

GUIDE TO SELLING PROPERTY



Welcome to Law North and Swift's GUIDE TO SELLING PROPERTY.

For homeowners the process of selling can be an exciting but stressful time. Making sure you understand the transaction and the potential for problems can help to reduce that stress and make for a smoother settlement.

IMPORTANT

We can give advice on the legal aspects of the sale, 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.

INTRODUCTION

This guide has been produced to help you understand your property transaction and our firm's role in this. While we cannot detail all of the requirements for the sale of a property, we set out below the more important issues. Any specific concerns you have that are not covered in this guide should be raised with us as soon as possible. Most sales in New Zealand are on the standard form of Agreement for Sale & Purchase used by Real Estate Institute members and legal firms. This guide is based on the provisions of that Agreement and refers to clauses are from that Agreement

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 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.

GST

The front page of your agreement will detail whether the sale is plus or inclusive of GST. There is also a detailed GST schedule in the Agreement. In the event that GST is involved in your transaction, these issues should be considered prior to the signing of the agreement. If the agreement was signed before you took advice, we suggest the GST issues are considered as soon as possible.

NOTE: If the sale is between two registered parties, it will be 'zero' rated and you will need to discuss this with our office.

Tenancies and Vacant Possession

The front page of the agreement provides for detail of tenancies to be included. If there is no detail of tenancies included, the vendor ("seller") must give vacant possession on settlement date. If there are tenants to vacate, it will be necessary to give the appropriate notice to the tenants. As the notice period is usually a minimum of 90 days, this needs to be dealt with quickly. Please advise our office if you believe there could be any problems with regard to tenants or the granting of vacant possession.

If the property is owned by a Trust there may be a life occupancy interest that needs to be accounted for on the sale of the property. Please discuss your requirements with our office.

Chattels

The chattels that are included in the sale are listed in the agreement and on settlement you are required to hand these over in the same state of repair as they were at the date of the agreement (free of any debts such as time payment).

Trees

Trees that could be classified as a forest need to be recorded to ascertain if they are liable under the Emission Trading Scheme ("ETS"). Please contact our office or your accountant in this regard.



Deposit

The general terms of sale record that the deposit is to be paid on the signing of the agreement unless the agreement provides otherwise. The person to whom the deposit is paid (usually the Real Estate Agency) holds this deposit as a stakeholder until the agreement is unconditional and the title requisition time (10 working days) has expired (for the definition of "title requisition" see clause 6 below). The agent will obtain authority from both the purchaser and seller to release the deposit. In the event that the agreement becomes unconditional, you should monitor the release of the deposit and if you require any assistance in this regard please advise.

If you have any concerns regarding the delay in payment of the deposit please discuss them with our office as there are provisions in the agreement to protect a vendor.

Possession and Settlement (Clause 3)

As noted previously you are required to give vacant possession unless a tenancy is recorded.
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There are a number of matters that need to be considered with regard to possession.

- **Boundaries.** The agreement provides that on the sale of vacant residential land, the seller must ensure that all boundary markers are in their correct positions. Please discuss with us if you foresee any problems in this regard.
- **Inspection.** The property must be in the same condition as inspected at the time of purchase (fair wear and tear excepted). Under the terms of the agreement you are required to give the purchaser, or the purchaser's agent, access to the property on one occasion prior to settlement to examine the condition of the property, fixtures, chattels, etc. and if necessary, the right to re enter and inspect any work that may have been carried out as a result of requirements following the first inspection.

Clause 10 details the rules for dealing with claims by a purchaser for compensation on settlement if there are issues after inspection. If this arises, please contact us to ensure the rules are followed.

- On settlement you are required to make available keys to all exterior doors, electronic door openers, and keys or security codes to alarms (this is not a requirement if the tenant holds these). It is essential that the keys etc. are available on settlement date. If keys have been lost, replacements should be made prior to settlement. We suggest that unless there are alternative arrangements the keys, etc. are left at our office for delivery to the purchasers on settlement. We emphasise that the provision of keys, etc. is a condition of the sale and non-availability will cause major difficulties on the day of settlement.



- Security contracts. If your alarm is part of a security contract, you may incur a liability to pay this after settlement if it is not taken over by the purchaser. This should be included as a condition of the agreement and should be discussed with our office prior to signing. If this has not been done it may be possible to negotiate with the purchaser post-settlement. Please let us have your instructions if you require this.

- Settlement. The agreement provides that settlement must take place on the nominated day of settlement before 4 pm. If the funds are not received by 4 pm interest at the rate detailed in the agreement is payable on a day to day basis until settlement occurs. Settlement can only occur if the seller is in a position to settle. This means that the appropriate transfer documents must be signed and available together with transferable title and the release of Mortgage documents. There is also the obligation to apportion outgoings such as rates, water rates, and provide keys etc. In the event that the seller is unable to settle, a default occurs. A default will lead to the purchaser having certain rights against you.

Examples of these rights are:

- If you are unable to give vacant possession you will be obliged to compensate the purchaser by provision of temporary accommodation or interest calculated on the purchase price at the rate of interest shown in the agreement.
 - In the event that you do not have proper title available and the purchaser elects not to take possession there is the obligation to compensate for temporary accommodation or pay
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the interest rate as detailed above. If the property is tenanted there is an obligation to pay the rent to the purchaser.

- If there is likely to be a problem in meeting the terms of settlement it is therefore essential that you discuss the problems with our office as early as possible with a view to mitigating the likely costs of default.
- Settlement against new Title. If you are subdividing and a new title is being created there are conditions relating to settlement that should be discussed with our office..

I n s u r a n c e (C l a u s e 5)

You are obliged to maintain insurance until possession is given. The purchaser is not required to take over your insurance policy and in almost every case will arrange their own insurance from possession. Following possession you have the right to cancel your insurance and seek any refund that is available from the insurance company. Please note if you are selling a Unit Title Body Corporate insurance covers the building and remains in place.



T i t l e R e q u i s i t i o n s (C l a u s e 6)

There are a number of provisions providing rights for the purchaser to requisition problems identified with the vendor's Certificate of Title, Unit Title, or Cross Lease. The purchaser must do this within 10 working days of the date of agreement and if a requisition is received this issue will need to be discussed with our office in detail.

Although there may be no other conditions in the agreement, the title requisition clause gives the purchaser the right to cancel the agreement and the general conditions provide that the deposit must be held until the requisition period has expired. If you have any concerns regarding this, please contact us regarding the requisition provision. Note – if on purchasing you need to protect yourself against requisition problems.

If your property is a cross lease or unit title property and you are aware of any changes that have occurred to the buildings or of the addition of extra structures, we suggest you discuss this with us as soon as possible.

V e n d o r (S e l l e r) W a r r a n t i e s a n d U n d e r t a k i n g s (C l a u s e 7)

Please note the importance of understanding the warranties and undertakings you as a vendor are providing.

The general terms of the agreement, if unaltered, record that the vendor is providing a number of warranties and undertakings. It is essential that you study these and if you believe there is any difficulty in complying please advise our office immediately. The important areas are;
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- a) The vendor undertakes that at the date of the agreement there has been no notice or demand from any local authority, a tenant, or any other party regarding the property. The agreement goes on to state there is a further obligation to give notice of anything received between the date of the agreement and settlement.
- b) The vendor undertakes that no consent or waiver has been provided in relation to any application under the Resource Management Act (e.g. consent to a neighbouring development).
- c) The vendor undertakes 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, as a seller you wish to exclude a system from this general warranty e.g. a fitted solar system that has been decommissioned, then it must be noted in the Agreement under "further terms of sale" and must be agreed to by the purchaser at the time of signing the Agreement.
- d) There are also undertakings given that:
 - All chattels will be delivered in the same state of repair as when the agreement was signed.
 - Anything sold on the property is free of any charge (e.g. time payment).
 - There are no arrears of general or water rates or other charges (if there has been any forest, bush cleared – please advise if there are any E.T.S. payments due).
 - If there is advance income (e.g. rent) that the statement provided on settlement correctly records the payment.
 - Any work to the property has been done with the appropriate Permit, Resource Consent or Building Consent and has been completed in accordance with that Permit or Consent and that a Code Compliance Certificate has been issued where relevant.
 - There is also an obligation to comply with the Building Act 1991 and Building Act 2004.

Please note that the two provisions underlined above create an obligation on you as vendor (and this can include a liability for all trustees if the property is held in a trust) to comply.

We are aware of a number of claims relating to leaky buildings that have caused problems for sellers. Please consider the provision on leaky buildings set out below.

We cannot stress the importance of the clause relating to warranties, in particular, building work. Please discuss any possible problems relating to these issues with our office.

Note: there is a responsibility not to breach these warranties between the signing of the agreement and settlement.

Leaky Buildings

With buildings constructed since the changes in the Building Regulations early in the 1990s, there have been a number of issues regarding leaking and rot. It is essential that the condition of any building is not misrepresented to a purchaser either by yourself or any of your agents. If questions are asked regarding leaks the correct answers need to be given. There is also risk if leaks are deliberately concealed.

We also draw your attention to the obligations under the warranties to comply with the Building Act. If you are the owner of a leaky building and sell this, you may be liable even if the purchaser knew of the problem. The only way to ensure protection from claims is to negate or remove the warranties referred to. This can only be achieved if changes are made before the agreement is signed. It is important that you discuss this with our office as early as possible.

If for any reason an agreement has been signed and you have concerns raise these with us. While your options may be limited, we can possibly take steps to remove or reduce your liability depending on the nature of the agreement.



Unit Titles and Cross Lease Titles (Clause 8)

The agreement has specific requirements regarding the sale of properties having a unit title. This relates to compliance with Body Corporate provisions and the appropriate certificates being provided by the Body Corporate. Please discuss these with our office.

Please also note you are undertaking that there are no changes to the unit plan and no resolution that would alter the title has been passed.



Conditions (Clause 9)

The agreement contains a provision regarding LIMs (Land Information Memorandum). The purchaser has a right to obtain the LIM if this provision has been included in the agreement. If the purchaser is not satisfied with the provisions of the LIM, notice must be given and the vendor has certain rights to resolve the matters identified as a problem. The time limits are strict and the response must be given within 5 working days. In the event that there is a problem with a LIM report contact should be made with our office immediately with a view to complying with the strict time limits.

It must be remembered with all conditions (e.g. finance, LIM, etc.) that if a purchaser does not comply a vendor has the right to withdraw from the agreement. There will be times when the purchaser requires an extension of the time limits. No extension of the time limits should be given by a vendor to the purchaser, real estate agent, or other party representing the

purchase without careful consideration of the provisions of the agreement. We therefore strongly suggest that you contact us to discuss any extensions before they are given.

As a seller, if the purchaser cancels the contract under either the finance or building report condition you are entitled to request proof/evidence of their failure to secure finance or the below standard building report.

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:

- **Tax Statement.** All purchasers and sellers must complete a Tax Information Statement, and in most cases will require a New Zealand IRD number to do that (see following details).
- **Bright Line Test.** For properties purchased before 29 March 2018, there is a tax on any profit if a property is sold within two years of purchase (with exemptions for a main home, transfer on death and on division of relationship property). For properties acquired on or after the 29th March 2018, the period is five years and for properties acquired on or after the 27th March 2021, the period is ten years. If you are at risk of selling within any of those periods, tax advice should be taken. There are also changes to the Main Home Exemption that take effect from 29th March 2021, including if there is a pattern of using the main home exemption regularly, which may have further tax implications. Tax advice from an accountant should be taken. There is a handy calculator on the IRD website that can assist you in determining if the house you are buying or selling is impacted by any of the property tax rules. Click the link to access the tool: [IRD Property Tax Rules Calculator](#) and reset the session to enter your properties details.
- **Withholding Tax.** Overseas persons selling within the two/five years 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 New Zealand Inland Revenue Department ("IRD"). If you think you fall into this category, you should immediately discuss your position with our office.
- **Income Tax.** Even if the Bright Line does not apply, not all profit from the sale of land is tax free. The tax status of a property is important. A property bought with the intention of development or sale at a profit is likely to attract the attention of the IRD. Care needs to be taken as it is the taxpayer's intention at the time of purchase that is the key to liability. It is important to take proper advice as decisions made at the time of purchase may lead to a tax liability on sale. Please discuss this with our office if you need assistance.

All purchasers and vendors are required to complete a 'Land Transfer Tax Statement.'

For those buying or selling their main residence (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 vendors status as detailed below:

1. Offshore Purchasers or Vendors – a Tax Statement together with Tax Details are required. This includes a New Zealand Tax Number (IRD Number) and Country Tax Code for country of tax residence with a Tax Identification Number for you in that country. (If more than one country or countries, then all countries where tax is paid).

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

2. Trusts, Companies and other Institutions – a Tax Statement and Tax Details are required. This means a New Zealand IRD number is required.

Exemptions apply to Government, Local Authorities, Vendors of Mortgagee Sales and executors of estates if selling to a third party.

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 but this will include an identification of person and funds required by the bank. This process, together with the time taken to issue a tax number by the IRD, will cause delays and possible defaults under a sale or purchase. Please discuss your status with our office as soon as possible.

Trusts will be required by IRD to register and we understand will need to detail all Trustees and provide a copy of the Trust Deed.

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 recommend an independent property Lawyer.

Payment of Money from Sale



We require your instructions as to how the money from the sale is to be utilised. If there are Mortgages or other charges on the property these will need to be repaid (if they have not been re-secured on other property) and any rates, water or other charges covered. The balance is then available for payment on your instructions. In view of the need to clear Mortgages, etc. it is often impossible to pay the amount on the same day, particularly if

settlement occurs late in the day. We will however be able to make payment by the next business day. From the settlement funds, we will withhold \$750.00 (minimum) pending the final water account being issued by the relevant Council or Water Company. Once this account is received, we will make payment and refund back to you any balance.

We sometimes experience difficulties with Banks accepting property sale payments as cleared funds that you can use immediately. If you will need to draw on the funds immediately please advise our office as it may be easier to make payments directly from our trust account to avoid banking delays. Alternatively, we may be able to complete a Same Day Cleared Payment, please discuss with us.

Finally, by way of warning, you need to protect ownership of your funds. If the funds are to be lodged to a joint account, there is a risk that these will become joint funds or relationship property (although gift duty has been abolished there is a potential risk of other tax being claimed by the Inland Revenue Department depending on your situation). Please consider your position and discuss this with our office before providing instructions to pay into joint accounts as there may be ownership, property relationship or other issues that need to be resolved first.

Other Property Related Issues

Our property lawyers and legal executives are trained to anticipate and recognise any pitfalls and resolve the problems often before you know you have got them. Their background means that they can use this experience to protect your interests. Please discuss with us what you require and what you expect from the transaction as this will help us work to your advantage.

In addition to the property related issues there are sometimes other issues that need to be considered, such as:

- What is the effect of the Property (Relationship) Act?
- Do you need a Family Trust?
- Do you need to update your Will?
- Do you need Powers of Attorney?

Please discuss these and any other particular requirements you may have with us as soon as possible.

SUMMARY

The above information is a brief summary of the vendor's obligations under the contract used in most land sales. Our office cannot cover all matters and in many cases there will be additional clauses. It is therefore essential that if you have any concerns regarding the form of agreement you discuss these with the appropriate person in our firm.

Our office handles our property transactions within a conveyancing team headed by a Lawyer. Each Lawyer 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 Lawyer handling your file at any time during the transaction.

As noted in the guide every vendor requires a New Zealand IRD number. If you or your Trust or company do not have one, advise us immediately.

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