

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 ("REINZ) and Auckland District Law Society Agreement for Sale and Purchase of Real Estate ("standard agreement). It highlights important matters; and
- Does not cover everything that may occur in a transaction.

Signing agreement

Before signing the agreement, we recommend seeking legal advice. Obtaining appropriate guidance at this stage can help prevent costly mistakes and delays.

Conditions to agreement

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

- Finance: Arranging suitable finance;
- Building report: It is suggested to have a minimum condition timeframe of 15 working days from the date of the agreement;
- LIM (Land Information Memorandum): It is suggested to have a minimum condition timeframe of 15 working days from the date of the agreement;
- Toxicology report: Including a toxicology report is recommended. A minimum condition timeframe of 15 working days from the date of the agreement is suggested to allow for drug contamination testing if there is concern that drugs may have been manufactured in the property, such as in tenanted or abandoned properties;
- Due diligence: This clause allows for a wide range of investigations to be completed. It is recommended to include this clause, especially in land or house and land package purchases, as it provides the right to withdraw from an agreement which may not be available through the LIM or Title requisitions;
- KiwiSaver: If you plan to use your KiwiSaver withdrawal to assist with the payment of the deposit, it is important to inform the Real Estate Agent when the agreement is drawn up to ensure the necessary clause is included. If an agreement has already been signed without the clause, notify us as soon as possible so we can communicate this with the vendor's solicitor. A vendor may refuse to accept deposits from KiwiSaver funds since they cannot access these funds until settlement.

LIM report

Obtaining a LIM from the Local Authority is recommended for your agreement. The LIM report includes details on rates, water charges, public works, drainage, consents, sewerage connections, and relevant drains. It identifies zoning restrictions, woodburner consents, swimming pool compliance, and requisitions. Additionally, it flags any flood-prone or unstable land issues for insurance purposes. If unsatisfied with the LIM report and the vendor does not resolve the issues, you may terminate the agreement.

Builder's reports

The Agreement can include a clause for obtaining a building report. This is recommended to uncover any hidden issues with the property. Hire an experienced building inspector and ensure the report is written. Relying on an oral or non-specialist report, or someone connected to you, may void your right to terminate the Agreement.

Escape clause

An "escape" or "cash-out" clause may be included in the contract, allowing the seller to accept a different offer and terminate your agreement if it remains unconditional within the specified time frame.

Confirmation of contract

If your contract is subject to any conditions, please inform us on or before the specified dates for confirming these conditions. 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 on time. When all conditions in the contract have been satisfied, the contract becomes "unconditional."

Title

We will review the title, easements, and encumbrances noted on the title. Should there be any inaccuracies, a notice of requisition can be issued to the seller. It is important to note that this must be done within ten working days from the date of the agreement, or the right to requisition will be forfeited.

Upon serving the notice, a strict procedure follows, which may lead to either party accepting the requirement or withdrawing from the agreement. We will guide you through this process.

To ensure that the property you are purchasing aligns with the plan attached to the title, please refer to the Local Authority planning maps and photographs for verification.

Cross leases (if applicable)

If the property is on a cross lease, the standard agreement includes specific provisions related to this type of ownership. It is important to verify that no alterations have been made to the exterior of the flat since the flats plan was deposited, as this plan shows the dwelling's footprint. If there have been alterations, the consent of all other owners in the cross lease development should have been obtained.

If alterations expand the flat's dimensions and are enclosed, the flats plan should have been revised to reflect the changes. If it was not, you can request the seller to rectify the title by obtaining consent from the other owners, depositing a new cross lease plan, potentially new leases, and issuing a new title that accurately shows the revised dimensions. To address this issue and protect yourself, you must "requisition the title" within 10 working days.

For buildings and structures built on "exclusive use" areas after the original flats plan was deposited, generally, you cannot requisition the title if other owners approved the building or structure. However, you can request a copy of the written consent. If the seller cannot provide written consent, you may cancel the contract.

It is essential to carefully examine the building for any modifications, which can be challenging to detect. We recommend having a builder inspect the property and original building plans to investigate this aspect. You must confirm if the building's "footprint" matches the one shown on the flats plan because any changes to the cross lease's footprint can nullify the title, making it expensive and difficult to rectify, and potentially prevent your bank from lending you money.

If any changes were made to the flat without the approval of all the other cross lease owners, you may breach your lease and be responsible for rectifying the breach, even if you did not make the alteration.

Unit titles (if applicable)

Unit Titles rules are similar to cross leases. Ensure there are no changes to building boundaries within the unit title, as fixing issues later can be costly.

Under the Unit Titles Act 2010, sellers must provide a disclosure statement before the agreement is signed. Additional information can be requested but may incur a fee.

Before settlement, sellers must give a pre-settlement disclosure statement with required information and a body corporate certificate verifying accuracy. If the seller owes money, the certificate may be withheld, but their lawyer can promise to pay any outstanding amounts on settlement.

Checking this information is crucial as unit titles are complex. The Convey Legal fixed fee service does not cover unit titles.

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

It is essential to exercise caution when a notice is present on the title, as it may indicate:

- Potential restrictions on future construction on the property due to risks such as flooding or land instability;
- Possible challenges in obtaining insurance coverage, as your insurer must be informed of the notice on the title, potentially leading to difficulties in securing a mortgage;
- A potential impediment to securing a mortgage, as both you and your solicitor are required to notify any lender of the existence of the notice, which could lead to the loan's denial due to perceived risks;
- In certain instances, the Earthquake Commission may refuse to satisfy claims related to flooding or land instability (Earthquake Commission Act 1993 Schedule 3 Clause 3). This may suggest that purchasing the property could be imprudent.

Boundary pegs and fences

When purchasing undeveloped residential land, the standard agreement allows you to request the seller to identify the boundary pegs. It is highly recommended that you take advantage of this option.

Conversely, when acquiring a house, the seller is not required to identify the boundary pegs.

If there is any uncertainty regarding the location of the boundaries, it may be necessary to arrange for a site survey. Please inform us if you intend to proceed with this option.

KiwiSaver deposit

If you plan to use your KiwiSaver contributions, you need to meet all the qualifying conditions, which include:

- Contributions cannot be used to repay loans. For example, you cannot pay off loans from family members and expect to withdraw KiwiSaver funds later to repay the loan.
- Allow at least 15 working days to withdraw funds before the settlement, in most cases.
- Notify the Real Estate Agent if you intend to use KiwiSaver funds for your deposit payable under the Agreement. The agent can then include the appropriate clause in the Agreement. If you have already signed the Agreement, notify us immediately, and we will inform the seller if this clause has not been included in the Agreement. Vendors can reject deposits where KiwiSaver funds are being used because they cannot access those funds until the day of settlement.

Chattels

The agreement specifies the chattels included in the purchase in Schedule 2. If there are additional chattels to be included that are not noted in the schedule, please inform us immediately.

The agreement also requires that the chattels be provided in reasonable working order prior to settlement. If any chattels are not functioning correctly or are broken before signing the agreement, please notify us so we can add clauses to ensure these chattels will be repaired or replaced before settlement.

Swimming pool / spa pool and fireplace

If the property includes a swimming pool, spa pool, or fireplace, it is essential to ensure that they have received the necessary council approval. A Land Information Memorandum (LIM) report can confirm whether such approval has been granted for their construction or installation.

Furthermore, it is crucial to regularly inspect a fireplace or chimney—at least annually—to maintain fire insurance coverage for your home.

Properties with swimming pools or spa pools must comply with strict local authority regulations regarding fencing. As the new owner, you will be responsible for adhering to these regulations and undergoing Council inspections every three years, which will incur associated fees.

Mortgages and guarantees

If you are obtaining a bank loan to finance the property, note that your loan will be secured by an "all obligations" mortgage over the property. This means the mortgage secures not only the current loan but also any other obligation you may have to the bank, present or future. This could include a guarantee signed for someone else in favor of the bank. If this might be a concern for you, please inform us or your bank promptly.

Priority Amounts/Sums

When a mortgage is registered on a property title (typically via LINZ – Land Information New Zealand), it includes a **priority amount**, which is the maximum amount the mortgagee (usually the bank or lender) can claim in **priority** over other creditors or registered interests.

- The **priority amount** gives the lender the right to recover **up to that amount** (not just the current loan balance) **before any other secured parties** (like second mortgagees or other lenders) can claim anything from the property's sale.
- It **includes** more than just the loan principal. It usually covers:
 - Principal loan amount
 - Interest (including future interest)
 - Fees and costs (e.g. legal costs, enforcement costs, etc.)
 - Default interest
 - Any additional advances under a revolving credit or facility agreement

Rates and water rates

On settlement day, rates are split between buyer and seller. The seller pays rates up to that date, while the buyer covers the rest of the current rating year. These details are in the settlement statement from the seller's lawyer. As the buyer, you don't need to do anything about rates; we will notify the council of the ownership change.

The seller's solicitor handles and pays for a special water meter reading until settlement. You will be responsible for water usage after the settlement date.

House insurance

Once the contract is unconditional, arrange insurance cover starting from the settlement date. The policy should be in the name of the new owners. If you have a mortgage, list your bank as the first mortgagee. Have your insurer send a Certificate of Currency to our office for submission to your bank before the loan advance.

Power, phone, internet, gas, etc

You are responsible for arranging the supply of these services from a provider of your choice.

Preparation for settlement

- It is recommended to allow at least 15 working days from the date the agreement becomes unconditional until the settlement.
- Settlement must occur on a working day. If the settlement date falls on a non-working day, then settlement will take place on the last working day prior to the settlement date.
- Once the agreement has become unconditional, we will schedule an appointment with you to sign the transfer and mortgage documents (if required). During this meeting, further details regarding the settlement process will be provided.

Right to inspect

We recommend inspecting the property about two working days before settlement. Arrange this through the real estate agent and ensure the seller is given reasonable notice. Confirm that the property and chattels are as originally viewed, testing features like lights, hot water, and ovens. Report any issues to us immediately to ensure timely resolution before settlement day.

Payment of balance of purchase price

We will notify you of the outstanding balance required to complete the transaction, which will include our fees. This amount must be paid into our Trust Account by direct credit or another agreed method on the business day before settlement. If you are securing a mortgage, your bank will arrange for the funds to be transferred to our Trust Account on the settlement day. Should there be any excess funds, we will coordinate the transfer of the surplus amount to you.

Settlement day

Please make sure to contact us in the early morning of the settlement date to confirm that there are no unforeseen issues that may affect the settlement process.

We will make every effort to complete the settlement as early as possible, provided that we have all the necessary funds available. However, there may be circumstances beyond our control that could cause delays, such as if the seller's documents are not signed.

In the event of any delays, we will try our best to keep you informed. We understand that the removal company you have hired will be charging for their time, so we recommend that you do not schedule your move too early in the day.

Possession

Typically, possession of the property will be granted once we have transferred the full purchase funds to the seller's solicitors in exchange for the property's title. Regrettably, we are unable to provide an estimated timeframe for when this transaction will be completed.

Keys

Usually, the real estate agent provides the property keys. Contact the agent before settlement to arrange key collection afterward. The agent should also give you any remote controls and alarm codes immediately after settlement.

We will notify you once settlement is complete so you can collect the keys from the agent.

After settlement

Upon completion of settlement, we will provide you with a comprehensive statement that outlines all the transactions made through our trust account. Additionally, we will provide you with a copy of the Record of Title that confirms you as the new owner of the property, as well as a copy of the mortgage document if applicable.

Relationship property

If you are in a personal relationship either prior to or after purchasing the property, it is recommended that you consider a Property Agreement with your partner. This agreement should outline each person's contributions to the purchase and how the property will be distributed in the event of separation.

In some cases, if the relationship lasts for 3 years or longer, or there is a child of the relationship, your partner may be entitled to acquire a half share in the property. If you and your partner are purchasing property, and your cash contributions are unequal, it is advisable to record the details in a Property Sharing Agreement.

If you require further advice on these matters, please inform us, and we can refer you to a lawyer who can provide you with appropriate guidance.

House Buying Process

Find your team - Mortgage Advisor, Conveyancer etc



Find a property you like



Have the agent draft the offer subject to conditions



Have your conveyancer review the agreement before signing



Sign the offer and have the agent present it to the vendors
The vendors may at this time counter offer on price or conditions



Agreement is signed and dated by the vendors and your condition dates start

You will need to arrange:

your building inspection & toxicology report (if applicable)
provide a copy of the agreement to your mortgage advisor
order the LIM Report from the local council

complete your kiwisaver withdrawal applications for your conveyancer to submit for withdrawal



Send copies of your Building report, LIM report and toxicology report to your conveyancer for review and advise



Send a copy of your written finance approval to your conveyancer for review and advise



Reply to conveyancers email for unconditional confirmation once all conditions are ready to be satisfied



Agreement then becomes unconditional via formal notification from your conveyancer to the vendors conveyancer



Payment of deposit is now due – if being paid via kiwisaver funds your conveyancer will arrange this or if being paid from your funds the agent will send instructions for payment of the deposit directly to you.



Arrange an appointment with your mortgage advisor to set up loan structure and interest rates – once this is done the lender will issue us loan documents



You will need to lock in your insurance and send us a copy of the certificate of insurance which will need to note your lender as the mortgagee/interested party



When we receive the loan documents we will prepare them for signing and contact you to arrange an appointment time for you to sign the documents in our office



Once the documents have been signed we will prepare them to be submitted to your lender for drawdown - loan documents cannot be submitted any earlier than 5 working days prior to settlement.



If you are contributing any funds towards final settlement you will need to arrange the funds to be transferred to us the day prior to settlement date



On settlement date:

Everything is done in the office by us - we receive the loan advance and prepare the settlement procedure and title to be transferred to us following settlement.

Please note that settlement can occur anytime between 9am in the morning right until 4pm in the afternoon - We will call you as soon as settlement has been completed and the keys have been released.



MOVE IN TO YOUR NEW HOME

