
BUYING OR SELLING A PROPERTY

**Do the right thing –
see your lawyer first**



**NEW ZEALAND
LAW SOCIETY**

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1. | **Get the most from your property experience**

New Zealanders like to own their own homes and, for most of us, it'll be our biggest investment.

Whether you are buying or selling for the first time or not, you will want the experience to be positive and rewarding. You can avoid a lot of potential stress, cost and frustration by following the basic steps in this brochure.

2. | **Do the right thing – see your lawyer first**

Choose a property lawyer – get recommendations from friends, family, work colleagues or your local branch of the New Zealand Law Society (see list on page 18). You can also visit www.propertylawyers.org.nz

See your lawyer and make sure that whatever you sign is right for you before you sign it. Remember:

- You usually can't change an agreement after you have signed it.
- Your agreement might be with your agent (an authority to sell) or with the property buyer or seller.
- You can save money and anxiety by seeing your lawyer first.
- Your lawyer can help you prevent small problems turning into big ones.

3. | Stay in control

Whether you are buying or selling a property, you are the one who must be satisfied with the outcome – not the agent, not your family or friends. Stay in control of the process and let your lawyer help you to:

- understand what your lawyer can do for you;
- understand the buying and selling process;
- avoid the pitfalls;
- work out your financial limitations – how much you can borrow, how much you can afford to repay;
- find out the other costs of buying or selling a property;
- complete any other legal work you might need such as making a will, preparing enduring powers of attorney, setting up a trust, taxation or property relationship matters;
- understand the agents' role, who they work for, how they are paid and how you can get best value from them.

4. | What is the process?

The beginning

Seller	Buyer
Talk to your property lawyer about your options and the outcomes you want, including choice of agent, selling methods and price range.	Talk to your property lawyer. Consider the price range for the type of property you want and how much you can afford to borrow.
Decide what you should do to make the house more saleable and get on with those jobs.	Complete the checklist on page 8 to identify the things you are looking for in a property.
Select a real estate agent and confirm the sale method (multiple listing/sole agency, auction/tender) and price range.	Identify key real estate agents; check out their listings in publications and websites.
You find that dream home!	

Remember, do not sign the agreement before your lawyer has had a chance to discuss it with you.

The middle

Seller

Your lawyer can help you negotiate the price, settlement date and conditions to achieve the best outcome for you.

You sign a final agreed offer – after talking with your lawyer, as this becomes the binding agreement. Don't sign more than one agreement unless it is absolutely clear that the subsequent agreement is a back-up that will take effect only if the first one falls through.

Make sure the deposit you receive is sufficient to cover any commission to the real estate agent that will fall due when the contract becomes unconditional (even if the purchaser fails to complete the purchase).

Resolve any problems with the title and Land Information Memorandum (LIM) report with the buyer. (Yes, problems do happen!)

Check that all conditions have been met.

The contract is declared unconditional.

Buyer

Your lawyer will help you negotiate the price and conditions you want. Your lawyer will advise you of any research you should do on the property.

You sign a final agreed offer – after talking with your lawyer, as this will become the binding agreement.

Consider your loan options – your lawyer can help you apply for a loan.

Get the title checked.

Get a Land Information Memorandum (LIM), a valuation and, if required, a builder's or engineer's report.

Try to resolve any title or LIM problems with the vendor.

Check that all conditions have been met.

The contract is declared unconditional.

The end

Seller	Buyer
You sign the authority that enables the lawyer to transfer title to the buyer.	Arrange insurance. You sign the authority that enables the lawyer to register the transfer from the seller and the mortgage charge. You also sign loan agreements for the mortgage.
Your lawyer will organise repayment of any mortgage.	Your lawyer will confirm the amount required on settlement and assist you to arrange payment.
Organise the keys for handing over.	
Organise your move and change of address. Advise phone, power and other utility companies of your moving out date and have meters read.	Organise your move, change of address and phone, power, gas and other utility connections.
Allow the buyer to re-inspect the property before settlement.	Before settlement, carry out the final inspection of the property you are buying.
Move out on settlement/possession date, or other agreed date.	Move in on settlement/possession date, or other agreed date.

A property transaction is like an iceberg. You, as the client, will see only a small part of the work that needs to be done to complete the deal. Behind the scenes, your property lawyer will make sure that it goes through with the minimum of fuss. Your lawyer will look after your interests every step of the way.

5. | Your lawyer's role

Your lawyer should protect your interests and ensure the smoothest, simplest, most efficient transaction for you, whether you are buying or selling.

Unlike others involved at various stages of a property transaction, your property lawyer:

- gives you independent advice;
- acts to protect your interests;
- understands the process well;
- has experience in negotiating for buyers and sellers;
- knows potential pitfalls and traps;
- knows you and your personal circumstances (or is prepared to find out);
- knows the law; and
- understands that buying and selling can be an emotional and stressful time and tries to steer around that!

Remember, get your lawyer's advice before signing anything. Documents can be emailed or faxed to your lawyer when there is any urgency.

When you go to see your lawyer, take a list of the questions you want to ask. The final decision in all matters will be yours. Make sure you have enough information to make the right decision.

6. | Checks – what needs to be done and who will do it for you?

There are many checks you can make to be sure that what you are buying is really what you want. Your lawyer will know what checks to make and who can make them for you.

For example, you'll want to know:

- Are there any problems with the title? – Get a title search.
- Are there any problems with the buildings? – Get a builder's (and /or engineer's) report.

- Have all council requirements been met? – Get a LIM report.
- Is the price good value for this property? – Get a report from Quotable Value New Zealand or a registered valuer.

Your lawyer can assist with any research required about the property, including advising you on any reports you obtain. This work is insurance against disappointment and perhaps substantial additional costs if you have to fix something later.

7. | Loans – so many choices!

There are a lot of choices for loans to buy property. Many lawyers provide a free mortgage-broking service. Your lawyer can provide unbiased advice about the best source of finance for you and about related matters, including:

- how long the term of your loan should be;
- the interest rate – whether floating or fixed; if fixed, for how long;
- whether you pay interest-only for a period or principal and interest together;
- whether you should make your repayments fortnightly, monthly, quarterly or annually;
- whether to take out mortgage repayment insurance;
- whether to take out redundancy insurance;
- what home insurance you should have – full replacement or indemnity, and with whom (the cheapest is not always the best).

Some of these decisions affect how long it will take to pay off your loan and how much interest you will pay overall.

8. | **Buying a property – ownership and other issues**

Get these things right the first time. A change required later will mean extra cost.

Should you own the property in your own name, a trust or a company? There are taxation and other issues here. There are also taxation and other implications if you are buying property as an investment.

You might buy the property as a single person, as a married, civil union or de facto (including same sex) couple, with a friend or in a business partnership.

Ask your lawyer:

- Should you buy the property in joint names?
- Should you buy the property in equal shares or unequal shares?
- What does buying the property as tenants in common mean?
- Do you need a property ownership agreement?
- Does a will make any difference to the form of ownership?
- How do wills and trusts work together?
- How does the Property (Relationships) Act affect you or anyone you buy a property with?

Take another scenario – where your family is prepared to help you financially:

- Should your family lend or give you the money?
- If it is a gift, will your family have to pay gift duty?
- If it is a loan, how will it be protected and how will you pay it back?
- What are the implications of a guarantee?

The decisions you make now might have important consequences later on when you sell the property or if your relationship ends.

9. | Your property checklist

Here are some of the questions you should consider when deciding what property to buy, what area to buy in and how much you should pay. You might also have questions about more personal issues. Add your own points to the checklist and rank them in order of importance to you.

Ownership issues

- Joint tenancy or tenancy in common?
- For your own occupation or as an investment?
- Finance – what source?
- Should you own it in your own name(s) or through a trust or company?
- Property insurance – should it be full replacement value or just indemnity value?

Property issues

- Location (consider your objectives and possible capital gains)
- Outlook, view
- Standard and condition of nearby houses, neighbourhood generally
- Closeness to schools, shops, church, parks, medical facilities, other services
- Transport
- Sun and shade, general weather patterns
- Access – steps, paths, driveway
- Trees, hedges, gardens, lawns, secure fencing
- Suitability for children, pets
- Pool – is it fenced properly?

Accommodation issues

- Number of bedrooms
- Number of bathrooms/toilets (showers or baths)
- Laundry/laundrette

- Kitchen size and amenities
- Separate living areas (dining, lounge, family room, study)
- Storage
- Carport, garage (door opener), off-street parking
- Outdoor living amenities

Facilities

- Mains power, water, gas
- Mains sewer/stormwater
- Rubbish collection, mail/paper delivery

Features

- Telephones, TV/Sky aerial/digital dish
- Chattels – curtains, carpets, stove, light fittings
- Storage, shelving
- Insulation, heating
- Alarm system
- Décor, maintenance, weathertightness.

10. | How much can you afford to pay for a home?

When you are planning to buy a home, you think first of what you would like and then it comes down to what you can actually afford.

- What do you earn?
- What have you saved?
- What other debts and commitments do you have (such as hire purchase)?
- What can you afford to pay back on a loan?
- What other costs are involved in buying and owning your home (eg, rates, body corporate fees, insurance, maintenance)?

11. | Other sale and purchase costs

Seller

Agent's commission \$ _____

Water rates (estimated) \$ _____

General rates instalments due \$ _____

Mortgage discharge registration fees \$ _____

Legal fees \$ _____

Moving costs \$ _____

TOTAL \$ _____

Buyer

Loan application fee \$ _____

Mortgage repayment insurance premium \$ _____

Title search fees \$ _____

Valuation fee \$ _____

Builder's report fee \$ _____

LIM fee to local council \$ _____

Transfer and mortgage registration fees \$ _____

Legal fees \$ _____

Moving costs \$ _____

Share of rates \$ _____

Property insurance \$ _____

TOTAL \$ _____

12. | Frequently asked questions

Do I need a Land Information Memorandum (LIM)?

It is recommended that you get a LIM if you are buying a property. The standard Agreement for Sale and Purchase includes a LIM condition, provided you select it on the front page. A LIM provides information the council holds about the property. It will show whether existing works have received council consent and whether the council requires any remedial work. It might, for example, show a fire burner has been installed without the appropriate certification. This could invalidate insurance on the property (eg, if the burner causes fire damage). A LIM report will also give you information about any site characteristics (such as contamination, propensity to flooding, etc) and zoning details. You can ask the seller to fix any defects disclosed in the LIM and cancel the contract if the seller refuses to do so. But remember, the LIM provides information only about those things reported to the council – not those that haven't been reported.

Who searches the title to the property?

Both sellers and buyers should ask their lawyers to search the title. Sellers should, among other things, make sure their property details are correct. Buyers should identify everything registered against the title that might affect their use and enjoyment of the property – eg, easements including rights of way, drainage and sewerage, electricity, telephone, gas, etc. Your lawyer will also check what needs to be removed from the title before you settle, such as the seller's mortgage.

Should I get the survey plan for the land being purchased?

Your lawyer should, in particular, get plans showing the site of buildings on the property when you are buying a cross-lease title or unit title. You should check, among other things, that the plans accurately show the outlines of the buildings on the land. For example, people sometimes add an extra room to a house on a cross-lease title without

changing the plan to include the extra room. The cross-lease title is then defective. You might also need to get survey plans for other reasons, such as identifying the location of boundaries or easements.

Should I get a builder's (or engineer's) report on the property?

It is now quite common for a buyer to ask for a builder's and/or engineer's report on a property. Buyers wanting a report should include an appropriate condition in the agreement. The condition usually allows the buyer to cancel if the report is not satisfactory. The Weathertight Homes Resolution Service run by the Department of Building and Housing will, if asked, check if the property is subject to a claim.

What about when a property is sold by auction?

Buying

- Auction agreements are usually significantly different from standard sale and purchase agreements. For example, you can't make an offer subject to finance or conditional on checking title matters and council records after the auction, so you need to make these inquiries before bidding.
- Always discuss the auction terms of sale with your lawyer well before the auction so these things can be checked first. You will have to pay the costs involved without any guarantee that you will be the successful bidder. However, you cannot afford not to make these checks.
- Also check that you can meet the financial terms of sale, including the deposit required at auction and the settlement date.

Selling

- Ask your lawyer to check the auction terms of sale before they are made available to the public.
- Make sure your 'reserve price' reflects the property's real value but is realistic.
- Competitive bidding for a sought-after property may bring you more than you expect or would get through another selling method.

What are council rates?

The local council (sometimes called the local or territorial authority) and local regional council charge annual rates on each property for the services they provide. Rates are set annually and collected throughout the year in instalments. Each council fixes its own number of instalments – usually between two and five each year. Your lawyer will make sure rates are adjusted on settlement. You will pay rates up to the settlement date if you sell and from the settlement date if you buy.

What if I buy a property with my de facto partner?

There are now major implications for de facto (including same sex) couples buying or owning property – and even for those who live in the property that just one of them owns. See your lawyer! Part 8 of this pamphlet sets out a lot of the issues you will need to consider if you buy a property in these circumstances. Make sure you discuss these issues with your lawyer before you sign the agreement to purchase.

13. | Commonly used terms

Agreement (also called the Agreement for Sale and Purchase)

A written contract for the sale and purchase of the property between the seller (vendor) and the buyer (purchaser). Never sign one without first discussing it with your lawyer.

Body corporate

The name for all the owners of unit titles on one underlying freehold title. The Unit Titles Act includes rules for owners to elect a body corporate committee and other rules that, for example, govern the use of common areas. Some, but not all, of these rules can be altered by the required percentage of votes of unit owners. Each owner gets a number of votes based on the value of their unit. Make sure your lawyer checks the body corporate rules and explains them to you if you buy a property with a unit title.

Chattels

Items included in the sale that are not legally part of a building. They usually include any stove, television aerial, carpets, blinds, curtains, drapes and light fittings on the property. They may also include rangehoods, dishwashers, refrigerators, heaters and so on. Make sure the agreement correctly includes the chattels you intend to buy or sell. Chattels not specifically listed in the agreement are not included in the sale.

Conditional agreement

A legally-binding agreement that can be cancelled if certain conditions are not satisfied. An agreement can, for example, be conditional on:

- the buyer arranging suitable finance to complete the purchase;
- the buyer getting a satisfactory builder's report or valuer's report;
- the seller finding another property.

The agreement becomes 'unconditional' when all the conditions are satisfied. Ask your lawyer to make sure all the conditions you need are included in the agreement.

Cross-lease (title)

More than one dwelling (or commercial premises) is included on one freehold title. All owners jointly own the freehold title. Leases by all the owners (as lessors) to individual owners (as lessees) give the individuals the exclusive right to occupy their own property. A cross-lease title is a combination of the owner's share in the freehold plus the owner's lease as lessee.

Deposit

Part of the purchase price (usually 10%) paid by the buyer when the agreement is signed or becomes unconditional.

Electronic transaction

A way of transferring title electronically instead of by paper transfer. Your lawyer needs to have a licence from Land Information New Zealand (LINZ) to do this.

Equity

What you own – rather than owe! The market value of your property less what you owe on your mortgage. Your equity will increase as the value of your property increases and the amount of your mortgage decreases.

Fee simple (title)

You own the property even if you have a mortgage. Also known as a freehold title, although some people do not regard their title as freehold until the mortgage has been paid off. It is the most common form of title in New Zealand.

Interest

Interest is the cost of borrowing money, usually expressed as an annual percentage of the amount borrowed. Interest is usually paid monthly for housing loans, but can be paid at different intervals.

Leasehold (title)

You do not own the property, but a 'lease' gives you the right to occupy the property. 'Tenancy agreements' are leases. It is possible to lease a property and own the building on the property. Your lease might also include an option to purchase. Ask your lawyer to explain the terms of the lease to you before you sign anything and, in particular, to identify costs in addition to rent (if any) the lease requires you to pay.

Mortgage

The security you give your lender and which is usually registered against the title to the property you buy. The property cannot be sold, except in rare cases, without the loan being repaid and the mortgage removed from the title (discharged). The lender can sell your property if you fail to do what your mortgage requires you to do. However, the lender must first meet certain legal requirements, which include giving you an opportunity to remedy any defaults. Make sure your lawyer explains the consequences of signing your mortgage.

Possession date

The date when the buyer takes physical possession of the property.

Principal (sum)

The amount you borrow.

Purchaser

The person who buys the property.

Settlement date

When the purchase price of the property is paid in full.
Usually the same date as the possession date.

Term (of your loan)

The period of time over which your loan (mortgage) is to be repaid. The longer the term, the more interest you pay.

Title

The Certificate of Title is an electronic document that describes the property and shows the legal owner of the property. In New Zealand, it can be a freehold, leasehold, cross-lease or unit title.

Unconditional agreement

An agreement not subject to any conditions: as buyer you must buy; as seller you must sell. Don't sign one unless you have discussed it with your lawyer first.

Unit title

Used for apartments and units. Each owner has freehold title to an apartment or unit and any garage/parking space or similar area attached to it. A unit plan shows their locality. Owners of units and apartments share common areas (eg, driveways and lifts) and the cost of looking after them.

Valuation

Your local council uses a valuation for rating purposes (previously the Government Valuation). The valuation is only a guide to the market value of the property. A private valuation, carried out by a professional valuer or Quotable Value New Zealand, should give a more accurate value.

Vendor

The person who sells the property. The vendor pays the commission to the real estate agent who arranges the sale of the property.

14. | What else can your lawyer do for you?

Lawyers deal with many personal, family, business and property matters and transactions. No one else has the training and experience to advise you on matters relating to the law. If your lawyer can't help you with a particular matter, he or she will refer you to another specialist. Seeing a lawyer before a problem gets too big can save you anxiety and money.

Lawyers must follow certain standards of professional behaviour as set out in their rules of conduct and client care. When you instruct a lawyer, he or she must provide you with certain information, as outlined in our brochure *Seeing a lawyer – what can you expect?*

This includes informing you up front about the basis on which fees will be charged, and how and when they are to be paid. The fee, which must be fair and reasonable, will take into account the time taken and the lawyer's skill, specialised knowledge and experience. It may also depend on the importance, urgency and complexity of the matter. There could also be other costs to pay, such as court fees.

You should discuss with your lawyer how you will pay for the work and advise if you don't want to spend more than a certain sum without the lawyer checking with you. A lawyer is required to tell you if you might be entitled to legal aid.

The brochure *Seeing lawyer – what can you expect?* also outlines how you can help control your legal costs and get best value from your lawyer.

Choose your own lawyer for independent advice. You do not have to use the same lawyer as your partner or anyone else involved in the same legal matter. In fact, sometimes you must each get independent legal advice.

Lawyers must have a practising certificate issued by the New Zealand Law Society. You can call the Law Society on (04) 472 7837 (or at one of the offices listed below) or email registry@lawsociety.org.nz to see if the person you plan to consult holds a current practising certificate. You can also check this on the register accessible through the website www.lawsociety.org.nz

If you have a concern about a lawyer, you can talk to the Lawyers Complaints Service, tel 0800 261 801.

If you don't have a lawyer:

- ask friends or relatives to recommend one;
- look in the Yellow Pages under “lawyers” or “barristers and solicitors”;
- inquire at a Citizens Advice Bureau or Community Law Centre;
- check these websites:
 - www.lawsociety.org.nz/home/for_the_public/find_a_lawyer
 - www.familylaw.org.nz
 - www.propertylawyers.org.nz
- contact your local New Zealand Law Society branch:

Auckland (including Northland, South Auckland, Coromandel) (09) 304 1000

Waikato Bay of Plenty (including Taupo) (07) 838 0264

Gisborne (06) 867 1562

Hawke's Bay (06) 835 1254

Taranaki (06) 758 3238

Wanganui (06) 345 7092

Manawatu (06) 356 2214

Wellington (including Wairarapa) (04) 472 8978

Nelson (03) 545 2613

Marlborough (03) 578 7269

Canterbury-Westland (03) 366 9184

Otago (03) 477 0596

Southland (03) 218 8778

Law Awareness Programme

The New Zealand Law Society publishes this pamphlet as part of its *Law Awareness Programme* to inform you of your legal rights, the law and how lawyers can help you. The full list of titles in this series is:

- Buying or selling a property
- Over the fence ... are your neighbours
- Domestic violence
- What happens to your children when you part?
- Dividing up relationship property
- What happens when your relationship breaks up?
- Living together
- The family trust
- Making a will and estate administration
- Powers of attorney
- Motor vehicles, accidents and alcohol
- You and the police
- Giving evidence
- Going into business

Client care brochures

The Law Society also publishes the following brochures outlining the standard of service that clients can expect from their lawyers and about the Lawyers Complaints Service:

- Seeing a lawyer – what can you expect?
- How to complain about a lawyer

Copies of the Law Awareness pamphlets and the client care brochures may be obtained from the New Zealand Law Society, PO Box 5041, Lambton Quay, Wellington 6145, tel (04) 472 7837, fax (04) 463 2985, email pamphlets@lawsociety.org.nz or from Citizens Advice Bureaux or Community Law Centres. They are supplied free to individuals and non-profit community service organisations, and at a small charge to others. They are also available on the Law Society website – www.lawsociety.org.nz/home/for_the_public/how_can_we_help_you

Notes

Notes

To the best of the New Zealand Law Society's knowledge, the information in this pamphlet is true and accurate as at the date below. However, the Law Society assumes no liability for any losses suffered by any person relying directly or indirectly on information in this pamphlet. It is recommended that readers consult a lawyer before acting on this information.

Reprinted July 2009

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