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Guide for Buyers of Residential Property



This guide:

- is not transaction specific and is intended for general information purposes only;
- refers to the Real Estate Institute of New Zealand and Auckland District Law Society Agreement for Sale and Purchase ("the standard agreement"). It highlights some important matters; and
- does not cover everything that may occur in a transaction.

Signing agreement

We recommend we advise you on the agreement before you sign. Our involvement at that stage can save costly mistakes and delays.

Conditions to agreement

Any agreement you sign should have sufficient protections for you such as the following conditions:

- **Finance:** Arranging suitable finance;
- **Building report:** The agreement provides a standard timeframe of 15 working days to have the building inspected by a suitably qualified building inspector and for that person to provide a written report. You may need longer than 15 working days;
- **LIM (Land Information Memorandum):** The agreement provides a standard timeframe of 15 working days to obtain a LIM from the local Council;
- **Toxicology report:** We recommend all purchasers include a condition in the agreement to allow for drug contamination testing if there is concern that drugs may have been manufactured in the property e.g. tenanted or abandoned properties;
- **Due diligence:** This clause gives time to allow a wide range of investigations to be conducted. We recommend this because the right to withdraw from an agreement (if you are dissatisfied with something) may not be available to you through the LIM or Title requisitions;
- **KiwiSaver:** If you intend to use KiwiSaver funds for your deposit payable under the Agreement, we recommend you notify the Real Estate Agent to include the appropriate clause in the Agreement. If you have already signed the Agreement without the clause, please notify us immediately so we can inform the seller. Vendors can refuse to accept deposits from KiwiSaver funds as Vendors cannot access those funds until the day of settlement.

LIM report

We strongly recommend you obtain a LIM from the Local Authority, as a condition of your agreement.

A LIM report provides information on rates, water charges, public works affecting the property, building drainage and health requisitions, building consents, resource consents, sewerage connections, public and private drains affecting the property etc. It can clarify whether there is "fill" on the land, zoning restrictions, woodburner consents, swimming pool Compliance Certificates, or requisitions under the Fencing of Swimming Pools Act 1987.

Some properties may be known to Council as being in flood prone land or built on unstable land. A LIM Report will tell us this. If any issues such as this are identified, you must notify your insurer.

If there are elements of the LIM report that you are not satisfied with, and the vendor cannot or will not provide a remedy to those, you may be able to exit the agreement.

Builder's reports

The Agreement can include a clause to allow you to obtain a report on the building. We recommend this to ensure you receive the best possible advice concerning the property. It may identify problems with the building that you were not aware of. You must instruct a suitably qualified building inspector. The report must be in writing. If you rely upon an oral report, or a report from someone who is not a specialist, or someone who is not independent of you, your right to cancel the agreement will fail.

Escape clause

The contract may contain an “escape clause” or “cash-out” clause, which will allow the seller to accept another offer, and cancel your contract if you are not able to confirm it unconditional within the time allowed.

Confirmation of contract

If your contract is subject to **any** conditions, please contact us **on or before** the dates for confirmation of these conditions, as we are required to provide written confirmation of satisfaction of any conditions to the seller’s solicitor. The seller may cancel the contract if written confirmation is not provided in time.

When all conditions in the contract have been satisfied, the contract is then “unconditional”.

Title

We will search the title, easements and encumbrances which appear on the title. You can serve a notice of requisition (or challenge) on the seller for some things on the title which may cause you concern or are not correct. This notice must be served within 10 working days of the date of the agreement, otherwise you will lose your rights to requisition.

There is then a strict procedure which can lead to either party accepting the requirement or pulling out of the agreement. We will guide you through this process.

You should check the property you are buying is the one shown on the plan attached to the title. Refer to the Local Authority planning maps and photographs as a double check.

Cross leases (if applicable)

If the house is on a cross lease, there are special provisions in the standard agreement relating to this type of ownership:

It is important to check that there have not been any alterations to the exterior to the flat since the flats plan was deposited (the flats plan shows the footprint of the dwelling). If there have been alterations then the consent of all other owners in the cross lease development should have been obtained.

If alterations extend the dimensions of the flat and are closed in, then the flats plan should have been amended to show the alteration. If this is not the case, you can require the seller to rectify the title by obtaining the consent of the other owners, depositing a new cross lease plan, possibly new leases and having a new title issued which correctly shows the amended dimensions. You have to “requisition the title” within 10 working days to correct this issue and protect yourself.

In the case of buildings and structures erected on “exclusive use” areas after the deposit of the original flats plan, you generally have no right to requisition the title, provided the consent of the other owners was obtained to the building or structure. You can, however, requisition to obtain a copy of the written consent. If the seller cannot satisfy your requisition to provide written consent you may cancel the contract.

It is therefore important that you thoroughly check whether any changes have been made to the building. This can sometimes be very difficult to detect. We recommend you have a builder inspect the property and the original building plans, to thoroughly investigate this aspect. In particular, to check whether the “footprint” of the building is as shown on the flats plan.

It is important because a change in the footprint of the cross lease can negate the title, which will be very difficult and costly to rectify (if is possible at all). It will cause difficulty in your selling the property in the future. It will also mean your bank will not lend to you.

If there have been changes to the flat without the consent of all the other cross lease owners, then you can be in breach of your lease and liable to remedy that breach, even though you did not make the change yourself.

Unit titles (if applicable)

Similar provisions apply in respect of Unit Titles as to cross leases. It is important to ensure no changes have been made to the boundaries of the building within the unit title, otherwise rectification in the future can be extremely costly.

The Unit Titles Act 2010 provides that the seller must give you “pre-contract disclosure” through a statement which is prescribed in the legislation. This must be done before the agreement is signed. You can seek further information, but you may be required to pay for the cost of supplying that additional information.

Likewise, not later than the sixth working day before settlement, the seller must provide you with a “pre-settlement disclosure statement” setting out the information prescribed. At the same time, the seller must also supply you with a certificate from the body corporate certifying that the information in the statement is correct.

If the seller owes money to the body corporate, the body corporate can withhold the certificate, but this can generally be rectified by the seller’s solicitor giving an undertaking to the body corporate to pay any outstanding amounts on settlement with you.

The supply and checking of this information is most important because unit titles are complex. For that reason, unit titles are not governed by the normal SmartMove fixed fee service.

Notices on Title: Sections 72 – 74 of the Building Act 2004 or Section 36 of the Building Act 1991.

Great care is needed when such a notice is on the title. It indicates:

- Possible restrictions on further building on the site (because of danger of slipping, flooding etc);
- Likely difficulties obtaining insurance (your insurance company **must** be informed that there is a notice on the title). You may not be able to get insurance, and consequently fail to get a mortgage;
- You may not get a mortgage. You (and we as your solicitors) have a duty to inform any lender to you of the existence of the notice. The lender may not lend because it is concerned about the risk;
- The Earthquake Commission may decline to pay out on any claim you make if you have flooding or a slip (Earthquake Commission Act 1993 Schedule 3 Clause 3). In some circumstances, you should not purchase the property.

Boundary pegs and fences

- If you are purchasing bare residential land, the standard agreement allows you to require the seller to identify the boundary pegs. We recommend this be done. If you are purchasing a house, the seller cannot be required to identify the pegs.
- If you are concerned about where the boundaries are, you may need to arrange for a site survey. Please advise us if you intend to do this.

KiwiSaver deposit

If you are planning to withdraw Kiwi Saver contributions, you must comply with all the qualifying conditions including:

- Contributions cannot be used to repay a loan e.g. you cannot settle early with loans from parents and then expect to uplift the Kiwi Saver contributions later to repay the loan.
- You must allow, in most cases, at least **15 working days** to withdraw funds **prior to settlement**.

- It is also recommend that if you intend to use Kiwi Saver funds for your deposit payable under the Agreement, that you notify the Real Estate Agent so they can include the appropriate clause in the Agreement, or if you have already signed the Agreement, you notify us immediately so we can notify the seller if this clause has not been included in the Agreement. Vendors can refuse to accept deposits where KiwiSaver funds are being used as a Vendor is not allowed to access those funds until the day of settlement.

Kainga Ora first home deposit subsidy

If you qualify for this subsidy, then you must:

- Live in the house for at least 6 months as your principal place of residence;
- For a new build, you must obtain and supply a Code Compliance Certificate to Kāinga Ora within 12 months.

Chattels

The chattels included in the purchase are detailed in Schedule 2 of the agreement. If there are other chattels which should be included, but are not described in the contract, please advise us immediately.

Swimming pool / spa pool and fireplace

Is there a swimming pool / spa pool or fireplace on the property? A LIM Report will identify if Council has approved the construction or installation.

If a fireplace/chimney is not checked on a regular basis (ie yearly), your home may not be covered for fire insurance.

Local Authorities have strict conditions regarding swimming pools and surrounding fencing. If the property you're intending to purchase has a swimming pool or spa pool, you will have to comply with 3 yearly Council inspections and the fees associated with same.

Mortgages and guarantees

Are you obtaining a bank loan to finance the property? If so, your loan will be secured by an "all obligations" mortgage over the property. It not only secures the loan now being made to you, but any other obligation you may have to the bank, whether now or in the future. For example, if you have signed a guarantee in favour of the bank for someone else, that may also be secured by the mortgage. Please urgently let us or your bank know if you think this may be an issue for you.

Rates and water rates

These are apportioned on settlement day. The seller is liable for the period up to that date, and you are liable for the balance of the rating year. The apportionment will be set out in the settlement statement produced by the seller's lawyer. You are not required to attend to any matters in respect of rates as we will notify Council of the change of ownership

The seller's solicitor will obtain and pay for a special water meter reading to the date of settlement. You will be liable for water consumption after the settlement date.

House insurance

If the contract becomes unconditional, please arrange insurance cover as soon as possible, with the cover to take effect on the date of settlement. The policy must be in the names of the new owners, e.g. yourselves, company name, or your Trust's trustees. Your bank (if you are obtaining a mortgage) must be noted as first mortgagee. Your insurer must send a Certificate of Currency to our office to supply to your bank before we can receive your loan advance.

Power, phone, internet, gas, etc

It is your responsibility to make arrangements for supply of these services from your chosen supplier.

Preparation for settlement

- It is wise to allow 15 working days from the date the agreement goes unconditional until settlement.
- Settlement must occur on a "working day". If the settlement date is not a "working day", settlement must take place on the last working day prior to the settlement day
- Once the Agreement has gone unconditional, we will make an appointment with you to sign the transfer documents and mortgage documents (if required). We will discuss the settlement procedure further with you at that appointment.

Right to inspect

The standard agreement provides that you are able to inspect the property prior to the settlement date. We recommend that you do this about 2 working days before settlement. Contact the real estate agent to make a time to do this. It must be on "reasonable notice" to the seller. When you inspect, you are checking to see that the property and chattels are in the same condition they were when you viewed the property. We recommend you test lights, hot water, ovens etc to ensure they are working. If they are not, please urgently advise us, even if the real estate agent says they will sort the issues, do not leave this until settlement day as we may not be able to do anything about the issues.

Payment of balance of purchase price

We will advise you of the balance needed from you to complete settlement, including our costs. That balance will need to be paid to our Trust Account on the day before settlement by direct credit or other terms as agreed by us. If you are obtaining a mortgage, the bank arranges for those funds to be deposited into our Trust Account on settlement day.

If there are surplus funds we will make arrangements to transfer them to you.

Settlement day

Please contact us early on the morning of settlement to confirm there are no unforeseen issues which could affect settlement.

Provided we are holding all funds required to complete settlement, we will endeavour to complete settlement as early as possible but other factors may affect the time of settlement beyond our control e.g. if the seller's documents have not been signed.

If delays occur, we will endeavour to contact you. We are aware that the removal company you may have engaged will be charging for its time. For this reason, we suggest you do not organise your removal company to move you too early in the day.

Possession

It is normal for you to take possession of the property only after we have paid over all the purchase monies to the seller's solicitors in exchange for the title to the property. We cannot give you a time estimation for when this will occur.

Keys

On most occasions, keys are supplied by the real estate agent. Contact the real estate agent prior to settlement to make arrangements for you to collect the keys following settlement.

Any remote control devices for access should also be held by the agent, and made available to you immediately following settlement. Any alarm codes should also be supplied at the same time.

We will contact you as soon as settlement has occurred so that you can collect the keys.

After settlement

You will receive a detailed statement showing all receipts and payments through our trust account, as well as a copy of the Record of Title showing you as owner and a copy of the mortgage.

Relationship property

If you have commenced a personal relationship prior to purchasing the property, you should consider a Property Agreement with your partner setting out your contributions to the purchase, and how the property is to be distributed in the event of separation.

If you commence a personal relationship after purchasing property, and the relationship lasts 3 years or longer, or there is a child of the relationship, your partner may be able to acquire a half share in the property. If you and your partner are purchasing property, and the cash contributions are unequal, it is advisable to record the details in a Property Sharing Agreement.

If you wish to discuss any of these issues, please speak with us as soon as possible. Our fee estimate does not cover any advice on the application or otherwise of the Property (Relationships) Act. We offer a free 15 minute discussion with one of our property lawyers – this can only be utilised before settlement of your purchase.