

# Terrace End Law.

Below is additional information entitled **WHAT YOU SHOULD KNOW AND THINGS TO DO WHEN YOU ARE BUYING A HOME** in relation to various common conditions, different types of title, the process of going unconditional, cash out clauses, caveat emptor, payment of the deposit, types of ownership, relationship property, insurance (including 'sum insured' insurance), rates, notices of change of ownership, matters to be attended to prior to settlement and possession, insurance, KiwiSaver and the Housing New Zealand subsidy and conflicts of interest. We encourage you to read these also. We especially refer you to the sections about Building Reports and Land Information Memoranda (LIMS, RPIE and Building File).

## **WHAT YOU SHOULD KNOW AND THINGS TO DO WHEN YOU ARE BUYING A HOME**

### **KiwiSaver – First Home Buyers**

If you have been enrolled in your KiwiSaver Scheme for 3 years, you may be entitled to withdraw all or part of your saving (this does not include the Government contributions).

Not all complying superannuation schemes permit withdrawals for this purpose and so you will need to discuss this with the Trustees of your complying fund that you belong to.

If you are buying your first home, **we strongly recommend** you obtain approval from your KiwiSaver provider (as this forms part of your finance for the transaction). It is unwise to assume you are entitled to withdraw funds from your KiwiSaver account in case you do not qualify, eg you have not held your account for long enough, you are on a contributions holiday or your KiwiSaver provider does not permit withdrawal for this purpose.

You will also have more certainty over the dollar amount of the permitted withdrawal.

### **KiwiSaver – Previous home owners**

You may also be able to use your KiwiSaver funds if you have previously owned a home, but do not currently own a property. You will need to apply to Housing New Zealand for them to determine whether you qualify. There are strict guidelines to qualify and you will need to provide Housing New Zealand with all information required before a decision can be made. Housing New Zealand will advise your KiwiSaver Scheme provider if you are eligible to use your KiwiSaver funds.

Again, **we strongly recommend** you obtain prior approval to use your KiwiSaver funds.

### **First Home deposit subsidy**

After three years of contributing to KiwiSaver, you may also be entitled to a first home deposit subsidy. The subsidy is administered by Housing New Zealand and you will need to apply to Housing New Zealand to see if you are eligible.

To qualify for this subsidy, payment is made directly from Housing New Zealand to our trust account on the settlement date. Housing New Zealand will not release this before or after the settlement date, only on the settlement date. This payment is not made to you directly.

**Please note that there are strict timeframes that need to be adhered to when applying for both Kiwi Saver contributions to be paid and also the Housing New Zealand subsidy.** We have been advised that 4 weeks is required by Housing New Zealand to process your application and pay the deposit subsidy. Please be aware of these timeframes

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and ensure that your application is completed correctly and that you have included all the relevant information that is required.

If the timeframes are not allowed for, then payments will not be received on the settlement date and funds cannot be paid by the KiwiSaver provider and/or Housing New Zealand after settlement has been completed and this may mean that you default on your property purchase.

## Insurance

Many insurers will no longer offer 'full replacement value' property insurance policies. Instead, these insurers will now require you to take responsibility for calculating the total cost to replace or repair your house in a total loss situation – called 'sum insured'.

Some lenders will now accept both 'full replacement value' and 'sum insured' property insurance policies. Some lenders will not accept 'sum insured' policies particularly where the insurance company imposes conditions (eg upgrade electrical wiring or remove scrim) or tags the cover to indemnity value.

If you have 'sum insured' property insurance, please note the following:

1. The 'sum insured' must, at all times, be sufficient to completely repair or replace the property in a total loss situation, regardless of how much your total borrowing is with your lender.
2. Your lender can ask you to increase the 'sum insured' at any time if it believes it is not sufficient to replace or repair the property in a total loss situation.
3. Lenders do not accept responsibility or liability in a total loss situation if that amount is not sufficient to replace or repair the property, even if they asked you as customer to increase the 'sum insured'. The lender would assess whether the property is suitable as security for them and that that property has adequate insurance to cover the amount that has been lent to you – not whether the insurance is right for your individual circumstances.

Here is some general information about 'sum insured' property insurance that may help you:

1. You as client will need to look at the terms of your insurance company's individual insurance policy to determine if the 'sum insured' needs to cover other items, for example:
  - (a) other structures or buildings, like deck, garages, carports, swimming pools and retaining walls; or
  - (b) allowance for demolition costs and professional fees, like architects or Council fees.
2. Building costs change over time and you should review the amount you are insured for regularly. Building costs differ depending on what materials have been used to construct the house and can also increase dramatically if there is a mass disaster. The insurance policy's annual renewal may be a good time for you to review the insurance that you have.

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3. If you change your property in any way, you should review the amount you are insured for.
4. Older properties, properties with unique features or built on difficult sites or properties with high quality internal finishes may cost more to repair or replace, and you may want to consider this when setting the amount you are insured for.

It is your responsibility to make sure that the insurance you or your broker arranges is acceptable to your lender. If it is not acceptable to your lender we may not hear about this until the day of settlement, causing delays, potential penalties and anxiety, as your lender will not advance loan monies for settlement unless it is satisfied with the insurance.

**Insurance for cross lease properties:** In the case of cross leases, it is preferable that all cross lease units, whether they are joined or not, have the same insurer. The Canterbury situation has shown the difficulties that arise when there are multiple insurers of flats or damage to one flat involves all insurers and mortgagees in settlement of a claim and there are often disputes particularly in relation to underlying services. Your bank may require all Cross Lease Owners to insure with the same Insurance Company.

**Insurance for attached dwellings:** In the case of dwellings which are attached to a neighbouring dwelling, it is preferable that attached dwellings have the same insurer. The Canterbury situation has shown the difficulties that arise when there are multiple insurers of flats or damage to one flat involves all insurers and mortgagees in settlement of a claim and there are often disputes particularly in relation to underlying services. Your bank may require all Owners of attached dwellings insure with the same Insurance Company.

**Previous Convictions:** Insurance Companies will not insure properties owned by any person who has a criminal conviction for dishonesty. If this affects you or a Co-Purchaser you are buying property with please urgently advise so the risk of you not obtaining adequate insurance can be considered in a timely manner.

**We as solicitors, must undertake to your lender that you have insurance cover in place before settlement. Your lender will not advance funds to our office until they have this confirmation.**

To do this you must provide us with a certificate of currency from your insurance company and this must show the following:

1. Your full name(s) as the insured person(s); and
2. Your lender noted as Mortgagee; and
3. The 'sum insured' amount or 'full replacement' must be shown on this policy; and
4. The commencement date of the policy (settlement date).

## **Title**

If the ADLS Agreement has been used then if you have any concerns in relation to the Title these must be addressed within 10 working days from the date you signed the Agreement. The requisition period expires on that date. Please raise any queries that you have with us as soon as possible, but ideally before the Agreement becomes unconditional as not all matters of concern can be requisitioned.

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## **Boundary**

Please pay particular attention to the boundaries to your property and if necessary have the boundaries checked to ensure that they align with the legal boundaries. If you cannot locate the survey pegs you would need to engage a surveyor to verify location and accuracy.

## **Finance**

If you have not already done so, please advise us of the name of the lender/mortgage broker arranging your finance (together with his/her mobile and email addresses).

As your Agreement is unconditional, we assume that you have made your own arrangements to finance the property and would appreciate your advice in due course as to the arrangements that you have made, if you have not already done so.

## **Risk Management**

The purchase of your home is one of the largest financial commitments you will make. Once you have committed yourself to a home loan, your lender will expect you to meet your repayments without fail, even when you can't work due to sickness or injury. No one likes to think about serious illness or death, but it makes sense to reduce the financial impact of such possibilities.

We, therefore, encourage you to seek sound risk management advice from an Authorised Financial Advisor (AFA) with a Qualifying Financial Entity (QFE) as a matter of urgency.

## **Type of Ownership**

You need to decide the identity of the party to be registered as the owner of the property. Put simply your choices, depending on your circumstances, are:

- (a) Sole Tenant:** This is suitable if only one person is to purchase the property.
- (b) Joint Tenants:** This can apply if more than one person (eg a couple but also other family members or business associates) are to purchase the property. The effect of joint tenants is that on the death of one of the co-owners the interest in the property of the dead person passes automatically to the survivor by virtue of the Law of Survivorship, rather than pursuant to the provisions of the dead person's Will (if any) or in the absence of a Will pursuant to the Intestacy provisions of relevant legislation.
- (c) Tenants in Common:** This can apply if more than one person (eg a couple, but also other family members or business associates) are to purchase the property.

One of the effects of tenants in common is that the Law of Survivorship mentioned above does not apply. This means that on the death of one co-owner the interest of the dead person passes according to the dead person's Will (if any) or in the absence of a Will pursuant to the Intestacy provisions of relevant legislation.

Another effect of tenants in common ownership is that the parties can decide in what proportion each co-owner will hold his/her/its interest in the property, whether that be equal or unequal shares.

- (d) Default Election:** If more than one individual is buying the property as co-owners then you need to be proactive in advising us whether or not you wish to purchase the

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property as joint tenants or as tenants in common and if the latter then you also need to advise us in what shares, whether equal or unequal. We would be pleased to speak to you about this further when you are in our offices or by telephone. If we don't receive specific instructions from you to the contrary we will be registering the property in your names as co-owners as joint tenants which is the LINZ e-dealing default option in the absence of an alternative choice being made.

**(e) Trusts:** Some clients have a Trust that they wish to utilise to purchase the property or may wish to establish a new Trust and nominate the Trust as purchaser of the property. If this is the case please make an appointment to see us to discuss this as soon as possible.

**(f) Company:** If the property is being purchased as an investment property then you should give consideration as to whether or not to purchase the property through a company at the outset, which is generally considered desirable. We can arrange for such a company to be incorporated and again, if this is the case, please let us know as soon as possible. However, if you wish to make an application to Inland Revenue to have the company registered with particular tax status (eg "a look-through Company"), then you will need to ask your accountant to attend to this for you.

Finally, it is important that you let your Lender know as soon as possible the ownership arrangements you intend for the property. Failure to do so could cause delays and difficulties with settlement.

## **Relationship Property**

If the property is being purchased by a couple in or about to enter into a relationship (whether de facto or de jure) then the couple should be considering the implications of the Property (Relationships) Act 1976, which now applies to de facto couples as well as to married couples. It may be desirable for the couple to complete a Relationship Property Agreement or for one or both of the parties to obtain asset protection advice. Before any such Agreement is completed each party would have to obtain their own independent legal advice. If you are concerned about the implications of relationship property legislation or purchasing the property with unequal cash contributions or unequal contributions to long term debt repayment then please call us to discuss this further or obtain your own independent legal advice before proceeding too much further.

## **Settlement Process**

If this Agreement is or becomes unconditional then prior to settlement and possession you will need to attend to the following matters:

**(a) Signing:** Prior to settlement you will need an appointment to attend our office to sign conveyancing papers. If you are raising a mortgage on your property, this will include Lender's documentation and securities. Please note the identification requirements mentioned above.

This appointment will be made in due course (following receipt of Lender's mortgage instructions, if applicable). If it is impractical for you to attend at our offices please let us know as soon as possible and if there is sufficient time we may be able to make arrangements to post these to you for signing and return prior to settlement.

**(b) House insurance:** As a matter of policy you should have Full Replacement House Insurance Risk over the dwelling and over any other improvements on the property. Certain properties can't be insured for full replacement value or at all, for example, those with a

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history of flooding, boarding houses and very old buildings. We suggest that you arrange insurance cover as soon as possible, with the cover to take effect on the date of settlement. If you are in any doubt about your ability to arrange full replacement insurance for a particular property you must check that it is insurable before the Agreement becomes unconditional. The policy must be in the names of the registered proprietors i.e. yourselves, company name, or the name of your Trust and your Bank (if you are obtaining a mortgage) must be noted as first Mortgagee. Once you have arranged the insurance, please ask your insurer to email their certificate of currency to my office, for my attention. Please note that we can't draw down your lender's finance without a copy of this insurance certificate so please ensure that you attend to this as soon as possible and follow up as necessary to avoid any difficulties on settlement.

The Agreement provides that you are able to inspect the property prior to settlement. You can do this up to the day before settlement (but not on the day of settlement) and can contact the Real Estate Agent to make a time to do this. When you inspect you are checking to see that the property and chattels are in the same condition they were in the day you signed the Agreement to purchase the property.

**(c) Possession:** It is normal for you to take possession of the property after all funds have been paid to the Vendor's Solicitor in exchange for Title to the property. Frequently settlements occur on Fridays and on most occasions, arrangements regarding keys are made directly between the parties and Real Estate Agents and the Vendor's Solicitor advises the Agent that the keys can be released to the Purchaser.

**(d) Payment of balance of purchase price:** Prior to settlement we will contact you advising of the balance that we will require from you to complete settlement. This balance will include the rates apportionment we mentioned above and my costs and disbursements and it will need to be paid to my Trust Account by way of cleared funds, on or before the date of settlement, prior to my completing the purchase for you.

We prefer to receive payment of the balance of the purchase price from you by direct credit to my Trust Account.

However, you will need to attend to this direct credit at least 3 full clear working days before settlement date to allow the funds to clear. **Please include in the narration of any electronic funds transfer your name and client number** (noted above) for accurate and prompt receipting. Please note that generally we will not be putting these funds on interest-bearing deposit as the amount of net interest that will be generated does not justify the administrative time involved.

If the amount is large and you are unable or choose not to complete the direct credit yourself you can arrange for your bank to electronically transfer these funds to our trust account and please ask them to email their undertaking that they have attended to this, that the funds are cleared and will not be reversed, in which case the 3 day rule need not apply.

If there are surplus funds available to you on the settlement date, you will need to provide us with an original deposit slip for the account into which you wish the balance of funds to go. This will enable us to deposit cleared funds to that account, through our on line banking system. If we do not hold your original deposit slip we will be unable to provide this service to you and the funds will be banked manually to your account, thus taking the usual 5 working days to clear.

**(e) Rates:** These are apportioned as at the day of settlement, with the Vendor being liable for the period of the rating year up to that date and you being liable for the balance of

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the rating year. The apportionment will be set out in our final statement of account. For most transactions there is a rates adjustment payable by the purchaser on settlement so please budget for this. We will advise the amount in due course.

**(f) Notification of Change of Ownership:** In addition to registering the property in your name, we will prepare Notices which are sent to the local and regional Council by the Vendor's Solicitor, so that your name will be included in their records as the new owner of the property. Once these Notices have been processed by Council (allow 2-3 weeks) we recommend you consider completing a direct debit authority for local authority rates to avoid inadvertent late payment with the consequential penalties.

**(g) What time will settlement be completed?** We are often asked this question and it is hard to answer. The best we can say is that the Vendor and Purchaser must be ready to settle by no later than 4:00 pm on the date of settlement and possession or they are in default with consequences. In reality, settlement is usually completed much earlier in the day with most settlements being completed between 11:00 am and 2:00 pm.

## **Bright-line Test AND RLWT**

The *bright-line* test is a form of Capital Gains Tax applying to sales of all residential land. It applies to sales of residential land acquired after 28 March 2018 and sold within 5 years of acquisition ("*the five year bright-line test*") and to land acquired after 26 March 2021 and sold within 10 years of acquisition ("*the ten year bright-line test*"). There are some exemptions for the "main home" but not for investment properties. Also, new builds are subject to the "*five year bright-line test*" only.

Residential Land Withholding Tax (RLWT) applies if the Vendor is an offshore person for the purposes of the "*bright-line*" legislation. If the Vendor and Purchaser are "*associated*" for tax purposes then the obligation to calculate, deduct, and pay RLWT to Inland Revenue is transferred to the Purchaser and the Purchaser's conveyancer. Please urgently advise if the *bright-line* test applies, you believe the Vendor is an Offshore RLWT person and you and the Vendor are associated.

## **Overseas Investment Restrictions on Purchase of Residential Land**

The Overseas Investment Amendment Act 2018 (effective 22 October 2018) brings residential and lifestyle land into the definition of sensitive land (i.e. land that falls under the category of "residential" or "lifestyle" on the district valuation roll).

The regime generally allows New Zealand citizens or resident-class visa holders who are ordinarily resident here to buy or build a home without having to apply to the Overseas Investment Office for consent. Residents who are not ordinarily resident can either apply for consent, or wait until they become ordinarily resident. Those who hold temporary visas, such as visitor, student, working holiday or work visas, generally won't be able to buy a residential property to live in.

Purchasers do not need OIA consent if:

- Purchaser is a New Zealand, Australian or Singaporean (Passport holder)
- Purchaser holds a New Zealand, Australian or Singaporean Permanent Resident Visa and lives in New Zealand for the 12 months previous to buying the property (and present in New Zealand for at least 183 days in the past 12 months).

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- Purchaser holds a New Zealand Resident Visa and lives in New Zealand for the 12 months previous to buying the property (and present in New Zealand for at least 183 days in the past 12 months) and is tax resident in New Zealand.

Purchaser can apply for OIA consent to buy one home to live in if:

- Purchaser holds a New Zealand Permanent Resident or Resident Visa and does not live in New Zealand
- Purchaser holds an Australian or Singaporean Permanent Resident Visa and does not live in New Zealand.

Purchaser cannot buy a home in New Zealand if:

- Purchaser does not have a Resident Visa (e.g. only holds a visitor, student, working holiday, work or other temporary visa).

If the Purchaser does not hold a New Zealand, Australian or Singaporean Passport we will need:

- A copy of the Purchaser's Visa; and
- A statement from the Purchaser that the Purchaser has lived in New Zealand for the 12 months previous to buying the property and has been present in New Zealand for at least 183 days out of the past 12 months.

**OIA applications:** Currently, we do not handle OIA applications. Any Purchasers who need OIA consent will either need to lodge this application themselves or refer this matter to an OIA specialist. In any event, there will be additional costs and delays involved.

**Refer:** [www.linz.govt.nz/OIA](http://www.linz.govt.nz/OIA): for Residential Land Statement which clients must complete before a dealing to transact land is lodged with Land Information New Zealand.

## **Land Transfer Tax Statement**

Before settlement you will be required to complete a Land Transfer Tax Statement.

In the case of individuals, we will require your IRD number(s) and there are no exemptions.

If the purchasing entity is a Trust or a Company, we will require the IRD number of that entity and there are no exemptions. If your Trust or Company does not already have an IRD number, we recommend you urgently obtain one as we cannot settle this transaction without it. We are told that the current delay is about two weeks.

## **GST: In relation to a taxable supply**

All transactions between parties in circumstances where both Vendor and Purchaser are registered for GST are **compulsorily zero rated** for **GST**.

If the Vendor **is** registered for **GST** but the Purchaser **is not** registered for **GST**, the Vendor may be obliged to pay **GST** to Inland Revenue in respect of the transaction.

If the Vendor **is not** registered for **GST** but the Purchaser **is** registered for **GST**, the Purchaser may be entitled to a **GST** refund in respect of the transaction.



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If there is a house on the property the dwelling may be (but not always) an exempt supply.

If you are **GST** registered then we strongly recommend you obtain advice from your accountant regarding the **GST** implications of this transaction so you are quite certain of the consequences.

**We will not take any responsibility for the effect or implications of this transaction on GST (whether that be a refund or a payment).**

## **Conflicts of Interest**

On occasion we find that the same practitioner from this firm may be asked to act for both the Vendor and the Purchaser or that one practitioner from the firm may be asked to act for the Vendor and another practitioner may be asked to act for the Purchaser.

This situation is not uncommon in a small provincial city like Palmerston North.

If this is the case on this occasion we are proceeding to act for Vendor and Purchaser on the basis of your informed consent. In the event any conflict of interest emerges during the course of this transaction such as a dispute between Vendor and Purchaser then we will recommend in these circumstances that both Vendor and Purchaser seek independent legal advice as soon as practicable. If we are incorrect and you do not so consent to these arrangements please urgently let us know so that alternative arrangements can be made for you to receive independent legal advice with another practitioner from outside our firm in respect of this transaction immediately.

If there are any matters about which you are uncertain please do not hesitate to contact us.