

Buying a home - a legal guide



Introduction

Whether you are buying your first home or upsizing, your home will likely be your biggest asset, so it is important to get the process right! That starts with getting to know the homebuying process, who's there to help and getting comfortable with some of the legal details.

We know that buying your first home can be incredibly daunting. Not only are you borrowing a lot of money but there are also a lot of unknown hurdles. Mistakes can be costly and ultimately you don't want to waste money as every dollar makes a difference.

We believe that the home-buying process should be easy and have created this first home-buyers' guide to help.

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Vendor/Seller

This is the person selling their house

The Agreement for Sale and Purchase (Agreement)

This is the written contract between the vendor and purchaser that sets out details of the property that you are buying and the terms and conditions that apply to your purchase.

Sale and Purchase Agreements are legally binding once signed and place obligations on you as soon as you sign. It is really important to take your time to understand exactly what you are signing and to get legal advice on any questions that you may have.

Purchaser/Buyer

This is you!

Conditional vs Unconditional

Sale and Purchase Agreements are either conditional or unconditional.

Conditional - means that a Sale and Purchase Agreement has one or more conditions that have not yet been met. You are obliged to try and meet the conditions at this point, but do not have to complete the purchase until all conditions are met or waived.

Unconditional - means that all of the conditions in a Sale and Purchase Agreement have been met and you must now complete your purchase. Properties are often considered to have been 'Sold' on a Sale and Purchase Agreement going unconditional.

Settlement

This is the date that your lawyer arranges to pay the agreed purchase price to the vendor, and you become the registered owner of the property. Settlement day is usually the day that you will get the keys to the property and be able to move into your first home (Yay!).

Conditions

Conditions are a set of stipulations in the Sale and Purchase Agreement that must be met before you are obliged to follow through with the purchase. Conditions can be added to benefit either you as the purchaser (e.g. ability to arrange finance to buy, Builder's Report, or Council LIM Report) or the vendor (e.g. buying another house), and often give you between 5 - 20 working days to confirm that you are happy that the condition(s) are satisfied.

Terminology



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Determine Your budget

Working out your budget is one of the more complex aspects of buying your first home. There are several places you can go for guidance on your budget. These include:

- Mortgage broker
- Bank

The best starting point in setting your budget is seeing a mortgage broker or your bank, even before you start seriously looking to buy. Your mortgage broker/bank knows the home loan application process (and assistance that you may qualify for) like the back of their hand and will let you know how much money you can borrow and pre-approve you to buy. They will also be able to let you know if you qualify for a Welcome Home Loan which requires only a 10% deposit, instead of the standard 20%.

We recommend seeking help even if you have only just started saving for a deposit, as a mortgage broker/your bank will be able to explain how you can make up a deposit and let you know how much you need to save – you might need a lot less than you expect!

There are a few things that can help you save a deposit:

Kiwisaver withdrawal

Almost all first home-buyers are eligible to withdraw their full Kiwisaver (apart from \$1,000) to help with the deposit. Your lawyer will help you out with the application to withdraw your Kiwisaver when your offer on a property is accepted.

Homestart Grant

Many first home-buyers that have contributed to Kiwisaver for 3 years or more will qualify for a Homestart Grant. The Homestart Grant is a cash contribution of up to \$5,000 per applicant (\$10,000 per couple) if you are buying an existing home and \$10,000 per applicant (\$20,000 per couple) if you are building a new house. Homestart Funds are given to you and do not need to be repaid, provided you meet Homestart's requirements for six months from settlement.

Applying for the Homestart Grant is quite complex and is handled by your lawyer on an agreement becoming unconditional. They will also help with the paperwork and ensuring this is processed on your behalf to release the funds (if you're eligible).

Parents

Parents can often also help with your deposit by providing a cash gift, or by guaranteeing your loan. It is important that you (and your parents) get legal advice if you are considering a guarantee as these are complex and can have significant consequences in case of default.

Once you've confirmed your budget with your bank or mortgage advisor you can apply for finance pre-approval. Finance pre-approval is usually a letter from your bank confirming that they have assessed you against their criteria and are happy to lend to you, with some conditions.

Pre-approval conditions often vary and can impact your ability to buy (even if you are 'pre-approved'). It's really important that your lawyer reviews these terms so they can let you know what you can and can't do when making an offer.



Attending open homes will cost you nothing more than your Sunday morning and can be good fun if done with coffee in hand.



Get a feel for the market

We always recommend that first home buyers check out as many properties as possible to get a feel for the market. This will get you familiar with different properties and neighborhoods and will help guide on what makes a good property and how much to offer.

The best way to get a feel for the market is to dive right into it and there are quite a few tools to help you out:

- Online websites such as [Trade Me](#), [open2view](#) and local agency websites
- Print media such as the Property Press and agency fliers

Attending open homes and talking to agents – Go out and look at as many properties as you can within your price bracket. Some agents will get details of what kind of property you are keen on and will add you to their mailing list if they have another listing that could suit, or something new pops up on the market.

Covenant

These are generally restrictions on the land on which the home is located. They may dictate what style of house can be built to either preserve the scenery or the value of surrounding houses, or they may restrict how land is used.

Easements

An easement grants another entity (person or group) certain rights over your property. This could be because a right of way crosses your land, or because other amenities such as water, electricity or other amenities run through your property.

Making an offer

Yay! You have found your dream home and now you're keen to make an offer.

If the property is listed through a Real Estate Agency the agent who will prepare a written offer for you to buy.

In preparing your written offer the Real Estate Agent will ask for some details from you such as the price that you want to pay, any conditions that you would like to add and contact details for yourself and your lawyer. Once prepared, the written offer will be returned to yourself (or your lawyer) to read through and if all is fine, sign.

We strongly recommend that you get your lawyer to look through any written offer that you want to make as Sale and Purchase Agreements create legal obligations, even if your offer is still conditional.

Getting your lawyer to look through a written offer is often at no additional cost and will ensure that your offer is as you expect it to be.

Your lawyer will also check the property's title and any **covenants**, **easements** or any other kind of instrument registered on the title and will explain how anything registered against the title could impact your use of the property.

You need to be aware of any and all of these restrictions before you place an offer. There are stories of people buying a property only to find they can't build a house due to gas pipes running through the land. This would have been identified on the record of title and easement details - something your lawyer will highlight before you place an offer!

Your offer is likely to include certain conditions. This is called a conditional offer, when all of these conditions have been met your offer becomes unconditional and the sale is going ahead!



The Sale and Purchase Agreement

This is the written legal contract between the buyer and the seller that gives both parties clarity on what is being bought and the terms agreed to. Once you sign this agreement it is legally binding so it is important to take your time with this, read the fine print and always seek legal advice.

When buying a house, you will typically receive a Sale and Purchase Agreement from the Real Estate Agent presenting the property. It is important to remember that while the Real Estate Agent must treat you (the buyer) fairly, they are ultimately working for the seller, and the terms in the Sale and Purchase Agreement often reflects this.

When done right, the Sale and Purchase Agreement is where as a buyer you can protect yourself by adding conditions to the purchase of a house.

Remember, if it is not in the Sale and Purchase Agreement there is no legal obligation for it to happen or be included.

That means if the dishwasher isn't on the chattels list then it might not be there when you move in!

Common conditions of purchase

When you make an offer to purchase a property you are able to include conditions to that offer. It is then up to the seller to accept your offer along with the conditions that you have included. Common conditions include (but are not limited to):

Finance

You are still able to make an offer on a property, even if your mortgage broker or bank have not yet approved your loan application. If doing this, you just need to ensure you include the condition that your offer is subject to having your finance approved.

Vacant possession

Meaning that the current tenants of the house must have left before the purchase is complete. This requires the seller to give 42 days notice to the current tenants from the time the Sale and Purchase Agreement becomes unconditional (after all other conditions have been met and you are definitely going to purchase the property). If you do not include this condition you could end up with a house already occupied by other people!

Solicitors' Approval

Is a condition often added to the Sale and Purchase Agreement to 'protect' a purchaser that signs a written offer, before seeking legal advice. Beware of this condition, however, as they tend to restrict what your Solicitor can disapprove and often give Purchasers very little (if any) real protection.

Property title search

It is really important you get your lawyer to complete a record of title search to ensure the seller is the legal owner of the property they are selling you. This will also show if anyone or any entity has a legal claim to the property (e.g. a bank or the vendor's ex-partner), plus any easements or covenants which may impact your use of the property.

Builder's report

It is really important that the house you are about to spend a lot of money buying is well built, compliant with the building code and healthy. If when you receive the Builder's report for the property there are any serious concerns, this condition gives you the opportunity to decide you no longer want to purchase the property.

LIM (Land Information Memorandum) report

This is a document that states everything the council knows about the history of the property (such as features or hazards of the land, potential erosion, water services, resource consents, building consents etc). If when you receive the LIM report for the property there are any serious concerns, this condition gives you the opportunity to decide you no longer want to purchase the property.

The completion of repairs or decorations

If the current owner has verbally agreed to have something completed by the time the property becomes yours it is important to include this in the Sale and Purchase Agreement to make it legally binding and set clauses for it being finished to a proper standard, and for what happens if the repairs or decorations do not meet that standard or aren't finished by the settlement date.

These are just some of the conditions that can be added to the Sale and Purchase Agreement. When the Real Estate Agent supplies you with the initial agreement be sure to take it with you to see a property lawyer; their expertise allows them to look at the Sale and Purchase Agreement with your best interests in mind and recommend things that you will not have considered.

Payment & obligations

When both the seller and the buyer have agreed to the terms of the Sale and Purchase Agreement the buyer is often required to pay a deposit. This is normally paid only on the Sale and Purchase Agreement becoming unconditional, but this needs to be added into the Agreement.

The deposit is typically paid to the Real Estate Agent and is in part payment of the purchase price. The balance of the purchase price and an adjustment for the rates on the property is paid to the seller's lawyer trust account on settlement day.

Once the Sale and Purchase Agreement becomes unconditional each party is legally obliged to complete the Sale and Purchase on the terms set out in the agreement.





Signing Transfer Documents and Settlement

Around two weeks or so before the settlement date (being the day you collect the keys and take ownership of your new home) your lawyer will contact you to arrange signing of the transfer as well as the bank's loan documents. By signing these documents, you are authorizing your lawyer to transfer the property into your name and to register your bank's mortgage over the property. You will also be signing bank loan documentation to ensure your bank has the funds available for you to drawdown to pay the balance of the purchase price on settlement day.

If you are contributing some of your own money towards the purchase price, your lawyer will ask you to make sure your funds are transferred into their trust account prior to settlement day.

Your lawyer will also ask you to make sure you have arranged house insurance and let you know that you are entitled to a "pre-settlement" inspection prior to settlement day. The pre-settlement inspection can be arranged

through the agent and allows you to check nothing has materially changed in the property since the date you signed the Sale and Purchase Agreement. If something has, you can talk to your lawyer about your options before you settle.

On settlement day, your lawyer will transfer the amount required to settle to the seller's lawyer. The timing of when this happens is usually dependent on when your bank transfers the loan funds to your lawyer's trust account. As a rough guide, settlement happens anytime between 10am and 4pm on settlement day.

Once your lawyer transfers the funds to the seller's lawyer's trust account, the seller's lawyer will notify the Real Estate Agent. The Real Estate Agent will be holding the keys to your home, and this is who you will collect the keys from so you can take over your new home!

Other considerations

All of the above is reasonably simple if you're buying on your own, as soon as you're buying a home with someone else things get slightly more complicated!

Property relationship legislation is an important consideration for couples and groups buying together. Depending on the state of your relationship with the other purchaser you may want to consider protecting your purchase. This can be done in a number of ways, with some protecting one person, and others protecting you both from external forces.

For example, if one of you is self-employed you may want to buy your first home under a Trust so that, if anything happens to the business, your home is protected from being used to pay back any debts the business may have.

If you are in a relationship of longer than 3 years or married then the law will entitle you both to a 50/50 split of the equity in the property if you separate unless you enter into a contracting out agreement.

If you purchase the property in your own name and then end up in a relationship, you may choose to protect your asset from any future changes in circumstance by entering into a

contracting out agreement. This can be arranged with suitable legal guidance.

Parents may be providing money for the purchase of a home and may want to protect their funds from a break-up or change in circumstances.

Once you become a homeowner, it is a good idea to make a Will to record who you wish to inherit your property if you pass away. Your lawyer will be able to assist with this.

Regardless of your circumstances, effective legal advice will help you navigate the choppy waters of buying your first home. The team at Govett Quilliam are experienced at guiding people buying their first home through this process.

Remember, this guide is a general overview. Always consult with professionals for personalised advice. If you're considering selling a home, chat to the Govett Quilliam property team for sound advice, outstanding experience and local insights.



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