

Lawyers challenge traditional real estate model

Report by Campbell MacDiarmid*

Since 2008, a handful of lawyers have taken up the opportunity afforded by the Lawyers and Conveyancers Act 2006 to sell real estate, but a new service aims to get every property lawyer in New Zealand selling houses.

Current New Zealand Law Society Registry data shows that nationally 28 lawyers spend over half their time selling real estate, 19 of whom are in the Auckland area. Auckland lawyer Mike Tolhurst, director of newly formed company ACRES, says it offers the tools to lawyers to enable them to sell real estate. "ACRES is a complete real estate system, we're a marketing system."

The ACRES service offers marketing programmes to clients and real estate professionals who will be contracted by lawyers to help with marketing, pricing and organising open homes. "The lawyer will decide with the client what the fee will be based on the normal principles. The lawyer will decide on the split between the real estate professional. That is up to those three people, ACRES gets no money out of that. ACRES gets a small mark up on each of the services that is provided on the website," Mr Tolhurst says.

Mr Tolhurst believes ACRES will be attractive to clients as it will offer substantially lower fees and greater legal protection than using a real estate agent. "We aren't able to charge a commission based on the value of the property. So the fee we will charge to clients will be substantially cheaper."

"ACRES' view is that it is unfair to consumers to charge commission based on the value of the property. There is as much work involved in selling a \$500,000.00 property

as there is in selling a \$2 million property. Based on the principles of quantum meruit there can be no justification whatsoever for taking \$15,000.00 plus out of the sale price of a \$500,000.00 property but then taking \$50,000.00 plus out of a \$2 million property... In most cases they will be paying well under half [with ACRES] than what they pay now to a real estate agent."

"The client will be dealing with a lawyer from the beginning, so any legal issues will be identified at that point and they will get any legal advice from the lawyer. The lawyer will be there for the contract with the purchaser. The purchaser will be better protected as well. The lawyer will not be able to act for the purchaser as there will be a conflict of interest because they are in a negotiation situation. Before they sign the agreement the purchaser will be sent away to their lawyer to get legal advice. At the moment the agent sort of waves the back page of the agreement at the purchaser which gives all those warnings about seeing a lawyer first and says 'you should read this' but of course they never actually send the purchaser away to see the lawyer to get the advice before they sign."

Mr Tolhurst says that although he thinks the model is a good one, there are two major hurdles to get over. "The first major hurdle is the public believing that lawyers can sell real estate. Getting the message out there to the public will be one challenge... It's going to take a while to build up momentum."

"Of course the second major hurdle, which you wouldn't have thought would be a hurdle at all, is convincing lawyers themselves. A lot were hurt by Real. We have to try

to change their mindset which is not going to be an easy task."

"It's totally different from the Real scheme. The Real scheme set up a real estate company, throughout New Zealand – all the bricks and mortar – and had real estate agents aligned to the REINZ who were charging commission on exactly the same basis that real estate agents charge now. From memory there might have been a slight discount on the percentage that was charged but it wasn't much. It was taking on real estate agents at their own game, so it was totally different [from ACRES]. First, we're not setting up a new real estate company because we've got the lawyers' offices; you've got your branch network already there. Secondly, we aren't able to charge a commission based on the value of the property so the fee we will charge to clients will be substantially cheaper than what Real was envisaging charging. Thirdly, it's the lawyers who stand to benefit; at the end of the day we didn't know what we were getting out of Real."

ACRES is currently available in Auckland, but Mr Tolhurst says the business hopes to expand nationally. "We are looking to create something that people will instantly think of in the three choices they have: they can go to a traditional real estate company and pay a fat commission; do it themselves; or use us, have legal protection all the way through and pay a fair and reasonable fee."

"We believe there is an opportunity to take a significant market share for lawyers."

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