report on your home. The report will identify any outstanding maintenance prior to listing. Apart from giving you the opportunity to

rectify any important items of maintenance, if the purchaser will only sign an agreement which is conditional on obtaining a building report, you will know from your own report what defects the purchaser's report may identify. This in turn will enable you to decide whether or not the condition is likely to be satisfied. ***Do not to give a copy of your report to the purchaser or let the agent know you have a report.***

### Summing up



Consult us before you list your property for sale and tell us about any potential problems



Beware of the pressure of time.



Obtain advice from three real estate agencies as to what is a realistic sale price for your property.



Obtain a written market survey.



Compare your property with the properties in the survey.



Inspect the competition.



Beware of the agent who tries to buy your listing by telling you what you want to hear rather than the truth.



When you receive an offer obtain as much information as you can about what the purchaser is looking for. If, for example, you find that the purchaser is looking for a three bedroom house with a rumpus room and from your research of the competition you know that your property is the only one with these features you can be more positive in your negotiations.



Price is not everything. The more options you have on the negotiating table the more likelihood you have of achieving your main objective.



Houses sell on the three "**P's**"; **presentation, price and position**. The only two you can change are presentation and price.



Review the insurance cover on your property and chattels and if necessary increase the cover to the full insurable value.

### Completing the agreement - vendors take care

In 2006 the Real Estate Institute of New Zealand/New Zealand Law Society introduced the current form of agreement which can be identified by the words "**Eighth Edition 2006**" in the top right hand corner of the front page. The agreement includes a number of warranties and undertakings of particular importance to a vendor:

- (a) Where you have done or caused or permitted to be done on the property any works for which a permit or building consent was required by law:
  - (i) The required permit or consent was obtained; and
  - (ii) The works were completed in compliance with that permit or consent; and
  - (iii) Where appropriate, a code compliance was issued for those works; and
  - (iv) All obligations imposed under the Building Act 1991 and/or 2004 were fully complied with.
- (b) Where you are selling a property and any building on the property requires a compliance schedule under the Building Act all obligations imposed under the Act have been fully complied with.
- (c) At the date of the agreement you have not given any consent or waiver to any application under the Resource Management Act which directly or indirectly affects the property and which has not been disclosed in writing to the purchaser. For example, you have not given consent to your neighbour building in a manner which infringes the building code.

There is a further warranty and undertaking which states that after the date of an agreement for the sale of a property you have not given consent or waiver to any application under the Resource Management Act which directly or indirectly affects the

property.

In addition to the warranties and undertakings the following general terms should be noted:

- (a) On the possession date you are required to make available to the purchaser keys to ***all exterior doors***, electronic door openers relating to the property and the keys and/or security codes to any alarms which may be situated on the property.
- (b) Prior to settlement the purchaser or any person authorised in writing by the purchaser is, upon reasonable notice in writing, entitled to enter the property ***on one occasion prior to the settlement date*** for the purpose of examining the state of repair of the property and any chattels and fixtures which are included in the sale. Where the agreement provides for you to carry out any work on the property or the chattels and fixtures the purchaser has the right on giving notice to confirm that the work has been carried out. ***The Law Society has ruled that 48 hours constitutes reasonable notice.***
- (c) Any chattels included in the sale must be left in the state of repair they were in at the time the agreement is signed (fair wear and tear excepted).

For further information read the paper "***Vendors Beware***".

**DO NOT SIGN AN AGREEMENT  
BEFORE YOU OBTAIN LEGAL ADVICE**

**Beware House Auctions**

If you want to sell your house, ask some hard questions before you agree to an auction.

An auction will cost you more, but the chance of your house selling, or your getting a higher price, may not be improved.

Under a normal sole agency or general listing, the agent pays the cost of advertising out of his/her commission. You pay the agent a percentage of the sale price, and a fixed sum of typically \$300-\$500, plus GST.

Under the auction system you pay the same commission, plus an up-front fee to cover marketing costs.

What you get for this fee are bigger advertisements, usually a larger notice on the property, perhaps more services such as open days, and the service of an auctioneer. What the agent gets is a sole agency for your house, usually 90 days, (30 days before the auction and 60 days after the auction) and the benefit of all the advertisements you have paid for. It is therefore important to satisfy yourself that you will get value for the fee paid for marketing.

Look at a page of real estate auction advertisements in the newspaper. The vendors paid for all those advertisements, but it is probably the agents' names that catch your eye.

Agents like auctions. As an expert brought to New Zealand in 1990 by United Realty stated: "***The ultimate aim must be to have vendors pay all costs***". He added that auctions gave the agency "***a larger impact in the market place through your corporate advertising***".

The sense of urgency auctions can generate among buyers may work against a vendor. If the

reserve price isn't met, the pressure goes on to settle for less - often during the auction itself. This is called "**meeting the market**", but if you're not in a hurry to sell there is no reason to accept a quick offer below what you want.

The television programme "**Location, Location, Location**" followed the experiences of a number of persons who were selling their properties. One of the vendors sold by auction and when the bidding did not meet the reserve, the auction was stopped for several minutes during which time the vendor was subjected to intense pressure to reduce the reserve price. The vendor agreed to reduce the reserve but the price realised for the house was substantially less than the price the vendor mentioned at the beginning of the programme.

At another auction of nine properties one of the vendors wanted to purchase a property listed later in the auction. The first vendor agreed to reduce his/her reserve by \$100,000 because the vendor was persuaded by the agent that the owner of the second property would also reduce his reserve. The first vendor sold his property but the owner of the second property refused to reduce his reserve price. The first vendor then tried to buy back his property but the purchasers were delighted with their purchase - they realised they had purchased at a very good price - and were not interested in selling. The agent who acted for the first vendor had no way of knowing if the second vendor would reduce his price and as a result the first vendor learnt a very bitter lesson about the auction process.

Auctions are not always bad for a vendor. They can be useful if you have an unusual property, or one of historic or regional significance, or you want a quick sale.

If you have not been to an auction go to an auction before you make a decision. If you are likely to get stressed then leave auctions alone.

Auctions are often suggested because your house is difficult to price. It is important however for you to obtain as much information as you can about what is considered to be a fair market price. Ask the agent for a "**written market appraisal**". Do not let the agent trick you into setting the price. If you are asked what price you want tell the agent you have no idea. If your property is difficult to price this will be reflected by a wide difference between the bottom and top prices. Check the newspapers and inspect any comparable properties for sale. In the lead up period to the auction make sure that the agent keeps you informed about all enquiries for your house. On the "**open home**" days the agent will record the names of all persons who inspected your house and ask each person to estimate the price of your house. By talking to each person the agent will determine how serious the person is about buying your house. It is essential for the agent to give you this information so that before you are asked to set the reserve price you have built up a picture of the number of potential buyers for your house and the price they are willing to pay.

On the basis of this information you may find there is a significant difference between what you want for your house and what prospective purchasers are willing to pay. If there is a big difference, by obtaining as much information as you can, you will be in a position to make an informed decision about the reserve price and minimise the pressure from the agent on the auction day if the bidding does not reach the reserve price. Remember that the auction day is only one part of the auction process and the agent still has another 60 days (check the number in the auction agreement) to sell your house.

Like all figures the success rate of auctions can be manipulated to provide the answer you want - it is a question of what figures you select. The following are sales figures we have obtained:

- Pre-auction 16%
- At auction or negotiated immediately after the auction 23%
- After auction 25%

Of the remaining 36% one-half of the vendors received a bid/were presented with an offer. No bids or offers were received for the balance.

If you have an ordinary house and you are in no hurry to sell, we advise you not to sell by auction.

