

## **PURCHASING PROPERTY**

**This guide is in two parts.** The first part covers what a purchaser has to consider (purchaser's obligations). The second part details our legal attendances and the costs involved (legal attendances). As this is a guide only it is important that you discuss your particular transaction with us.

We acknowledge there is a lot of information to wade through, buying a property is a major investment and justifies the time to understand the transaction and the potential for problems.

**Note: The form of purchase agreement used in New Zealand is binding from the time it is signed subject only to any conditions set out in the agreement. Purchasers (particularly from overseas) have been surprised to find they are bound by the agreement.**

### **1. Purchasers Obligations**

In New Zealand it is difficult to bring a successful claim against a vendor (what you see is what you are buying) it is therefore important to investigate the property thoroughly.

There are a number of areas which may require your attention before and during a purchase. We can assist with regard to these however these are not matters we automatically attend to, we ask that you advise us of your requirements.

**These headings are not exhaustive and any other requirements or concerns particular to your transaction should be discussed with us.**

#### **1.1 Land and Property Information Memorandum (L.I.M)**

The local authority is obliged on payment of a fee to provide a report on the property (land and/or buildings). We strongly recommend that purchasers obtain this report (Land Information Memorandum). The local Council takes about two weeks to produce such a report and it is therefore necessary to make the agreement conditional on obtaining and approving the report. This report provides information regarding the property known to the local authority e.g. zoning, resource consents, building consents and compliance detail, rates, drainage, electricity cables and stability etc.

In cases where an agreement has been signed without a LIM condition we still recommend that a Report is obtained. We may still be able to deal with any problems identified in the LIM prior to settlement.

**PLEASE NOTE:** the Agreement for Sale & Purchase has a standard LIM provision. If a purchaser has elected the LIM option an application must be made within five (5) working days. This time limit is important as the right to reject the LIM is lost if the purchaser does not comply with the time limits.

When received the LIM needs to be carefully checked to ensure any problems are identified and if necessary the vendor is put on notice. There are strict time limits, please discuss these with us.

We recommend that the purchaser also check the Council building file. While the LIM report normally details the buildings on the property this is not always the case. It is therefore often necessary to check the building file to clarify what buildings have been permitted on the property. We do not carry out a physical inspection of the site and it is therefore important that you raise any concerns you have regarding buildings and permits with us.

The vendor provides various warranties in the agreement, particularly where the vendor did the work and any concern regarding buildings, resource consents etc should be raised prior to settlement as it is easier and certainly cheaper to deal with problems at that stage. If you require any assistance in inspecting the building file please advise.

## 1.2 Local Authority requirements and Planning Zoning

It is essential the property can be used for its intended purpose, Local Authority zoning or existing resource consents may control the use of the property. Please either consult the local authority yourself or advise us of your intentions to enable us to properly investigate the matter.

Please note in some areas there is not an automatic right to build on sections this should be checked carefully with the local authority as consent may be required and conditions can be imposed.

## 1.3 Resource Consents

Some properties have resource consents which require transfer on purchase. In particular this relates to coastal permits (jetty or other structures), water permits (right to take water for farming etc) and discharge permits (the right in certain circumstances to discharge into the air or water). If you believe your property has or should have a consent please notify our office as it is important that such consents are transferred to the new owner. As it is important to include the obligation to transfer such consents in the agreement it is advisable to deal with these issues early in the transaction. There is no central register of such consents and we require advice from the purchaser if a resource consent exists for the property. If you have any difficulty in relation to this please contact our office.



#### 1.4 Quality of Buildings, etc.

Inspection of buildings, fixtures, fittings and supplies such as electricity, water, gas and telephone is the responsibility of the purchaser. Gas supplies in the area are from onsite storage and these must comply with regulations, if the property uses gas check that the system complies. The vendor has very limited liability unless specific representations are made. You should therefore ensure that the buildings etc. meet your requirements and are in good order. Building inspections are provided by businesses operating in the area and we strongly recommend that you obtain a report and that the purchase is conditional on you approving the report. Please advise if you require any assistance in this regard.

##### Leaky Buildings

Buildings especially those constructed after the changes in the New Zealand Building Regulations early in the 1990's need to be checked for building leaks. Changes in the construction methods and the types of material used could result in buildings (despite the Building Compliance Certificate having been issued) experiencing leaking and rot problems. We do not inspect buildings and have no qualifications in this regard, you must have the building inspected by a suitably qualified person. If you are purchasing a building and you suspect there could be problems it is essential that any purchase agreement is made conditional upon you approving an inspection report.

While a check list for detecting a leaky building can never be finite we have been advised that the following are the most common problem areas:

- Mediterranean style roofs that do not have eaves.
- Windows that are not recessed into walls.
- Monolithic cladding systems and/or lack of wall cavities.
- Untreated timber framing is susceptible to rot where the exterior cladding has allowed moisture in.
- Insufficient space between the underside of the floor and the ground usually combined with insufficient ventilation.
- Balustrades and balconies attached to walls are a common source of rot as water leaks back into the walls.

The leaky building issues are serious and can have a major impact on the value and re-saleability of a property.

#### 1.5 Overseas Investment Regulations

Purchasers who do not qualify as New Zealand residents are restricted as to the types of property that can be purchased without the approval of the Overseas Investment office. If you are not a New Zealand resident or have any doubts regarding this issue please discuss this with us before you sign any agreement. Signing the agreement without making it subject to Overseas Investment consent is warranting that you do not require consent.

### 1.6 Boundaries/Location of buildings on property

It is wise to define the boundaries before signing the agreement as unless it is vacant residential land there is no obligation on the vendor to do this. With vacant residential land, there is an obligation for the vendor to ensure that all boundary markers are in their correct positions at settlement date.

If you have any doubts regarding the location of buildings particularly with regard to boundaries please advise as soon as possible. The services (water, power, sewerage, telephone, etc.) should be located. It may be necessary to check that suitable easements are in place to allow the services to travel over/under neighbouring properties.

### 1.7 Access

It is important to ensure the physical access to the property is over the legal access shown on the title (e.g. a formed driveway may not be on the legal right of way). As we do not inspect properties we require your input in this regard. Please check this aspect of the property and discuss any concerns with us as soon as possible.

Please note if the property has an entry on to a state highway (or any other arterial road with limited access) the legality of the access should be checked. Transit New Zealand issue crossing place licenses. These Licenses identify the correct road entrance. You should ascertain that your entrance is the properly licensed entrance. If you have any concerns in this regard please discuss it with us.

### 1.8 Purchase of land for building

There have been major changes in the way local Councils collect their levies for land development over the last few years. In the Far North District area the Council imposed development contributions which in mid 2006 were up to approximately \$21,500.00 per Lot. These are allocated between roading, water, waste water, stormwater, community infrastructure, carparking contributions and reserves.

Some of these contributions may have been paid by the subdivider although in some cases no contributions will have been paid.

When an owner of land applies for a building consent the Far North District Council will check the contributions that have been paid. A credit will be allowed for those payments made, however, you will need to pay the balance which can be substantial.

We strongly recommend that before entering into an agreement for land that you check the development contributions due on that land. This can be done by enquiring of the Far North District Council in Kaikohe. They will require details of the land, (eg Lot and Deposited Plan number or valuation number).

Don't be caught with a nasty shock when you apply to build. Check the contributions due on the land before you sign the agreement. We can assist you in this regard.

### 1.9 Cross Leases and Unit Titles

The agreement utilised by Real Estate Agents contains a number of provisions giving a purchaser rights to ensure that a cross lease or unit title has not been amended in a way that would invalidate the title. It is extremely important when purchasing such a property to ensure that the buildings comply with the title plan. This plan allows the property owner to erect buildings and other structures within certain defined areas. It is not unusual to discover that either the plan is incorrect or that further buildings or structures have been erected outside the plan e.g. carport, conservatory etc. These alterations are likely to create a serious defect in the title and may actually affect the ability to transfer proper title. It is essential that purchasers check the title plan against the buildings and structures being acquired.

You must carefully check the plan against the property and if there are any concerns make contact with us immediately. We do not inspect the property and will not be aware of such problems unless advised.

If purchasing in a multiple owned apartment block it is essential you consider the type of construction and the possibility of a leaky building problem as referred to earlier in this information. One of the ways of checking on the background to the building is to require the vendor to supply copies of the Body Corporate minutes for the unit (for the last few years). These minutes will more than likely contain reference to any problems that have occurred in the past, any repairs and the possibility of new problems. An independent building report is also essential and it should be a condition of your agreement that you have the right to obtain and approve the report. If you have any concerns or problems in this regard please discuss these with us.

The standard provisions in the agreement contain a number of warranties from the vendor in relation to the Body Corporate payments. You should ensure that the position is checked prior to settlement if you have any concerns in this regard.

### 1.10 Caveat

A caveat is a registered notice on the title that you have an interest in the property. If you are paying a large deposit or there is a long period until settlement you need to consider this step.

If you have concerns regarding the vendor or the vendors finances you may also need a caveat.

We do not automatically take this step and you should discuss this with us and let us have your instruction.

### 1.11 Production etc. (Horticultural or farm properties)

When purchasing a farm or horticultural property the ability of the property to produce may be an issue. Production figures and cashflows should be checked with qualified personnel. We can assist in this regard if required.

### 1.12 Value of Components in Sale

Income tax and GST legislation involves the apportionment of the purchase price between the various components in a transaction, this is especially relevant with small holdings, farms and commercial property. It is important to resolve the values to be applied to land, buildings, other improvements, land with dwelling, chattels etc.

Please discuss this with us if you require assistance, your accountant should also be involved.

In relation to the sale of land that contains a business e.g. farm, orchard etc further consideration needs to be given to the apportionment of the purchase price and this is referred to in the following paragraph.

### 1.13 Value of Land and Improvements in Rural Agreements (e.g. farm or orchard)

The tax laws mean that there are advantages in isolating improvements from the land in a rural property purchase. It is important that the values attached are accurate for both the vendor and the purchaser as either party could be penalised as a result of incorrect values.

We are not qualified to apportion values. These should be finalised in consultation with your own accountant. It may be necessary for you to negotiate with the vendor and the vendor's accountant regarding the values to be attached to the various components. We can assist in arranging this.

In addition to dwellings, buildings, plant and machinery, timber, hay, silage or other crops, dairy company shares, such items as fences, yards, tracks, reservoirs, airstrips, water supplies and electricity supplies will need to be considered, there may be other items individual to your purchase that also need to be dealt with.

With some farm and horticultural properties to supply milk or produce there is a need for a licence, or in the case of milk, shares in Fonterra. To purchase a property without the appropriate licence or shares would seriously affect the value. Once again the values also need to be apportioned between such shares or licences and other items in the purchase.

It is essential that you discuss this with your accountant before completing the agreement. If for any reason an agreement has been completed without consultation we recommend that you discuss matters with your accountant prior to settlement as there may be the opportunity to resolve values with the vendor.

#### 1.14 GST (Time of Supply)

The standard agreement contains provisions regarding the supply of properties subject to GST and it is extremely important that you check your position in this regard before signing.

If there is any intention to carry out a taxable activity on the property or if the purchase is expressed as being plus GST it is important that your intentions are discussed with us to avoid any difficulties at the time of settlement or in the assessment of the value of components or the actual time of supply. It is necessary to carefully word the agreement so as to avoid the "time of supply" being earlier than intended.

It is unusual for a residential property to be liable for a GST payment, however, there are properties where part of the sale is liable for GST and the house is exempt. Care needs to be taken to correctly ascertain GST liability and this should be discussed with us.

#### 1.15 Insurance

The standard form of agreement provides that the vendor is obliged to maintain insurance, however, the purchaser should investigate the position.

In any event it is essential insurance is arranged before the day of settlement. Please let us have detail of your insurance arrangements. We can assist in arranging insurance if required.

Where the property is to be Mortgaged Insurance detail will be required, prior to settlement, for the mortgagees.

#### 1.16 General Rates

Local authority rates are apportioned on settlement and a debit or credit will be made depending on the date of settlement. Please note that it usually takes some time after settlement for rate demands to be addressed to the purchaser and it will be necessary to ensure that rates on your property continue to be paid. If you do not receive the rate demand at the appropriate time please check with the local authority office or contact our office if you require assistance.

#### 1.17 Water Rates and Irrigation Charges

Water rates are payable in areas with town supply water and every effort is made to apportion these accurately on settlement. Unfortunately obtaining the correct readings at settlement is sometimes difficult and there may be a delay in finalising water payment. To assist you in calculating costs we suggest you make inquiry regarding the water charges at the time you are purchasing.

Kerikeri has an irrigation scheme operated by Kerikeri Irrigation Company Limited. The right to use the water and transfer of appropriate company shares must be obtained at the time of purchase, please discuss this with us.

In some areas of Kerikeri there are private water companies which have their own arrangements regarding supply and charging for water. The rules and method of operation of the Water Company should be investigated at the time of purchase.

#### 1.18 Sewerage

While some properties in the Bay of Islands are connected to sewer most are using septic tanks or biocycle disposal systems. The Far North District Council is registering all such systems and will licence these. To comply a cleaning programme is necessary. The council records (this should show in your LIM Report) will show the next cleaning date.

#### 1.19 Telephone and Electricity Connections

These connections are the responsibility of the purchaser and we suggest that you communicate with the local Power Company to transfer the connection. We suggest you contact the local Telecom Office to arrange a telephone connection or transfer.

#### 1.20 Rapid Numbers

Rural properties are located by a Rapid Number system. This is operated by the local Council. There may be an existing number but if not you can apply to the Council (fee \$25) for a number. This enables emergency services to locate the property.

#### 1.21 Chattels

The agreement should correctly record the chattels being sold with the property. Chattels are not automatically included in the sale and care should be taken to list the chattels you believe you are buying.

In some cases chattels including carpet being sold with the property are subject to a finance arrangement. Registration of this finance arrangement under the Personal Property Securities Register means you that are deemed to have notice of the finance arrangement and if after settlement the Finance Company wish to repossess the chattels they have the right to do so. The general conditions of the agreement state that the vendor will provide unencumbered title and it is accordingly wise to search the Securities Register before settlement and if any security is in place require clearance of this at the time of settlement. We will do this as part of the purchase. This is referred to in relation to settlement.

## 2. Legal Attendances

It is normal for us to attend to a property purchase in four stages. We detail the four stages below.

We stress the importance of understanding what occurs at the time of settlement and possession.

### 2.1 Contract (known as an Agreement for Sale and Purchase).

If a real estate agent is involved in the transaction the agency will normally draft the agreement.

It is important that there is legal involvement prior to the signing of a written agreement. An agreement prepared in the correct form can save considerable time and expense as the transaction proceeds.

If you are intending to sign the agreement as trustee of a trust, there is a limitation of liability clause in the agreement. It should be noted that this clause also contains a warranty that you have the power to sign the agreement on behalf of the trust. Care needs to be taken that the appropriate steps have been followed and you should discuss this with us if you have any concerns.

While we recommend obtaining a search of the Certificate of Title prior to entering into the contract to enable encumbrances, covenants, etc to be checked, it is possible to deal with these issues after signing. Each contract gives the purchase the right to requisition problems with the Certificate of Title. You should discuss the title issues with us as any problems must be raised within ten (10) working days of the agreement.

Many agreements will need to be conditional on certain matters being completed e.g. finance, inspection of buildings, Overseas Investment approval. It is important that appropriate clauses with realistic dates for compliance are inserted in the agreement.

If you have conditions that require action on your part (eg arranging finance) you must take reasonable steps and have evidence of failure if you wish to rely on such a provision to cancel the agreement. The agreement advises that the party relying on the condition “shall do all things which may be reasonably necessary to enable the condition to be fulfilled by the date for fulfilment”.

Please note if you are new to the purchase of property in New Zealand, the contract is binding (subject to any conditions) when signed. We have experience of purchasers from other countries being surprised by this. Please take care before signing and discuss this with us.

While we recommend that you discuss all of these issues with one of our Conveyancing Partners before entering into the agreement, in many cases we find agreements have been signed without legal input. If you are in this position you should discuss your requirements with us as soon as possible.

## 2.2 Deposit

The deposit is payable on the signing of the agreement. Failure to pay a deposit gives a vendor the right to cancel provided three (3) working days notice is given. If you have any problems with regard to payment of the deposit please advise immediately.

## 2.3 Attendances after completion of Contract

Often there will be finance to be arranged and we can assist with this if necessary. There may also be other conditions in the agreement that require attention and you will need to keep us informed in this regard.

During this time further investigations may be necessary regarding the suitability of the property and/or title etc. This will involve a full search of the title together with any easements etc.

Any conditional date or dates need to be complied with or extended to ensure the agreement does not lapse, please monitor these carefully.

### WHO OWNS THE PROPERTY? – Do we need separate agreements?

If there is more than one purchaser we need to be advised by you how the funds are being contributed to the purchase and how you wish to be recorded on the title. There is the ability to have the ownership recorded in shares or jointly. In the event of a joint ownership the property automatically transfers to the survivor in the case of the death of one party. If owned in shares the share of each owner remains separate on death.

Personal relationships, business partnerships etc need to be considered when purchasing property. It is important that we are informed of the details of any arrangement and that you consider how it is proposed to deal with a break up in the partnership or relationship, or the death of a party. New Wills may be required.

We will also require detail as to how each party is contributing to the purchase. In the absence of specific instruction we will assume that contributions are equal and there is not a need for a separate agreement. It is therefore essential you let us have your instructions if the circumstances are different.

If you are purchasing the property in your own name or are in a relationship or commence a relationship after the purchase you need to consider whether the property is intended to be a family home and whether it is intended to become relationship property. After a relationship of 3 years it is likely that a property will be assessed as relationship property and there will be a presumption of equal division. If you have any concerns regarding this aspect of the

transaction you should discuss these with us as it may be possible to enter into an agreement with your partner to cover these issues.

If the property is owned by a Trust there may be a life occupancy interest that needs to be accounted for. Failure to do this may cause problems with the Inland Revenue Department.

Once the agreement is unconditional we will arrange the documentation to transfer title (in most cases this is done electronically) and Notices of Sale for the Local Authority. Where mortgage documents are required, these are completed and signed.

A settlement statement will be received from the vendors solicitor. This will be checked and discussed with you prior to settlement.

A search of the Personal Property Securities Register will be carried out to check whether the vendor has any financing arrangements secured over the chattels being sold with the property. There is a small fee for such a search, however we believe it is essential to ensure that you obtain clear title to chattels at the time of settlement. In the event a security is registered we will require clearance of this prior to, or at the time of settlement.

The vendor gives a number of warranties under clause 6 of the agreement regarding the property. You should familiarise yourself with these warranties and advise immediately if you believe there are any breaches as it is easier to deal with these before settlement. The main warranties that are likely to cause issues are those relating to buildings and work carried out on the property.

#### 2.4 Settlement and Possession

The agreement records a possession date on the front page, this date is also sometimes referred to as the settlement date. This is the date on which the balance of the purchase price is paid to the vendor, normally this is through the vendor's Solicitor. It is essential that we are in a position to lodge cleared funds with the vendor's Solicitor on that date to prevent a default. As noted below there are strict deadlines for payment to avoid a default.

The property will have been inspected at the time of purchase. The form of agreement provides the purchaser may inspect the property again (upon giving reasonable notice) prior to settlement date. This is to ascertain the state of repair of the property, chattels and fixtures. The property should be in the same condition as inspected when the contract was entered into (fair wear and tear exempted). There is a further right to inspect work required to reinstate damage. We do not inspect properties and this should be carried out by the purchaser or a person who saw the property at the time of purchase. We recommend an inspection is made.

The physical transfer of possession often takes place directly between the purchaser and vendor and keys are exchanged between the parties or through the Real Estate Agent. The contract provides that the purchaser is entitled to a

key to each external door and any automatic door openers and security codes. If you are having any difficulty in obtaining these please advise us immediately.

The agreement provides that settlement must occur before 4 pm on the day of possession and settlement (some vendors may as a term of settlement bring this time forward and we will monitor this on your behalf). If the funds are not paid to the vendor or vendor's Solicitor before 4 pm then interest accrues for each day until settlement. The interest is at the rate fixed in the contract. This is normally a default rate. If settlement is before a weekend or holiday period, interest is paid until the next working day. Considerable penalties can be incurred. Often payment is controlled by your own purchaser or the bank providing Mortgage funds. It is essential that these parties understand that you will incur penalty if cleared funds are not available within the time limit provided in the contract. The requirement to pay the penalty after 4 pm means that if we do not have funds in excess of the purchase price available it will be necessary for us to contact you on settlement day for the further funds necessary. Please discuss settlement day requirements and if you believe there are likely to be problems or delays advise us as soon as possible.

The agreement records the purchasers' and vendors' obligations in the event of default and if there are difficulties we will need to discuss these provisions with you in detail.

The time delay in clearing cheques means that you will be requested to supply a bank cheque or cleared electronic transfer for any funds paid to us for a settlement.

It is important that any matters of concern are raised prior to settlement. If we are aware of problems with the property or any other concerns we can deal with this by negotiation prior to settlement, it is always easier and certainly cheaper to resolve the dispute before funds are paid over.

### Guaranteed Search.

Prior to settlement we will obtain a guaranteed search. This is a search issued by the Government Land Registry with a guarantee which protects you while we go through the registration process detailed below. This is an extra cost but it is dangerous to settle without a guaranteed search and we will do this automatically, however please contact us if you require any further information in this regard.

## 2.5 Registration

Most documents are now registered electronically and your ownership and mortgage will be registered on the day of settlement. In some circumstances where the vendor's solicitor is not capable of online dealing we will still be required to action a paper transfer and there will be a delay until the registered documents are returned to our office. We will report to you and forward a copy of the electronic title document. Please note the Land Registry ceased issuing hard copy titles in 2002 and all titles are now electronic.

## 2.6 Conflict between clients

The Bay of Islands is a relatively small community and being the largest law firm in the area there is a possibility that your transaction may involve another of our clients. We will normally be aware of this and discuss the possibility of conflict with you. If we are not aware of this please bring it to our attention immediately.

Where there is the potential for conflict we will discuss this and in conjunction with you decide whether it is appropriate for our firm to be involved, if necessary we can refer you to an independent property Lawyer.

***We handle our property transactions within a conveyancing team headed by a Solicitor. Each Solicitor is assisted by Legal Executives who deal with the day-to-day matters. Most of your contact once the transaction is underway will be with the Legal Executive. Please do not hesitate to contact either the Legal Executive or the Solicitor handling your file at any time during the transaction.***

*The above information is a general guide regarding purchasing property and cannot cover all aspects of each transaction. Please discuss the particulars of your transaction with us.*

Cut along dotted line-----

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