

Legal Insight

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Legal Insight is a publication on topical legal matters for Taranaki dairy farmers

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If you would prefer to receive Legal Insight by email, please let me know.

Why is this happening? Perhaps it is the fact that Taranaki land is very desirable, we have a good climate and the whole Taranaki area is buzzing with development.

The demand for lifestyle blocks is ever increasing and this is perhaps allowing farmers to pay more for neighbouring blocks of land that have houses on them that can subsequently be subdivided off and sold. The opportunity to subdivide has become an easier process these days.

Types of Ways of Selling

When selling a farm how should you sell it? Should you sell it by way of tender, auction or list it with a price? Should you market it yourself or through an agent? These are questions that can vary depending on where your property is and how desirable it is and perhaps based on demand from neighbouring farmers.

Sometimes I find you can do yourself an injustice by trying to market the property yourself without exposing it to the wider market via a good rural land agent.

There are some really good experienced land agents out there who know the best way of marketing to achieve the best price for you.

Auction

An auction is a sale process that has been around for many years. The word auction is derived from the Latin word Augere which means "to increase" – often being the reason that vendors elect an auction as a means of sale.

In New Zealand there are a number of Acts that govern the rules and regulations relating to auctions. These Acts include the Fair Trading Act 1986, The Property Law Act 1952, The Sale of Goods Act 1908 and The Auctioneers Act 1928.

From the Office

WOW! There have been some awesome prices for dairy farms sold this season in Taranaki with some prices in the vicinity of \$40.00 per kg upwards of milk solids for farms in sought after locations.

One has to wonder at the sustainability of the prices being paid if you relate it back to the current pay-out of (hopefully) \$4.00 per kg of milk solids from Fonterra this season and of no immediate increase indicated.

Over the past 10 years I have had clients who have been waiting for those prices to drop or steady but each year we seem to have a further record set in the price paid for dairy farms.

The Property Law Act 1952

The Property Law Act 1952 provides that Section 59 of The Sale of Goods Act applies to auctions of every kind of property.

The Sale of Goods Act 1908

Section 59 of the Sale of Goods Act provides as follows:-

- (a) Where property is put up for sale in Lots each Lot is deemed to be a separate contract of sale.
- (b) The sale by auction is always complete when the auctioneer announces its completion by the fall of the hammer.
- (c) Until such announcement by the auctioneer any bidder may retract his bid.
- (d) The vendor may reserve the right to bid at the auction. Such right must be notified and this is usually done by the auctioneer.
- (e) The sale by auction may be notified to be subject to a reserve price.

The Auctioneers Act 1928

The Auctioneers Act 1928 requires all auctioneers to be licensed.

The Fair Trading Act 1986

The Fair Trading Act 1986 provides that no person shall, in trade, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

The Fair Trading Act provides that no person can make in relation to an auction a false or misleading misrepresentation that a person has any sponsorship, approval, endorsement or affiliation or make a false or misleading representation concerning the nature of the interest in land, the price payable for land, the location of the land, the characteristics of the land, the use to which the land is capable of being put or may lawfully be put, or the existence or availability of facilities associated with the land.

The majority of auctions proceed with a reserve price, it is not common for an auction to proceed without a reserve. It is important to note that an auctioneer at an auction without a reserve will be in breach of contract to the highest bidder if the auctioneer withdraws the property from sale.

Sale by Tender

The calling of tenders invites proposed purchasers to submit an offer and if the person who seeks the tender accepts that offer then a contract is concluded.

A tender can be a good way of getting the best price by vendors out of a proposed purchase.

All interested parties have to submit their tender by a certain date and the vendor may not be bound to accept any of the tenders.

The vendor does not have to disclose any of the tenders to another tenderer and in some cases there can be quite a difference between the top tender and the next tender down.



Forestry Rights

A forestry right grow and harvest trees from the servient tenement (ie land over which right is taken). Forestry rights are created by a Transfer registrable at Land Information New Zealand under the Land Transfer Act 1954. The key features of forestry rights are:-

- (a) The person who has the benefit of the right does not obtain possession of the land.
- (b) The term of the forestry right can be definite or indefinite.
- (c) The forestry right can be granted to the registered proprietor or any other party.
- (d) The forestry right is capable of being mortgaged.

Forestry rights are used for retirement investment or for future generations in which planting is a planned set up for retirement for another generation.

Joint Venture Forestry Agreements

The owner of the land and another party form a joint venture in which both benefit from the joint venture.

Important items for forestry rights are that there is a clear aerial photograph of the area available for identification of access to the forest. The forestry right should state what the holder could do on the

land ie: whether the land can be grazed etc, include indemnities for risk for both parties, stipulate the liability for obtaining and complying with consent.

The final split of reserve will depend on what each party will introduce to the Venture. If you need assistance we can provide you with guidance on what should be addressed.

This issue's recipe – nice and quick and easy

Batter Patties

Ingredients

1 cup flour	1 teaspoon baking powder
1 teaspoon salt	salt and pepper to taste
1 cup milk	1 egg
750 grams mince	1 onion, finely chopped
1 cup tasty cheese, grated	½ cup tomato sauce

Method

Make a batter by mixing in a bowl the flour, baking powder, salt and egg beaten with milk. Mix until smooth. Add remaining ingredients.

Heat oil in a frying pan and drop tablespoonful lots into it. Cook approximately 4-5 minutes on each side. Drain on paper and serve hot or cold.

I recently in an old recipe book of mine found some quotes which I thought were rather interesting and would like to share with you:

“You might be on the right track but you will be run over if you just sit there.”
“Of all the things you wear, your expression is the most important.”
“We'd worry less what others think of us if we realised how seldom they do.”
“Gossip is due to the fact that there are more talkers than thinkers.”



I hope you have enjoyed this issue of Legal Insight – some news on the office front, Melanie Goodchap, our Personal Assistant, recently married Graeme Cameron so when you next speak to her she will be Mrs Cameron. Melanie had an awesome sunny day for her wedding and I look forward to having her back at work.

We are holding a Seminar on Subdivisions on 3 May 2006. Please contact me if you wish to attend on 758 0884.