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LAW SOCIETY

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BUYING OR SELLING A PROPERTY

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 guide.

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.

You can also visit www.propertylawyers.org.nz and get detailed information on property lawyers in your area.

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.

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- If you are selling a unit title property it is illegal to enter into an agreement (even a conditional agreement) until you have given the buyer a pre-contract disclosure statement.

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 the buying and selling process;
- understand the continuing financial commitments, if you are buying a unit title property. They are different to those associated with traditional home ownership;
- understand the different disclosures you are legally required to make as a seller or request or receive as a buyer of a unit title property, and the consequences or remedies available if they are not made or are made late;
- understand the loan documentation and the financial commitment you are making, and that it fits within your budget;
- 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 or understanding 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.

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.

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If you are selling a unit title property, talk to your lawyer about your legal obligation to make statutory disclosures to the buyer and when you have to make them.	If you are buying a unit title property, talk to your lawyer about the statutory disclosures the seller is required to make to you and that you are entitled to request.
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.

Remember, do not sign the agreement before discussing it with your lawyer. If you are selling a unit title property you must not sign the agreement until you have made pre-contract disclosure to the buyer.

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).
If the property is in a unit title development, make sure you make all disclosures required under the Unit Titles Act on time.
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 can help you negotiate the price and conditions you want. Your lawyer will advise you of any research you should do on the property.

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Consider whether you will be able to obtain insurance (including earthquake cover) on terms satisfactory to you and your lawyer.
After talking with your lawyer, you sign a final agreed offer and this becomes the binding agreement.
Consider your loan options.
If the property is in a unit title development, decide whether to seek additional disclosures from the seller. Time limits apply.
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 seller.
Check that all conditions have been met.
The contract is declared unconditional.

THE END

Seller
You sign the authority that enables the lawyer to transfer title to the buyer.
Organise repayment of any mortgage.
If you are selling a unit title in a unit title development make sure you make pre-settlement disclosure to the buyer. Your lawyer will need to make sure your levies are up to date and obtain the appropriate certificate from the body corporate.
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.
If applicable, notify body corporate in writing of the transfer.
Allow the buyer to re-inspect the property before settlement.
Move out on settlement/ possession date, or other agreed date.

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Tell your lawyer where to pay the money.
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 confirm the amount required on settlement and assist you to arrange payment.
Organise your move, change of address and phone, power, gas and other utility connections.
If applicable, provide the body corporate with details required to be included in the register of owners.
Before settlement, carry out the final inspection of the property you are buying.
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.

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!

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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.

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.
- In the case of a unit title property, is there any other information about the body corporate and its administration you should be aware of? – Request an additional disclosure statement from the seller within the time limits allowed under the Unit Titles Act.

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

LOANS – SO MANY CHOICES!

There are a lot of choices of loans to buy property. Your lawyer can assist you interpret the documentation to ensure you understand your obligations, including in relation to:

- the term of your loan;
- the interest rate – the difference between floating and fixed;
- whether you will pay interest-only for a period or principal and interest together;
- whether your repayments are fortnightly, monthly, quarterly or annually;
- whether you have mortgage repayment insurance;
- whether you have redundancy insurance;
- home insurance – full replacement or indemnity, (the cheapest is not always the best).

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

BUYING A PROPERTY – OWNERSHIP AND OTHER ISSUES

Get these things right the first time. Changing them 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 couple (married, civil union or de facto (including same sex)), 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/sharing 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?

What about where your family is prepared to help you financially? Ask your lawyer:

- Should your family lend or give you the money?
- How to appropriately record family money made available, whether by loan or gift?
- How this will work if you are buying with someone else?
- 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.

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.

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OWNERSHIP ISSUES

- Joint tenancy or tenancy in common?
- Freehold, cross-lease, unit title or leasehold?
- 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? Does the fence meet all legal requirements?

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

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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.

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. Think about:

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

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OTHER SALE AND PURCHASE COSTS

Seller	
Agent's commission	\$ _____
Water rates (estimated)	\$ _____
General rates instalments due	\$ _____
Fees payable to body corporate or body corporate manager (if a unit title)	\$ _____
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	\$ _____
Additional disclosure fees (if a unit title)	\$ _____
Legal fees	\$ _____
Moving costs	\$ _____
Share of rates	\$ _____
Property insurance	\$ _____
Total	\$ _____

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?

The standard Agreement for Sale and Purchase includes a builder's report condition in clause 9.3, provided you select it on the front page. 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?

See your lawyer! 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. 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.

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 an agreement without first discussing it with your lawyer.

Body corporate

The body corporate is a statutory entity made up of all the unit owners in a unit title development. When you buy a unit you automatically become a member of the body corporate and when you sell your unit you cease to be a member of the body corporate (but may remain liable for levies if you don't give proper notice). The body corporate elects an owner of a unit as chairperson. The chairperson has certain powers and duties under the Unit Titles Act.

The body corporate is responsible for a range of management, financial, maintenance and administrative functions relating to common property and to the development as a whole. It is also responsible for maintaining and repairing some building elements and infrastructure which may not be common property. Some bodies corporate have or are required to have a committee to which the body corporate may delegate some of its powers and duties.

The rules governing the election of the body corporate chairperson and the committee and the rules governing meetings and voting are set out in the Unit Titles Act and can't be changed by the body corporate. Make sure your lawyer explains them to you.

Body corporate operational rules

The body corporate operational rules help the body corporate govern the unit title development. All unit owners, occupiers and the body corporate must comply with the rules. Under the Unit Titles Act, default operational rules are set out in statutory Regulations. The body corporate can revoke, amend or add to the default rules within certain limits set out in the Act.

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;

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- 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

The way of transferring title electronically in New Zealand. Your lawyer will 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 any costs in addition to rent the lease requires you to pay.

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Mortgage

The security you give your lender in exchange for the loan of money. It 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 (discharged) from the title. The lender can sell your property if you fail to meet your mortgage requirements. However, the lender must first meet certain legal requirements, including 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

The 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 property ownership

Unit titles are a common form of multi-unit property ownership. Owners privately own an area of land or part of a building and share common property (such as lifts or driveways) with other unit owners. Unit titles have a body corporate management structure to enable decisions affecting the development to be made jointly by unit owners.

Unit Title disclosures

Under the Unit Titles Act sellers of units are required to provide buyers with disclosure

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statements containing information prescribed in Regulations under the Act. In some cases prescribed forms must also be used.

There are three types of disclosure:

- pre-contract disclosure
- pre-settlement disclosure
- additional disclosure

Failure to provide a disclosure statement or failure to provide it within timeframes set out in the Unit Titles Act can have serious consequences and in some cases a buyer may even be able to cancel an unconditional agreement. Make sure your lawyer explains the types of disclosure and consequences of failing to make the proper disclosures to you.

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.

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 guide *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.

Lawyers must have a practising certificate issued by the New Zealand Law Society. You can call the Law Society on (04) 472 7837 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.

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If you have a concern about a lawyer, you can talk to the Lawyers Complaints Service, phone 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.

To the best of the New Zealand Law Society's knowledge, all information in this guide 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.

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