

## **Questions from the Southshore residential red zone workshop**

26 July 2012

### ***Legal - Community Law Canterbury***

#### **Are some lawyers better equipped?**

Lawyers are the same as any other service provider in that different practitioners have different areas of speciality and experience. Think of legal advice in the same way as any other service you regularly obtain - for instance, if you were looking for food you wouldn't ask your butcher to bake you a cake even though the butcher and the baker both make food. Similarly, a criminal law specialist may not have the same level of experience to deal with an insurance matter as a property lawyer.

#### **Do you choose your own lawyer? And when? What questions should I be asking them?**

If an offer from EQC or your insurer recommends or requires you to seek legal advice then you should contact a lawyer for advice as soon as practicable.

When you choose a lawyer you should make sure that they are knowledgeable in the areas of law that relate to your legal issue. Lawyers are bound by an ethical duty to refuse clients with legal issues that are beyond their level of skill or experience. Common areas of speciality to look for are conveyancing, land law, insurance law, contract law, public law and property law.

If you know a lawyer or lawyers who you think are capable of dealing with your issue you should contact them and ask them about their level of experience with EQC and insurance matters, their hourly rate and how much they think your matter will cost you.

If you do not have a lawyer then you can contact the Canterbury-Westland District Law Society on 03-366-9184 or Community Law Canterbury legal information line 0508-226529 to ask for a referral to a lawyer.

#### **Next step in the process – what further information do we need to make a decision?**

Your lawyer is in the best position to advise you on what information you need to make a decision. Every situation is different so it is important, and in some cases required, for your situation to be explained to you by a professional so that you may make an informed decision. An informed decision includes the benefits and burdens of any decision you make - a lawyer will be able to clearly point out the risks and rewards of the options available to you.

Your lawyer will be able to explain to you any further information you require and help you arrange any additional reports or inspections that are needed.

### **Fee frame for lawyers?**

Lawyers are similar to any other service provider and their fees may vary. With this in mind you should ask about the lawyer's level of experience and speciality and the basis on which their fee will be charged. You are entitled to ask for an estimate of the fee. Remember, as with any service provider more expensive does not necessarily mean more experienced and less expensive does not necessarily mean less experienced.

### **Is there CERA support to pay for lawyers' fees?**

When you accept the offer, the Crown will pay 50 per cent of your legal costs, up to a maximum contribution of \$750 plus GST for Option 1 and \$500 plus GST for Option 2. This amount will be paid directly to your lawyer on settlement. Further information is available in the supporting information provided by CERA. There are also other grants available from organisations such as the Red Cross that may help offset other earthquake related legal costs.

### **What happens if EQC and insurance cannot agree? Cap vs. undercap? Repair vs. rebuild?**

Generally speaking if there is disagreement between EQC and your insurer then that is a matter for them to determine by gathering more information and negotiating between themselves. You should communicate your point of view and concerns to EQC and your insurer to ensure they take your circumstances into account.

### **What do I do about chattels and fixtures?**

Generally speaking, items that are attached to, or part of the property are *fixtures* and items that are separate from the land/property are *chattels*.

Fixtures should not be removed from the property without the consent of your insurer, EQC and/or CERA depending on which option of the Crown offer you are accepting.

Generally, you may remove chattels unless you have made an insurance claim on them with EQC or your insurer, in which case it is important that you check with them first.

If you are unsure about what you can remove from your property, seek advice from a lawyer.

### **When do we stop paying insurance on red zone property if we accept a Crown offer?**

You can stop paying insurance on a red zone property once you are no longer the owner of the property, that is, once you have settled the sale of your property with the Crown.

**Does the government have an obligation to help people to challenge insurance/EQC decisions?**

There is no definitive obligation on the Government to provide legal assistance to challenge decisions by EQC or your insurer. There are organisations who may be able to assist you such as Community Law Canterbury. The Government is currently considering different options to help people with their EQC and insurance matters.

**Can my insurance company retract an offer made to me?**

Under the law of contract, your insurance company can generally retract an offer unless it has been properly accepted by you, which is usually by way of signing a deed of settlement. However, every situation (and insurance policy) is different so if your insurer has retracted an offer of settlement then you should seek advice from a lawyer.

**Ownership of shared driveways/right of ways, when some parts are green and some are red?**

If this situation applies to you then it is a good idea to obtain your certificate of title and survey plan from Land Information New Zealand, your insurance policy and any other documentation related to the situation. With this information you should seek advice from a lawyer.