



Property Speaking

DG LAW LIMITED 13 Queens Road, PO Box 14081, DX EP 80503 Panmure 1741, Auckland
Phone: (09) 574 5316 | Fax: (09) 570 9529 | A/hours: 021 486 164, 021 527 311 or 021 527 301 | mail@dglaw.co.nz | www.dglaw.co.nz

Welcome to the Winter-Spring issue of *Property Speaking*. We hope you find the articles both interesting and useful.

If you would like to talk further about any of the topics covered in this newsletter, please don't hesitate to be in touch with us; our contact details are above.

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The next issue of Property Speaking will be published in November 2013.*

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Copyright, NZ LAW Limited, 2013. Editor: Adrienne Olsen. E-mail: adrienne@adroite.co.nz. Ph: 029 286 3650.

Are You Covered?

The Sum Insured requirements: what does it mean for you?

Insurance companies now require their policy holders to nominate a sum as the maximum amount they will receive in the event of making an insurance claim to rebuild their home. This 'sum insured' policy shifts the risk of the rebuilding cost being greater than the insured value from the insurers to the policy holder. This article looks at this change and provides guidance on how to ensure your home's Sum Insured value is sufficient to meet the cost of a rebuild.

In the era BC (before Christchurch earthquakes) homes were insured for 'full replacement' value. Your insurance premium was calculated per square metre by your insurance company based on their estimate of the cost to rebuild your home. Since the Christchurch earthquakes, insurance companies have found that these calculations often do not accurately reflect rebuild costs. As a result, insurers are phasing out 'full replacement' value insurance policies to 'sum insured' as a customer's policy comes up for renewal. This move will cap the amount your insurance company will be required to pay in the case of rebuilding your home.

Assessing the cost of a rebuild

Two issues arise in nominating an amount as the Sum Insured value of your home:

1. You insure your home for a sum which is less than the cost to rebuild. This will result in you either having to pay the extra costs to rebuild your home, or the rebuild will not be to the same specifications as your current home, or
2. You insure your home for a sum more than the cost of the rebuild. This means that your insurance company will meet the full rebuilding costs, but your insurance premiums are likely to be higher than necessary.

With these two issues in mind careful consideration should be made before specifying a sum as your replacement cost. It's important that you do some in-depth research in order for you to nominate a sum that accurately reflects the costs of rebuilding.

How do you calculate the rebuilding cost? There are a number of online do-it-yourself calculators, and your property's Rating Valuation may be another good place to start. These options, however, have limitations. The online calculators may not accurately take into account all features of your home and Rating Valuations do not indicate rebuilding costs or current market values.

You could consider obtaining your own estimates, such as a valuation for insurance purposes, quantity surveyor's report or quotes from various trades people. A valuation report for insurance purposes, quantity survey or obtaining building quotes will help assess the cost of rebuilding and may therefore provide a better indication when arriving at a sum insured value.

When deciding how to calculate your Sum Insured value you should also consider other likely costs. What about private drainage and housing connections such as gas, phone and internet? You need to take into account the costs of demolition and replacement of driveways, garages and landscaping. In the event of catastrophic land damage it may not just be your home that requires rebuilding. These can be costs that are often overlooked.

You have specified your Sum Insured value: is that the end?

Unfortunately it's not the end of the road. It is important that the sum you have nominated continues to reflect likely rebuilding costs. Costs associated with rebuilding can change over time and vary widely depending on the cost of building materials, workmanship, obtaining council consents, and the cost of replicating any special features of your home such as heritage windows. We also recommend that you update your policy regularly in order to keep up with inflation. If you decide to renovate your home you should also look to add the cost of the renovations to your Sum Insured value.

At the end of the day the Sum Insured assessment is a cost-benefit analysis. The 'conservative approach' would be to err on the side of over-specifying. The 'risk approach' would be to trim the Sum Insured as much as possible and reduce your premium.

Insurance has come into real focus since the Christchurch earthquakes with many people ending up much worse off than they would ever have envisaged. Scrutiny of insurance policies and their terms is essential to ensure you don't come off second-best. ■

Building Natural Capital

Legal protection for natural features on private land

Many private land owners have outstanding natural habitats or landscapes on their land and want to preserve that for future generations. Others engage in projects – such as restoring wetlands and planting native vegetation - to create or restore these areas. Land owners can use land covenants and other legal measures to help protect natural heritage for the future.

Legal mechanisms can be used to help protect natural, scenic, scientific, historical, spiritual and cultural features on private land. Examples are forest and bush areas, wetlands, tussock grasslands, coastlines, waterways, cultural and historical sites, and threatened species habitats.

Why put in place legal protection?

There are many good reasons to engage in environmental and biodiversity projects on your land. Adding legal protection – such as a land covenant to protect the area - can help to ensure your efforts aren't undermined by future owners. Putting legal protections in place can also entitle you to rates relief and boost your chances of getting funding for your project.

Legal protection for natural areas is often required as a condition of obtaining subdivision consent.

So what are the options for you to protect natural areas?¹

Land covenants

A land covenant is a legal agreement between the land owner and another party such as, for example, a local authority, the Department of the Conservation or the QEII National Trust. A land covenant can be entered into for the purposes of providing long-term legal protection to the natural, cultural or other values of a site. The land owner keeps ownership of their land, but the covenant is registered against the title, and it binds current and future owners. The area covered by the covenant usually needs to be defined on a survey plan.

The land covenant will contain agreed rules for the protection and management of the site. These may include restrictions on use of the land (such as preventing the erection of structures, lighting of fires or vegetation removal), requirements to fence and keep out stock, and other responsibilities. There's usually on-going monitoring of the site. As the land owner you can have the option whether to allow public access to the land.

Different types of land covenant include:

- » Open space covenants with QEII National Trust (3,659 covenants covering 99,783ha had been registered as at 30 June 2012²)
- » Conservation covenants with local authorities, the Department of Conservation or other authorised bodies under the Reserves Act or Conservation Act, and
- » Ngā Whenua Rahui kawenata (for Māori land or Crown land held under a Crown lease by Māori).

Covenants may be for a fixed period or in perpetuity. Ngā Whenua Rahui kawenata may be subject to review at agreed intervals of not less than 25 years.

Other legal mechanisms

If you don't want to establish a land covenant, there are a range of other mechanisms for protecting natural areas on your private land:

- » Land can be declared as protected private land if it meets specified criteria under the Reserves Act.
- » Management agreements for conservation purposes can be entered into with the Department of Conservation. These don't bind future owners.
- » Māori reservations can be established under Te Ture Whenua Māori Act 1993 (Māori Land Act 1993).

Land can also be sold, exchanged or gifted for conservation purposes.

¹ This article focuses on protection of natural areas. Other protection mechanisms exist specifically for historic and cultural sites, such as protection under the Historic Places Act.

² Annual Report 2012 Queen Elizabeth the Second National Trust, p 6.

Property Briefs

Buying a property through a mortgagee sale: maybe a bargain, but also has risk

A mortgagee sale occurs as a result of a home owner not meeting their obligations under the terms of their mortgage. In this instance, the mortgagee lender (usually a bank) exercises its power of sale by selling the property to recover its debt.

Mortgagee sales often provide an opportunity for a buyer to 'grab a bargain'. There are, however, significant risks attached to buying at a mortgagee sale; many potential buyers aren't aware of these risks. The Sale and Purchase Agreement used in a mortgagee sale differs from a standard agreement. You need to know that chattels, such as the stove, light fittings, curtains, carpet and so on aren't included in the sale price. This means that the previous owner could remove some or all of the chattels from the property. There have been situations where buyers have been left with little more than an empty shell after the previous owners removed all the walls, doors and windows from the property! Also, the mortgagee selling the property won't guarantee that on settlement the property will be vacated by any unlawful occupants (usually the mortgagor/previous owners). If the occupants refuse to leave the property it will be your responsibility to have them removed; you'll need to get, and enforce, a trespass notice or a possession order.

The risk of damage caused to the property passes to you, as purchaser, when the Agreement becomes unconditional. You should arrange for the property to be insured from the date the Agreement becomes unconditional. This is often difficult as insurers are wary of insuring a property of which you don't have legal possession.

Unfortunately, many property buyers don't ask for legal advice before they sign an Agreement for Sale and Purchase. Remember that a real estate agent acts for the vendor. Always get legal advice before you sign an Agreement for Sale and Purchase, to minimise costly and stressful surprises later. ■

Authority and Instruction Form (A & I Form)

Land Transfer regulations require an A & I Form to be signed by you (as either vendor, or purchaser); the Form gives your lawyer the authority to complete the sale or purchase transaction by electronic registration. The A & I Form confirms your identity, capacity and authenticity as a party to the transaction; this is required to ensure the integrity of the land register.

Current New Zealand Government-issued photo identification, such as your driver's licence or passport, is required as part of the Form and must show your name as you wish it to be recorded on the certificate of title (for a purchase) or as it's currently shown on the certificate of title (for a sale or refinancing). If your name differs on your Government-issued identification a statutory declaration must be prepared and witnessed by a lawyer to clarify that you are the same person as shown in your ID and/or supporting documents provided, such as a marriage certificate to evidence the name change.

The Form also has very strict signing and witnessing requirements. If you cannot come into your lawyer's office, you will have to track down a Justice of the Peace, a Notary Public or find another lawyer for their witnessing capabilities, and you may find yourself paying additional fees. ■

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Costs and funding

In addition to land management costs (such as fencing and pest control), costs of establishing legal protection may also include application fees, survey, legal and registration costs.

A number of agencies and organisations offer funding, advice and assistance to private land owners wanting to restore and protect natural heritage and indigenous ecosystems. These include the QEII National Trust, the Department of Conservation and Ministry for the Environment (which administer various funds), Ngā Whenua Rahui and local authorities. Rates relief may also be available.

If you're interested in knowing more about protecting natural features on your land, get some advice on your options and contact us or one of the agencies listed above. ■