

Partner

Stewart Lloyd Germann
B.Com, LLB, FCIS, MNZIM, Notary Public

Partner

Clive Frederick Neifeld
B.Com, LLB

Ground Floor, Princes Court
2 Princes Street, PO Box 1542
Auckland, New Zealand

Telephone 0-9-308 9925
Facsimile 0-9-308 9922
Email stewart@germann.co.nz
Web www.germann.co.nz

Solicitor's Approval Clauses – Beware!

The intention of a solicitor's approval clause is not simply to allow a party to cancel a contract they have signed if he/she decides they no longer wish to proceed with it.

Take, for example, the situation where a party decides to buy or sell a property (or business) without their solicitor's advice and signs an Agreement for Sale and Purchase which includes a condition that the transaction is conditional on their solicitor's approval. After signature of the Agreement by all requisite persons the party having the benefit of the clause "*changes its mind*" and does not wish to proceed with the transaction. He goes to his solicitor who has not seen the Agreement earlier and instructs the solicitor to write to the other party cancelling the Agreement on the basis that the solicitor's approval condition has not been fulfilled. The other party can object to cancellation if no reason is given. Also, if the reasons given do not relate to the legal aspects of the transaction, that is to the conveyance of the property, the attempted cancellation could be invalid attempting to justify cancellation for concerns regarding GST or storage of furniture and effects.

The Courts have held that a solicitor is only entitled to refuse approval of an agreement if there are genuine legal objections or impediments to the bargain the parties have made – this was held in a judgment of the High Court on 4 August 2008 in the case of *Reynish v Joyce* confirming the principle as set out in *Dashwood Vineyards Limited v Hammond* (21 July 2000).

It is unfortunate that too many people appear to think that a solicitor's approval clause is the same thing as taking the contract to their lawyer **before** signing it. This is wrong. If you are not entirely sure that you want to "*do the deal*" then don't sign the agreement. If you want time to think about the transaction after signing the agreement then you must have a specific clause drafted to cover this.

The moral of this story is to get your solicitor to approve the "*offer*" before you sign it. Also, you must tell your solicitor your concerns and requirements so that an appropriate clause(s) can be drafted and included in the offer/agreement.

For further advice please contact Clive Neifeld or Stewart Germann at SGL.