

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 ("the standard agreement") and the Real Estate Institute of New Zealand and Auckland District Law Society Particulars and Conditions of Sale of Real Estate by Auction ("the auction agreement") and when we refer to "the agreement" that includes both the standard agreement and the auction agreement. It highlights some important areas of the agreements 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 agreement contains warranties and undertakings by you that:

1. You have not received, nor do you have any knowledge of, a notice, demand or any outstanding requirement from any person, company, local or government authority which you have not disclosed to the buyer e.g. a notice from a neighbour to contribute to fencing, a notice from Council to fence a swimming pool, or knowledge that a building does not comply with the building code;
2. You have not given any consent or waiver directly or indirectly affecting the property, such as a consent to any application under the Resource Management Act for a neighbouring property development which has not been disclosed in writing to the buyer;
3. You do not know about any fact that might result in court proceedings such as a neighbour threatening to take you to court;
4. All chattels listed in the agreement and all plant, equipment, systems or devices which provide services or amenities to the property (e.g. heating, cooling, security) will be in reasonable working order (fair wear and tear excepted), in the same condition as the date the agreement was signed and will be free of security interests i.e. no charge registered to secure money borrowed by you to purchase the item;
5. If you have done any work to the property which required a resource or building consent:
 - a. you obtained the consent from the appropriate authority;
 - b. the work was carried out in accordance with the consent; and
 - c. you obtained a "code compliance certificate" where appropriate.

The full extent of the warranties is set out in the agreement. If you have any concerns about giving these warranties, please speak to us so we can protect you from liability. There are extra comprehensive warranties for unit title properties so if your property is a unit title, please talk to us before you sign the agreement.

Titles

Different types of titles have different requirements when it comes to sale. If you have a cross lease or unit title property, please see below for the extra requirements.

Cross leases

There are specific clauses in the standard agreement, but not the auction agreement, relating to cross lease ownership.

If there have been alterations to the "flat" (being the building) since the Flats Plan was deposited, the consent in writing of all other cross lease owners should have been obtained (usually required by the lease). This is separate from any Council requirements.

If any alterations of the building extend beyond the dimensions of the flat shown on the Flats Plan and are enclosed, the Flats Plan should have been amended to show the alteration. If not, the buyer can require you to rectify the title by obtaining the consent of the other cross lease owners, depositing a new Flats Plan, obtaining new cross leases and a new title. This will be costly. The sale will no longer qualify for the Smart Move fixed fees.

If buildings and structures are erected on "exclusive use" areas as shown on the Flats Plan, the buyer generally cannot object, provided the consent of the other owners was obtained to the building or structure. You can, however, be required to provide a copy of the written consent. If you cannot provide the consent within 5 working days, then, unless the buyer waives the requirement, either party may cancel.

Please immediately seek our advice if alterations have been made that are not shown on the Flats Plan. Please also let us know if there have been any external or internal alterations that do not have the written consent of all other cross lease owners.

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).

Pre-settlement disclosure to buyer

Not later than the 5th 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 Unit Titles Act).

Delay to settlement

Delays or inaccuracies in providing the pre-contract or pre-settlement disclosure can result in delay to settlement, with penalties for late settlement and the possibility of cancellation by the buyer (Section 149 and 151 Unit Titles Act).

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

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

Tenants

You must specify whether the property is sold with any existing tenancies.

If the property has tenants, and the agreement does not specify that the property is subject to tenancies, you are required to give vacant possession. For a periodic tenancy, you are required by law to give the tenant at least 42 days' written notice (but preferably a little longer, say 45 days) to vacate the property. Therefore, you should ensure that settlement occurs at least 47 days after the date that 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 provide the buyer's name, address and occupation to the tenant at time of sale. Rent will be apportioned along with rates as part of the sale process. If the tenant has paid a bond, you will need to transfer it to the buyer.

Back-up offers

If you are presented with a back-up offer, please do not sign it without consulting us. If it is not correctly worded, you could find yourself with two binding sale contracts that you cannot complete.

Goods & Services Tax (GST)

Usually GST will not be payable on the sale of a home and the purchase price will be stated as "inclusive of GST". However, if you are a "registered person" for GST purposes, it is important to discuss this with your accountant as you may be liable for GST from the sale proceeds. The agreement may need to be changed to reflect this.

Inland Revenue Department (IRD)

We will need your IRD number to complete your sale. If the owner of the property is a trust, company or deceased estate, the IRD number for that entity will be needed. If you do not have an IRD number, please let us know as soon as possible, as you will need to apply for one.

Sale within two years of purchase

As of 1 July 2024, if you sell your property within two years of your purchase, the "bright-line" test will apply, and you may have to pay income tax on your gain. There are exceptions such as the main home exemption, 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 buyer e.g. finance, LIM, building report, toxicology, due diligence. However, you may have vendor conditions such as an "escape" or "cash-out" clause where you continue to market the property and if you receive a better offer, you can cancel the agreement. These clauses are suitable where there is an extended period until the agreement is unconditional or if the agreement is conditional on the sale of the purchaser's property.

Deposit

Usually the agreement will provide for the buyer to pay the deposit to the real estate agent once the agreement is unconditional. If the deposit is paid to the real estate agent, they are required by law to hold the deposit for 10 working days before they can release the balance of the deposit to us after deducting their commission. In some circumstances, you can request an early release of the deposit where the real estate agent will hold the deposit for 3 working days instead of 10 – usually this is where the seller needs to use the deposit to pay for the deposit on a property they are purchasing.

If the buyer is using KiwiSaver funds to pay the deposit, you cannot receive these funds until settlement as by law they must remain in our trust account until settlement has been completed.

Title requisitions

If there is a defect with your title – for example the title plan is incorrect, the buyer has a right to requisition (or object to) the title under the standard agreement but not the auction agreement. If the buyer requisitions the title and you are unable or unwilling to remedy the defect, then you must advise the buyer within 5 working days. If you do not notify, you will be deemed to have accepted the requisition and will be required to comply with it before settlement, even if it is impossible or expensive to do.

If you notify the buyer that you will not 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 occurred, as you carry the risk of the property until settlement is fully completed. We recommend cancelling your insurance the day after settlement has been completed just in case there is an unforeseen issue and settlement cannot proceed on the intended settlement date.

Utilities

General rates

The Council requires the current rating instalment to be paid by the seller on settlement. As you are paying the rates in advance for the period that you will not own the property, this is apportioned on settlement. These are included as adjustments on the "settlement statement" that we give to the buyer's solicitors before settlement. The seller is responsible for the land rates on the date of settlement and the buyer reimburses the seller for the rates between the day after settlement and the end of the rating instalment period.

Water rates

If your property has a water meter, we arrange for the meter to be read, and we will use funds retained from your sale proceeds to pay for your water use up until the settlement date and the charges of the local authority for reading the meter, which varies for different Councils. If your water is not provided by Council and is provided by a third party, please advise us e.g. Watercare, Vientia, Doubtless Bay Water Supply Company etc. We will retain \$700 from the settlement to pay the water account and pay the balance to you thereafter.

Automatic payment to Council

Please cancel any automatic payment/debit authorities to Council.

Telephone, power and gas connections

It is your responsibility to arrange directly with the landline telephone company for the transfer and disconnection of your phone if you have one. You must also arrange with your power and gas companies for final electricity and gas meter readings to be taken, and for accounts to be forwarded to you at your new address. You must arrange for your internet to be cancelled. You are responsible for paying for utility consumption 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, but must give reasonable notice prior to the settlement date.

Repayment of mortgages

If you have a mortgage over your property, it will need to be discharged on settlement. This will usually mean the loans secured by the mortgage must be repaid.

If you own several properties secured by a mortgage with the same bank, the bank may require you to repay lending on other properties you own, not just the loan borrowed for the property you are selling. If you are concerned about this, you should speak to your bank at the earliest opportunity. We are only notified about the repayment amount on the settlement date, which is usually too late to sort out issues of repaying other loans.

Generally, banks will charge a discharge administration fee and may also charge a fee for early repayment.

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 real estate 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 that settlement has been completed, **before you give the keys or access to the property.**

Keys and electronic opening devices

A key and remote electronic controllers must be supplied to the agent if there is one, 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 - 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 of the sale proceeds to you, by deposit to your nominated bank account. To do this, we will need proof of the bank account in the names of the owners of the property, such as a bank statement, screenshot or letter from your bank.

If you wish the funds to be paid to anyone other than the owner of the property, we will need written authorisation to make the payment to that other person.

Final statement

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

Ask us for help

Selling a property can be an exciting and overwhelming time. We have done this many times before, and we know the process inside out. This guide is intended to assist you with understanding the usual sale process, but ultimately every transaction is unique. Please ask us to explain anything that you do not understand – we are happy to help.