

Buying or Selling Property after the Canterbury Earthquake

If you are thinking about buying or selling property after the September 4 earthquake, there are some extra things to check on before you commit to the agreement.

The earthquake, and its subsequent aftershocks, significantly affected the property market in Christchurch and Canterbury. There is much uncertainty about damage to land and buildings, what EQC and the insurance companies will cover, and what happens to an EQC claim when a property is sold.

This is a challenging time for everyone involved in a sale and purchase transaction, but taking a few simple precautions should make the transaction less stressful than it might otherwise be.

In the first instance, make sure that you:

- Get legal advice before you sign any contract;
- Find out beforehand what your lender and insurer will require; and
- Allow extra time to obtain any necessary reports.

If you are Buying

You may need to take a few more steps to satisfy your lender and insurance company that the property you want to buy is sound and will provide adequate security for any lending.

Make your offer conditional upon:

- Finance being approved;
- Obtaining Insurance cover on terms satisfactory to you and your lender;
- Full disclosure by the vendor of any damage done by the earthquakes, and what steps have been taken to lodge a claim or attend to any repairs etc;
- Obtaining a satisfactory building inspection report from a qualified building inspector, building surveyor, or engineer;
- Obtaining a satisfactory Land Information Memorandum (see below);
- Obtaining a satisfactory valuation report.

We can assist you with the proper wording for these conditions.

You may be required to provide a geotechnical report on the property which is satisfactory to your lender or the insurance company.

If you are Selling

You may like to assist prospective purchasers by:

- Providing a building inspection report from a qualified building surveyor or other professional;
- Providing an up to date Land Information Memorandum;
- Providing details about any EQC or other insurance claim made in respect of the property;
- Checking with your own insurer about whether they would be prepared to assign or transfer your insurance policy to an approved purchaser.

If you are undertaking any repairs to the property, arrange for them to be done by a qualified builder.

DO NOT cancel your existing insurance policy until the money is safely in the bank after settlement.

Finance Requirements

All lending institutions are lending, but it is likely that they will want you to provide them with some extra information concerning the property you are offering them as security. These will include:

- A building inspection report from a qualified building surveyor or building inspector; and
- A geotechnical or other engineering report, if the land or the building has suffered damage.

There will be additional costs associated with obtaining these reports and you should take these costs into account when considering what you can afford to pay for the property you are looking at.

Insurance Requirements and EQC Claims

Insurers are once again providing cover but may require you to provide certain additional reports, such as the building inspection reports and geotechnical reports referred to above. This will be particularly so where the property has suffered damage or is within those areas of Christchurch or Canterbury which have suffered serious damage, or the purchase price payable for the property is in excess of \$1,000,000.00.

Each insurer will have different criteria for providing cover on new risks and you should check with your own insurer to find out exactly what they will require. Some may require a declaration that no damage has been done to the property.

In respect of EQC claims, our view is that all property owners should lodge a claim, regardless of the level of damage, to protect their position. For example, ground settlement could occur some time after the earthquake, and cause damage to your property.

It is also possible, if there is an aftershock after 3 December 2010 which damages your property, and you haven't lodged an initial claim for the 4 September earthquake, that you may not be able to make a claim.

At the moment, there has been no clear direction from EQC as to how they distinguish an aftershock from a new earthquake, so the cautious approach would be to lodge a claim, even if the property appears undamaged at this stage.

We would also discourage property owners from negotiating the settlement of an EQC claim without a physical inspection by either an EQC assessor or an independent expert, partly because there may be damage which goes unnoticed by the untrained eye and partly because you are more likely to be able to claim for future damage suffered if a physical inspection has been made.

If you are purchasing a property in respect of which an EQC claim has been made, we would recommend that you take an assignment of the Vendor's interest in the claim. We can assist with this.

Land Information Memoranda

Following the earthquake, Councils in the Canterbury region have been inundated with information relevant to LIM reports. The earthquake resulted in significant changes in ground and building conditions.

We understand that where Councils have issued notices (the so called Traffic-Light notices), there may be information on the physical effects of the earthquake on the land, which Council has been notified of but which it has not yet been transferred into a form suitable for inclusion on the LIM. It is the responsibility of the owner of the property to update the Council about what has been done to comply with or satisfy the requirements of any notice issued in respect of the property.

Further, information relating to EQC claims will be not recorded on a LIM report, as EQC do not share information they have about a particular property with the local Councils.

The LIM report therefore should not be seen as a substitute for a purchaser undertaking what checks they consider appropriate, and we have referred to some of those checks above. Councils are also advising people seeking additional information to that currently held within the LIM report to seek advice from an independent technical expert.

Summary

Whilst the property landscape is significantly different following the earthquake, involving your professional advisers early in the process and taking the extra steps recommended above, will assist both buyers and sellers to achieve a positive result. We can help you to undertake the necessary checks and evaluate the results to ensure that you make the right decisions about purchasing a property.