

Section 27 B What is it?

When looking at properties in the Far North, sooner or later you as a prospective purchaser are likely to stumble across the phrase **"27B"**

When asking what this means, you may be told that it has something to do with the State Owned Enterprises Act and the Waitangi Tribunal. Suddenly the property you thought was made for you start to look decidedly unappealing.

This flyer is designed to briefly explain what Section 27 B of the SOE Act (**"27 B"**) says and what implications it has for the buyer or owner of land subject to it.

In essence s.27B states that;

Where the Waitangi Tribunal has recommended the return of Maori ownership of land transferred to a State Owned Enterprise, that land shall be resumed by the Crown and returned to Maori ownership.

How 27Bs came about:

- ★ Back in 1986 the Crown began to transfer land to SOEs. The SOEs were then able to sell the land to private interests. Maori saw these sales as diminishing the available pool of Crown land for the settlement of legitimate Treaty grievances.
- ★ In 1987 the NZ Maori Council obtained a declaration from the Court of Appeal that such transfers of land to SOEs, without a system in place to consider whether the transfers were contrary to the principles of the Treaty of Waitangi, were unlawful.
- ★ As a result, the Crown established a system whereby land transferred to an SOE would have a memorial on its title. This memorial is what we now call s.27B. it serves as notice to any prospective buyer of the land that the Waitangi Tribunal could make a recommendation to the Crown that it resume the land and return it to Maori ownership as a way of settling a claim to the Tribunal. This can be done without hearing of the current owner and regardless of any changes in land condition.

- ★ The Tribunal may recommend other forms of relief if the claim is well founded rather than ordering the return of the land.
- ★ Where an order for the return of the land is made, the landowners are to be compensated under the Public Works Act.

It is important to note that there is a process available whereby landowners may apply to the Waitangi Tribunal for the removal of s.27B memorials from their land.

However, and more importantly, while it is clear that under these provisions the Crown is obligated to transfer ownership back to Maori in these circumstances, this has never yet been done. In fact, every indication from the Court to date shows that the Court would be extremely reluctant to do this. In several decisions the Judge has made comments to the effect that the results of this would be inconsistent with the overall principles of the Treaty as the Maori claimant would then bear any community ostracism and resultant disharmony arising from the dispossession of the third party by the Government. The Tribunal itself has noted that the powers contained in the relevant legislation have not yet been tested or accepted by either the Tribunal or the Courts.

What does all this mean?

- ★ If the land is subject to a s.27B memorial the Waitangi Tribunal **may** make a recommendation to the Government that the land be returned to Maori ownership; but
- ★ It has never been done before; and
- ★ In view of judgments to date it appears highly unlikely that it will be done in the future.

As a buyer, it is really just one more thing for you to take in to consideration and weigh on the scales when making a decision whether or not to purchase. If you really want the property and everything else is right then **"go for it"**

In the extremely unlikely event that the property is subsequently returned to Maori ownership you would receive compensation.