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Are you buying a house?

Before buying your new home it pays to get good legal advice first.

Types of property

In New Zealand property there are a variety of legal titles to property. The property you wish to purchase will have either a:

- Fee simple or Freehold title;
- Leasehold title;
- Unit title;
- Composite Cross lease title; or
- Company share title.

There are advantages and disadvantages to these different types of property title and different considerations apply to each type. For example in a Unit title development, each owner owns a defined part of the building, (ie an apartment or unit and parking space), and they may also have shared ownership of the common areas (ie lifts, lobbies or driveways). A property which has a cross lease title means that a number of people will **share in the freehold ownership** of the land as tenants in common, and each house on the land is leased from the other land-owners.

The Sale and Purchase agreement

An Agreement for Sale and Purchase of Real Estate is a legal document which provides the terms of the contract between the purchaser and the vendor. Usually it will be drawn up by the vendor's (seller's) real estate agent on behalf of the vendor. If the sale is a private sale then a lawyer will often be instructed to prepare the sale and purchase agreement. Both the purchaser and seller will sign the agreement.

Should a Lawyer check the Agreement for Sale and Purchase?

It is best practice to obtain legal advice before you sign an Agreement. If the Agreement is correctly drafted then the whole transaction tends to proceed smoothly without unpleasant surprises. The lawyer will find out what safeguards you require and will incorporate the appropriate clauses into the Agreement. The lawyer will also advise on the amount of the deposit; the appropriate wording for the conditions (depending on whether you are a purchaser or vendor) and discuss with you any other matters of concern and potential risks.

What conditions should I include in the Agreement for Sale and Purchase?

The conditions to be included in the Agreement are extremely important. The most common conditions are:

- **Finance** - Do you have finance arranged? If not, then this should be either arranged with your bank first before signing the agreement or making the obtaining of finance a condition;
- **Registered Property Valuation report** - Do you need a Registered Property Valuation report? If you are concerned that you are paying too much for the property then you may want a valuer to do a report;
- **Builder's report** - Do you need a builder's report? A builder will carry out an appraisal of the property noting any defects that they can detect. They will normally also do a moisture level reading which may alert you to any leaky home issues.
- **LIM** - Do you need a Land Information memorandum (LIM)? The LIM is a document issued by the local City Council and it will provide you with a comprehensive report of the land and the buildings on it including the local body consents that have been issued; what zoning the property is situated in (ie residential, commercial or industrial) , whether it is free from any restrictions (ie building and fence heights); whether there are any proposed local developments which may affect the property; the wind zone; and any resource consents that may have been issued recently in the neighbourhood.
- **Code of Compliance** - Has a Code of Compliance been issued?

Other clauses that may be included in the Agreement for Sale and Purchase

- **Settlement date** – When does it suit you to take possession of the property? It may be you are locked into a residential tenancy lease and you may need to negotiate with the landlord to be released from that;
- **The chattels** – Usually the agreement will have a chattels list. Often these are just the basics (ie carpets and curtains and in New Zealand it is traditional to leave the stove) but other chattels should be specified (ie the garage door remote, the central vacuuming system, the security system, any particular garden features);
- Do you wish to include a “sunset clause” ie make your offer only open for a certain period of time. This may have the effect of putting the vendor under pressure to accept the offer particularly in the times when the property market is quiet.

Once the terms of the Agreement for Sale and Purchase has been completed what happens next?

Once the terms of the Agreement for Sale and Purchase have been finalised (noting the price offered, settlement date and any conditions) it needs to be signed by the purchaser and presented to the vendor (usually the vendor's agent will do this). If the vendor accepts

the offer then they will sign the agreement and a copy will be returned to the purchaser (or their lawyer). If the vendor does not accept the offer the vendor will commonly respond by amending the purchaser's terms (for example by amending the purchase price).

If agreement is reached

If agreement is reached between the vendor and the purchaser, then the purchaser must pay the deposit and undertake to fulfil all the conditions noted in the Agreement (ie endeavour to obtain finance, instruct a builder to carry out a report and obtain a LIM). Once the conditions have been fulfilled to the satisfaction of the purchaser then the vendor will be told that the agreement is no longer conditional and is therefore unconditional. The respective lawyers will carry out the necessary legal work to ensure that the property is transferred on the settlement date (the date that the purchaser actually takes possession). This will include preparing a settlement statement (which sets out the amount to be paid including an apportionment of the rates). The lawyer will also act for the purchaser's bank by ensuring all the loan documentation is correctly completed and the Bank's mortgage is registered promptly against the title. The purchaser will be required to organise property insurance before the bank will advance the funds.

Graeme Withers Law is highly experienced in all property matters. If you are looking for personal, prompt and professional advice, we'd be delighted to take your call. Contact us for an obligation-free chat on (04) 478 4888.

This note is intended for general information only. It is not intended to be relied on as a substitute for legal advice which focusses on individual circumstances.