

GUIDE TO PURCHASING PROPERTY



Welcome to **Law North** and **Swift's** GUIDE TO PURCHASING PROPERTY. We acknowledge there is a lot of information to wade through, but buying a property is a major investment and justifies the time to understand the transaction and the potential for problems.

Part one covers what a purchaser should consider – **the purchaser's obligations**. Please note we do not inspect the property and any physical issues need to be brought to our attention.

Part two..... covers **the legal attendances**. As this is a guide only, it is important that you discuss your particular transaction with us.

IMPORTANT

We can give advice on the legal aspects of the purchase, but we are not qualified to advise on the financial merit of the transaction.

The form of purchase agreement (the "agreement") used in New Zealand is binding from the time it is signed subject only to any conditions set out in the agreement.

PART ONE – PURCHASERS OBLIGATIONS

It is difficult to bring a successful claim against a vendor (“seller”) after settlement (what you see is what you are buying). It is therefore important to work through the purchase process thoroughly.

There are a number of areas which may require your attention before and during a purchase. We can assist with arranging these, if you are having difficulty ... just ask!

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

Identification/Money Laundering Legislation

We operate under New Zealand's Anti Money Laundering legislation and this obliges us to comply with strict identification criteria.

We are required to formally identify all clients (this includes directors and shareholders of companies and trustees and beneficiaries of trusts) before commencing work. We need current photo identification (passport or NZ driver's licence). We must retain a copy and you authorise us to use this copy, and if necessary other identification information, and provide those to third parties. To sell a property you, or the entity selling, must have a New Zealand IRD number.



We will also require documents connecting you to your residence and to the property you are selling (e.g. rates account).

Overseas Investment Act

Residential property purchasers are now subject to the Overseas Investment Act. This means that all purchasers must comply with the Citizenship and Residential Visa qualifications. A purchaser that does not qualify, is unable to purchase. Please ensure that your purchaser qualifies. Your Real Estate agent should be able to assist you, however please ask us if you have any questions or concerns.

NOTE: A sale to a non-qualifying purchaser will be invalid. Do not enter into an agreement to purchase another property, without ensuring first that your sale is valid.

Land and Property Information Memorandum (L.I.M)

The local authority provides a report on the property (land and/or buildings). Purchasers should obtain this report (Land Information Memorandum) before confirming the agreement. The local Council takes about two weeks to produce such a report, and it is necessary to make the agreement conditional on obtaining and approving the report. A LIM can only be relied upon by the person to whom it is addressed and up to the date the LIM was issued. Councils owe no duty of care to a purchaser relying on a LIM ordered by a Vendor or agent or in relation to new information obtained after the date the LIM was issued.

The LIM report provides information regarding the property known to the local authority e.g. zoning, resource consents, building consents and compliance details, rates, natural hazards, drainage, stability and Council notices etc. These matters can materially affect a property's value, future use and the ability to obtain insurance and/or finance.



LIMs can be lengthy and contain a lot of information. We would be happy to review the LIM for you and explain any risks or red flags identified. We are not building or geo tech experts but if we consider further expertise is needed, we will let you know.

Where an agreement has been signed without a LIM condition our office still recommends that a Report is obtained. Our office 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 seller is put on notice. There are strict time limits, please discuss these with us.

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, consents and permits or other physical issues with us as this information helps when considering the LIM.

The seller provides various warranties in the agreement, particularly where the seller did the work. Concerns 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.

Natural Hazards Portal

Councils are now required to include information that they become aware of in relation to natural hazards in LIMs. In addition to this information, the Natural Hazards Commission (previously known as the Earthquake Commission) provides a Natural Hazards portal. The portal currently shows settled EQC claims since 1997 that can be linked to an address. It does not show pre-1997 claims, claims that cannot be linked to a property, or claims that were withdrawn or were found to be invalid.

The portal shows the event date, event type (e.g. earthquake) and claim type (land, building or both). EQC classified a claim involving the services, such as drainage, as a building claim. If there is a claim noted for the property, there is a link to a form to request further information under the Official Information Act. The portal is an additional source of information, but it is NOT a substitution for obtaining a LIM.

You can access the portal at <http://naturalthazardsportal.govt.nz/s/>
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Please let us know if you would like us to check the portal and report back to you.

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 our office of your intentions to enable our office 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.

Resource Consents

Some properties have resource consents which require transfer on purchase. Often 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. There is no central register of such consents and our office requires advice from the purchaser if a resource consent exists for the property.

Quality of Buildings



The standard agreement provides options to select a Building Report condition. Inspection of buildings, fixtures, fittings and supplies such as electricity, water, gas and telephone is the responsibility of the purchaser. If gas supplies are from onsite storage these must comply with regulations. The seller 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 our office strongly recommends that you obtain a report and that the purchase is conditional on you approving the report.

New regulations relating to earthquake strengthening of buildings needs to be considered, especially for commercial buildings.

Clause 7 of the agreement deals with Vendor warranties. This is where the seller must warrant and undertake that all chattels included in the sale (meaning those listed in schedule 2 and all plant, equipment, systems or devices which provide services or amenities to the property) are in reasonable working order. This includes, but is not limited to, security, heating, cooling, air conditioning and solar. If a vendor wishes to exclude a system from this general warranty then it must be noted in the Agreement under "further terms of sale" which must be agreed to by the purchaser at the time of signing the Agreement.

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.

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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.

Hazard Warnings (flood, erosion, coastal risks, earthquake risks, etc.)

Your property may be affected by potential hazards such as coastal erosion, inundation, flooding and subsidence. We mainly deal with Northland properties that have lower earthquake risks, but if you are buying in earthquake prone areas you should check with the local Council. We do not inspect properties and require you to investigate specific risks, and if you need help raise any concerns with us. Hazard information is available from Regional and District Councils. Particular care should be taken as where there is a possibility the Council may designate areas as susceptible to coastal erosion/inundation, that can dramatically affect the value of properties designated "at risk". You will be required to disclose hazard risks to insurers and lenders.

Contaminated Land

The Local Authority has a duty to identify contaminated land. This includes land (now or previously) used for orchards, market gardens, glass houses, etc. and has wide implications for anyone buying land. There are many other Hazardous Activities and Industries identified. This should be discussed with us and, if possible, a purchase agreement made subject to an investigation. A due diligence provision will allow a full investigation.

Methamphetamine (P) Contamination

There is a risk that any building (if the property has been rented the risk is probably higher) can be contaminated from the manufacture or use of Methamphetamine. There is an option to select a report as a condition in the purchase agreement. Apart from health risks from contamination, the clean-up costs can be substantial.

Asbestos



Health & Safety Regulations require all building owners, before commencing any construction work on their building, to assess the building for Asbestos. If Asbestos is found in the area of the work, then an expensive removal and reinstatement of the building will be required. The report itself is costly.

It is therefore important to ascertain if any asbestos is present before buying.

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We recommend that you ask your building Inspector to report on the presence of any asbestos so you can make an informed decision before proceeding with the purchase.

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. These restrictions apply to trust, companies and other entities also. If you are not a New Zealand resident, or have any doubts regarding this issue, please discuss this with our office before you sign any agreement. Signing the agreement without making it subject to Overseas Investment consent is warranting that you do not require consent.

New Zealand has, since 2018, restricted the purchase of homes (including apartments) to NZ citizens and permanent residents, although there are some exemptions for Australian and Singaporean citizens buying house or land that has a property category of 'residential' or 'lifestyle'. If you are an overseas person purchasing property, please discuss this with us.

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 seller to do this. With vacant residential land, there is an obligation for the seller 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 us as soon as possible. The services (water, power, sewerage, telephone, etc.) should be located. We do not visit properties so cannot provide you with advice as to the physical accuracy of buildings, boundaries and services. It may be necessary to check that suitable easements are in place to allow the services to travel over/under neighbouring properties.

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). We do not inspect properties. 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 issues crossing place licenses. These Licenses identify the correct road entrance and you should ascertain that your entrance is the properly licensed entrance. If you have any concerns in this regard, please discuss it with us.

Purchase of land for building

In the Far North District area, the Council imposed development contributions (which are at present not being charged). There could be old fees still owing.

Some of these contributions may have been paid by the sub-divider 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 may need to pay the balance which can be substantial.

Our office strongly recommends that before entering into an agreement for land, you check the development contributions due on that land. This can be done by enquiring of the Far North District Council. They will require details of the land, (e.g. Lot and Deposited Plan number or valuation number). Note – a LIM will contain this information.

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.



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.

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.

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

If purchasing in a multiple 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 seller 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 our office.

The standard provisions in the agreement contain a number of warranties from the seller 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, please discuss these with our office.

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 protecting your interest in the property.

If you have concerns regarding the seller or the seller's finances, you may also need a caveat. We do not automatically take this step and you should discuss this with us and let our office have your instructions.



Production Income (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.

Value of Components in Sale

Income tax and GST legislation involve 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, machinery etc.

Please discuss this with us if you require assistance, Your accountant should also be consulted.

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.

Value of Land and Improvements In Rural Contracts (e.g. farm or orchard)

The tax laws mean that there are advantages in isolating improvements, and possibly plantings of trees, from the land in a rural property purchase. It is important that the values attached are accurate for both the seller 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 seller and the seller's accountant regarding the values to be attached to the various components. We can assist if required.

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.

With some farm and horticultural properties, to supply milk or produce there is a need for a licence (e.g. some varieties of kiwifruit, or in the case of milk, shares in Fonterra). To purchase a property without the appropriate licence or shares would seriously affect the value. The values also need to be apportioned.

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 seller.

Forests. If the land contains trees that could be covered by the Emission Trading Scheme (ETS), care should be taken. This should be discussed with us or your accountant before you sign any agreement.

G S T **(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 our office 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 our office.

PLEASE NOTE: A sale of land between two registered parties may be zero rated. This will affect your ability to claim GST if that was intended. This should be investigated before any agreement is signed.

I n s u r a n c e

The standard form of agreement provides that the seller is obliged to maintain insurance; however, the purchaser should investigate the position. We strongly recommend you have

confirmation you can get insurance on the property **before** going unconditional or bidding at auction

In any event, it is essential insurance is arranged before the day of settlement. Please let us have the details of your insurance arrangements.

Where the property is to be mortgaged, Insurance details will be required prior to settlement, for the mortgagees.

It is important that you are aware that risk classifications for the property, including natural hazard and climate-related information, may change over time and may affect the cost and availability of insurance in the future. For example, some insurers or lenders may be unwilling to provide insurance / finance in areas that are considered to be at high risk of natural hazards. If you have any queries in this regard, please let us know.

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 us.

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 difficult and there may be a delay in finalising water payment. To assist you in calculating costs, our office suggests 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 and Northland 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.

Sewerage

While some properties in the Bay of Islands are connected to sewer, most are using septic tanks or bio-cycle disposal systems. The Far North District Council monitors these. To comply, a

cleaning/service programme is necessary. The council records (this should show in your LIM Report) will show the next cleaning date.

Telephone and Electricity Connections

These connections are the responsibility of the purchaser and you should communicate with the local Power Company to transfer the connection. You should arrange a telephone connection or transfer.

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 for a number. This enables emergency services to locate the property.

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. The general conditions of the agreement state that the seller 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.

Tax on Land



While New Zealand does not have a blanket Capital Gains Tax on land, there are a number of tax issues to consider when buying or selling. Although the focus is often on the Bright Line test, the IRD will first look into aspects including, but not limited to: if you buy the property with the intention of reselling and/or a scheme for profit-making purposes; if you have a regular pattern of buying and selling property; if you are a property dealer, developer, or builder, or are otherwise involved in property business; if you are associated with someone in the property business even if you aren't personally a property dealer, developer or builder; and lastly, the Bright Line test. We recommend taking accountant's advice prior to signing an agreement for sale or purchase. Decisions made at the time of purchase may lead to a tax liability on sale.

The Bright Line test. If you sell a residential property any profit will be taxable if it is sold within a set period of time, unless an exemption applies. The most common exemption is if the property is your main home, although, if there is a pattern of using the main home exemption, this exemption may not be available and there may be further tax implications. For properties sold on or after 1 July 2024, the Bright Line period is two years. There are a number of other considerations which apply to the Bright Line test, if you fit within the relevant timeframes, and accountant's advice should be taken.

Withholding Tax. Overseas persons selling within the Bright Line period will have a withholding tax (lesser of 30% of the profit or 10% of the sale price) deducted from the sale proceeds and paid to the IRD. If you think you may fall into this category, you should immediately discuss your position with us.

Tax Statement. **All purchasers and sellers must file a Tax Information Statement, and will require a New Zealand IRD number to do that.**

For those buying or selling their main home (provided it is held in their own name) this is a relatively simple process. For any other transaction, this is a more complex process.

The requirements vary according to a purchaser or seller's status as detailed below:

1. Buying or selling main home – a Tax Statement is required by all parties and you will be required to provide your personal IRD number. NOTE: if you use this right more than twice in a two year period immediately before you sold your main home the exemption expires.
2. Offshore Purchasers or Sellers (even if it is a home) – a Tax Statement together with Tax Details are required. This means a New Zealand Tax Number (IRD No) and Country Tax Code for Country of tax residence with a Tax Identification Number for you in that Country (If more than one country all countries where tax is paid).

NOTE: Trusts, Companies etc will be considered offshore if they don't meet Overseas Investment criteria.

3. Trusts, Companies and other Institutions – a Tax Statement and Tax Details are required. This means a New Zealand IRD number is required for the entity purchasing.

Warning – For Offshore people to obtain a tax number in New Zealand you will be required to have an operational bank account. You should check with your bank. This process, together with the time taken to issue a tax number by IRD, will cause delays and possible defaults under a sale or purchase. Please discuss your status with us as soon as possible.

Trusts are required by IRD to register and our office understands will need to detail all Trustees and provide a copy of the Trust Deed.

We are not tax advisors. We cannot advise you as to the consequences of the transaction or the value or price of the property involved in the transaction. Any queries about tax should be directed to your accountant or a tax expert.

PART TWO – LEGAL ATTENDANCES

It is important to understand what occurs at the time of signing the agreement until settlement and possession.

Contract

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. A 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 our office if you have any concerns.

While we recommend obtaining a search of the Record of Title prior to entering into the agreement to enable encumbrances, covenants etc to be checked, it is possible to deal with these issues after signing. Each agreement gives the purchaser the right to requisition problems with the Record 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.

ADLS	REINZ	Tenth Edition 2019 (2)
AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE		
<small>This form is approved by the Real Estate Institute of New Zealand Incorporated and by Auckland District Law Society Incorporated.</small>		
DATE:	The day of	2020
VENDOR:	[REDACTED]	
PURCHASER:	[REDACTED]	and/or nominee

If you have conditions that require action on your part (e.g. 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 the agreement is binding (subject to any conditions) when signed. Our office has experience of purchasers being surprised by this. Please take care before signing and discuss this with our office.

While we recommend that you discuss all of these issues with us 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, it may not be too late!

Deposit

The deposit is payable on the signing of the agreement. Failure to pay a deposit gives a seller 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 us immediately.

If you are considering selling and purchasing on the same day and intend using deposit funds from your sale for your purchase then we recommend discussing this with our office as soon as possible so that steps can be taken to streamline the process and ensure the money is available at the right time for the on-purchase.

Attendances after completion of Contract

There may be conditions in the agreement that require attention and you will need to keep us informed in this regard. Swift clients are required to obtain their own reports.

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 will own 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 details as to how each party is contributing to the purchase. In the absence of specific instruction our office 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 three (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 our office as it may be possible to enter into a agreement with your partner to cover these issues.

If the property is owned by a Trust there may be a beneficiaries occupancy interest that needs to be recorded. Failure to do this may cause deemed rent problems with the Inland Revenue Department.

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

A settlement statement (the payment due on settlement) will be received from the seller's 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 seller has any financing arrangements secured over the chattels being sold with the property. In the event a security is registered, we will require clearance of this prior to, or at the time of settlement.

The seller gives a number of warranties under clause 7 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.

Settlement and Possession

The agreement records a settlement date on the front page. This is the date on which the balance of the purchase price is paid to the seller, this is through the seller's Solicitor. It is essential that our office is in a position to lodge cleared funds with the seller'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 ("pre-settlement inspection") upon giving reasonable notice prior to settlement date, this must be at least one working day before settlement. 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 agreement 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 a pre-settlement inspection is made.



The physical transfer of possession often takes place directly between the purchaser and seller and keys are exchanged between the parties or through the Real Estate Agent. The agreement 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 sellers 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 seller or seller's Solicitor before 4 pm then interest accrues for each day until settlement. The interest is at the rate fixed in the agreement. 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 agreement. 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 our office 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 sellers' obligations in the event of default and if there are difficulties, we will need to discuss these with you in detail.

You will be requested to pay by electronic transfer (your bank can arrange this) for any funds paid to our office 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.

Registration

Documents are registered electronically and your ownership and mortgage in most cases will be registered on the day of settlement. We will report to you and forward a copy of the electronic title document. Please note the Land Registry ceased issuing hard copy titles and all titles are now electronic.

Cost

Each purchase is different and the cost will reflect the complexity of the purchase, loan arrangements etc. We are happy to discuss the cost before we commence work. Our Swift Office deals with less complex purchases on a fixed fee basis.

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 a conflict, 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 assist you to find an independent property Lawyer.

S U M M A R Y

The above information is a brief summary of the buyer's obligations under the agreement used in most land sales. We cannot cover all matters and there may be issues that require other input, please advise. It is therefore essential that, if you have any concerns regarding the form of agreement, you discuss these with us.

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