

The Process of Buying a Home

Buying or selling a home is one of the biggest financial commitments you will ever make. There are several relatively complicated stages to negotiate and there are a number of things to look out for.

In New Zealand there are several ways to sell and buy a home, including: auction, tender, advertised/ fixed price or by negotiation.

Regardless of the method used, you should always have a written sale and purchase agreement.

Preparing an offer

Before you submit an offer there are a number of key details that need to be determined:

- The name(s) of the vendor(s) and purchaser(s).
- The address of the property.
- The type of title (freehold, leasehold etc).
- The chattels that are to be sold with the property (e.g. whiteware, drapes, satellite dish).
- The price.
- The rate of interest that the purchaser must pay on any overdue payments.
- The deposit that the purchaser must pay.
- The date on which the agreement will become unconditional if there are conditions, e.g. title approval, finance, LIM report, builder's report, valuation, sale of existing home.
- The settlement date (the date the purchaser pays the remainder of the amount for the property, usually the day when the purchaser takes possession of the property).
- Any conditions the purchaser wants fulfilled before the contract is agreed.
- Condition of property.

The Sale and Purchase Agreement

Have your lawyer review the sale and purchase agreement prior to executing (signing) same, as this will afford you the opportunity to make any suggested amendments. It is extremely important to remember that once you have signed the agreement, a legally binding contract comes into force with the ensuing legal obligations.

Once your offer is submitted to the vendor, it will either be accepted, rejected or you will embark on negotiations with the vendor. It is usual for those negotiations to be handled by the real estate agent with any amendments to the contract preferably being approved by your property lawyer. Every time the Agreement for Sale and Purchase is amended and submitted to the other party it is, in law, the rejection of the previous offer and the making of a counter-offer. When the document is accepted without amendment and signed then the contract is formed.

It is important to note that the real estate agent works for and is paid by the vendor. The agent must therefore carry out the vendor's instructions (as



set out in the agency agreement) and act in the interests of the vendor. Agents do also have clear responsibilities to purchasers even though they are representing the seller.

Once the contract has been signed and dated, the real estate agent sends signed copies to the solicitors for the vendor and purchaser. The purchaser's solicitor will immediately obtain a search of the title and any relevant documents recorded against the title. Copies will then be provided to the purchaser. The general conditions of the standard contract contain provisions allowing a purchaser to object if there are problems with the title.

Can I cancel the agreement if I change my mind?

Once a contract has been formed, you cannot cancel a sale and purchase agreement just because you have had second thoughts about buying or selling the property concerned.

In general, once you have signed a sale and purchase agreement and the conditions set out in it have been met, you will have to go ahead with the sale/purchase of the property.

Satisfying Conditions as set out in the Sale and Purchase Agreement

At the same time as the title is searched, the purchaser is normally required to take steps to fulfill any other conditions of the contract. For example, if the contract is subject to finance or a valuation report, then steps should be taken to satisfy these conditions. The purchaser should also at this time check with the Council to ensure that all Council requirements have been satisfied and in particular that any additions or alterations have obtained the requisite consents. Many purchasers obtain a LIM (Land Information Memorandum) report from the Council. The LIM sets out information the Council has on the property. Councils make a charge for providing LIMs.

A condition of the contract may be a pre-purchase inspection report. This report should identify any items in the property that require attention. It is unlikely that a home will come through a property inspection with a clean report as maintenance on an existing home is always required. However, a property report allows you to make an informed decision prior to proceeding with the purchase of the property.

We recommend you use a certified inspector for your potential pre-purchase inspection report.

Confirmation

Once the purchaser is satisfied that the conditions can be fulfilled, the

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purchaser's solicitor confirms to the vendor's solicitor that the contract is unconditional. Alternatively, should a condition not be satisfied then the purchaser's solicitor should notify the vendor's solicitor that the contract is at an end.

Post Confirmation and preparation for Property Transfer

Once the contract has been confirmed we commence updating the Land Information New Zealand website (Landonline) for managing the transfer of the property's title with the details of your transaction. Relevant documents are completed on behalf of parties through the completion of signed Authority and Instruction forms (A&Is) which enables both the vendor's and the purchaser's solicitors to make the necessary changes to the title, on the day of settlement, of the property being purchased. The vendor's lawyer prepares a settlement statement (showing debits and credits) which adjusts the rates on the property as at the proposed settlement/possession date.

In addition, your solicitor will:

- arrange for the execution of the A&I's - which transfers ownership to you.
- check that the rates and other costs are paid and up to date.
- check that you have arranged insurance for your new home from settlement date.
- carry out a 'guaranteed search of title' from the Land Information Office. This protects you from anyone else having a claim over your property.
- make arrangements with you and the bank for advancing of your loan and payment of the remaining share of the purchase price (excluding your deposit).

Loan and Mortgage Documentation

The mortgage is a legal document that gives your lender security for the money that you owe them.

If the purchaser is borrowing money from a financial institution, then following confirmation and before settlement all loan and mortgage documents need to be completed by the purchaser. Mortgage instructions are sent by the lending institution to the purchaser's solicitor for preparation of the security documents and execution. The details of the mortgage are added to Landonline by the solicitor. Once the documentation has been completed, the purchaser's solicitor completes a certificate requesting the financial institution to draw down the loan on the settlement/possession date.

Insurance Cover

The purchaser needs to arrange insurance cover for the property from the possession / settlement date.

Pre Settlement Property Inspection

During the normal course of events prospective property purchasers visit a house they intend to purchase and if the property is to their liking, enter into an Agreement for Sale and Purchase.

Once the Agreement becomes unconditional, the purchaser is entitled to carry out a pre-settlement inspection in order to avoid any unpleasant surprises. Examples could be a window broken, light fittings missing, a burn mark on the carpet, etc. Obviously this damage must have occurred after



the date on which the agreement was signed.

The pre-settlement inspection is normally arranged by the real estate agent, and must be carried out no later than the day before settlement is scheduled to occur. During this inspection the property purchaser should ensure that the property is in the same condition as it was on the day that the contract was signed. If any damage has occurred since the signing of the Agreement for Sale and Purchase, the purchaser can request that the problem be

remedied or alternatively could ask for compensation.

Depending on the situation the purchaser's solicitor could negotiate with the vendor's solicitor to retain an amount in their trust account pending the satisfactory correction of the identified damage.

Possession / Settlement

The possession date, usually the same as the settlement date, is the day that you will take possession of the house. It is also known as the settlement date because it is the day you pay for the house and this process of transferring money is known as settlement.

On the possession/settlement date, the purchaser's solicitor receives the loan advance from your lender and any cash contribution from the purchaser and pays over the full settlement figure to the vendor's solicitor by way of a bank cheque or electronic transfer. This must be completed before 4pm on the day of settlement. The purchaser is entitled to vacant possession (and handing over of the keys) of the property as soon as moneys have been paid over but not before.

In exchange for the settlement moneys, title passes to the purchaser by means of the release of the Landonline documents from the vendor's solicitor to the purchaser's solicitor. The title is updated immediately with the discharge of the existing mortgage, the transfer of title to the purchaser and the new mortgage registered. A copy of the updated title is provided to the purchaser as part of the purchaser's solicitor's settlement report. Following settlement, the vendor's solicitor notifies the relevant Council with details of the names of the new owners of the property.

General

Whilst there is a process to follow when it comes to property conveyancing transactions, there is skill and experience required to avoid potential problems. You need to have confidence in those parties representing you to ensure an excellent result. 🏠

This article has been written as a guideline in order to highlight the process involved with purchasing a home. Should you need any assistance in relation to your property purchase or NZ Property Law, please contact Auckland Property Lawyer, Ian Mellett at Quay Law Barrister and Solicitor.

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