

## Methamphetamine Contamination

It's a fairly well known fact that the drug Methamphetamine (also referred to as "P", "Meth" or "Crystal Meth") is a huge problem in New Zealand. The consequences are serious - and it's a sad reality that they span across personal, social, health and economic realms. As lawyers who help prospective home buyers through the purchasing process, we're becoming more and more conscious of one consequence in particular: There are now numerous properties on the market that show varying levels of toxic contamination resulting from Methamphetamine either being used or manufactured on that property.

You may be wondering if this is really such a big deal. There can't be that many contaminated houses out there, right? We hate to bear bad news, but unfortunately, it seems like, yes, there may be a significant number of them. Housing New Zealand's most up-to-date data shows 688 of its properties tested positive for Methamphetamine between June 2015 and May 2016.

In our view, this issue is significant enough to be considered a risk for potential home buyers. This risk and our experience advising clients has inspired the preparation of this brief guide, designed to offer some background information on Methamphetamine contamination in homes and how this might affect you if you're in the market to buy a new house. We'll also briefly look at the rights and obligations of landlords and tenants when it comes to contamination in rental properties.

### Methamphetamine Contamination in New Zealand Homes - It's a thing

The New Zealand Police last year described the demand for Methamphetamine in New Zealand as "huge". In order to meet this demand, Methamphetamine is either imported illegally into the country or it is manufactured in makeshift laboratories dotted around New Zealand. The prevalence of the latter source was demonstrated way back in 2003 when Investigate Magazine wrote that:

*"An essential guide for the more sophisticated cooks, named 'Secrets of Methamphetamine Manufacture (3rd ed.) by Uncle Fester, is readily available on the Internet and even through bookshops like Amazon. In fact, an illustration of just how prevalent drug manufacturing has become in New Zealand can be seen in the fact that Uncle Fester's Secrets made the top 20 list of books supplied by Amazon to New Zealand bookbuyers last year. Another "cookbook" went as high as number nine."*

These days, Methamphetamine labs are still being uncovered with some frequency. The illegal manufacture of the drug is a dangerous process and, according to The Ministry of Health, involves toxic chemical compounds becoming airborne and settling out around the home, depositing onto walls, ceilings, appliances, floors, carpets and other surfaces. It is estimated that for every one kilogram of Methamphetamine manufactured, five kilograms of toxic waste are produced as by-products.

Unlike other countries around the world, New Zealand doesn't have a specific legal standard for the level of Methamphetamine related toxins that make a house uninhabitable or classified as "contaminated". However, there are Ministry of Health guidelines from 2010 which say that an acceptable level is less than 0.5 micrograms per 100 square metres. For the sake of this article, when we talk about a "contaminated" house, we are talking about levels that are over this guideline.

Unfortunately, the consequences of living in a house that's considered to be contaminated are thought to be serious.

- **Health-wise**, the contamination can cause short term effects like shortness of breath, chest pain, lack of coordination, dizziness, headaches, skin irritation and even chemical burns to the body. There is also the risk that contamination will result in longer term effects like neurological damage and an increased risk of cancer.
- **Money-wise**, it can be very expensive to decontaminate a house. Depending on the circumstances and level of contamination, decontamination can cost between \$2,000 and \$50,000. In really serious cases, the house may have to be demolished and rebuilt. In terms of indirect costs, the value of any contaminated property will be impacted.

## I'm in the market to buy: how do I avoid buying a contaminated house?

Although the bad news is that there seems to be Methamphetamine contaminated houses out there, the good news is that there are many ways to help minimise the risk that you'll buy one. Here are some that we think are useful if you're looking to buy a house:

- **Don't make assumptions:** Methamphetamine labs and contamination have been uncovered in state houses and in multi-million dollar mansions, in low socio-economic areas and in some of the wealthiest streets in the country.
- **Do some sleuthing:** Look around the property and see if there are any signs showing it may have been used to make Methamphetamine, or was home to heavy Methamphetamine users. Unfortunately, any chemical residue on surfaces will generally be invisible. However, you can keep an eye out for discoloured ceilings and surfaces, over the top security systems or fencing, sickly sweet or chemical smells, stains around outside drains, leftover lab materials like containers or chemicals, unusual wiring or plumbing fixtures, or corroded rubber or plastic around taps and stoves.
- **Ask all the questions:** Do some information gathering on any house that you're interested in by talking to other people.
  - **Real Estate Agent:** Firstly, talk to the agent selling the house and ask specifically if they are aware that the house is contaminated or has been used as a Methamphetamine lab in the past. Ask if there have been recent renovations (that may have been done to hide any contamination). Agents are required to tell you any information they know about contamination and, if they don't, they face serious consequences.
  - **Seller:** Secondly, you can ask the same specific questions to the person selling the house (usually you can do this through the agent). You may also like to ask about the property's history, including, for example, if the house was a rental property. This is important because typically 75% of labs uncovered by Police are rental houses. If it was a rental property, ask the seller if they were they aware that the

tenants were drug users or if they used or manufactured Methamphetamine inside the house.

- **Neighbours:** Thirdly, The Department of Building and Housing recommend speaking to the neighbours living near to the property, asking if the property had lots of visitors coming and going, if it had its windows and curtains closed a lot (and particularly during the day) or if it seemed that there were secretive activities going on at the house. Neighbours can be a wealth of information.
- **Check out the LIM:** Talk to your lawyer about obtaining a Land Information Memorandum on the property. This is a report created by the Council that covers the area where the house is located. If the relevant Council is aware of contamination, the LIM Report must include this information. However, this isn't a failsafe method simply because Councils aren't always informed about contamination.
- **Do your own testing:** The above techniques are useful, but as the NZ Law Society says, when in doubt, test the property for contamination. There are various options available for testing - from simple "surface" tests to more comprehensive "swab testing". Prices range from around \$100 to \$3000 for this testing.

However, as a word of caution, there is currently a lack of regulation and official guidelines around Methamphetamine contamination and testing in New Zealand. Perhaps as a result, many in the property industry are warning that there has been a recent increase in private companies offering testing and decontamination services, and potentially some "cowboy" operators among them. We recommend that you do your research on which testing provider you choose. Hopefully more clarity will be coming soon as the Building Minister Dr Nick Smith has said the Government would have new national standards in place by the end of 2016 which would cover testing methods, among other things relating to the issue of Methamphetamine contamination.

- **Sale and Purchase Agreement:** If you're considering signing a Sale and Purchase Agreement for a house, but you're worried about the risk of contamination, we recommend talking to your lawyer about how the Agreement can be tweaked to protect you. In the standard Agreement, there is already some protection due to the warranties, or promises, that the Seller makes to you about the house.

Although this and other protections already built into the Agreement are useful, there is more you can do to address the risk of Methamphetamine contamination. For example, you can talk to your lawyer about adding a condition saying that the Agreement is entirely conditional on a contamination test being completed and shown to be clear or satisfactory to you. Another option would be to expand on the seller's warranties. For example, you could require the Seller of the house to specifically promise that the property is not contaminated and has never been used for making Methamphetamine. If this turns out to be wrong, you would have some legal options against the seller.

## The Landlord / Tenant Situation: Contaminated Rental Properties

Perhaps you've already bought a house and you're renting it out to tenants. As a landlord, the risk of a contaminated home is relevant to you. As we said before, the Police suggest that 75% of Methamphetamine labs are in rental properties. So, with that in mind, what do you need to know?



Well, as a Landlord, you owe your tenants certain legal duties and, in particular, you are responsible for providing your tenants with a clean house and cleaning up chemical hazards on their property. In practical terms, this means that, if you become aware that the house is contaminated, it is your responsibility to decontaminate the property. Until this has occurred, you cannot rent the house to new tenants. As we've talked about above, decontaminating a property is time consuming and expensive, and, in some cases, not covered by insurance. It may be possible to recover costs from the person and people who caused the damage, but this too could be a lengthy and challenging process.

The consequences of Methamphetamine contamination in your property are serious in terms of your investment. The risk is that the value of your property, as well as its saleability, will decrease once it is known as a house that has been previously contaminated (and then publicly noted on the property's Land Information Memorandum).

As a landlord, there are also steps you can take to reduce the risk that your property becomes contaminated or, alternatively, minimise the consequences if it does. For example, you could think about:

- Exercising your right to inspect the property regularly, looking out for suspicious signs or behaviour.
- Modifying your tenancy agreement to specifically prohibit illegal drugs being used or made in the house.
- Checking your insurance policy to see if it would cover decontamination expenses.
- Testing the property for contamination in between tenants.

**Have a question about Methamphetamine contamination? Or perhaps you just fancy a chat about how this information applies to your situation? If so, we would love to help. You can give us a call or send us an email for more information.**

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