



CavellLeitch >

Residential
property
buyer's guide

This guide provides you with an overview and to assist you through the purchase process.

Keep it somewhere handy so you can refer to it throughout the process.

This is not an exhaustive document, and does not take the place of our legal advice. Everyone's situation is different, so we will tailor our legal advice to your individual circumstances.

Normally a lawyer is engaged once the agreement has been signed, but you can come and speak to us when you are first wanting to put in an offer on a house, or have found a property that you'd like to buy at auction.

If we are able to meet with you before you sign a purchase agreement then we can ensure the agreement is drafted in a way that suits you best.

This guide doesn't discuss the process leading up to signing an agreement (i.e. offer negotiations and auctions) in detail. If you would like information about this then please get in touch.

1. Signing the agreement

2. Confirmation

3. Settlement

Definitions

There are some common terms used in this guide. Here's what they mean.

Agent

The Real Estate Agent licensed with the Real Estate Authority (REA) under the Real Estate Agents Act 2008.

Agreement

The agreement for sale and purchase. This legal document sets out in writing all of the terms and conditions of the sale/purchase as agreed by the buyer and seller.

Chattels

Movable and removable items of personal property. Chattels included in a purchase usually include the stove, television aerial, carpets, blinds/curtains, and light fittings. If you wish to purchase certain chattels then they must be listed in the agreement, otherwise the seller will be able to take them when they move.

Conditional period

The period of time between signing the agreement and confirmation.

Confirmation

Occurs when all of the conditions listed in the agreement have been satisfied within the time frames stipulated. For example finance has been approved by the bank, you have arranged insurance, a satisfactory building report has been obtained and a Land Information Memorandum (LIM) and title report has been produced by us and approved by you. We will notify the seller's lawyer, on your behalf, that all of the conditions have been satisfied. The agreement is then "confirmed" (also known as "unconditional"). This is the point of no return. Once an agreement has been confirmed, you are legally obliged to complete the purchase.

Due diligence

The term 'due diligence' encompasses all of the investigations that a buyer may wish to do to enable them to decide whether or not to proceed with the purchase. These investigations include, but are not limited to, reviewing the LIM and title, obtaining a builder's report, and obtaining suitable finance and insurance.

Fixtures

Items that cannot be removed without damaging the property or the item itself because they are physically attached to the property. When you purchase a property all fixtures must remain onsite, unless the agreement specifically allows for their removal. An example of a fixture would be a pergola that is bolted to the ground, or inbuilt shelving inside the home.

Purchaser / buyer

You, your company or trust. We can help you decide which is the most appropriate entity to use to purchase your home. It may also be necessary to obtain the advice of an accountant.

Settlement day

The day you take ownership of the property. If you are borrowing money from a bank to fund your purchase we will draw down any bank loan on the settlement day and pay the money to the seller's lawyer. You will not be able to start moving into the property until we have let you know that settlement has been fully completed.

Settlement statement

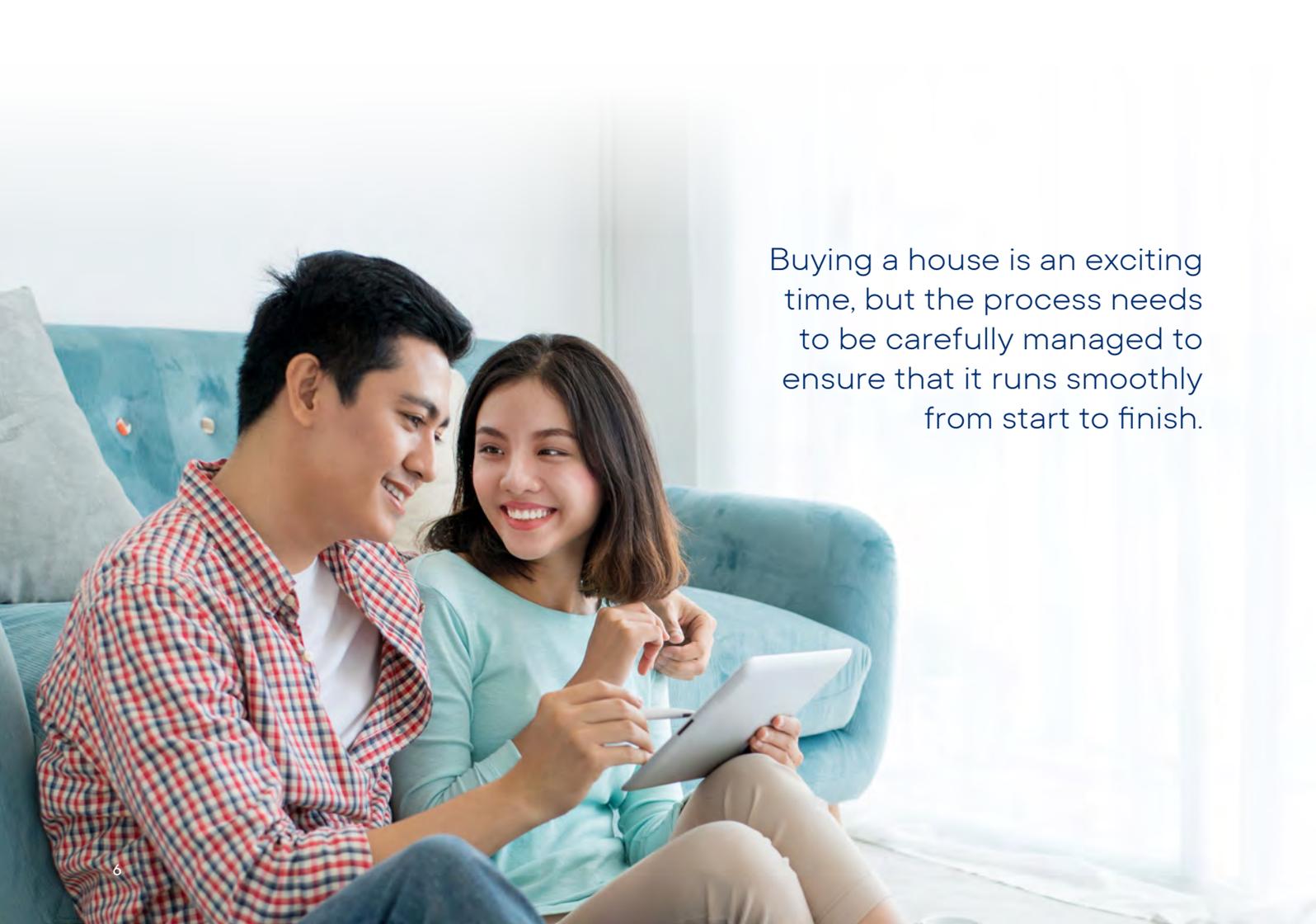
A statement showing the exact amount needed to complete settlement. This is calculated by deducting any deposit that's already been paid from the purchase price, and also including an apportionment of the rates on the property.

Title

A title (also referred to as the 'record of title') is a legal document that identifies the legal owners of land and also key information about the land such as the land area, the legal description and any restrictions. Each title has an identifier which will be a series of numbers or a combination of numbers and letters.

Vendor / seller

The person/people/trust/company selling the property.



Buying a house is an exciting time, but the process needs to be carefully managed to ensure that it runs smoothly from start to finish.

Important factors you must consider

Legally binding agreement

When you sign an agreement, it is legally binding. You are bound to do all things necessary to take the agreement to completion. If your agreement contains appropriate conditions you may be able to cancel it. For example if your investigations about the property reveal flaws that are serious enough to warrant cancellation, or if you are unable to obtain suitable finance or insurance. However cancellation is not always as straightforward as some people believe. This is one of the reasons why we encourage clients to see us before they sign an agreement.

Overseas purchasers

Please note that in general the law now states that only New Zealand residents and citizens can buy homes in New Zealand. If you are not sure that you qualify then we suggest that you discuss this with us before signing any agreement.

Are you using KiwiSaver funds?

If you are withdrawing KiwiSaver funds and/or applying for a First Home Grant or First Home Loan from Kāinga Ora then you must tell the agent. If you need to withdraw your KiwiSaver funds to pay the deposit when the contract confirms, then the agent will need to insert a clause confirming that KiwiSaver funds are being used for the deposit.

The agent will also need to ensure that there is sufficient time between signing the agreement, confirmation and settlement to allow for your KiwiSaver funds to be withdrawn.

You can obtain pre-approval from your KiwiSaver Provider and Kāinga Ora which does help speed up the process.

Timeframes for KiwiSaver withdrawals vary between providers so it is important that you check what those timeframes are before you sign any agreement to buy a house.

The First Home Loan is available from participating lenders, who each have their own credit criteria.

For more information on these grants visit your provider's website and the Kāinga Ora website.

Kāinga Ora First Home Grant / First Home Loan

kaingaora.govt.nz

Inland Revenue implications and accounting advice

We are not tax specialists, and we are not able to provide you with accounting advice. If you have any queries regarding how this transaction might affect your tax liabilities (for example if you are purchasing in the name of a company or trust or purchasing an investment property) you should seek professional accounting advice.

Ownership structure

This is an important consideration you need to think about at an early stage of the purchase process. Property that is owned by more than one person can be owned either 'jointly' or as 'tenants in common'.

Joint ownership

If a property is owned jointly, then both people own the whole of the property together. On the death of one of the joint owners, their interest (share) in the property automatically passes to the other joint owner.

Tenants in common

With a tenancy in common, each person owns a set portion of the property (for example 50/50). On the death of one of the owners, then their interest (share) passes according to the instructions in their will. We are happy to discuss this with you further and explain the benefits and implications of each type of ownership to you before you make this decision.

Other types of ownership

If you have been thinking about forming a trust or company, but are not quite sure what this means, and what the benefits might be, then now is an ideal time to speak to us and your accountant.





Unequal contributions and relationship property

If you and your partner are purchasing the property, and one of you is contributing significantly more money than the other, then it is important to consider whether you want to have this recognised and/or protected. For example, it might be appropriate for the property to be owned in shares as "Tenants in Common". We discuss this on page 8 of this guide.

Under the Relationships Property Act if you separate and have been together for more than 3 years, then the general rule of thumb would be that the value of the home is split equally. This might not be what was originally intended to be a 'fair' outcome however. If you both want clarity, you can enter into a 'contracting out agreement' (also known as a 'pre-nup') before you complete the purchase of your home. Such an agreement allows you and your partner to agree what is to happen with your respective assets if you separate or if one of you passes away.

The bank of Mum and Dad

It is increasingly common for parents to offer financial help to their child when they're buying a home. This can take a number of forms:

- Money can be gifted to the purchasers without the expectation of repayment.
- Purchase funds can be lent to the purchasers as an interest-free loan, or with interest and other conditions attached.
- Parents can also offer a guarantee to the bank or agree to offer their own property as security to help their child obtain a mortgage.
- Parents and their children may choose to co-own the property, with both parents and the child owning a percentage of the property. This type of arrangement should be recorded in writing including conditions on how costs/capital gains will be split in the future.

We can help you structure your arrangements to ensure everyone is happy.

Different ways of purchasing your property

There are many ways of buying and selling property in New Zealand. Here are the most common methods.

Price by negotiation

A property is advertised, sometimes with the vendor's expected price, and purchasers are invited to make offers. Your offers can be conditional upon you completing checks on the property, and you can also negotiate the amount of the deposit, the settlement date, and what chattels are sold with the property.

Auctions

When you purchase by action your winning bid is automatically binding, and you'll ordinarily be required to pay a 10% deposit immediately. Because of this, you need to ensure that you complete all your checks and approvals for the property before attending the auction. This will include having your lawyer review the LIM and title, having a builder check out the property, and being 100% comfortable you have finance and insurance organised. You can negotiate some aspects of the purchase before the auction commences, but this is less common.

Deadline sales

In a deadline sale, the vendor sets a date by which all offers must have been submitted. The vendor will then review all of the offers and decide which offer it wants to accept or renegotiate. The vendor will be able to accept or reject any offer at will, and accordingly purchasers are encouraged to put their best foot forward in a deadline offer scenario as they may not have the chance to reconsider their offer. Because of this some purchasers like to complete all of their checks and approvals before submitting their offer. This can allow their offer to be seen as 'clean' and attractive as possible.

1. Signing the agreement



From signing the agreement to confirmation

Once the agreement has been signed by all parties, the next step is to get any special conditions confirmed so that the agreement can become unconditional. The following tables set out the most common conditions and who is responsible for ensuring they are satisfied. You can tick off each condition as it is satisfied. Not all conditions will apply and you should check the agreement to see which conditions relate to your purchase.

Common conditions

| Condition | Who is responsible | What it means | <input checked="" type="checkbox"/> |
|------------------|--------------------|---|-------------------------------------|
| Form and content | Us | We review the agreement and make sure the form of the agreement and its content is satisfactory for your needs. | <input type="checkbox"/> |
| Title | Us | We obtain a search copy of the title and any registered interests and check for issues. A detailed report will be provided to you setting out what was found. We will advise you if there is anything that needs to be addressed. | <input type="checkbox"/> |
| Finance | You | You need to be sure that you can afford to buy the property. Before you confirm any finance condition you should obtain formal approval in writing from the bank or other lender of the exact figure they are willing to lend. You should make sure there are no conditions in the approval you cannot comply with. The bank could require you to obtain a valuation of the property as part of this process, and they will also require that the property is adequately insured. | <input type="checkbox"/> |
| Insurance | You | It is important to insure your property. As previously mentioned, your bank will require (as a condition of any mortgage) that the property is insured. You should ensure that the insurance is adequate given that most insurance companies no longer provide "full replacement" insurance. The cover will likely be a "sum insured" policy (meaning the insurance company will pay you an amount up to the sum you insure the property for). There are various ways you can work out how much you should be insuring the property for. Most insurers offer calculators on their websites, and you can also obtain an insurance assessment from various professionals. | |

| Condition | Who is responsible | What it means | <input checked="" type="checkbox"/> |
|-----------------------------------|--------------------|---|-------------------------------------|
| LIM (Land Information Memorandum) | Us and you | <p>LIMs are obtained from the local Council for a fee. The information is collected from the Council's property files. They provide site specific information such as (but not limited to):</p> <ul style="list-style-type: none"> - Rates - Land features and environmental issues, such as erosion and flooding - Restrictions on land or building use - Building consents issued for the property - Resource consents issued - Potential contamination by hazardous substances - The location of storm water and/or sewage drains <p>If there is a LIM condition in your agreement, we will obtain a LIM report and investigate this on your behalf. We will then prepare a detailed report about what we discover (together with the title report) and advise if there are any areas of concern. Please note – we are not able to inspect the Council's files personally and it is possible there could be other matters in this file that are not on the LIM report. If you have any reason that suggests a close inspection of the Council's file is warranted, then we recommend that you arrange to inspect their file yourself, as well as our report on the LIM.</p> | <input type="checkbox"/> |

| Condition | Who is responsible | What it means | |
|-----------------|--------------------|---|-------------------------------------|
| EQC claims | Us and you | <p>The seller will provide you with details of all EQC claims and a copy of the scope of works for work that has been completed. If you are obtaining a building report, it will be useful for you to provide the scope of works to the builder so they can check the work has been completed to a high standard.</p> <p>If the agreement is properly worded then any claims lodged by the seller will be transferred to you as buyer, irrespective of whether or not they have been completed. Assigning the claims will ensure the rights of the current owner are transferred to you, and you can deal with EQC in relation to any matters that may arise in the future.</p> <p>We will prepare a Deed of Assignment to be signed by you and the sellers which will then be lodged with the EQC on settlement.</p> <p>Alternatively the agreement may state that you are purchasing the property on an 'as is where is' basis. In this scenario the seller will be able to keep any money they have received from the insurers, and you will be purchasing the property in its current (and potentially unrepaired) condition.</p> | <input checked="" type="checkbox"/> |
| Building report | You | <p>If you have inserted a building report condition then it is up to you to obtain a report from a suitably qualified professional. You should arrange a time with the agent for the builder to inspect the property, and you may wish to accompany them. If there are any concerns raised by the builder, then you should notify us of these immediately so that we can raise them with the seller's lawyer. If you do not know of a suitably qualified professional, feel free to contact us as we have a list of preferred suppliers available to assist you.</p> | <input type="checkbox"/> |



Notes

LIM Review

As previously mentioned, the LIM will show any building consents that have been issued for the property. It is important that all necessary consents or permits have been obtained for the property and for any additions or alterations that have been made since it was first built. So that we can check for the required permits, it can help if you tell us if the property has any of the following:

- Log burner or pellet fire
- Gas appliances (hob, fire etc.)
- Swimming or spa pool
- A sleepout or granny flat
- Any garden sheds, pergolas or other structures
- Separate garage or carport
- Any deck or other 'drops' of more than 1 metre where a fence may be required
- Interior alterations including the removal of walls (e.g. wall between living room and kitchen)

- Internal plumbing rearrangements (e.g. laundry has become a bathroom)
- Exterior extension (e.g. new rooms, conservatory, porch)

Interior alterations and internal plumbing rearrangements may not be easily spotted when you are viewing the property. If you suspect there have been alterations to the property, you should ask the agent, who can in turn ask the seller if they are unsure.

Finance

As part of working out the affordability of your purchase, it is important that you take into account the costs involved in completing the purchase.

Fixed and estimated costs you may incur

Costs for independent reports

| | |
|--|--------------|
| Building Report | \$400-\$1500 |
| Valuation | \$500-\$1000 |
| LIM Fee from Council (varies according to which Council the property is in) – if a LIM isn't provided by the seller, we will obtain this on your behalf. | \$190-\$390 |

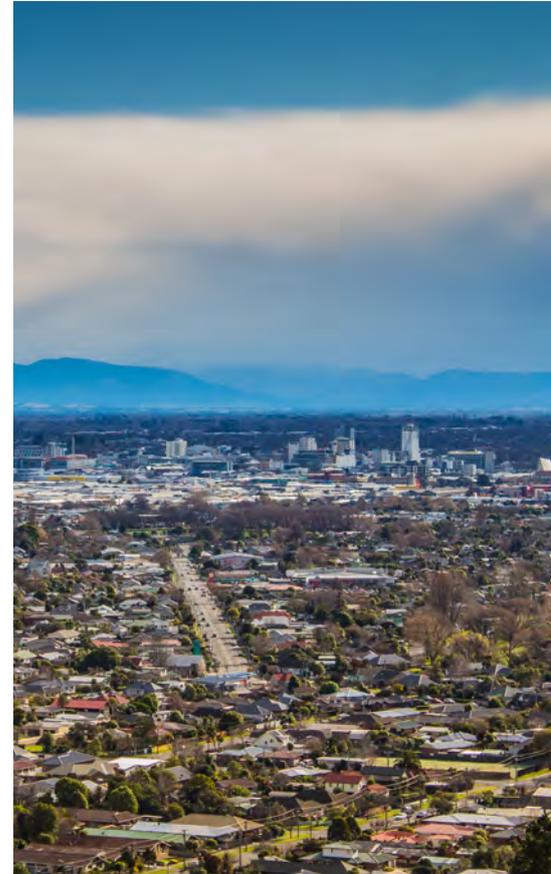
Costs for independent reports

| | |
|--|-----------|
| Search fees (\$6–\$7.50 per search) | \$36–\$60 |
| <hr/> | |
| PPSR (Personal Property Securities Register) search fee (a search we conduct to see whether the sellers have any outstanding loans) – \$3.45 per search. | \$6.90 |
| <hr/> | |
| Registration fees paid to LINZ (Land Information New Zealand) – \$90 per document – e.g. Transfer and Mortgage. | \$180 |
| <hr/> | |
| Bank fee | \$5 |

Legal fees

Our engagement letter will provide an estimated range of what our fees are likely to be. Please note we are only able to estimate our fees. Given the nature of the work it is impossible to give an actual quote. If there are complications or unexpected attendances, this fee is subject to change. We will do our best to keep our fees within the range estimated and will keep you informed if there is likely to be any change to the estimate provided in our engagement letter.

There are other fees such as courier charges, toll charges, forms and photocopying etc. that we might also incur on your behalf.



2. Confirmation

Confirming the agreement

We will work with you to ensure that any conditions are satisfied within the time frames given on the agreement. We diary the dates in our workflow system so they do not get missed. Once you are happy that each condition is satisfied, we will notify the solicitor for the seller. After all conditions have been satisfied, the agreement is then “unconditional”. This is usually when you need to pay your deposit (unless the agreement stated that the deposit must be paid as soon as the agreement was signed).

Deposit

The deposit amount (usually 10% of the purchase price, although this can be negotiated) is written on the front page of the agreement, and will also show to whom it needs to be paid. It is often paid to the real estate agent's trust account.

If you change your mind for any reason after the agreement becomes unconditional, you may forfeit your deposit, which is likely to be substantial.

Please note: it is easy to confuse this deposit with the 'deposit' you have saved to contribute towards the house purchase. For the purposes of this guide, when we talk about a 'deposit' we are always referring to the amount on the front page of the agreement payable to the seller. The amount you have saved towards the house purchase we refer to as your 'cash contribution'.

If you have any questions about the conditions in your agreement, please contact us and we will be more than happy to work through these with you.

Working out your cash contribution

When you meet with us, we will provide a draft statement setting out the flow of funds for your purchase. It will include the purchase price of the property, the deposit amount, any KiwiSaver and/or First Home grant monies, any bank loan advance, our estimated legal fees and the cash contribution (if any) required from you to complete the transaction. Any cash contribution paid into our trust account by you must be paid the day before settlement so the funds are cleared and ready to use on settlement day.



3. Settlement

From settlement to confirmation

After the agreement has been confirmed, we then prepare all the necessary paperwork for you to take ownership of the property on settlement day. These documents include:

- We'll work with you to complete and send any KiwiSaver withdrawal paperwork and Kāinga Ora First Home grant application forms. These need to be completed as soon as possible following confirmation
- Bank documentation for your loan and mortgage (if a trust or company is involved there will be additional documentation such as guarantees)
- Trustees and/or company resolutions (if required)
- Deed of Assignment of EQC and/or insurance claims
- Tax statements
- If you are purchasing the property in a name or entity that is different from what is written on the agreement, we will need to prepare a Deed of Nomination (to formalise the nomination of a different buyer)
- Authority & Instruction form (this is the form that allows us to register the transfer into your name and register the mortgage (if any) on the title)

Once we have completed the necessary paperwork, we will make an appointment for you to come in and sign the documentation. There are maps at the back of this guide showing our office locations.

Your appointment

Before you come in and see us, you should:

- Lock in interest rates and terms with your bank and ask them to send the loan documents to us
- Obtain an insurance "certificate of currency" from your insurer. This certificate will need to note the bank as an interested party if you have a mortgage. You can either bring this with you or ask your insurer to email it to us directly

You will need to bring certain things with you to the appointment (we will remind you when we call).

What to bring

- Identification – valid New Zealand Driver's Licence, Passport, NZ Firearms Licence
- Your IRD numbers (including IRD number for the trust/company if that is the entity purchasing)
- Proof of your residential address, such as a utility bill or rates demand

We will discuss

- Bank documents – we will explain the bank documents to you, provide you with the necessary disclosure and answer any questions you may have.
- Whether you are moving into the house on settlement day.
- What happens on settlement day, when you can expect your keys and where to collect them
- Tax and Residential Land statements.
- Pre-settlement inspection.
- Money – if you are providing a cash contribution how and when this needs to be paid.
- Our fees.

Tax statements and IRD numbers

A 'Bright-line test' now applies to all New Zealand residential property. It says you will have to pay tax when you buy and sell a residential property within a certain time period unless it's your main home or another exemption applies. Every transfer of land requires each party to complete their own tax statement. You therefore must provide us with your IRD number prior to settlement.

Please note

- It is your responsibility to complete the tax statement and determine whether you are eligible for an exemption from the Bright-Line Test. If your position is unclear you may need to seek advice from your accountant.
- You cannot use the main home exemption if you have used it at least two times in the last two years.
- If you are purchasing a house in the name of a trust, then you must supply the IRD number of the trust. If the trust does not have an IRD number then you must obtain one before settlement.
- If you do not complete your tax statement settlement will be delayed as we will be barred from completing registration.



E-dealings (Authority & Instruction forms) and proof of identification

You will be required to sign an "Authority & Instruction Form" (A & I form) whereby you authorise members of our firm to electronically register the transfer of the property and any other interests that may be required (such as a mortgage).

To enable registration to take place we are required to sight and certify an original New Zealand Government issued photographic ID (such as a passport or driver's licence) for every person each time we act for them.

It is essential that the name we use on the land titles register exactly matches the name shown on your photo ID. If you have changed your name by deed poll or by marriage from the name shown on your photo ID then you will need to provide us with a copy of a marriage certificate or document showing the change of your name.

Preparing for settlement

After you have signed the necessary documents, we then begin preparation for settlement. This involves us:

- Returning the documents to the bank, together with any other documents they require to ensure the funds are ready for us on settlement day.
- Certifying to the bank that we have done what is required of us in order for the transaction to progress smoothly.
- Liaising with the agent and/or seller's solicitor to obtain keys or ascertain where they can be collected from on settlement.
- Obtaining final searches to ensure the title is clear and the transfer is able to be registered.
- Setting up, prevalidating and certifying the e-dealing with LINZ so the transfer of ownership can take place on settlement day.
- Receiving and checking the settlement statement from the seller's lawyer and making sure outstanding rates/water rates are paid up to date.
- Receiving your cash contribution and preparing a statement to ensure we have enough funds to complete settlement.

Pre-settlement inspection

Prior to settlement you are entitled to conduct a one-off pre-settlement inspection of the property. You should be able to arrange this directly with the agent, or if it is a private sale, we can arrange this with the seller's lawyer. We would normally recommend conducting the inspection at least two days prior to settlement.

Once your inspection has been completed you should contact us to advise whether you are happy that the property is in the same condition as when you signed the agreement. If there has been any damage or if any chattels or fixtures have been removed then you will need to notify us immediately. We will then advise the seller's lawyer that there are things that need to be rectified before we settle.



Settlement day

The day you take ownership

When settlement day arrives, you will no doubt be eager to move in to your new home as soon as possible. However, it is very difficult to be able to give you a specific time of when settlement might happen. It is unlikely that settlement will happen first thing in the morning because there is a lot of behind the scenes work that we need to do on settlement day. We are unable to settle until we have received all necessary funds in (money from the bank, KiwiSaver, Kāinga Ora your cash contribution etc.). Also, if your purchase is part of a chain (i.e. you are selling a house on the same day as buying, or the seller is also buying on the same day) then there may be 2, 3, 4 or even more settlements that need to take place before yours. If you are intending to move in on the day of settlement, please advise us. We will do everything we can to settle as early as possible. If you are booking a moving company to help shift your belongings, we would recommend that you don't book them for first thing in the morning.

Make yourself available

It is important that we are able to contact you on settlement day, not only to advise you when settlement has been completed, but in case a situation arises where we need to take your urgent instructions.

As soon as settlement has been completed we will phone you to let you know. Once the seller's lawyer has let the real estate agent know and given them authority to release the keys, you can then arrange to collect the keys and move in to your new home!

The settlement process

Receive loan funds
from bank and any
other sources

Arrange payment to
seller's lawyer of the
total settlement funds

Seller's lawyer receipts
settlement funds to
their trust account

Receipt funds to
our trust account

Send confirmation
of payment to
seller's lawyer

Seller's lawyer 'releases'
the e-dealing allowing
us to register the
transfer in your name

Advise that
settlement has been
fully completed

Seller's lawyer advises agent that funds
have been received and authorises
agent to release the keys. You can now
pick up your keys

Submit the e-dealing
(transfer) to LINZ –
the property is now
officially in your name



We can also help with your other legal needs

Buying a house is one of the most exciting steps you will take in life, and Cavell Leitch would love the opportunity to help you get your hands on those keys. Our mission is to deliver New Zealand's best legal experience. We understand that legal matters can be confusing, stressful and scary so we try our hardest to simplify the process, listen to your needs and deliver timely, transparent advice. Please let us know if we can assist with any of your other legal needs, including:

Wills

Now that you have purchased a considerable asset like a home, it is the perfect opportunity to ensure you have an up-to-date will in place.

Trusts

We can discuss various ways of protecting your assets, including forming a family trust.

Employment

We can assist you with your employment needs, whether you're the boss or the employee.

Disputes resolution

Life doesn't always go to plan. If you find yourself in a dispute then we can help you resolve it, either via the courts, mediation, arbitration or by negotiated agreement.

Immigration

Cavell's immigration experts can assist you with any of your immigration queries.

Business and commercial

Cavell's specialists will work alongside you as you start, operate, purchase or sell your business.

Other property needs

Looking to buy an investment property, lease a building or subdivide land? Whatever you're aiming to achieve, we can help.

Checklist

Prior to agreement

- Applied for KiwiSaver approval
- Applied for First Home approval
- Applied for bank pre-approval
- Considered who the owners of the property will be

Conditional

- Spoken to solicitor about details of agreement
- Building report arranged and report completed
- Insurance confirmed
- Finance confirmed
- Spoken to lawyer re LIM and title
- Spoken to lawyer re intentions for property i.e. family home, development etc.
- Spoken to lawyer re EQC/insurance position
- Checked that the buyers or entity have an IRD number

Unconditional/pre settlement

- Return KiwiSaver and First Home forms to provider
- Obtained insurance certificate noting bank as interested party
- Loan confirmed and organised loan documents
- Met with us to sign all documents (bring ID, ideally passport) proof of address and IRD number
- Deposited cash contribution into our trust account (the day before settlement)
- Completed pre purchase inspection and informed us you are happy to proceed/ raised any issues

Settlement day

- Make sure you're available to answer phone calls if necessary
- Don't expect to move in at 9am – plan to move in later in the day to allow enough time for settlement (see page 19)

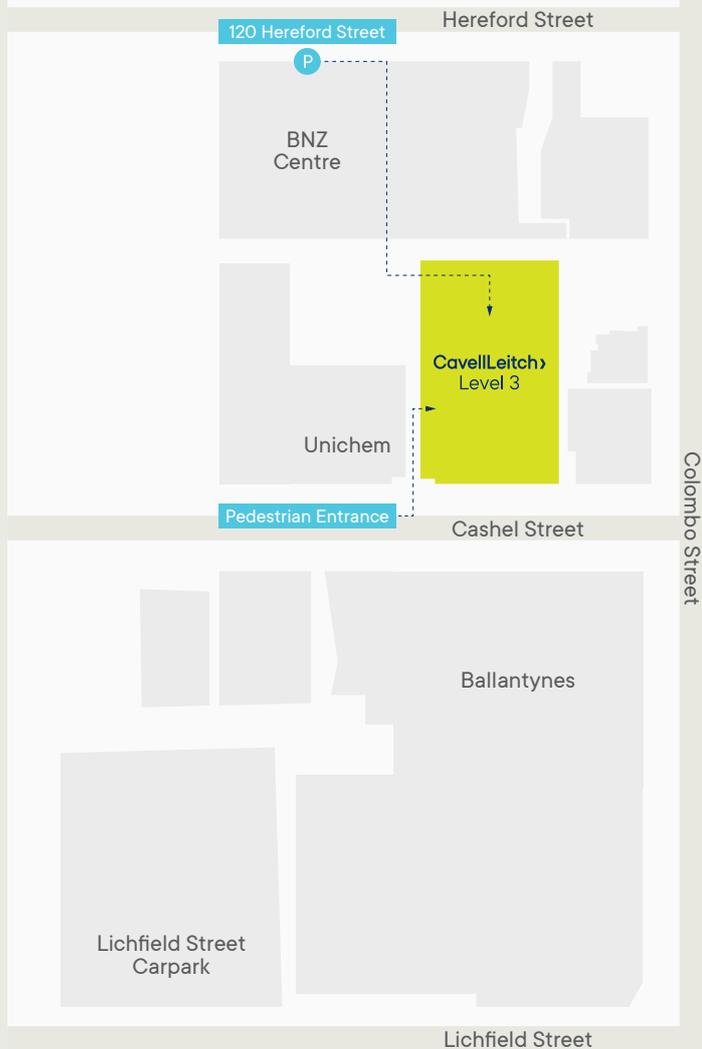
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