



## PRACTICE BRIEFING:

# PROPERTY TRANSACTIONS WITH POTENTIAL METHAMPHETAMINE CONTAMINATION

## INTRODUCTION

*Methamphetamine, Meth, Crystal Meth, or “P” as it is sometimes known, is a Class A controlled drug under the Misuse of Drugs Act 1975. Manufacturing methamphetamine, or “cooking” involves combining and releasing a range of highly corrosive and dangerous chemicals. Police estimate that producing one kilogram of methamphetamine creates at least six kilograms of toxic by-products. This toxic waste can end up contaminating a home. The Ministry of Health suggests that total concentrations below 0.5ug/100cm<sup>3</sup> are “acceptable” for post-remediation pre-occupancy, yet there is no agreed “safe” threshold for methamphetamine residue in a home.*

*As the problem of clandestine methamphetamine laboratories or “P-labs” continues to rise, lawyers and their clients need to be aware of the risks and tell-tale signs to look for at a property. Through a well-informed lawyer, clients can avoid costly mistakes in purchasing a property contaminated by this most dangerous of drugs.*

*This Practice Briefing aims to give helpful guidance to lawyers on best practices for property transactions involving houses that are potentially contaminated. It is not intended to be an industry standard, nor does it provide a defence to misconduct or improper professional practice.*

## METHAMPHETAMINE PREVALENCE

Any lawyer dealing in property transactions needs to be aware of the increasing risk to clients of methamphetamine contamination. The remediation of a methamphetamine-contaminated home is not normally covered by insurers.

Contamination in state homes or houses used for rental purposes is particularly prevalent in New Zealand. In 2014 there were 101 state houses contaminated with methamphetamine out of 196 that were tested by Housing New Zealand. Typically 75% of P-labs uncovered by police have been in rental houses. Housing New Zealand advises that it can cost between \$600 and \$1800 to test a home for methamphetamine residue and up to \$30,000 to decontaminate a property.

In some severe cases of contamination the only option is to demolish the property. In 2014 alone, taxpayers contributed some \$1.3 million in cleaning up methamphetamine-contaminated state houses. It is estimated that police currently only uncover 5 to 10% of the P-labs in operation each year.

## “P-LABS” - WHAT TO LOOK FOR AND HOW TO HANDLE THE SITUATION

There are some general signs a client can investigate that may suggest a risk of past P-lab activity. These include:

- The property being used, or having a history as a rental property.
- History of the property having had frequent visitors or access denied to neighbours.
- History of the property having the windows and curtains drawn throughout the day.
- Installation of surveillance equipment and “high spec” locks and security devices.
- Excessive and/or high fencing.
- Sickly sweet or solvent smells permeating the property.
- Highly discoloured ceilings and/or benches – especially those in the kitchen, bathroom and garage.
- Staining of concrete around the outside of drain covers.
- Unusual wiring/plumbing fixtures, installation of fans/additional ventilation systems extraordinary for a residential home.
- Corroded rubber and/or plastic around taps and stoves.

## WHAT SHOULD YOU DO?

It is important that clients are made them aware of these risks so they can ask the right questions of the vendor.

If methamphetamine contamination or prior activity is suspected and a P-lab test is to be conducted, a due diligence clause ought to be inserted into the Agreement for Sale and Purchase of Real Estate.

This could advise that the agreement is conditional on the vendor carrying out methamphetamine testing at the property. It may even be important to state that a copy of the report must be produced and, if contamination levels are found, the vendor is to remedy any issues at their cost prior to possession.

## HOW TO HELP AND INFORM YOUR CLIENTS

If a conditional agreement is put in place, clients should be aware of their contractual obligations. Past or prospective landlords need to realise that they have a statutory obligation for correcting chemical hazards on their property (Health Act 1956 and section 35 of the Building Act 2004). This obligation also extends to property managers and agents.

Purchasers should also be made aware that while a vendor must declare as part of the agreement that they have not received any notice, requirement or have knowledge of any outstanding order from a local government authority or other statutory body (pursuant to the Resource Management Act 1991), including any tenant of the property or from any other party in relation to the property, a vendor warrant does not extend to the work of any previous owners. If in doubt, test.

However, if a property has been tested and identified as having past contamination, councils must record this on the LIM (Land Information Memorandum) report. Once this information is placed on a LIM this will not be removed, even if remedial work has been completed.

Additionally, a real estate agent must disclose any known information about contamination and may be prosecuted if they knowingly market a property that has been used for methamphetamine manufacture and not decontaminated. However, if an agent discloses any known information about prior contamination, there are no legal constraints on selling the property.

Unfortunately, the problem of methamphetamine will continue to be an issue for clients engaging in selling or purchasing a property. Through engaging a lawyer who is up-to-date with the risks P-labs pose, clients can avoid costly errors.