



smart prices smart services smart people

Guide for Sellers of Residential Property



This guide:

- is not transaction specific and is intended for general information purposes only;
- is not intended as a substitute for specific legal advice - each property transaction is different;
- refers to the Real Estate Institute of New Zealand and Auckland District Law Society Agreement for Sale and Purchase (called “the standard agreement”) and the Particulars and Conditions of Sale of Real Estate by Auction (called “the auction agreement”). It highlights a number of important areas of the standard agreement and the auction agreement and some other areas which may be of interest to you; and
- does not cover everything that may occur in a transaction.

Contractual warranties

The standard agreement contains warranties and undertakings by you as a seller that:

1. You have not received, nor have any knowledge of, any outstanding requirements from any local or government authority which you have not disclosed to the buyer - for example a notice to fence a swimming pool, or that a building does not comply with the building code;
2. You have not given any consent or waiver of consent to any application under the Resource Management Act directly or indirectly affecting the property, which has not been disclosed in writing to the buyer - for example a neighbouring property development;
3. All chattels listed in Schedule 2 and all plant, equipment, systems or devices which provide services or amenities to the property (i.e. heating, cooling, security) will be free of security interests i.e. no charge registered to secure money owed by you;
4. All of the listed chattels are delivered in reasonable working order (fair wear and tear excepted) in the same condition as at the date the agreement was signed;
5. Where you have done any work to the property which required a building consent:
 - a. you obtained a building consent from the appropriate authority;
 - b. the work was carried out in accordance with the consent;
 - c. you obtained a "code compliance certificate"; and
 - d. you complied with all obligations imposed on you under the Building Act.

The full extent of the warranties you are giving are set out in the agreements. If you have any concerns about giving these warranties, speak to us so we can protect you from liability.

Titles

Different types of titles have different requirements when it comes to sale. If you have a Cross Lease or Unit Title property, you should familiarise yourself with the following:

Cross leases

There are specific clauses in the standard agreement relating to this type of ownership.

The title for the property has attached to it a copy of the "flats plan", which show the footprint of your "flat" (dwelling). If there have been alterations to the "flat" since the flats plan was deposited, the consent in writing of all other owners should have been obtained (as stipulated in the lease).

If alterations extend the dimensions of the flat (and the alterations are enclosed) the flats plan on the title should have been amended to show the alteration. If this has not been done, the buyer can require you to rectify the title by obtaining the consent of other owners, having a new flats plan prepared, depositing it in the Land Transfer Office, obtaining new cross leases signed by the owners, and obtaining a new title. This will be costly and take some months. The sale will no longer qualify for the SmartMove fixed fees.

Most cross leases contain "exclusive areas" for the owners of each flat e.g. backyard and front yard. If buildings and structures are erected on "exclusive use" areas, the purchaser generally has no right to requisition the title, provided the consent of the other owners was obtained to the building or structure. You can, however, be requisitioned to provide a copy of the written consent.

If you cannot satisfy the requisition and advise the buyer within the five working day period, then, unless the buyer waives the requisition, either party may cancel.

Please immediately seek our advice if:

- if your property is a cross lease; **and**
- if alterations have been made, which are not shown on the flats plan; **and**
- the written consent of the other owners was not obtained.

Unit titles

Pre-contract disclosure to buyer

Before you sign an agreement to sell a unit title, you must provide a “pre-contact disclosure statement” to the buyer, setting out prescribed information (Section 146 Unit Titles Act and Form 18 of Unit Titles Regulations).

The buyer can seek further information which has to be provided within five working days, but for which the buyer pays the costs (Section 148).

Pre-settlement disclosure to buyer

Not later than the **sixth working day before settlement**, you must provide a pre-settlement disclosure statement to the buyer, setting out information prescribed by the Unit Titles Act, and a certificate from the body corporate certifying that the information is correct. A body corporate can withhold its certificate if you owe money to it – our undertaking to pay on settlement will normally resolve this issue (Section 147).

Delay to settlement

Delays in providing the pre-settlement disclosure or additional information can result in delay in settlement, with penalties for late settlement and the possibility of cancellation by the buyer (Section 149 and 151).

All disclosure documents must be dated and signed by you or your agent (Section 152).

Unit titles are complex and do not fall into the SmartMove fixed fee criteria.

Tenants

You must specify whether the property is sold with “vacant possession” or “subject to existing tenancies”.

If you have tenants, and agree to sell with vacant possession, you are required at law to give the tenant at least 90 days (but preferably a little longer, say 93 days) written notice to vacate the premises. Therefore, you need to ensure that settlement occurs at least 93 days **after** the date on which the agreement becomes unconditional, to give you time to give notice to the tenant.

The option of terminating by notice is not possible if you have a “fixed term” tenancy and you will need to sell “subject to existing tenancies”.

Where the property is sold “subject to existing tenancies”, you must give notice to the tenants of the buyer’s name, address and occupation at time of sale, so that the tenant can make new arrangements to pay rent. Rent will be apportioned along with rates as part of the sale process. If the tenant has paid a bond, it will need to be transferred to the buyer by you.

Back-up Offers

If you receive a backup offer, please **do not sign** it without consulting us. If it is not correctly worded you could find yourself with two binding sale contracts for the same property, and costly legal consequences.

Goods & Services Tax

Usually Goods & Services Tax will not be payable on the sale of a home. This will be stated in the agreement as being “inclusive of GST”. However, if you are a “registered person” for GST purposes, it is important to discuss this with your accountant and make sure that the agreement correctly reflects the GST position for you and the buyer.

Inland Revenue Department (“IRD”)

We will require your IRD number to complete this transaction. If you are selling through a Trust or Company, the IRD number for that entity will be required. If you do not have an IRD number, please let us know as soon as possible, and we will arrange to obtain a GST number for you.

Sale within five or ten years of purchase

- if you bought your property after 28 March 2018 and you have entered into an agreement to sell within five years of your purchase; or
- you purchase your property after 28 March 2021 and sell your property within ten years of your purchase

the new “bright-line” test will apply and you may have to pay income tax on your net gain. There are exceptions so please speak to us if this applies to you.

Conditions

Your agreement may be subject to a number of conditions. Each condition will have a due date for satisfaction. Most conditions are for the benefit of the purchaser e.g. finance, Builders Report, due diligence. However, there may be conditions for your benefit, such as a cash-out clause, where you can continue to market the property to receive a better offer.

Requisitions of title

If there is a defect with your title – for example the plan of the property is incorrect, the buyer has a right to requisition under the standard agreement (but not the auction agreement). If the buyer requisitions the title and you are unwilling remedy the defect then you **must** advise the buyer **within five working days** otherwise you will be deemed to have accepted the requisition and will be required to comply with it before settlement - which may be impossible or expensive to do.

If you refuse to remedy the defect, the buyer has 5 working days to decide whether to accept the title as it is or cancel the agreement.

Insurance

Your house insurance should remain in place until settlement has been completed.

Utilities

General rates

Rates will be apportioned between you and the buyer as at the settlement date. These are included as adjustments on the “settlement statement” we give to the buyer’s solicitors before settlement.

Water rates

If your property has a water meter, we arrange for the meter to be read. We will pay for your water use up until the settlement date and the charges of the local authority for reading the meter. We will retain \$700 from the settlement to pay the water account and pay the balance to you after settlement.

Automatic payment to Council

Please cancel any automatic payment/debit authorities to the Council or other institutions.

Telephone, power and gas connections

It is your responsibility to arrange directly with the telephone company (if any) for the transfer and disconnection of your phone. You must also arrange with the electric power supply authority and the gas authority for final electricity and gas meter readings to be taken, and for accounts to be forwarded to you at your new address. You are responsible for paying those bills up to the date of settlement.

Right of inspection by the buyer before settlement

The buyer, or somebody authorised in writing by the buyer, may inspect the property prior to settlement - but must give reasonable notice to do so.

Repayment of mortgages

If you have a mortgage over your property, it must be discharged from the title on settlement. Any money owed under the mortgage must be repaid, and the lender's administration charge paid in connection with the execution of the discharge. We will make those payments for you.

Banks may also charge a fee for early repayment of the mortgage.

Settlement

On settlement we will:

1. Collect the balance of the purchase price;
2. Transfer the title to the purchaser;
3. Repay the mortgage (if any);
4. Notify the Council of the change of ownership; and
5. Authorise the land agent to release the keys to the buyer.

Unless the agreement provides otherwise, you must give the buyer vacant possession on the settlement date. If you do not, you are liable to pay penalties for breach of your agreement, and possibly damages (including the buyer's costs of temporary accommodation).

Please confirm with us when you have vacated the property, so that we can ensure we have received payment of the settlement monies **before you give the keys or access to the property to the buyer.**

Keys and electronic opening devices

A key and remote electronic controllers must be supplied to the agent (if there is one) to be delivered to the buyer following settlement, or speak to us if you are selling privately. All other keys and extra electronic devices (including garage door openers) must be left at the property for the buyer - also alarm codes.

Final settlement matters

Balance of your sale proceeds

Unless the settlement money is needed for the purchase of another property, we will pay the balance to you, by deposit to your nominated bank account. We will require proof of the bank account in the names of the owners of the property, such as a bank statement or letter from your bank.

If you wish settlement funds to be paid to anyone other than the owners on the title, we will need a written authorization by the owners to make the payment to that other person.

Final statement

We will send you a statement showing receipts, all payments, our fees and expenses deducted from the sale proceeds.