



CavellLeitch >

Residential
property
seller's guide

This guide to selling residential property provides you with an overview of what is involved and how to go about it.

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 you will always need tailored advice for your individual circumstances.

1. Getting ready for the sale

2. The
agreement

3. Confirmation
and pre-
settlement

4. 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 as agreed by the buyer and seller. Both parties sign the agreement once those terms and conditions are agreed.

Chattels

Movable and removable items of personal property. Chattels included in a sale usually include the stove, heat pumps, carpets, blinds, curtains, and light fittings. Unless chattels are specified in the agreement, they may not be sold as part of the property.

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 in the agreement. For example the buyer's finance has been approved by the bank, they have arranged insurance and a satisfactory building report has been obtained. The buyer's lawyer will notify us when all of the conditions have been satisfied and 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 sale.

Fixtures

Items that cannot be removed without damaging the property or the item itself, because they are physically attached to the property. In a sale, fixtures must remain with the property unless the agreement specifically allows for their removal. An example of a fixture would be inbuilt shelving inside the home.

Purchaser / buyer

The person, people, trust or company that is buying the property

Settlement day

The day the buyer pays for the property and takes ownership.

Settlement statement

A statement showing the exact amount the buyer needs to pay the seller to complete settlement. This is calculated by deducting any deposit that's already been paid from the purchase price and including an apportionment of the rates and any other income or expenses for 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 land area, the legal description and any rights and restrictions that apply to the land. Each title has an identifier which will be a series of numbers or a combination of numbers and letters.

Vendor / seller

You, your company or trust that is selling the property and is listed as the registered owner on the title.

Warranties

Guarantees or promises made by you to the buyer. Some standard warranties include that there are no outstanding building or planning issues, the chattels will be handed over in reasonable working order and the rates and water charges will be paid up to date.

Selling your house is a big decision. Whether you sell privately or through an agent there are things you need to be aware of.



1. Getting ready for the sale

Getting ready for the sale

Before you put your house on the market there are some things you need to consider:

Different methods of selling your property

The first decision you will need to make is whether to sell your property yourself or through an agent.

Private sale

If you choose to sell your property yourself, it may save you money because there is no commission to pay to an agent. However, negotiations around price and conditions can be daunting. Some prospective buyers are put off by not having a professional person to deal with, especially if they don't understand the process themselves. There are also warranties that you give to the buyer by signing the agreement and you must fully understand them before you sign anything. We will discuss these

warranties shortly. With a private sale, a lawyer will draft the agreement. You and the buyer then negotiate directly to agree on the price and conditions inserted into the offer. We would strongly recommend that you let us look over any offer in relation to a private sale before you sign it.

Selling through an agent

Most sellers choose to use an agent to market and sell their property. They find that dealing with an expert gives them more time to deal with preparing the house and garden for sale. Agents also have good knowledge of current market conditions, and will be able to advise on the best marketing strategy for your particular property. You can contact as many agents as you like for an appraisal of your property before you decide who to list with. If you want to work with a specific agent you can contact them directly. Contact details for all licensed real estate agents are available from the Real Estate Authority public register.

Selling at auction

If you choose to sell your property at auction, then any prospective buyer will need to complete their due diligence investigations before the auction takes place. A buyer is deemed to have agreed that the property is satisfactory for their needs, and so on the fall of the hammer, the purchase becomes unconditional. The agent will need to prepare an 'auction pack' which will provide the information to help any prospective buyers decide whether to attend and bid at the auction. The auction pack may contain things such as:

- A Council Land Information Memorandum (LIM).
- A copy of the record of title from Land Information New Zealand (LINZ).
- In some cases, you may provide things such as building reports or engineers reports.
- You may also be required to pass on any documentation in relation to EQC (such as scopes of works and information regarding settlement payments).
- The agreement for sale and purchase.

It is normal practice for us to review the auction agreement on your behalf before the auction takes place. We make sure that the agreement has been correctly drafted by the agent and that your interests are protected as much as possible.

Offer and negotiation

When a potential buyer wants to make an offer, the agent will draw up the agreement. The buyer will sign it and the agent will then present the offer to you for consideration. It is common for a conditional offer to be made. This means that the offer is subject to a number of conditions that must be met before the agreement goes unconditional and the sale takes place. You can negotiate with the prospective buyer (via the agent) with the goal of reaching a mutual agreement. The agreement may be amended a number of times during this process. Any changes to the terms must be initialled by both parties.

Is it a rental property?

If the house you are selling is a rental property then you need to tell the agent. There are various rules under the Residential Tenancies Act that mean certain notice periods must be adhered to if you are giving vacant possession to the buyer. Notice periods vary depending on whether the tenancy is fixed or periodic. The agent should be familiar with the Residential Tenancies Act and will be able to set confirmation and settlement dates accordingly.

For more information go to

www.tenancy.govt.nz/ending-a-tenancy





2. The agreement

The agreement

Chattels and fixtures

It is important to make sure any chattels or fixtures that you wish to take with you are noted in the agreement. If, for example, you want to take your curtains then this will need to be noted in the agreement. Otherwise it could become an issue when the buyer inspects the property before settlement and sees that they have been removed.

Vendor warranties

The agreement provides for certain warranties that you give to the buyer. It is important that you understand these warranties and their effect. Breaching a warranty can lead to significant financial and legal costs.

Notice or demand

You give a warranty to the buyer that you have not received, nor have any knowledge of a notice or demand or outstanding requirement from any local government authority or statutory body, tenant or other party that affects the property. If you have received a notice or demand, or have knowledge of one, then you must disclose this in writing to the buyer. For example, you may have received a notice from your neighbour to fix a shared sewer pipe. You must also give notice in writing to the buyer if you have given a consent to another party that directly or indirectly affects the property. An example of this would be where you gave consent for your neighbour to erect a conservatory closer than 1 metre to your shared boundary fence.

Chattels

All chattels listed in the agreement must be delivered to the buyer on settlement day in reasonable working order and otherwise the same state of repair as at the date on which the agreement was signed. If your heat pump breaks down before settlement day you need to fix it. Also, you cannot remove a chattel that is listed to stay with the property and replace it with something else. For example, you cannot remove a dishwasher and replace it with an older model.

Rates

When the property is sold, all rates need to be paid up to date. There is a warranty in the agreement that there are no outstanding arrears of rates, water rates or other charges (for example Clean Heat Loans) outstanding on the property.

Work done to the property

If you have done any work to the property, you give a warranty to the buyer that you obtained the correct permits, resource consents and/ or Code Compliance Certificates, and that the work was completed in compliance with those permits or consents. This warranty does not extend to work done by a previous owner, and buyers should carry out their own investigations rather than relying on the warranties. As you can see these warranties are important. The consequences of giving incorrect warranties can be significant. If there are warranties you cannot give (for example you erected a sleepout without Council consent) then the warranties will need to be amended or a clause excluding a particular warranty added.

This needs to be addressed **before** the agreement is signed.

The conditional period

Once you have agreed on the terms and both signed the agreement, the buyer will then work through the conditions inserted into the agreement. They will be obtaining finance and insurance, obtaining any building or structural engineers reports and their lawyer will be providing LIM and title reports. During this time there may be very little that you need to do, unless there is specific work to be completed before settlement. We will inform you as each condition is satisfied.



3. Confirmation and pre-settlement

Confirmation and pre-settlement

When we receive notification from the buyer's solicitor that the agreement is confirmed as unconditional, we then need to get ready for settlement. If you are selling through an agent, the commission will now be payable, as the agent has secured the sale of your property.

Deposit

In most cases the buyer pays the deposit when the agreement is confirmed. A standard deposit is 10% of the purchase price. If the agent receives the deposit, they are obliged to hold it in their trust account for 10 working days from the date they receive it. After 10 working days (or earlier with the agreement of both you and the buyer), the agent can deduct their commission from the deposit. The agent will then pay any funds remaining from the deposit to our trust account. We then either hold the deposit until settlement or pay it to you.

In general we are only able to pay the balance of the deposit to you if there is no mortgage on the property. If there is a mortgage to be repaid, we are usually required by the bank to hold the

deposit in our trust account until settlement so that the funds can be applied to repay the mortgage.

If you need the deposit money (for example to put towards a deposit on a house to buy) then please contact us to discuss. We can then talk to the bank to see if they will approve its release to you.

Discharge of mortgage

If you have a mortgage we will need to write to the bank requesting a discharge of that mortgage. A transfer (which represents a change of ownership) cannot take place without first discharging (removing) the mortgage.

The bank will send us a discharge authority and will provide an indication of the amount required to repay on settlement. This amount is subject to change, and we will only know the exact repayment figure on the morning of settlement.

Rates

You are required to pay any outstanding rates arrears and current rates up to the end of the current instalment to the local Council if you haven't already done so. The rates are then apportioned in the settlement statement so that the buyer reimburses you for the period from settlement day until the end of the current instalment. It would be helpful if you could contact the Council to cancel any direct debit or automatic payment you have in place.

Your appointment

We need to prepare the A & I form to enable the transfer from your names into the names of the buyer(s). You will need to come in to the office to sign this document as well as any Deed of Assignment of EQC claim and any other documents required for settlement to take place. We will contact you to arrange an appointment, normally around a week before settlement.

What to bring

- Identification – current passport, government issued NZ Driver's Licence, NZ Firearms Licence
- Proof of change of name (if applicable)
- IRD number(s)
- Last rates demand
- A key and alarm codes (if you are not leaving them with the agent)
- Pre-printed bank deposit slip, bank statement or a screenshot showing your bank account number, the names of the account owners, and the bank logo. We have strict audit requirements that mean the bank account information you provide us with must be from the bank. An email from you advising us of the account number is not sufficient.

What we will discuss

- Keys – whether or not you have given one to the agent and the location of the remainder of the keys/garage door remotes.
- If you are buying a home and moving on the same day as your sale, we will discuss the procedures required for this to happen smoothly.
- Repayment of any mortgage – we would appreciate it if you could provide an approximate figure of the outstanding amount on your mortgage.
- Repayment of any other loans – it is important to note that some banks might also require repayment of outstanding credit card and personal loan debt on settlement day.
- Your contact details – we will make sure we have your mobile phone numbers. We will also need your new address.

- Payment of the sale proceeds – if there is money left over after repayment of your mortgage (and you are not purchasing another home on the same day) then we will pay the sale proceeds to your bank account. We can only pay the funds to an account in the same name as the legal owner of the property. For example, if the property is owned by a couple, and we are asked to pay the sale proceeds to an account in the name of only one of them, we cannot do so without the written authority of both owners. If the property is owned by a trust, then we need to pay the proceeds to the trust's bank account. If the trust does not have a bank account, then you will either need to set one up, or provide an authority to pay to a different account. This authority must be signed by all trustees.



Tax statements

Every property transaction requires all parties to complete their own tax statement even if the sale relates to your main home and you are exempt the Bright-Line Test.

If you are a tax resident in a country other than New Zealand you'll need to provide your Taxpayer Identification Number (TIN) from that country. The information provided in your tax statement will be given to Land Information New Zealand (LINZ) as part of the registration of the transfer. You therefore must provide us with your IRD number prior to settlement.

The 'Bright-Line Test' – capital gains tax

The 'Bright-Line Test' only applies to residential properties bought on or after 1 October 2015.

If you sell a residential property you have owned for a certain time period you may have to pay tax, unless you're selling your main home or another exemption applies.

For more information on the Bright-Line Test, refer to the IRD's website. If you have any specific concerns regarding this test, we recommend you discuss them with your accountant.

Pre-settlement inspection

Prior to settlement, the buyer has the right to carry out a once only inspection of the property and any fixtures and chattels being sold, to make sure that they are in the same condition as when they signed the agreement. That inspection (normally arranged via the agent or us) usually takes place within 48 hours of settlement.

The types of things a buyer would expect to see on a pre-settlement inspection are:

- Oven cleaned
- Lawns mowed and gardens weeded
- Heat pumps working and remotes available
- Cooktop, oven, dishwasher and waste disposal in full working condition
- User manuals to all chattels available
- Carpets are vacuumed
- Cupboards, drawers, showers and windows cleaned inside and out
- All rubbish and compost removed from the property
- All lights and light fittings to be working
- You also need to ensure that all garage door remotes, and keys to all exterior doors and windows are available. It is normal practice to provide one key/remote to the agent to hand over on settlement and to leave the rest of them inside the house.



RANGE: HERITAGE PILL OWCASE BE TS
STYLE: 4247
COLOUR: WHITE
SIZE: STANDARD
QUANTITY: 32
CARTON # : 151 OF 170
TO: WALLACE COTTON,
KERRIE ORD SMITH PLACE AUCKLAND AIRPORT
MANGERE 2022, AUCKLAND
NEW ZEALAND



4. Settlement

Settlement day

Vacant possession

On settlement day, you are required to give the buyer vacant possession unless otherwise specified in the agreement. You should leave the property in a clean and tidy condition and have all of your belongings removed as soon as possible on the settlement day.

It is difficult to give you a specific time to indicate when settlement might happen. Possession is handed over to the buyers when the settlement funds have been paid to us. This could happen at any time and is not something we can control. We do not authorise the release of keys until we receive payment of the settlement funds.

If vacant possession is not available, the buyers do not have to settle and you could be liable for penalty interest and additional costs.

Contemporaneous settlement

If you need to use your sale funds to purchase a property on the same day this is called a "contemporaneous settlement." A contemporaneous settlement can cause issues with providing vacant possession on settlement day. Because there is a period between completing the sale of your current property and the purchase of your new property, at some point you will need to remove your possessions from your current property but will not yet have anywhere to take them.

If you are looking at completing a contemporaneous settlement, please let us know as there are ways to accommodate this, such as:

- Making special arrangements with your moving company to hold your possessions "in transit".
- Storing most of your possessions at a third location prior to settlement of your current property, so providing vacant possession on settlement day can be carried out quickly and easily.
- Negotiating with the seller of the new property to allow you to store possessions on the new property prior to settlement (such as in the garage).
- Altering the settlement date of your purchase to occur before settlement of your sale and receiving bridging finance from the bank.



Maintaining insurance

The property and any chattels that are being sold with the property are still at your risk until the buyer receives possession on settlement day. Therefore, it is essential that you have adequate insurance in place. Your insurance must not be cancelled until **after settlement has taken place**.

Fixed and estimated costs you may incur

Disbursements (paid by us on your behalf)

Search fees	\$5-\$20
(at \$6-\$7.50 per search)	

Registration fees paid to LINZ (Land Information New Zealand) – \$90 per document – e.g. Discharge of Mortgage	\$90-\$180
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Legal fees

Our engagement letter will have provided 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.

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 settlement

- Meet with us to sign all documents.
Bring with you:
 - Valid passport, government-issued NZ driver's licence or NZ Firearms licence
 - Proof of change of name (if applicable)
 - Pre-printed bank deposit slip, or bank statement showing the account name, account number and bank logo
 - IRD number(s) for all owners or the trust/company
 - Recent rates demand and utility bill invoice
 - Key/garage door opener and alarm codes (unless you are leaving them with the agent)
- Contact your power company to advise them of the settlement date and arrange a final meter reading (if applicable)
- Cancel any rates direct debit or automatic payment
- If you receive a newspaper delivery, cancel it
- Contact your communication provider to advise them of the settlement date and to disconnect the telephone/broadband
- Contact your insurance company to advise them of the new address for your contents policy. Do not cancel the house insurance until settlement has been completed
- Complete a redirection application with NZ Post for your mail

Settlement day

- Ensure the property is empty, clean, tidy and free from rubbish
- Make sure you're available to answer phone calls if necessary
- Turn off the power before you leave (this may not be required if the buyer is moving in on the same day)
- After you receive notification that settlement has been completed, call your insurer to cancel the house policy
- Advise the Electoral Office of your change of address (required by law to be done within a month of moving)
- Cancel your insurance once settlement is complete

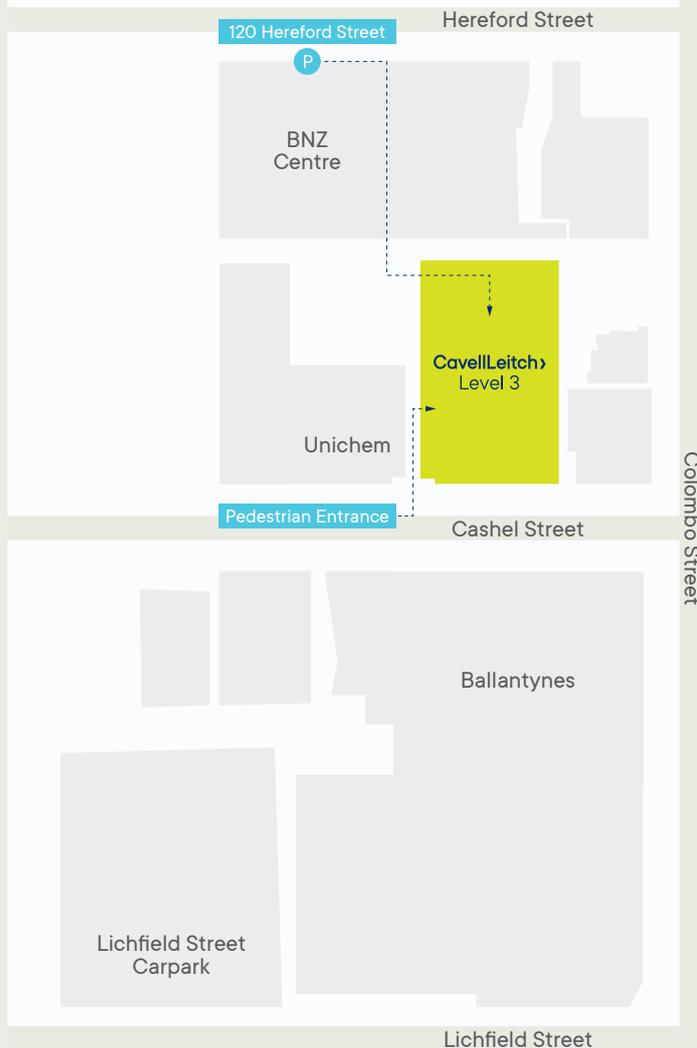
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