

CavellLeitch >

Property First Home Buyer's Guide

Guide to purchasing residential property in New Zealand



Cavell Leitch Guide to Entering into a Contract

When buying a property it is important to have a lawyer help you carry out due diligence on the property. This is completing an investigation to enable you to decide whether or not to proceed with the purchase.

Key due diligence checks to include:



Discuss your intended use of the property with your lawyer. This assists us in getting an idea of what checks you might need.



Title: checking interests are noted such as easements, access rights, drainage, restrictions etc.



Land Information Memorandum (LIM): this contains council information on the property including rates, building consents; services, zoning and hazards.



EQC information: when purchasing a property which has been subject to EQC or insurance claims relating to earthquake damage it is important that you get the related documents from the Vendor or their agent.



Building Inspections: arranging for an independent building inspection of any buildings on the property will identify whether there are any key issues relating to the current state of repair or standard of the initial building works.



There are other reports and things you may consider obtaining and checking such as getting a valuation, a toxicology, electrical or geotechnical report or simply checking tenancy or lease documents if the property is being sold with a tenancy.

Due diligence is a very important step when buying a property. Cavell Leitch can tailor make any further terms for you in an agreement to ensure that you can easily complete your due diligence on a property, which again is why it's important to chat to us before you sign an agreement.

Please get in touch with Cavell Leitch's property experts today if you have any questions.

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Cavell Leitch Guide to 'Bank of Mum and Dad'

Due to increasing house prices of the last few years it has become increasingly common for children to rely on assistance from their parents (the bank of mum and dad) in order to secure their first property. There are a number of ways parents can help their children into their first home however if you plan on entering into one of these arrangements here are a number of key things you should consider.

Key considerations:



Right from the outset all parties need to seek independent legal advice so that everyone involved is fully informed of what they are signing up to, the associated risks and any alternative options.



Advancing funds directly: recording the advance of funds as a loan can prevent the assumption of funds being a gift by making the parties' intentions clear. setting out the terms and timeframes for repayment of the loan is also important, particularly for parents who are relying on repayment of the advance as part of their retirement plan.



Separation: if the child separates from a partner at some point further down the track then recording the advance as a loan at the outset can help prevent half of the funds from being claimed by the child's former partner.



Bank guarantees: if parents choose to guarantee their child's debt with the bank, the banks' starting point is usually to ask for an unlimited liability guarantee. It is important that legal advice is sought beforehand to ensure you are fully informed of the extent of your liability and you may also seek to negotiate a cap on your liability to limit some of the risk you are taking on.



Purchasing property: purchasing the property together is often an attractive option as it allows parents to share in any capital gain in the property. Both parties should always enter into a property sharing agreement so that everyone's rights and obligations in relation to the property are set out clearly, this helps to avoid potential arguments further down the track.



Property sharing agreement: a property sharing agreement will cover things such as who is responsible for any ongoing costs and maintenance of the property and can provide an exit strategy if at some point one party wishes to buy the other parties share.

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Cavell Leitch Guide to House and Land Packages

House and land packages are a popular way for builders to sell new houses. These agreements can be complex as they cover both the purchase of the section, and how the house will be built and bought.

Here's what you need to know to get yourself ready:



New title: the agreement should set out exactly what type of property you are purchasing and whether any rules or restrictions will apply to the property once you're the owner.



Plans and specifications: the builder should provide full plans and specifications for the house. These should either form part of the agreement, or the agreement should be conditional on them being agreed by the parties.



Fixed price: the agreement clearly states whether the agreement is 'fixed-price' or not. You'll also want to understand what you'll be liable for if you want to change the plans, if build costs increase, or if materials aren't available.



Timeframes: you'll want to understand when the house is expected to be completed. You may also want to include what is called a 'sunset date' in the agreement – this will give you an opportunity to cancel the agreement if you haven't received the keys by an agreed date.



Finance: there can be quite a long time between signing the agreement and taking possession of the finished home. Banks may only keep their finance approvals open for a certain period of time so you won't want to be caught short.



Progress payments: you'll want to understand when 'progress payments' are due under the agreement to ensure that you are only paying for work that has been completed.



Deposit: ensure your deposit is protected in case things go wrong with the build. The agreement should state that the deposit will be held by the vendor's lawyer right up until the settlement.

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Cavell Leitch Guide to Deadline Sales

A deadline sale is a method of selling a property where the vendor and their agent set a date by which any interested purchasers must submit their offer to purchase the property. It is important to contact your property lawyer early on in the process so that they can help you make an offer.

Here's what you need to know to get yourself ready:



Information pack: the vendor will usually provide an information pack in relation to the property for sale which may contain documents such as: the title, LIM, EQC documentation, and sometimes a building report.



Reviewing documents: after reviewing the information and agreement provided by the vendor, with your lawyer, purchasers should consider whether to make an unconditional or conditional offer for the property.



Unconditional offer: whether you are in the position to make an unconditional offer will often depend on matters such as: whether bank finance is required to purchase, whether kiwisaver or homestart grants are being used, whether insurance has been arranged, whether a building inspection has been completed and/or provided prior to the offer deadline, and what other information is provided or is missing from the property information pack.



The offer: making an unconditional offer usually requires more work (and cost) for a purchaser up front. Purchasers will need to engage their property lawyer to review and advise on the legal aspects of the property (title and LIM), engage a building inspector or engineer to obtain building inspection reports, arrange unconditional finance and insurance approvals, and complete all other due diligence on a property before knowing whether the price you are offering is acceptable to the vendor and getting a contract in place.

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Cavell Leitch Guide to Auctions

Auctions are a popular way of selling properties and can be daunting for first-time buyers. It is important to be organised in the fast-paced lead up to auction day. Luckily, we are here to help!

Here's what you need to know to get yourself ready:



Register your interest: the first step is to register your interest with the agent and get the property information. You need to fully review and consider the property information and complete your checks before the auction. This is because you will be bound to buy the property if you win the auction.



Engage a lawyer: your lawyer will review the documents and provide advice. A lawyer will identify any legal issues with the property you need to be aware of, such as a defect with the title.



Finance: if you are using bank borrowing to fund your purchase then you need to ensure that you have finance approved. You should obtain written confirmation of finance for the specific property.



Pre-auction offer: the idea of a pre-auction offer is to bring the auction date forward to try and reduce the amount of people who are ready and able to bid at the auction. Your offer will be the opening bid on at the auction.



The auction itself: we recommend you prepare by attending some auctions beforehand to familiarise yourself with the auction environment, setting a game-plan and a bidding strategy.



If you are successful: on the day you will need to pay the deposit and sign a sale and purchase on the terms already set out prior to the auction. From here your lawyer will help you through the settlement process.

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Cavell Leitch Guide to Cross Lease Titles

A Cross-Lease is one of the forms of Property ownership in New Zealand and can be identified by looking at the Record of Title for a Property.

When considering purchasing a Cross-Leased Property there are a number of unique things that you need to watch out for including:



When purchasing a Cross-Lease you acquire two separate title interests. The Land the flat is located on is owned equally by all the Owners of the Cross-Leased flats and recorded in a Title and those same owners then grant a Lease back to each flat owner granting them the right to occupy a pre-defined area of the land, this is called a leasehold title.



The Lease: this is registered against the title and will determine the portion of the land that makes up your flat, which parts of the flat you have the exclusive right to use and any areas which are for common use with other flat owners, most commonly a shared driveway. The lease will contain specific rules regulating your use of the flat, these may include; standards of property maintenance, who is responsible for the cost of that maintenance and potentially may exclude you from keeping certain pets on the property. It is important you have your Lawyer look over the Lease so that you are fully informed of all of the restrictions and obligations that will apply to you. Any structural changes to the Property also requires the consent of all the other flat owners.



The Flats Plan: this will outline the each flat on the Property, the common areas and the exclusive use areas. This plan needs to reflect the Property accurately as any additions or alterations to the Property which are different from the flat plan can create a defective title.



Some of these issues, such as a defective title, can be time consuming and very costly. Because of this it is crucial that you get legal advice prior to signing any Agreement so that you can ensure you are protected and that these issues are spotted before it is too late.

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Cavell Leitch Guide to Unit Titles

A unit title is a common form of property ownership for apartments or units which are part of a larger complex. You own a defined part of a building and have the use of other common areas, such as driveways and apartment lobbies jointly with the other unit owners.

Here's what you need to know before purchasing a unit title:



Unit titles are subject to regulations set out in the Unit Titles Act 2010 (**Act**) so that all unit owners are members of a body corporate. The body corporate's role is to provide a structure for the management and maintenance of the development, for example establishing and maintaining a long-term maintenance plan and arranging insurance, which is funded by annual levies paid by each Unit owner.



Whether you are considering buying or selling a unit title, there are a number of disclosure requirements set out in the Act which must be complied with. These can be broken down into the following 3 categories, which we discuss below.



Pre-contract disclosure statement: the property owner must provide a pre-contract disclosure statement to all prospective purchasers. This statement must include specific information, which is set out in the Unit Title Regulations, for example unit levies, details of any maintenance planned by the body corporate and whether the property has ever been subject to any weathertightness claims.



Additional disclosure statement: up until 5 working days after the agreement is signed, the purchaser can request additional information relating to the body corporate (for example, copies of the body corporate's operational rules, the long-term maintenance plan, and details of the body corporate's insurance policy).



Pre-settlement disclosure statement: prior to 5 working days before settlement the vendor is required to provide a final pre-settlement disclosure statement and insurance. This statement lets the purchaser know whether there have been any changes since they entered into the contract, such as changes to the current body corporate rules or the levies that relate to the unit.



The pre-settlement disclosure statement: must be signed off by the body corporate (if there is no chairperson or management company, then all unit owners in the development must sign). Because of this, it is crucial to obtain this statement well before the due date to avoid unanticipated delays.

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Cavell Leitch Guide to 'As Is Where Is' Transactions

Following the Canterbury Earthquakes, many homeowners chose not to completely repair the earthquake damage to their properties and instead opted to take cash settlement options from EQC and insurance companies. Accordingly, the sale of property on an "as is where is" basis has become commonplace in Christchurch.

Here's what you need to know before purchasing an "as is where is" property:



Seek legal advice early: this is so we can review the agreement and do some initial checks before you sign anything and ensure that you have the right to carry out various inspections of the property.



Complete your due diligence: as the property is being sold in its current state it is crucial to complete an in-depth due diligence on its current condition so you know what you are buying.



Finance: it can prove difficult to obtain finance from a bank or other lender as generally your lender will want proof that the property is insured prior to you completing settlement. They may require you to complete some reports such as a building report to satisfy themselves that this particular property is in an insurable state.



Land status: if you intend to complete the repairs to the property, or to demolish the property and erect a new dwelling, it is important that you also take into account the status of the land you are purchasing when deciding how much you are willing to offer. Land was given different classifications following the earthquakes, there can be significant costs added to comply with specific foundation requirements when building on land which is susceptible to liquefaction damage.



As Is Where Is transactions can be tricky depending on the state of the property and what you wish to do with the property in the future. Make sure you set aside time and money to do your due diligence and set up a strong support team to help you decide whether this is a good option for you.

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