

Sue Fordyce

BARRISTER & SOLICITOR



HOME BUYER'S GUIDE

WELCOME TO MY GUIDE FOR HOME BUYERS

On the following pages I have collected together information about buying a home which I hope you will find both informative and practical.

One thing to remember is this – you can never spend too much time informing yourself about a property you are keen on about or the process of buying a home – it is never time wasted – knowledge is power!

As a lawyer what I want for my clients is that they feel fully informed and in charge of the process of buying a home and that they feel completely confident about what they are doing. This guide is intended to help with that.

But any guide intended for many people to read has its limitations. I cannot possibly write down for you the huge number of different things that I, as your lawyer, would be looking out for and dealing with in any potential purchase to protect your interests in your own specific personal situation.

So please use the information in this guide to help you gain general information about the process of buying a home but also please come and see me, let me check your contract before you sign it and use that opportunity to tell me something of your particular situation so that I can make sure we work together to look after your interests.

Remember that almost everybody else you talk to in the process of buying a house is actually being paid by someone else to get your business. Your lawyer is the only person whose sole and only duty is to look after you and your best interests.

CONTENTS

On the following pages you will find information about the following topics:

- 04 → **Glossary** - A glossary of what all those strange words you hear when you are buying a house mean.
- 05 → **Titles** - The different types of titles to land that you may come across.
- 08 → **Joint ownership** - The different ways that couples can own property together.
- 10 → **Conditions** - The main types of conditions that get put into contracts to protect buyers.
- 13 → **Promises** - The promises that sellers are making to buyers in the small print of the contract - and the promises they are not making!
- 14 → **LIM's** - All about Land Information Memorandums ("LIMs").
- 16 → **Deposits** - All about deposits and what happens to them.
- 18 → **What does your lawyer do?** - Details about what I will be busy doing in the background to help make your purchase happen.

Remember - this is only a guide!

As I mentioned earlier I cannot possibly hope to write down everything you might need to know about purchasing a particular property. This is only a beginners guide to some of the questions you may have about buying a house.

The contents of this guide are not legal advice!

But I will be happy to give you personalised legal advice about any of the topics covered in this guide - please contact me in person or by phone to talk to me about a specific property you are interested in or even for your more general questions.

GLOSSARY OF TERMS AND WORDS YOU MIGHT MEET WHILE YOU ARE BUYING YOUR FIRST HOUSE

Confusing words and terms

You may meet a number of new words and terms as you go about buying a house. Don't let anyone use complicated terms or words to bamboozle you. Everything about buying a home and everything that goes with it can be simply and clearly explained – so if in doubt – ask!

Here are some of the words and terms you may come across:

Agreement	The written contract for sale and purchase of the property between the seller and the buyer. There is a standard form of agreement used by all Real Estate agents and Solicitors throughout New Zealand. If someone suggests another form of agreement don't sign it!
Chattels	Moveable and removable items of property. In real estate transactions the following chattels are usually included in a sale: stove, television aerial, fixed floor coverings, blinds, curtains, drapes, light fittings. Other items such as dishwashers, alarm systems or waste-masters can also be specified as being included in a sale. Unless chattels are specified in the agreement they do not get sold as part of the property.
Commission	The flat fee or percentage of the sale price paid by the seller to the real estate agent responsible for the sale.
Conditional Agreement	A conditional agreement is a legally binding contract, but it is subject to certain conditions being satisfied before it is fully operative.
Legal Description	The unique description of each property that lawyers, real estate agents and Councils use to identify one property from another. It usually includes the area (in square metres or hectares), a Lot number, a Deposited Plan (called the "DP") number and the certificate of title number.
Mortgage	The security a home-buyer gives the lender to be registered against the title to the property being purchased. This secures the buyer's debt to the lender.
Possession Date	The date that full payment for the property takes place and the buyer receives the keys (this date can also be called the "settlement date").
Unconditional Agreement	The legal contract that binds both the seller and the Agreement buyer to settle the sale and purchase of a property at an agreed price on an agreed date. It is either not subject to any conditions or all conditions have been fulfilled. An unconditional contract commits you in all respects to purchasing the property.
Vendor	Another name for the seller of a property.
Warranty	A promise made by the seller of a property to the buyer.

Please note: Remember this is only a guide and not intended to be legal advice. Please refer to page three for our full disclaimer. You may not reproduce, publish, copy or transmit in any form, this document or parts of this document, without the prior permission of Sue Fordyce.

WHAT DIFFERENT TITLES TO LAND CAN YOU GET?

What is “title”

In New Zealand the term “title” is used to describe ownership of land. We use a system called the Torrens system of land ownership. Every piece of land in New Zealand has a certificate of title. That certificate of title has on it all details of the legal status of that particular piece of land. It is absolutely conclusive and it would have to be truly exceptional circumstances for anyone to ever claim that they have more or less rights in respect of a piece of land than the title shows.

There are four main types of title, fee simple (or freehold), leasehold, cross lease and unit title. Below is a paragraph about each main type of title.

Fee Simple title

This form of title is the most common in New Zealand. It is also sometimes called “freehold”. When the word freehold is used to describe a title it has nothing to do with whether there is a mortgage on the land, it is just another way of saying “fee simple”.

If a title has a fee simple title that means that the owner of the land has the greatest right of ownership of the land that is possible to have in New Zealand. Provided the owner does not disobey any laws and he or she meets all Council requirements and any requirements set out on their actual title document they can do just about anything they like on their property without needing anyone else’s consent.

Leasehold

This form of title is almost the exact opposite of fee simple title. A person with a leasehold title does not own the land at all, they just have the right to occupy the land for a certain number of years.

Most leasehold titles have a 21 year term, sometimes with rights for additional terms built in. Every year a rental, called ground rent, must be paid to the owner of the land. This is often many thousands of dollars each year.

At the end of the term of the lease the person with a leasehold title must leave the land and they must remove any houses or other structures they have built on the land. During the lease they often need the owner’s consent before they can do things on the land.

Palmerston North has several areas of leasehold land, some owned by the Council and other areas are Maori leasehold land.

Before you consider buying a piece of land with leasehold title you should not only have a talk with me so I can explain more about this form of title to you but you should also talk to a valuer about the value of this type of land.

Cross-lease

The term “cross-lease” means that the title to the property is a mixture of fee simple and leasehold. This form of title is often used for properties with two or more townhouses or flats on them. All of the owners of the flats or units in a block share an equal and undivided share in the fee simple title to the entire block of land. Each unit owner then holds a 999 year lease of their individual home which gives a right of exclusive occupation of the home. In addition each home owner usually has a right to exclusively use a designated yard area and all of the other home owners promise not to enter or use that yard area. All of the owners often share driveway access and share the costs of maintenance of that common area.

This form of title is very common for multi-unit developments. Provided that title is accurate then cross-lease title is a completely normal and acceptable form of title to property.

BUT!

It is crucial however when buying a cross-lease property to ensure that the title is entirely in order. In particular it is essential to check that the drawing of the “footprint”: of the house which is shown on a special plan which forms part of the title is exactly in accordance with the actual “footprint” of the house. If any additions have been made to the property such a porches, extra rooms or conservatories since the plan was registered or if new outbuildings such as garages or carports have been added the original cross-lease may no longer provide an accurate title to the property.

If that plan is incorrect then correcting it can be both time consuming and costly. For this reason it is really important to check cross-lease titles very thoroughly. If you want to enter into a contract to buy a cross-lease property then I recommend that a specifically drafted clause to deal with your approval of the title should go into the contract.

There is some small print in the contract about cross-lease titles but in my view the small print provisions of the standard contract are not really adequate to properly protect buyers.

If you are interested in this type of property please talk to me FIRST before you sign a contract.

Unit Title

Unit title is another common form of title for multi-unit developments. It is also the most appropriate form of title for multi-level properties such as apartments.

The biggest difference between cross-lease and unit titles is that with unit title the owner has a specific title to their own unit.

Common property such as driveways are owned by all of the unit owners as tenants in common. In order to manage the development as a whole there is a “body corporate” (like a management committee) made up of all of the unit owners. The body corporate often arranges maintenance of common areas and sometimes insurance and other costs for all the units as well. These costs are met by an annual levy paid by unit owners.

Please note: Remember this is a only a guide and not intended to be legal advice. Please refer to page three for our full disclaimer. You may not reproduce, published, copy or transmit in any form, this document or parts of this document, without the prior permission of Sue Fordyce.

This is another common and entirely acceptable form of title to land. It is important however to be fully informed about the rules of the development and the costs of annual levies with this type of title. If a seller is selling a unit title there is certain information which they must disclose to the buyer at the time that the contract is signed.

If you do not get that sort of information sheet given to you then you should request it.

Other features of titles

No matter which form of title a piece of land has there are many features that can appear on a title which a buyer needs to be aware of and which can affect their rights to the land they wish to purchase. Below I have listed a few of these as examples.

Easements	These are rights set out on a title for either you to have the right to do certain things on your neighbour's land or for your neighbour to have those rights on your land. Rights of way are a common type of easement. Others are drainage rights, water supply rights or electricity or gas supply rights.
Restrictive Covenants	These are restrictions on the things you can do on your land. For example in many modern subdivisions it is common for titles to restrict the type of houses that can be built on the land to ensure a certain standard of homes in the subdivision.
Fencing Covenants	These are agreements or stipulations about sharing of fencing costs between neighbours.
Council Land Covenants	These are documents setting out requirements or restrictions affecting the land which are imposed by the Council. These types of covenants can impose ongoing and expensive obligations on land owners or restrict activity on the land and sometimes in unexpected ways.

It is important to realise however that every title is unique. In every case each certificate of title must be researched thoroughly before I can explain fully to you the title to the land you are interested in. In some cases a title might have 20 or 30 pages of details stored at the Land Transfer Office which need to be obtained and read over before I can tell you exactly what a particular title says about the property!

DIFFERENT WAYS IN WHICH TWO PEOPLE CAN OWN PROPERTY TOGETHER

Introduction

There are two main different types of joint ownership. They are called joint tenancy and tenancy in common. One of the main differences between them lies in what happens if one owner dies during the time the property is owned.

Joint Tenancy

With joint tenancy both owners are listed on the title without any indication of the shares in the property that each owner will have. One of the main features of this form of ownership is what is called a “right of survivorship”. This means that if either of the two joint owners dies the property automatically transfers to the survivor of them. This automatic right of survivorship can take precedence even over a will which tries to leave the property to a person other than the other joint tenant.

Tenancy in common

The other form of ownership is called tenancy in common. In this case the names of the owners are listed on the title together with an indication of their shares in the property. Those shares can either be equal shares or unequal shares, for example one joint tenant could have a 10% interest in the property while the other has the 90% interest in the property.

In the case of this form of ownership if either party dies then that party’s share of the property becomes part of their estate and would be dealt with in the accordance of the provisions of their will. For example if you owned the property as tenants in common and one of you died leaving your estate to one of your parents then that parent would become a replacement joint tenant of the property along with the survivor of you.

Please note: Remember this is a only a guide and not intended to be legal advice. Please refer to page three for our full disclaimer. You may not reproduced, published, copy or transmit in any form, this document or parts of this document, without the prior permission of Sue Fordyce.

Which one is right for you?

While these two forms of joint ownership are clearly different there is certainly no right nor wrong in respect of which choice you make between you. People's choice in this matter can be very different.

The Property (Relationships) Act 1976

When you consider forms of joint ownership and whether to show shares in property on the title it is important to also realise the impact that Property (Relationships) Act 1976 will have on sharing on property between a couple.

This Act essentially says that once a couple have been married or together as a couple for three years then ordinarily their home and all of its contents (along with other things like vehicles, Kiwisaver and even pets) would be equally shared between the two parties if they separate, no matter which of them has actually paid for the property or the contents or whether initial contributions were equal or not.

This Act also says many other things about a whole range of property issues between couples involving much more than just houses. I anticipate that most if not all couples will need advice on the impact of this Act on them and once they are aware of how extensive it's provisions are many will want to enter into an agreement about the ownership of the property when they purchase a house together.

Sometimes talking about these topics can feel uncomfortable, or that by raising them you are indicating a lack of faith in your relationship. If you would rather that an impartial outsider be the one to introduce this topic I am always happy to talk to a couple about these issues. In fact, even if you don't mention it I will talk to you about these matters during the course of a purchase. It is simply too important to ignore nowadays.

COMMON CONDITION CLAUSES USED IN AGREEMENTS

Conditions generally

When you put conditions into a contract you are signalling the things you still need to check, arrange or be satisfied with before you will agree to buy a property. The only reasons you can then give for avoiding or cancelling the contract must relate to the conditions you have put into the contract.

This means that if you find out something that is wrong with, for example, the Council records on the property after you have signed a contract but you only have a finance condition in the contract and not a "LIM" condition you may not be able to get out of the contract.

For this reason it is a really important part of preparing and signing a contract to give plenty of thought about the conditions that should go in to look after your interests.

Advice

I am always happy to give free advice about conditions or to check and correct contracts before they are signed free of charge, even if the contract you sign eventually doesn't go ahead for some reason (like the seller doesn't like the price you offer). I do not charge for this service to my clients because I would far rather we worked together before you signed a contract than to have to try to help you with difficulties later as a result of inadequate contract conditions.

Here is a short explanation of some of the most common conditions that are placed into contracts:

- **Finance condition:** The purpose of this condition is to provide you with time to arrange your finance to complete your purchase after you have signed a contract. Normally it is worded so that if you cannot obtain sufficient finance on terms and conditions satisfactory to you then you are entitled to cancel the contract. It is important to realise that you must make a genuine attempt to obtain finance. You can be asked to prove that you have. So a finance condition should never be seen as a simple way to "get out" of a contract. If what you really want is the opportunity to have second thoughts about buying you should think very carefully about whether you are ready to sign a contract at all.
If you do really want a "second thoughts" clause you should let me specially draft you a clause to put in to the contract to achieve that objective.
- **"LIM" condition:** The purpose of this condition is to provide you with time to arrange a report from the Council on the property (see the sheet about "LIM's" in this pack for more information about these reports) after you have signed a contract.
If you are not satisfied with that report to you are entitled to cancel the contract. It is again important to realise that you must have a genuine and reasonable objection to something in the report. You can be asked to specify the reason.
NB: On the front page of the contract there is a Yes/No box you can complete which automatically inserts a "LIM" condition BUT BEWARE if you use this option it imposes a time limit on you for seeking a "LIM" report and it has other restrictions and obligations as well. I

Please note: Remember this is a only a guide and not intended to be legal advice. Please refer to page three for our full disclaimer. You may not reproduced, published, copy or transmit in any form, this document or parts of this document, without the prior permission of Sue Fordyce.

think it is better to put a separate clause into the special conditions of the contract rather than use the clause written into the small print of the contract. If you do want to use the Yes/No option on the front page talk to me first so that I can tell you more about this before you do.

- **Builders report condition:** The purpose of this condition is to provide you with time to arrange for the builder or property inspection service of your choice to give you a verbal or written report on the property after you have signed a contract. If you are not satisfied with that report to you are entitled to cancel the contract. It is again most important to realise that you must have a genuine and reasonable objection to something in the report. You can be asked to specify the reason.
NB: On the front page of the contract there is a Yes/No box you can complete which automatically inserts a “Builder’s Report” condition BUT BEWARE if you use this option it imposes a time limit on you for seeking a “Builder’s Report” and it has other restrictions and obligations as well. I think it is better to put a separate clause into the special conditions of the contract rather than use the clause written into the small print of the contract. If you do want to use the Yes/No option on the front page talk to me first so that I can tell you more about this before you do.
- **Title condition:** Some people like to put a clause into a contract to provide for either the buyer or their lawyer to be satisfied with the title to the property within a certain number of days. Strictly speaking this type of clause is not usually necessary because in the small print of the contract there is a clause which says a buyer has 15 working days to check the title to the property. If there is something genuinely wrong with the title the buyer can request the seller to correct the defect in the title. If the seller is unwilling to do so then either the seller or the buyer can cancel the contract. Generally I think it is best to leave title conditions out of a contract as the small print provisions about title in the contract usually cover this sufficiently. There is one exception to this and that is cross lease properties. (See my separate sheet about tiles to properties in this guide where I explain more about cross lease titles.) In every case if you want to put a contract on a cross lease property let me draft a special clause about the title to the property.
- **Subdivision conditions:** Sometimes at the time that a contract is being signed the property being purchased is in the process of being subdivided (that is where a separate new title is being created for the property being purchased) or a subdivision needs to be started to sell you the property. In this case many extra clauses are needed to go into the contract to look after your interests by making sure the subdivision is done properly and to make sure that you get a title you are happy with within a reasonable timeframe.
NB: Never sign a contract where a subdivision is involved without letting me check, and, if necessary, draft, the clauses that are needed. Every subdivision is different and so there are no such things as “standard” subdivision clauses.

Please note: Remember this is a only a guide and not intended to be be legal advice. Please refer to page three for our full disclaimer. You may not reproduced, published, copy or transmit in any form, this document or parts of this document, without the prior permission of Sue Fordyce.

- **Building conditions:** Sometimes at the time that a contract is being signed the property being purchased is in the process of being built or building has not even started on the house you wish to buy.
In this case many extra clauses are needed to go into the contract to look after your interests, to make sure the building work is done properly and to make sure that you get a house you are happy with within a reasonable timeframe.
NB: Never sign a contract where building is involved without letting me check, and, if necessary, draft, the clauses that are needed. Every building job is different and so there are no such things as “standard” building clauses.
- **Other conditions:** There are many other conditions that can go into a contract. However if you think you need extra conditions to meet your special circumstances then please talk to me and let me draft those extra clauses for you or, at the very least, check over any special clauses before you sign a contract.
In particular please talk to me if you want to sell another property before you are committed to buying a new one. This situation needs careful attention to the wording of special conditions to look after your interests.
Another special situation that needs careful attention to drafting special conditions is where your contract is a “back-up” contract – that is a second contract on a property where one contract is already in existence. Please let me talk to you about the special features of this situation before you sign any contract.
No matter how experienced your real estate salesperson is, if you have special needs then your lawyer is the best person to look after you with extra clauses.

WHAT PROMISES ARE THE SELLERS MAKING TO YOU? – AND WHAT AREN'T THEY PROMISING?

Promises that the sellers do make to you

When a seller signs an agreement for sale of their property they are automatically making a number of promises (called “warranties”) to you, the buyer. These promises are hidden in the small print of the agreement.

Some of the main ones are as follows:

- **Chattels:** That the chattels included in the sale of the property will be in the same state of repair when you get the keys to the property as they were on the date that the contract was signed.
- **No hire purchase or other outstanding debt:** That on the possession date all of the electrical installations (like the stove or the hot water cylinder) and any other items installed in the house (like gas heaters) are all free of any charges, hire purchase or other debt on them.
- **No arrears of rates:** That on the possession date the rates and water rates on the property will be fully paid up until that date.
- **The sellers have had proper building permits for any work that they have done:** That if the sellers have done any building work on the property that they have not only obtained all necessary building and resource consents to do the work but also that they have complied with the terms and conditions of those consents and have a code compliance certificate for the work.
- **The sellers have not received any Council notices about the property:** That the sellers have not received any notice or demand from their local Council requiring them to do any work on the property or to repair anything on the property. If after the contract is signed the sellers then get such a notice they must immediately notify you.
- **The sellers have told you about any consents to any applications under the Resource Management Act:** That if the sellers have given anyone any consents to any applications under the Resource Management Act 1991 which could affect the property then they have given you written notice of that. For example if the sellers have agreed to a neighbour’s request for consent to subdivide their property in a way that does not fully meet Council’s requirements then they must tell you about the consent they have given and it’s impact on your property. The sellers also can’t give any consents of this kind after the contract is signed without your consent.

Promises that the sellers are NOT making to you

There is one very important thing to realise that the sellers are not promising you:

- **That all previous owners had proper building consents**

The promise mentioned above about building consents only applies to work the sellers themselves have done. There is no promise that all of the earlier owners of the property had proper building consents for the work they may have done. This is why a LIM is so valuable to get.

Please note: Remember this is only a guide and not intended to be legal advice. Please refer to page three for our full disclaimer. You may not reproduce, publish, copy or transmit in any form, this document or parts of this document, without the prior permission of Sue Fordyce.

ALL ABOUT “LIMS”

What is a LIM?

The term “LIM” stands for Land Information Memorandum.

It is a special report obtainable from the local Council about any property within the Council’s area. Because of the information it contains a LIM is a particularly valuable report for a purchaser of a property to get.

I recommend that every purchaser should obtain a LIM and there should be a condition in almost every contract requiring a satisfactory LIM report on a property before a buyer is committed to the purchase of a property.

What information will I get in a LIM?

A Council must include the following information in a LIM:

- Information on any special features or characteristics of the property including potential erosion, subsidence, flooding or the presence of hazardous contaminants which are known to the Council.
- Information on private and public stormwater and sewerage drains on the property.
- Details of rates and any arrears of rates.
- Information on any consent notice or requisition affecting the land or any building on the land previously issued by the Council.
- Information about any certificate issued by a building certifier pursuant to the building Act 1991 – in other words a building permit history of the property.
- Information relating to the uses to which the land may be put and conditions attached to that use – in other words the zoning of the property.
- Information that has been notified to the Council by organizations such as the Department of Conservation or the Historic Places Trust.

As well as the above information some Council’s choose to give other information from their files – for example whether the Council is aware of any swimming pools on the property. Some Councils also provide copies of plans of the buildings that they are aware of on the land as well (Palmerston North City Council do this but Manawatu District Council does not.)

Please note: Remember this is only a guide and not intended to be legal advice. Please refer to page three for our full disclaimer. You may not reproduce, publish, copy or transmit in any form, this document or parts of this document, without the prior permission of Sue Fordyce.

How long will it take to get one?

A Council must supply a LIM within 10 working days.

Some Councils will agree to speed up this time frame if you pay an extra fee

Palmerston North City Council have developed a range of different options for people who wish to check Council records. These range from simply supplying a CD containing the basic information relating to the Council permits and plans to buyers for a modest cost and within a quick timeframe or alternatively a kind of a mini LIM called a Residential Property Enquiry through to a full blown LIM report. However if you choose to get one of these other reports you do need to realise that in that case there may be information the Council will not be giving you which is really relevant for you to know as a buyer so think very carefully before making that choice.

How much will it cost?

Costs of LIMs vary from Council to Council and come cost hundreds of dollars.

Currently Palmerston North City Council charges for a LIM start at \$422.00 (GST inclusive) but often can be more depending on the time taken by the Council to collect the information.

Manawatu District Council currently charge \$104.00 if ten working days are taken to prepare it and \$136.00 if three working days are taken.

Palmerston North City Council currently charge \$261.00 (GST inclusive) for a Residential Property Enquiry.

Councils seem to change these price with alarming regularity. The best suggestion is to check the prices to make sure they are still accurate before ordering your report!

ALL ABOUT DEPOSITS

What is a deposit?

A deposit is a part payment of the purchase price of a property. It is paid soon after you have signed a contract. It is really a sign of good faith to the seller to show that you are committed to the purchase.

In some cases no deposit is paid at all but this is very rare and you should expect to pay a deposit in the majority of cases. However if your purchase is one of the unusual ones where no deposit is paid the fact that no deposit has been paid has absolutely no effect on the legality of the contract or on how binding the contract is on the buyer or the seller.

How much should be paid?

There is no magic amount for a deposit. It is a matter for negotiation between buyer and seller.

If there is a real estate agent involved then a good rule of thumb is 5% of the purchase price of the property. It is a common misconception that deposits must be 10% of the purchase price. This is common in auction purchases but it is by no means the normal amount for most sales and purchases.

It is important to realise that once a deposit is put into a contract it **must** be paid when the contract specifies it to be paid (more about that below) so you should **never** sign a contract with a deposit that is more than the cash you have available to put towards your purchase. If you are getting a bank loan to help with the purchase that loan money will not normally be available to you until the date you actually complete the purchase of the property (the settlement date) so bank loan money is not able to be used to help you pay the deposit – so always limit the amount of a deposit to the cash you are able to actually lay your hands on at the time you are signing a contract.

When should the deposit be paid?

There are two main alternatives to the timing of paying the deposit. Firstly if the amount of the deposit is simply filled in on the front page of the contract then the small print of the contract says that the deposit must be paid immediately that the contract is signed.

Alternatively it is very common for the words “payable upon the date that this contract becomes unconditional” or words very similar to that to be added in after the amount of the deposit on the front page of the contract. If this is done then the deposit does not have to be paid until the date that you advise the seller that all of the conditions in the contract are satisfactorily completed. That is when you are completely committed to the purchase.

I prefer the second alternative in most cases because that way you are not actually paying any money over until you have reached the “point of no return” with the purchase.

Please note: Remember this is only a guide and not intended to be legal advice. Please refer to page three for our full disclaimer. You may not reproduce, publish, copy or transmit in any form, this document or parts of this document, without the prior permission of Sue Fordyce.

What happens to my deposit money?

If a real estate agent is involved in your purchase then the deposit is paid to the real estate agency.

The agency must hold the deposit in a trust account for ten working days or until the contract is unconditional, whichever is the later date. Once that time has gone by the real estate agent deducts their commission from the deposit you have paid and pays the balance of the deposit money over to the lawyer acting for the seller. Their lawyer can then pay that money over to the seller and normally does.

Sometimes the date for settlement comes along before the real estate agency is entitled to release the deposit money. In that case both the seller's and the buyer's lawyers must give written authority for the deposit money to be released.

Unfortunately you do not receive any interest on your deposit money while it is sitting in the real estate agent's trust account and neither does the seller.

If you are involved in a private sale where no real estate agent is involved then the deposit money gets paid into the seller's lawyer's trust account. Again it cannot be released to the seller until the contract is unconditional and you are completely committed to the purchase.

You do not receive any interest on your deposit money while it is sitting in the seller's lawyer's trust account and neither does the seller or their lawyer. The Government receives all the interest that is paid on money in lawyer's trust accounts. It uses that money to help pay for legal aid and community law centres.

What could happen if I fail to pay the deposit?

If your contract says you must pay a deposit and you do not do so when you are required to then you have breached your contract. If that occurs then two things can happen. Firstly, provided you are given a notice by the seller requiring the deposit to be paid, then, if you still fail to pay the deposit, then two days after you receive that notice the seller can cancel the contract.

Secondly you can be charged interest on the unpaid deposit money from the date you should have paid it up until the date that you do pay the deposit or the date you settle the purchase.

Failure to pay a deposit is usually regarded very seriously by real estate agents and sellers. One of the main duties of a real estate agent after a contract is signed is to collect the deposit money.

WHAT DOES YOUR LAWYER ACTUALLY DO?

What do lawyers really do in the background?

As you go through the process of buying a house you can feel very busy at times while during other parts of the process you wonder why nothing very much seems to be happening.

Below is a list of some of things I will be doing in the background to help you get from the point of signing a contract right through to sending you a copy of the title to the property with your name on it – and getting you the keys to move in at some point in between.

First steps – before you sign a contract

Ideally you will talk to me before you sign anything.

This is the best time to receive advice about the conditions you need in a contract. It is also a good time to talk about how you will finance your purchase. I can inform you about the different types of finance that are available and give you impartial advice about your different options for finance.

I will check your contract for you once your real estate agent has prepared it, looking at the conditions, the deposit and all other aspects of the contract. Alternatively if it is a private sale I will prepare the contract for you.

As soon as the contract has been fully signed by both seller and buyer.

As soon as a contract is signed I do the following things:

- Order a search of all the documents relating to the title and check those documents thoroughly.
- Diarise to make sure we do not miss any deadlines like dates for conditions to be fulfilled.
- Report to you about the title.
- Help you with your finance and kiwisaver applications if you need assistance with supplying information.
- Keep in touch with you to see how fulfilment of your conditions is going.
- Check over your lim or your builders report for you if you would like me to.
- Once you are sure you are happy with all aspects of the property and your finance I write a formal letter to the sellers lawyer telling them that the contract is unconditional – this is the point of no return! – You are now fully committed to purchasing the property.
- This is the time you will usually need to pay your deposit – you do that by taking a cheque or cash directly to the real estate agent.

Please note: Remember this is only a guide and not intended to be legal advice. Please refer to page three for our full disclaimer. You may not reproduce, publish, copy or transmit in any form, this document or parts of this document, without the prior permission of Sue Fordyce.

After the contract is made unconditional

- Prepare an authority for you to sign which effects the change of ownership of the property at Land Information New Zealand.
- Send a special notice to tell the Council that the property is changing hands to the seller's lawyer - their job is to forward it on to the Council on the settlement date.
- Receive your loan and mortgage documents from the bank and check them over.
- Receive and check a statement from the seller's lawyer setting out the exact amount of money due to be paid on the settlement date - this statement includes a calculation to adjust the rates that are due or have been paid on the property between the buyer and the seller.
- Meet with you to sign up your loan and mortgage documents, and talk to you about co-ownership of the property. I will also get details from you about the insurance on the property.
- Send off the signed loan and mortgage documents together with a special solicitors certificate to your bank - this will trigger the bank's willingness to give us the loan money on the settlement date.
- Close to the settlement date I will receive from you the rest of your cash contribution to the purchase (over and above the deposit you paid to the real estate agent) if any.
- Close to the settlement date you may choose to do a final inspection of the property to make sure it is still in the same state as when you signed the contract.

On the settlement date

- Receive a special search of the title called a guaranteed search and check to make sure no changes have occurred to the title since you signed the contract.
- Receive and check confirmation from the seller's lawyer that they are ready to properly transfer the title to the property over to you.
- Receive your loan money from your bank.
- Attend on the actual settlement - lawyers have a special procedure we follow to do the settlement, usually by transferring the settlement monies by electronic transfer between us.
- Let you know that you can collect the keys from the real estate agent!

After the settlement date

Once all the excitement of getting the keys is over I still have work to do to finish the purchase:

- Register all of the documents to change the ownership of the property at Land Information New Zealand into your name and to register any bank's mortgage.
- Send a copy of the title to you and your bank and a final report to you.

Please note: Remember this is only a guide and not intended to be legal advice. Please refer to page three for our full disclaimer. You may not reproduce, publish, copy or transmit in any form, this document or parts of this document, without the prior permission of Sue Fordyce.

