BARFOOT & THOMPSON
LICENSED REAA 2008

Buyer's guide and information

AUGUST 2025

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Consents and disclosure – buyer acknowledgement

(prior to signing an agreement for sale and purchase of real estate offer)

Property address .....

The buyer acknowledges that prior to signing an agreement for the sale and purchase of real estate they have been:

Advised (delete if not applicable)	**Initial**
• That they seek legal, technical, or other advice.	.....
• Of the chattels (if any) that are included in the sale of this property.	.....
• That following acceptance of the offer by the vendor they will be required to pay a deposit to the Barfoot & Thompson Trust Account in accordance with the Agreement for Sale and Purchase.	.....
• If they are purchasing the property as an investment/rental property, that they must carry out their own investigations to determine whether the property complies with all applicable Insulation Regulations and smoke alarm and/or the Healthy Homes standards (the Requirements). If the property does not comply, costs may need to be incurred by the buyer to bring the property up to standard before it can be rented. No warranty or representation express or implied has been made by the vendor or the vendor's agent in respect of whether the property complies with the Requirements.	.....
• Of the matters noted in the Additional disclosures section of this form, overleaf.	.....
• Of any occupational health and safety issues that the vendor has disclosed.	.....
• Of any work that the vendor of the property has declared which may have required permits/local body consents.	.....
• Of any pending works that the vendor has declared or agreed to on adjoining properties or in the immediate area.	.....
• That the property type is a 'unit title' and that they have been made aware of the aspects that relate to that property type.	.....
• The vendor of the property is a licensee/employee of Barfoot & Thompson and that the appropriate clause has been included in the agreement for sale and purchase of real estate offer.	.....
• The property is of a cladding type that may be at risk of weathertightness problems and that it was recommended that they seek the expert advice of a suitably qualified person.	.....
• The vendor of the property is GST registered for the purposes of the sale and that it was recommended that they seek their own expert advice.	.....
Provided (delete if not applicable)	
• Real Estate Authority New Zealand residential property sale and purchase agreement guide.	.....
• Barfoot & Thompson in-house complaints procedure and advised that they may access the Real Estate Authority complaints process without first using the Barfoot & Thompson in-house procedures and that any use of the Barfoot & Thompson in-house procedures does not preclude the making of a complaint to the Real Estate Authority.	.....
• Barfoot & Thompson Privacy Policy	.....
• Taxation (land information) legislation guidelines relating to the requirement for a New Zealand Inland Revenue taxation number.	.....
• Overseas Investment Office information guidelines relating to the purchase of residential land in New Zealand.	.....
• Land Information Memorandum for the property.	.....
• Record of Title for the property (it is recommended that purchasers seek their own expert advice in regard to title documents).	.....
• Pre-contract disclosure statement and any additional pre-contract disclosure information (Unit Title properties only).	.....

Clear

Print

Additional disclosures

I confirm that I was advised to seek my own expert opinion in relation to any of the advice or information provided in this form.

Buyer ..... Signed .....

Salesperson ..... Signed .....

Date ..... /..... /.....

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Buying and not sure what to do when?

Your real estate buying journey

Understanding the end-to-end real estate process

Be a confident home buyer with **settled.govt.nz**

Buying a home is one of the biggest financial decisions you'll ever make. It can be a complex and sometimes stressful process.

Settled.govt.nz will help to inform and guide you through the process from when you're thinking of buying right through to when you're moving in or out.

Have a look at the checklists, quizzes, videos and tools. From understanding LIMs to sale and purchase agreements to when to contact a lawyer, **settled.govt.nz** explains what you need to know.

Learn more at settled.govt.nz

Brought to you by the Real Estate Authority

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Your real estate **buying journey**

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Before you can make an offer, you'll need to know the method of sale being used for that home.

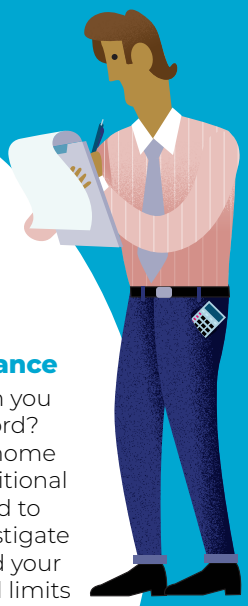
Remember, the real estate agent should treat everyone fairly, and your lawyer or conveyancer is there to support you through the process.

Don't make an offer on a property before seeking legal advice.

Thinking of buying?

Agree on your goals

Decide what you're looking for and what your goals are. Talk to friends and family.



Sort your finance

How much can you borrow or afford? Buying a new home comes with additional costs you need to budget for. Investigate and understand your loan options and limits before you take out a home loan. Investigate and understand your loan options and limits before you take out a home loan.

Build your support crew

You'll need a lawyer, an insurer and a bank or mortgage broker. You may need a property inspector later too.

Finding a property

Learn the lingo

The more prepared you are, the less confusing the process will be. Learn about methods of sale, types of property ownership and how to identify risks and potential issues.

Attend open homes or arrange a private viewing

By now, you'll know what you're looking for in a home and what red flags to watch out for. If you like a home and it meets your needs, you can let the agent know and start researching it in more detail.

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Doing your homework means you can make informed decisions.

Researching the property

Do your homework

When you've found the property you want to buy, it's important to find out as much as possible before you make an offer.

It may take a while to find the ideal property.

Understand issues and hazards

Doing your homework means you can make informed decisions, for example, you'll learn about the neighbourhood and what kind of natural hazards might happen in the area.

Don't make an offer on a property before seeking legal advice.

Making an offer

Use settled.govt.nz's Property Checker Tool

Understand the offer process

The offer process will vary depending on the method of sale. Learn about the different methods of sale.

Understand the multi-offer process

If another buyer also puts an offer on the property you want, it becomes a multi-offer process. Ask the agent to clearly explain the process and make sure you talk to your lawyer.

Ask for a title search

A record of title is essential. It is specific to the address you are looking at and will tell you if there are any restrictions against the property.

You may repeat the offer process several times before you are successful.

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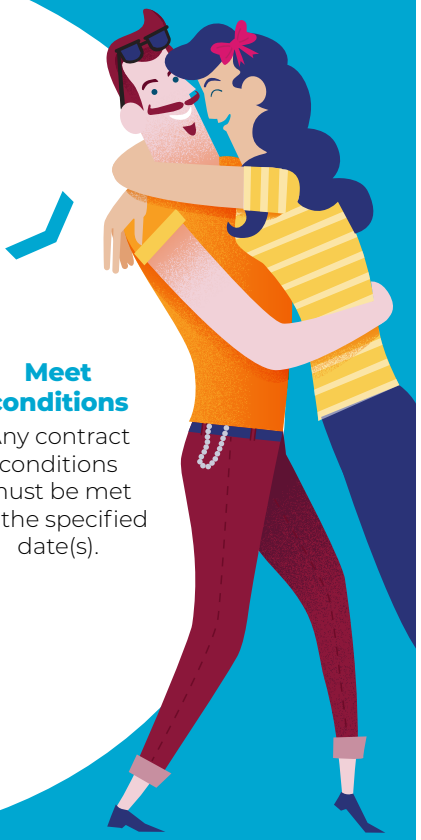
Confirm your finance

Now's the time to confirm your finance with the lender. Most banks will ask you for more information about the property and require proof that you've arranged insurance before settlement.

Make a conditional offer or an unconditional offer

With some methods of sale, you can make a conditional offer, such as the offer being subject to a property inspection or finance. Ask your lawyer for advice. You may decide to do some of these before making your offer.



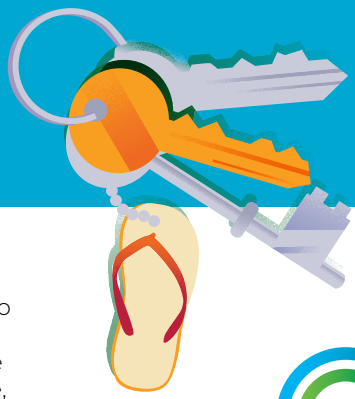
Meet conditions

Any contract conditions must be met by the specified date(s).

Settling and moving in

Plan for settlement day

A number of things need to happen before settlement day, such as your pre-settlement inspection and ensuring your finances and insurance are in place.



Settle on settlement day

The big day has arrived! Many things need to happen in sequence between your lawyer, the seller's lawyer and the banks before the property becomes yours. This can take time, and you may not get the keys until late in the day. It's a good idea to plan to move in the day after settlement day.

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Understand the offer process

The offer process will vary depending on the method of sale. Learn about the differen

Buying by advertised price, deadline sale or negotiation

Advertised price: The seller sets a price, and you can choose to offer more or less than that price and negotiate the sale. There is no specific deadline your offer needs to be received by.

Deadline sale: The seller sets a date, and you can make an offer at any time before that date. The seller may indicate the price. You can offer more or less than that price and negotiate the sale.

Negotiation: When it's difficult to estimate the market value of a property, a seller may choose to sell by negotiation. Buyers make offers based on what they think the property is worth in the current market. You can make an offer at any time.

Important things to know

- In all cases, you can attach conditions to your offer, like making the offer subject to a property inspection. You can change your offer at any time before the seller accepts it, and you can include an expiry date on the offer.
- The seller can also attach terms and conditions to the sale, for example, the settlement date.
- If you can't meet the conditions or need an extension, you need to talk to your lawyer or conveyancer and the real estate agent as soon as possible.
- If there is more than one offer, the sale may become a multi-offer process.

Buying by tender

When a property is for sale by tender, buyers give a confidential written offer by tender to the agent before a specified end date.

Important things to know

- You can attach conditions to your offer. The seller can also attach terms and conditions to the sale.
- You can make an offer at any time.
- The seller doesn't have to accept the highest offer or any offer. The seller may choose to negotiate, through the agent, with anyone who submitted an offer.
- You may not get a chance to negotiate once you submit your offer, so consider putting forward your best offer.

Buying by tender unless sold prior

Some tenders may be sold prior to the deadline, and this should be highlighted in the advertising.

- If the seller decides to accept offers earlier than the tender end date, the property can be sold before this date.
- Register your interest with the agent and ask to be informed if someone else makes an offer before the end date to see if you can also make an offer.
- If the seller has decided they will accept offers before the end date and there is more than one offer, the sale may become a multi-offer process.

Buying by auction

A property auction is a fast-paced, public sale. The property is sold to the buyer with the highest bid after the seller's reserve price is reached.

Important things to know

- Buyers should register their interest with the agent and ask to be informed if another buyer makes an offer before the auction date.
- If you haven't been to an auction before, it's a good idea to attend one as a spectator so you can see how they work.
- If you win an auction, you are committed to purchase the property. You must pay the purchase deposit on the auction day. It's very important to have your finances in order and to complete your due diligence before you think about bidding at auction.

Whichever offer process is used, remember that a sale and purchase agreement is a legally binding contract, so get legal advice before you make your offer.

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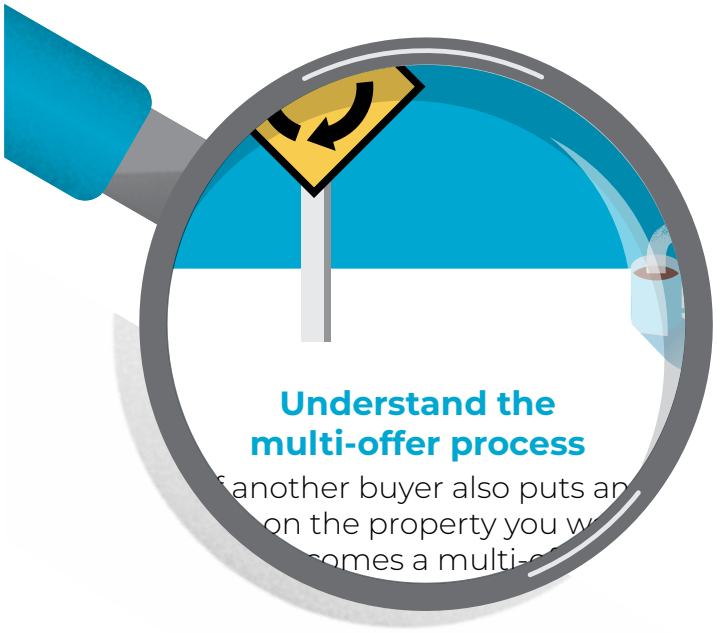

Multi-offer process

A multi-offer process happens when more than one buyer makes an offer on a property. It's important to put your best foot forward in this situation as you might not get a chance to increase your offer or to negotiate.

Important things to know

- Agents must clearly explain the process and any relevant paperwork to all buyers.
- There must be more than one offer in writing. An agent can't say you are in a multi-offer process if there are no other offers in writing.
- In a multi-offer situation, the seller can choose the offer that works best for them. An offer with a lower price but fewer conditions may be chosen over a higher price with more conditions. The seller can also choose to decline all offers.
- If you have any concerns about a multi-offer process you are part of, you can speak to the agent's manager.

Real Estate Authority

Settled.govt.nz is brought to you by the Real Estate Authority (REA) – Te Mana Papawhenua (REA).

REA is the independent government agency that regulates the New Zealand real estate profession. Our purpose is to promote and protect the interests of consumers buying and selling real estate and to promote public confidence in the performance of real estate agency work.

Getting help when things go wrong

If something has gone wrong, first discuss your concern with the real estate professional or their manager. All agencies must have in-house procedures for resolving complaints.

If you can't resolve the issue with the agency or you don't feel comfortable discussing it with them, you can contact the Real Estate Authority (REA). We can help in a number of ways if your complaint is about the real estate professional. For example, we can help you and the real estate professional or agency to resolve the issue and remind them of their obligations under the Real Estate Agents Act 2008. When you contact us, we'll work with you to help you decide the best thing to do.

Call us on **0800 367 7322,** email us at **info@rea.govt.nz** or visit us online at **rea.govt.nz**

This guide is available in other languages.
You can find a translated copy of this guide here
settled.govt.nz/resources

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TE MANA PAPAWHENUA

October 2022

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Buying or selling your property?

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New Zealand Residential Property
Sale and Purchase Agreement Guide

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This guide tells you...

what a sale and purchase agreement is

what's in a sale and purchase agreement

what happens after you sign the sale and purchase agreement

what happens if you have a problem

where to go for more information

Where to go for more information

This guide is available in other languages. You can find translated copies of this guide on rea.govt.nz and settled.govt.nz.

The New Zealand Residential Property Agency Agreement Guide is also available on settled.govt.nz. The guide tells you more about the agreement you sign with the agency helping to sell your property.

We welcome any feedback you have on this publication.

The information in this guide was accurate when published. However, the requirements this information is based on can change at any time. Up-to-date information is available at rea.govt.nz.

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Key things to know about sale and purchase agreements

- A sale and purchase agreement is a legally binding contract between you and the other party involved in buying or selling a property.
- You must sign a written sale and purchase agreement to buy or sell a property.
- You need to read and understand the sale and purchase agreement before you sign it.
- Even if a standard sale and purchase agreement is being used, you should always get legal advice before you sign the agreement and throughout the buying and selling process.
- You can negotiate some of the terms and conditions in a sale and purchase agreement.
- You can include additional clauses, such as what to do if there are special circumstances. Your lawyer plays an important role in providing advice on what the sale and purchase agreement should say.
- A sale and purchase agreement becomes unconditional once all the conditions are met.
- In most cases, the real estate professional is working for the seller of the property, but they must treat the buyer fairly.
- If your real estate professional or anyone related to them wants to buy your property, they must get your written consent to do this. They must also give you a valuation of your property by an independent registered valuer.
- The sale and purchase agreement is only available in English. You may need assistance interpreting it if English is not your primary language.

What a sale and purchase agreement is

A sale and purchase agreement is a legally binding contract between you and the other party involved in buying or selling a property. It sets out all the details, terms and conditions of the sale. This includes things such as the price, any chattels being sold with the property, whether the buyer needs to sell another property first or needs a property inspection and the settlement date.

A sale and purchase agreement provides certainty to both the buyer and the seller about what will happen when.

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What's in a sale and purchase agreement

Your sale and purchase agreement should include the following things.

Basic details of the sale

Different sale methods like tender or auction might mean the sale and purchase agreement can look different, but all sale and purchase agreements should contain:

- the names of the people buying and selling the property
- the address of the property
- the type of title, for example, freehold or leasehold
- the price
- any deposit the buyer must pay
- any chattels being sold with the property, for example, whiteware or curtains
- any specific conditions you or the other party want fulfilled
- how many working days you have to fulfil your conditions (if there are any conditions)
- the settlement date (the date the buyer pays the rest of the amount for the property, which is usually also the day they can move in)
- the rate of interest the buyer must pay on any overdue payments (such as being late on paying the deposit or the remaining amount at the settlement date).

General obligations and conditions you have to comply with

The sale and purchase agreement includes general obligations and conditions that you will need to comply with. For example, these may include:

- access rights – what access the buyer can have to inspect the property before settlement day
- insurance – to make sure the property remains insured until the settlement date and outline what will happen if any damage occurs before settlement day
- default by the buyer – the buyer may have to compensate the seller if they don't settle on time, for example, with interest payments
- default by the seller – the seller may have to compensate the buyer if they don't settle on time, for example, by paying accommodation costs
- eligibility to buy property in New Zealand – people who have migrated to New Zealand may not be permitted to immediately buy property or may need to get consent from the Overseas Investment Office.

Your lawyer will explain these clauses to you.

Check...

Always check your sale and purchase agreement with a lawyer before signing.

Buying or selling a property where the owner isn't able to participate, like a mortgagee sale or deceased estate, can mean the real estate professional has limited information about the property. It pays to allow for this when deciding what conditions the buyer and seller might need.

Remember...

Before you sign a sale and purchase agreement, whether you're the buyer or the seller, the real estate professional must give you a copy of this guide. They must also ask you to confirm in writing that you've received it.

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Specific conditions a buyer may include

Some buyers will present an unconditional offer, which means there are no specific conditions to be fulfilled. Some buyers will include one or more conditions (that must be fulfilled by a specified date) in their offer such as:

- title search – this is done by the buyer's lawyer to check who the legal owner of the property is and to see if there are any other interests over the property such as caveats or easements
- finance – this refers to the buyer arranging payment, often requiring bank approval for a mortgage or loan
- valuation report – a bank may require the buyer to obtain a valuation of the property (an estimate of the property's worth on the current market) before they agree to a loan
- Land Information Memorandum (LIM) – provided by the local council, this report provides information about the property such as rates, building permits and consents, drainage, planning and other important information
- property inspection – a buyer paying for an inspection provides an independent overview of the condition of the property rather than relying on an inspection that has been arranged by the seller
- engineer's or surveyor's report – similar to the above but more focused on the entire section and the structure of the property
- sale of another home – the buyer may need to sell their own home in order to buy another.

The real estate professional helps the buyer and the seller to include the conditions they each want. Even though the real estate professional works for the seller, they also have to deal fairly and honestly with the buyer. While they're not expected to discover hidden defects, they can't withhold information and must tell the buyer about any known defects with the property. If a buyer needs time to check a property for defects, including a property inspection condition may be important.

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What happens after you sign the sale and purchase agreement

Signing the sale and purchase agreement is not the end of the sale or purchase process.

Both parties work through the conditions until the agreement is unconditional

A conditional agreement means the sale and purchase agreement has one or more conditions that must be met by a specified date and before the sale goes through.

The buyer pays the deposit. Depending on what the sale and purchase agreement says, the buyer may pay the deposit when they sign the agreement or when the agreement becomes unconditional. If the deposit is made to the real estate agency, it must be held in their agency's trust account for 10 working days before it can be released to the seller.

An agreement for sale and purchase commits you to buy or sell

Once you've signed the sale and purchase agreement and any conditions set out in it have been met, you must complete the sale or purchase of the property.

The length of time between the conditions being met and the settlement date varies. Settlement periods can be lengthy if the property hasn't been built yet or the sale and purchase agreement includes conditions for one party to buy or sell another property. The real estate professional has obligations to keep you informed of important updates that come up during this time.

Pre-settlement inspection

This is the chance for the buyer to check the property and chattels are in the same condition they were when the sale and purchase agreement was signed and to check that the seller has met any conditions, for example, there is no damage to walls or chattels haven't been removed from the property.

It's important to raise any concerns you find at the pre-settlement inspection with your lawyer and the real estate professional as soon as possible to allow enough time for an issue to be resolved. If it's less than 24 hours before settlement, the vendor may not be obligated to set things right.

Payment of a commission

Once the sale is complete, the seller pays the real estate professional for their services. The real estate agency usually takes the commission from the deposit they're holding in their trust account. The seller should make sure the deposit is enough to cover the commission. The real estate professional cannot ask the buyer to pay for their services if they have been engaged by the seller.

The buyer pays the rest

The buyer pays the remainder of the amount for the property on the day of settlement, usually through their lawyer.

Buying a tenanted property

If the property is tenanted, the agreement for sale and purchase should specify this. It may also contain a specific date for possession that may differ from the settlement date.

If the buyer requires the property to be sold with 'vacant possession', it is the seller's responsibility to give the tenant notice to vacate in accordance with the tenant's legal rights.

It is recommended that you seek legal advice if you are buying a property that is currently tenanted.

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What happens if you have a problem

If something has gone wrong, first discuss your concern with the real estate professional or their manager. All agencies must have in-house procedures for resolving complaints.

If you can't resolve the issue with the real estate agency or you don't feel comfortable discussing it with them, you can contact the Real Estate Authority (REA). We can help in a number of ways if your complaint is about the real estate professional. For example, we can help you and the real estate professional or agency to resolve the issue and remind them of their obligations under the Real Estate Agents Act 2008. When you contact us, we'll work with you to help you decide the best thing to do.

Call us on **0800 367 7322**, email us at **info@rea.govt.nz** or visit us online at **rea.govt.nz**

About settled.govt.nz

Settled.govt.nz guides you through home buying and selling.

Buying or selling your home is one of the biggest financial decisions you will make. It's a complex and sometimes stressful process with potentially significant emotional and financial impacts if things go wrong.

Settled.govt.nz provides comprehensive independent information and guidance for home buyers and sellers. You can find information about the risks and how they can impact you and get useful tips on how to avoid some of the major potential problems.

Settled.govt.nz will help to inform and guide you through the process from when you're thinking of buying or selling right through to when you're moving in or out. You'll find valuable information, checklists, quizzes, videos and tools. From understanding LIMs, to sale and purchase agreements, to when to contact a lawyer, settled.govt.nz explains what you need to know.

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For more information

For more information on home buying and selling, visit settled.govt.nz or email info@settled.govt.nz

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About the Real Estate Authority – Te Mana Papawhenua (REA)

REA is the independent government agency that regulates the New Zealand real estate profession.

Our purpose is to promote and protect the interests of consumers buying and selling real estate and to promote public confidence in the performance of real estate agency work.

What we do

Our job is to promote a high standard of conduct in the real estate profession and protect buyers and sellers of property from harm.

- We provide independent information for people who are buying and selling property through our settled.govt.nz website.
- We provide guidance for real estate professionals and oversee a complaints process.
- We license people and companies working in the real estate industry.
- We maintain a Code of Conduct setting out the professional standards real estate professionals must follow.
- We maintain a public register of real estate professionals that includes information about disciplinary action taken in the last 3 years.

The Real Estate Agents Authority is a Crown agent, established under the Real Estate Agents Act 2008. The Real Estate Authority is the operating name of the Real Estate Agents Authority.

For more information

To find out more about REA, visit rea.govt.nz, call us on 0800 367 7322 or email us at info@rea.govt.nz

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Approved under section 133 of the Real Estate Agents Act 2008. Effective from 14 October 2022.

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REAL ESTATE AUTHORITY
TE MANA PAPAWHENUA

Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012

RES00016e-2105

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Important note

The Real Estate Authority (REA) is the operating name of the Real Estate Agents Authority (REAA).

Please note that this publication uses the legal name 'Real Estate Agents Authority (REAA)' due to a requirement to maintain consistency with legislation.

Rules

These Rules make up the Real Estate Agents Authority code of professional conduct and client care. The Rules were made by the Authority and notified in the New Zealand Gazette.[1] The rules set minimum standards of conduct and client care that licensees are required to meet when carrying out real estate agency work and dealing with clients.

1 Pursuant to section 14 of the Real Estate Agents Act 2008, the Real Estate Agents Authority, with the approval of the Minister of Justice given in accordance with section 17 of that Act, and after consultation in accordance with section 16 of that Act, makes the following rules.

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1 Title

These rules are the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012.

2 Commencement

These rules come into force on 8 April 2013.

3 Scope and objectives

3.1 These practice rules setting out a code of professional conduct and client care have been prepared by the Real Estate Agents Authority (**the Authority**). They constitute the Professional Conduct and Client Care Rules required by section 14 of the Real Estate Agents Act 2008.

3.2 These practice rules set out the standard of conduct and client care that agents, branch managers, and salespersons (collectively referred to **as licensees**) are required to meet when carrying out real estate agency work and dealing with clients.

3.3 These practice rules are not an exhaustive statement of the conduct expected of licensees. They set minimum standards that licensees must observe and are a reference point for discipline. A charge of misconduct or unsatisfactory conduct may be brought and dealt with despite the charge not being based on a breach of any specific rule.

3.4 These practice rules must be read in conjunction with the Act and regulations, and do not repeat duties and obligations that are included in the Act or regulations.

4 Interpretation

4.1 In these rules,—

- **Act** means the Real Estate Agents Act 2008.
- **customer** means a person who is a party or potential party to a transaction and excludes a prospective client and a client.
- **prospective client** means a person who is considering or intending to enter into an agency agreement with an agent to carry out real estate agency work.
- **regulations** means regulations made pursuant to the Act.

4.2 Unless the context otherwise requires, terms used in these rules have the same meaning as in the Act.

5 Standards of professional competence

5.1 A licensee must exercise skill, care, competence, and diligence at all times when carrying out real estate agency work.

5.2 A licensee must have a sound knowledge of the Act, regulations, rules issued by the Authority (including these rules), and other legislation relevant to real estate agency work.

6 Standards of professional conduct

6.1 A licensee must comply with fiduciary obligations to the licensee's client.

6.2 A licensee must act in good faith and deal fairly with all parties engaged in a transaction.

6.3 A licensee must not engage in any conduct likely to bring the industry into disrepute.

6.4 A licensee must not mislead a customer or client, nor provide false information, nor withhold information that should by law or in fairness be provided to a customer or client.

7 Duty to report misconduct or unsatisfactory conduct

7.1 A licensee who has reasonable grounds to suspect that another licensee has been guilty of unsatisfactory conduct[1] may make a report to the Authority.

7.2 A licensee who has reasonable grounds to suspect that another licensee has been

1 Unsatisfactory conduct is defined in the Act: see section 72.

RES00016e-2105

guilty of misconduct[2] must make a report to the Authority.

7.3 A licensee must not use, or threaten to use, the complaints or disciplinary process for an improper purpose.

7.4 If a licensee learns that a person is committing an offence by undertaking real estate agency work without a licence, the licensee must immediately report the matter to the Authority.

8 Duties and obligations of agents

Promoting awareness of rules

8.1 An agent who is operating as a business must display these rules prominently in the public area of each office or branch, and provide access to them on every website maintained by the agent for the purposes of the business.

8.2 A licensee must make these rules available to any person on request.

Supervision and management of salespersons

8.3 An agent who is operating as a business must ensure that all salespersons employed or engaged by the agent are properly supervised and managed.[3]

Ensuring knowledge of regulatory framework and promoting continuing education

8.4 An agent who is operating as a business must ensure that all licensees employed or engaged by the agent have a sound knowledge of the Act, regulations, rules issued by the Authority (including these rules), and other legislation relevant to real estate agency work.

8.5 An agent who is operating as a business must ensure that licensees employed or engaged by the agent are aware of and have the opportunity to undertake any continuing education required by the Authority.

9 Client and customer care

General

9.1 A licensee must act in the best interests of a client and act in accordance with the client's instructions unless to do so would be contrary to law.

9.2 A licensee must not engage in any conduct that would put a prospective client, client, or customer under undue or unfair pressure.

9.3 A licensee must communicate regularly and in a timely manner and keep the client well informed of matters relevant to the client's interest, unless otherwise instructed by the client.

9.4 A licensee must not mislead customers as to the price expectations of the client.

9.5 A licensee must take due care to—

(a) ensure the security of land and every business in respect of which the licensee is carrying out real estate agency work; and

(b) avoid risks of damage that may arise from customers, or clients that are not the owner of the land or business, accessing the land or business.

9.6 Unless authorised by a client, through an agency agreement, a licensee must not offer or market any land or business, including by putting details on any website or by placing a sign on the property.

Agency agreements and contractual documents

9.7 Before a prospective client, client, or customer signs an agency agreement, a sale and purchase agreement, or other contractual document, a licensee must—

(a) recommend that the person seek legal advice; and

(b) ensure that the person is aware that he or she can, and may need to, seek technical or other advice and information; and

(c) allow that person a reasonable opportunity to obtain the advice referred to in paragraphs (a) and (b).

2 Misconduct is defined in the Act: see section 73.

3 The Act defines what is meant by a salesperson being properly supervised and managed by an agent or a branch manager for the purposes of section 50 of the Act: see section 50(2).

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9.8 A licensee must not take advantage of a prospective client's, client's, or customer's inability to understand relevant documents where such inability is reasonably apparent.

9.9 A licensee must not submit an agency agreement or a sale and purchase agreement or other contractual document to any person for signature unless all material particulars have been inserted into or attached to the document.

9.10 A licensee must explain to a prospective client that if he or she enters into or has already entered into other agency agreements, he or she could be liable to pay full commission to more than 1 agent in the event that a transaction is concluded.

9.11 On notice of cancellation of an agency agreement being given or received by the agent under the agreement, the agent must advise the client, in writing, of the name of each customer (if any) in respect of whom the agent would claim a commission, were the customer to conclude a transaction with the client.

9.12 An agent must not impose conditions on a client through an agency agreement that are not reasonably necessary to protect the interests of the agent.

9.13 When authorised by a client to incur expenses, a licensee must seek to obtain the best value for the client.

Conflicts of interest

9.14 A licensee must not act in a capacity that would attract more than 1 commission in the same transaction.

9.15 A licensee must not engage in business or professional activity other than real estate agency work where the business or activity would, or could reasonably be expected to, compromise the discharge of the licensee's obligations.

Confidentiality

9.16 A licensee must not use information that is confidential to a client for the benefit of any other person or of the licensee.

9.17 A licensee must not disclose confidential personal information relating to a client unless—

(a) the client consents in writing; or

(b) disclosure is necessary to answer or defend any complaint, claim, allegation, or proceedings against the licensee by the client; or

(c) the licensee is required by law to disclose the information; or

(d) the disclosure is consistent with the information privacy principles in section 6 of the Privacy Act 1993.

9.18 Where a licensee discloses information under rule 9.17(b), (c) or (d), it may be only to the appropriate person or entity and only to the extent necessary for the permitted purpose.

10 Client and customer care for sellers' agents

10.1 This rule applies to an agent (and any licensee employed or engaged by the agent) who is entering, or has entered, into an agency agreement with a client for the grant, sale, or other disposal of land or a business.

Appraisals and pricing

10.2 An appraisal of land or a business must—

(a) be provided in writing to a client by a licensee; and

(b) realistically reflect current market conditions; and

(c) be supported by comparable information on sales of similar land in similar locations or businesses.

10.3 Where no directly comparable or semi-comparable sales data exists, a licensee must explain this, in writing, to a client.

10.4 An advertised price must clearly reflect the pricing expectations agreed with the client.

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Relationship between prospective client's choices about how to sell and licensee's benefits

10.5 Before a prospective client signs an agency agreement, the licensee must explain to the prospective client how choices that the prospective client may make about how to sell or otherwise dispose of his or her land or business could impact on the individual benefits that the licensee may receive.

Agency agreements

10.6 Before a prospective client signs an agency agreement, a licensee must explain to the prospective client and set out in writing—

(a) the conditions under which commission must be paid and how commission is calculated, including an estimated cost (actual $ amount) of commission payable by the client, based on the appraisal provided under rule 10.2:

(b) when the agency agreement ends;

(c) how the land or business will be marketed and advertised, including any additional expenses that such advertising and marketing will incur:

(d) that the client is not obliged to agree to the additional expenses referred to in rule 10.6(c):

(e) that further information on agency agreements and contractual documents is available from the Authority and how to access this information.

Disclosure of defects

10.7 A licensee is not required to discover hidden or underlying defects in land but must disclose known defects to a customer. Where it would appear likely to a reasonably competent licensee that land may be subject to hidden or underlying defects[4], a licensee must either—

(a) obtain confirmation from the client, supported by evidence or expert advice, that the land in question is not subject to defect; or

(b) ensure that a customer is informed of any significant potential risk so that the customer can seek expert advice if the customer so chooses.

10.8 A licensee must not continue to act for a client who directs that information of the type referred to in rule 10.7 be withheld.

Advertising and marketing

10.9 A licensee must not advertise any land or business on terms that are different from those authorised by the client.

Contractual documentation and record keeping

10.10 A licensee must submit to the client all offers concerning the grant, sale, or other disposal of any land or business, provided that such offers are in writing.

10.11 If a licensee is employed or engaged by an agent, the licensee must provide the agent with a copy of every written offer that the licensee submits.

10.12 An agent must retain, for a period of 12 months, a copy of every written offer submitted. This rule applies regardless of whether the offer was submitted by the agent or by a licensee employed or engaged by the agent and regardless of whether the offer resulted in a transaction.

11 Client and customer care for buyers' agents

11.1 This rule applies where an agency agreement authorising an agent to undertake real estate agency work for a client in respect of the purchase or other acquisition of land or a business on the client's behalf (a buyer's agency agreement) is being entered into, or has been entered into.

11.2 Before a prospective client signs a buyer's agency agreement, a licensee must explain to the prospective client and set out in writing —

4 For example, houses built within a particular period of time, and of particular materials, are or may be at risk of weathertightness problems. A licensee could reasonably be expected to know of this risk (whether or not a seller directly discloses any weathertightness problems). While a customer is expected to inquire into risks regarding a property and to undertake the necessary inspections and seek advice, the licensee must not simply rely on caveat emptor. This example is provided by way of guidance only and does not limit the range of issues to be taken into account under rule 10.7.

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(a) the conditions under which commission must be paid and how commission is calculated, including an estimated cost (actual $ amount) of commission payable by the client, based on the average of the estimated price range of the land or business that the client is seeking to purchase:

(b) when the agency agreement ends:

(c) any additional services that the licensee will provide, or arrange for the provision of, on the client's behalf and the expenses relating to those services payable by the client:

(d) that the client is not obliged to agree to the additional expenses referred to in rule 11.2(c):

(e) that further information on agency agreements and contractual documents is available from the Authority and how to access this information.

11.3 A licensee must not undertake real estate agency work with customers, or other licensees, on terms that are different from those that are authorised by the client on whose behalf the licensee is carrying out real estate agency work.

11.4 A licensee must submit all offers that the licensee is instructed by the client to make concerning the purchase or acquisition of any land or business, provided that such offers are in writing.

11.5 If a licensee is employed or engaged by an agent, the licensee must provide the agent with a copy of every written offer that the licensee submits.

11.6 An agent must retain, for a period of 12 months, a copy of every written offer submitted. This rule applies regardless of whether the offer was submitted by the agent or by a licensee employed or engaged by the agent and regardless of whether the offer resulted in a transaction.

12 Information about complaints

12.1 An agent must develop and maintain written in-house procedures for dealing with complaints and dispute resolution. A copy of these procedures must be available to clients and consumers.

12.2 A licensee must ensure that prospective clients and customers are aware of these procedures before they enter into any contractual agreements.

12.3 A licensee must also ensure that prospective clients, clients, and customers are aware that they may access the Authority's complaints process without first using the in-house procedures; and that any use of the in-house procedures does not preclude their making a complaint to the Authority.

12.4 A licensee employed or engaged by an agent must advise the agent within 10 working days of becoming aware of—

(a) any complaint made to the Authority against them, the decision of the Complaints Assessment Committee made in respect of that complaint, and any order made by the Committee in respect of that complaint; and

(b) if the matter proceeds to the Tribunal, the decision of the Tribunal in respect of the matter, and any order made by the Tribunal in respect of the matter.

12.5 If a licensee was employed or engaged by a different agent at the time of the conduct relevant to the complaint referred to in rule 12.4, the licensee must also provide the information referred to in rule 12.4(a) and (b) to that agent within 10 working days of becoming aware of the complaint.

13 Revocation

The Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009 (SR 2009/304) are revoked.

Issued under the authority of the Acts and Regulations Publication Act 1989. Date of notification in Gazette: 13 December 2012. These rules are administered by the Real Estate Agents Authority.

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Complaints

Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 – Rule 12

Initial complaint:

Written complaint
To be emailed to compliance@barfoot.co.nz

→

Acknowledgment
Compliance manager to acknowledge receipt of written complaint and advise that the matter will be addressed in the first instance by the branch manager.

→

Complaint referred to branch manager
Complaint in written form forwarded to branch manager.

↓

Branch manager acknowledgment
Branch manager to acknowledge receipt of complaint and advise that formal response will be provided within five working days.

←

Branch manager to investigate
Branch manager to obtain written report from salesperson.

←

Branch manager to respond
Branch manager to review process and send formal response with comment and conclusion to complainant.

↓

Branch manager to file
Branch manager to retain a copy of response and supporting file documentation on file.

For complaints responded to by the branch manager but which do not satisfy the complainant:

Escalate complaint
Escalate complaint in writing to compliance manager by emailing your complaint to compliance@barfoot.co.nz

→

Acknowledgment
Compliance manager to acknowledge receipt of complaint and advise that the matter will be reviewed from an agency perspective and a response provided within 15 working days.

→

Agency level review
Compliance manager to obtain the branch file, review, and seek additional information if required.

↓

Agency level response
Compliance manager to provide formal written response from an agency perspective and advise that the process does not preclude the matter from being referred to the Real Estate Authority or the Tenancy Advice Helpline (property management issues).

↓

Recording
Issue to be recorded in complaints register; documentation to be held on file.

Note:
This process does not preclude the matter from being referred to the Real Estate Authority.
The Authority can be contacted through: rea.govt.nz

Privacy statement

This information is designed to assist you in understanding how we collect and use the personal information you provide to us and to assist you in making informed decisions when interacting with us.

Barfoot & Thompson Limited (NZCN 75655) of Level 7, 34 Shortland Street, City, Auckland ('Barfoot & Thompson', 'we', 'us', 'our') is committed to complying with the Privacy Act 2020 and to good practice standards for privacy and security whenever we collect, hold, use, or share information.

Our policies also cover how we look after confidential and/or commercially sensitive information provided to us. Confidential and/or commercially sensitive information includes information about corporate entities (e.g. companies) and financial information.

What information do we collect?

We collect information from you when you interact with us, like attending open homes, making inquiries about properties, selling or buying with us, signing up to newsletters, and when you visit our website, check out our social media channels, or use our applications.

It will usually be obvious when we collect information from you, in forms, registers, correspondence, or on sign-up pages. This will usually identify you. We may ask for your consent to collect information about you from other people.

Our digital channels will also collect information about peoples' interactions using cookies and other digital tools. We only use this on an aggregate basis for the purposes set out in this policy.

You chose to provide us with the information outlined in this statement, so we can provide you with the services you are after from us. We aim to make why we need to collect the information from you (i.e. the purpose) clear before you provide it to us. We will also tell you where you must provide us with details and where it is voluntary or beneficial for you to provide us those details.

Further details about information we collect and how we may use it is included below.

What we do with the information we gather

We use the information you provide for our business purposes, to understand your needs and provide you with a better service. Our purposes for collecting personal information are:

- Sale and purchase of residential/rural and commercial real estate including recording attendance at a property, interest in a listing, facilitating an agreement for sale and purchase, valuations, itemised chattels, photos, and any other record of interactions with a person or their property.
- To provide property management and body corporate management services including undertaking background checks on potential tenants and any information created about a person as part of providing services.
- Internal business management purposes including internal record keeping, and to monitor, measure, and improve our own business practices. This also includes checking our processes are being followed, managing, training and developing our personnel, and improving or customising our products and services.
- Marketing and promoting our real estate services and current and future properties to clients, customers and potential customers including advertising, direct marketing, other promotions, and social media engagement, and for maintaining a connection or relationships through the provision of market information, news, and/or events.
- Conducting market research and surveys. Contact information can be used to make initial contact and invite participation in market research and survey activities. Where the individual opts-in to participating, the information gathered may then be used to provide insights into real estate market activities.

- To comply with all relevant laws, where these are required for the above purposes including requirements to record and report transactions under anti-money laundering and counter-terrorist financing laws, maintain records for real estate agent code of conduct regulation and tax purposes, and to comply with any lawfully issued notice to provide information to a regulatory agency, including the New Zealand Police and Serious Fraud Office.

'Closed Circuit Television' (CCTV) is used in our premises to help reduce crime and anti-social behaviour and to support community safety. Signage advising of CCTV equipment will give notice of areas covered by such equipment. CCTV footage will only be reviewed by authorised people in accordance with the purpose noted above or for the purposes of regularly checking the system is operational. No attempt is made to identify individuals from CCTV footage except in relation to a reported or suspected incident requiring investigation.

Personal information you choose to provide:

Sign-up information

You will be asked to provide us with information about yourself, your firm or company, when you register for certain services, such as email newsletters and alerts, or to save properties of interest to you on our website or our app. You may also provide additional comments on how you see Barfoot & Thompson servicing your needs and interests. You can unsubscribe to newsletters and alerts at any time.

Email information

If you choose to correspond with us through email, we may retain the content of your email messages together with your email address and our responses.

Email newsletters you sign up for

When you sign up to email newsletters we may track your interaction with the emails we send for the purposes of improving the content we deliver you. You can unsubscribe to email newsletters at any time.

Your needs, interests, and preferences

We will use the interactions you have with us to better understand your needs and preferences, so we can offer you the best services we can.

Digital use information

Cookie and tracking technologies are used for gathering unidentified information such as browser type and operating system, tracking the number of visitors to the website, and understanding how visitors use the website.

We may use cookie and tracking technology depending on the features offered. Cookies also help us to customise the website for visitors. You can turn off Cookies in your computer settings but this may affect your experience of our website.

We use Google Analytics features that associate anonymous data from the Google accounts of signed-in users who have consented to this association for the purposes of personalised advertising.

- Third party vendors, including Google and Facebook, show our ads on sites on the internet
- Third party vendors, including Google and Facebook, may use cookies on our website to serve ads on other sites on the internet based on a user's prior visits to our website
- Users may opt out of Google's use of cookies by visiting the Google advertising opt-out page policies.google.com/technologies/ads and control the way that Facebook showsads using Facebook's ad settings facebook.com/adpreferences/?entry_product=ad_preferences_delegation
- Google account holders may view and control their activity by visiting their My Activity page myactivity.google.com/myactivity?pli=1

Where you agree to allow the app to access your location on a mobile device, we may use that information to show you properties around you and give you more relevant search results. Your location information is used only by the app in real time and is not stored by us.

Note:

The privacy practices set forth in this privacy statement are for our services, website, our social media channels, and applications only. If you click on links to other websites, review the privacy policies posted at those sites. In addition, your access and use of the social media platforms that we use (including Facebook, Youtube, Linkedin, Pinterest and Twitter) will be subject to the terms and conditions and privacy policies of the companies that operate those platforms.

Social media information

When you follow or like our social media channels or like, comment on, share or otherwise interact with any of our content on our social media channels, you may provide information to us about yourself, including your name, profile information and profile picture. The information you make available can often be controlled through the settings for your account on the relevant social media platform.

Our social media channels are public and everything you share on our posts can be seen by everyone else. Please do not share any personal, confidential or sensitive information when posting on any of our social media channels.

Distribution of information

Barfoot & Thompson may share personal information with the third parties we work with to provide or promote our products and services, including using techniques to identify potential audiences for our products and services. Your personal information will only be shared on a confidential basis for the purposes of our business and promotions only and the third party is not permitted to use the information to promote their own products and services.

From time to time, our agents may transfer personal information between themselves, for example, where an agent moves regions and provides their local contacts to an agent in the area they have left. In this case, you should expect the opportunity to 'opt out' of the new agent holding and using your information.

Barfoot & Thompson may share personal information with governmental agencies or other companies assisting us in fraud prevention or investigation. We may do so when:

1 permitted or required by law; or
2 trying to protect against or prevent actual or potential fraud or unauthorised transactions; or
3 investigating fraud which has already taken place.

Personal information is not provided to these entities for marketing purposes.

We will otherwise only share your information with other parties with your consent or direction.

Commitment to data security

We have put in place physical, electronic and organisational processes to protect your personally identifiable information. Only authorised employees, agents and contractors (who have agreed to keep information secure and confidential) are granted access to this information. All emails and newsletters from this site allow you to opt out of further mailings.

We use service providers to process information you provide to us. Data will be stored in overseas jurisdictions (Philippines, United States) as well as New Zealand. We enter into agreements with our service providers to require your data to be protected to the same standard as it would be in New Zealand and ensure your privacy is maintained. The jurisdiction your data is stored in does not affect your privacy rights (as described below).

Your privacy rights

You have the right to find out and see what personal information we hold about you and to request correction of that information.

You can make requests by contacting the agent or Branch you believe holds information about you.

You will be notified as soon as practicable of any breach involving your personal information where we believe it has caused serious harm or is likely to do so.

If you have any questions about how we manage your personal information, contact us. Please report any problems, issues, or concerns about privacy to a Branch Manager.

Note for European and Californian residents – you can request deletion of the personal information we hold about you by sending us an email detailing your request barfoot.co.nz/global/forms/contact-compliance-team.

More legal information

- Disclaimer: barfoot.co.nz/global/legal-documents/disclaimer
- Terms of use: barfoot.co.nz/global/legal-documents/terms-of-use

Note:

Barfoot & Thompson may change this policy from time to time. The most up to date version of this policy will always be found at barfoot.co.nz/global/legal-documents/privacy-statement.

Taxation (land information) legislation

Information for sellers and buyers – what you need to know

What you need to know:

- The sale or purchase of **all** land in New Zealand is caught by this legislation and therefore applies to all contracts for the sale and purchase of any land in New Zealand.
- Sellers and buyers who enter into contracts will need to provide a New Zealand IRD number before the settlement can take place and possession can occur.

What sellers and buyers need to provide:

- Sellers and buyers will need to provide their lawyer with their New Zealand IRD number.
- All sellers and buyers will need to complete and sign a Tax Statement before settlement can occur and possession can be given and taken.
- 'Offshore' sellers and buyers will need to provide a New Zealand IRD number or obtain a New Zealand IRD number before the settlement date. (All 'Offshore' sellers and buyers without a New Zealand IRD number will need to get a New Zealand bank account opened before applying for a New Zealand IRD number.) Offshore parties also need to provide their tax number/details from their country of origin.
- An 'exemption' may apply where private individuals are only selling their 'main home'.
- Whether this 'exemption' applies depends upon a variety of factors. Advice must be taken from your accountant or lawyer.
- Entities such as trusts, companies, partnerships, charitable trusts and the like must provide a New Zealand IRD number for their particular entity (not individual partners or trustees) in all cases.
- Each individual seller or buyer must provide their own Tax Statement to their lawyer.
- Without the Tax Statement the seller or buyer's lawyer cannot complete settlement and delays may occur.

Vendor/buyer initials ..... Date ..... /..... /.....

Disclaimer

This information sheet is provided as an indicative guide only. You are recommended to consult your own accountant or lawyer concerning your personal circumstances and the requirements to complete a Tax Statement before entering into a contract to sell or buy land in New Zealand.

Information Sheet

REINZ | REAL ESTATE INSTITUTE OF NEW ZEALAND

Overseas Investment Act 2005
Version 1: Republished August 2021

Important changes to the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005 relating to the purchase of **residential land** come into force on 22 October 2018.

The changes affect all purchasers of residential land, not just Overseas Persons.

It is important for overseas persons to seek legal advice as soon as possible prior to making any commitment to acquire residential property.

Residential Land Statement

From 22 October 2018, every purchaser of land that is classified as residential or lifestyle, or that includes residential/lifestyle land (regardless of whether they are an **Overseas Person** or not), will need to complete a **Residential Land Statement** advising whether they require Overseas Investment Office (**OIO**) consent to buy the property.

The Residential Land Statement is available on the REINZ website, under Advisory resources, and on the Overseas Investment Office website.

The purchaser's lawyer or conveyancer will assist them to complete their Residential Land Statement, which needs to be completed prior to settlement.

What does this mean for a purchaser of residential land?

If the purchaser requires OIO consent to purchase the property:
1. They will need to apply to the OIO for permission to do so; and
2. The sale and purchase agreement must be conditional on them obtaining OIO consent, unless they have already obtained a pre-approval from OIO.

If an Overseas Person enters a sale and purchase agreement that is not conditional on OIO consent:

- they will be in breach of the Overseas Investment Act as soon as they enter the agreement;
- they will not be able to settle the contract, even if it is otherwise unconditional, until OIO consent is granted;
- any deposit they have paid may be forfeited;
- the purchaser could be liable for penalty interest for delayed settlement pending the granting of OIO consent;
- the vendor could take action against the purchaser for any losses suffered, including a loss on re-sale of the property; and
- if the vendor or real estate agent knew OIO consent was required, they could be liable for civil penalties.

DISCLAIMER: The material and information contained herein is for general information purposes only and is not intended to form professional legal advice. REINZ does not accept liability for any claim or other action that may arise directly or indirectly from the use of or reliance on the material and information provided herein. REINZ recommends you seek independent legal advice if you are unsure of your legal position.

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Therefore, if you are dealing with a purchaser who may require OIO consent and who does not already have pre-approval, the "OIO Consent Required" option in the Conditions box on the front of the ADLS/ REINZ Agreement for Sale and Purchase must be marked "YES". This will activate clauses 10.4–10.6, making the agreement conditional upon the purchaser obtaining OIO consent. Please note, the default time frame for obtaining consent in clause 10.6 is currently 65 days.

The OIO website will provide more information regarding the number of days an application to purchase residential land will take to be processed. The timeframes will depend on the test applied and on whether the applicant is an individual, a trust, or a company.

How do you identify whether the land is residential land?

Whether land is residential land or not is determined by the records held by the relevant Local Authority (Local Council). The chart in **Schedule 1** will help you determine whether land could be residential land. If in doubt, contact the relevant Local Authority. Alternatively, you can find this information on property websites, such as PropertySmarts under 'Category' on the property details page.

How do you identify whether the land is sensitive land for reasons other than that it is residential land?
You can find out more about what is 'otherwise sensitive land' on Land Information New Zealand's website at https://www.linz.govt.nz/overseas-investment/what-you-need-do-if-you-are-selling-new-zealand-assets-overseas-investors/sensitive-land

How do you identify whether the purchaser may be an Overseas Person?

The chart in **Schedule 2** will help you to identify whether a purchaser may be an Overseas Person and therefore require OIO consent.

An overseas person will need to satisfy one of the tests set out in **Schedule 3** to obtain OIO consent.

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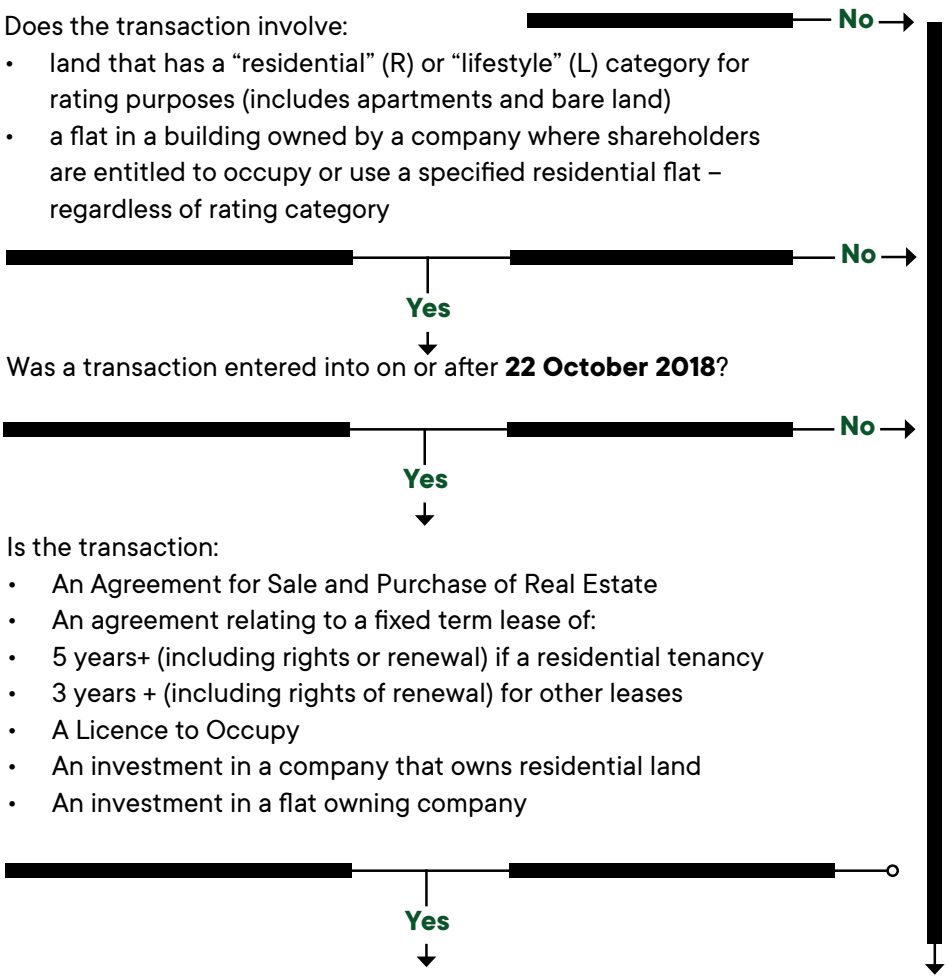
Schedule 1: Does the transaction involve an interest in residential property?



Residential Land Statement is required, regardless of whether purchaser is an Overseas Person or not OIO consent is generally required if the interest is being acquired by an Overseas Person (See Schedule 2)

No Residential Land Statement or OIO consent required.
If the land is "sensitive land" for reasons other than that it is residential, and the purchaser is an Overseas Person, then OIO consent is required.

Exemptions from OIO consent requirement:

- Purchaser is buying from an apartment developer who holds a Transitional Exemption Certificate or an Exemption Certificate
- Purchaser is a network utility company buying land to provide network services
- Hotel lease-back arrangements

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Schedule 2: Is the interest in residential property being acquired by an Overseas Person?

If the purchaser is an **individual**, are they: • A NZ citizen; **or** • An Australian or Singaporean citizen; or • A NZ residency visa holder or an Australian or Singaporean permanent resident who: - has lived in NZ for at least 183 days in the last 12 months; **and** - is NZ tax resident	**If YES** → No OIO Consent required* Note that for Australians and Singaporean citizens and permanent residents OIO consent is always required if the residential land is also sensitive for other reasons. **If NO** → OIO consent required
If the purchaser is a **couple** (married, civil union or de facto relationship), are they: • buying residential land as relationship property, and • one of them is a person listed above (definition for individuals)?	**If YES** → No OIO consent required for the Overseas Person * **If NO** → OIO consent required If the relationship property is acquired under the Commitment to Reside test consent is required for one of the spouses/ partners
If the purchaser is a **trust**: Are all of the trustees, settlors or beneficiaries listed above (definition for individuals)?	**If YES** → No OIO consent required* **If NO** → OIO consent may be required
If the purchaser is a **company**: • Is the company incorporated in New Zealand, and • are at least 75% of the shares, voting rights, and director appointment rights held by persons listed above (definition for individuals)?	**If YES** → No OIO consent required* **If NO** → OIO consent required

* **Important Note:** Even if the purchaser is not an overseas person, OIO Consent will still be required if:
- The purchaser is buying the property on behalf of / as agent for an overseas person; or
- An overseas person will be nominated as purchaser

DISCLAIMER: The material and information contained herein is for general information purposes only and is not intended to form professional legal advice. REINZ does not accept liability for any claim or other action that may arise directly or indirectly from the use of or reliance on the material and information provided herein. REINZ recommends you seek independent legal advice if you are unsure of your legal position.

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Schedule 3: Tests to be Satisfied for Overseas Person to buy Residential Property

Test 1: Commitment to Reside in New Zealand Test (can be used for property that is residential or residential and otherwise sensitive)

Purchaser

- holds a NZ residence class visa or is an Australian or Singaporean permanent resident that has not lived in NZ for at least 183 days in the last 12 months;
- is acquiring a residential property to occupy (or build to occupy);
- commits to be present in NZ for at least 183 days in the next 12 months, and;
- commits to become a tax resident

Relationship property Exemption

In cases where:

- both spouses or partners are Overseas People
- the land is or will be relationship property

one of the spouses or partners has or will be granted OIO consent under the Commitment to reside in NZ test, then the other spouse or partner is not required to apply for OIO consent.

Notes:

All consent holders must comply with certain conditions. If not then they may need to sell the property and/ or face civil penalties,

Also certain "trigger events" may require the consent holder to sell, e.g.:

- absent from NZ for 183+ days in 12 months
- ceases to be a "qualifying person"

Test 2: Increased Housing Test (can be used for property that is residential but not otherwise sensitive)

Purchaser will increase the number of residential dwellings, or the units of a long-term accommodation facility (such as a retirement village) on the land or carry out associated development works (subdivision not sufficient).

Notes:

- Purchaser must agree to sell all their interest in the land within a "specified period" after completion of the development, determined by the OIO
- If the purchaser will be developing 20+ new dwellings, the purchaser may retain an interest as landlord, shared equity, lease-to-own
- Developers of long-term accommodation facilities do not need to sell if a long-term accommodation facility will be operated on the land

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RES00016i-2206

- If the purchaser will be developing a large apartment complex of 20+ new residential dwelling they can also apply to the OIO for an Exemption Certificate. The developers or the overseas buyers s may not occupy any of the dwellings unless they have consent under the Commitment to Reside test. Any related parties can only occupy the dwellings at "arms length terms"

Test 3: Non-residential Use Test (can be used for property that is residential but not otherwise sensitive)

The land will be used/developed for non-residential purposes associated with a business such as building a supermarket.

Test 4: Incidental Residential Use Test (can be used for property that is residential but not otherwise sensitive)

The land will be used for residential purposes associated with a business (e.g. staff accommodation when there is no reasonable alternative)

Test 5: Benefit to New Zealand Test (can be used for property that is residential or residential and otherwise sensitive)

The investment will, or is likely to, result in a "benefit" to New Zealand

Notes:

- "Benefit" assessed against factors set out in the Act and Regulations (mix of economic and non-economic)
- This test is unlikely to be widely used for land that is residential but not otherwise sensitive.

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RES00016i-2206

OVERSEAS INVESTMENT OFFICE

Land Information New Zealand
Toitū te whenua

Can you buy a home in New Zealand to live in?

Most overseas people are not able to buy homes in New Zealand to live in, but some can apply to the Overseas Investment Office for consent.

You don't need consent if...

- You are a New Zealand, Australian or Singaporean citizen.
- You have a New Zealand, Australian or Singaporean Permanent Resident visa and live in New Zealand.*
- You have a New Zealand Resident visa and live in New Zealand.*

*You have lived in New Zealand for at least 183 days in the past 12 months.

You must apply for consent to buy one home to live in if...

- You have a New Zealand Permanent Resident or Resident visa and do not live in New Zealand.*
- You have an Australian or Singaporean Permanent Resident visa and do not live in New Zealand.*

*To get consent you'll need to live in New Zealand, and if you stop living here, you'll have to sell.

You can't buy one home to live in if...

- You have a Temporary visa, such as a visitor, student, working holiday, or work visa (you don't have a Permanent Resident or Resident visa).

  There are other ways you may be able to invest in property.

Check if you can buy

Visit the Ministry of Business, Innovation & Employment website at https://www.newzealandnow.govt.nz/overseas

RES00016j-2011

What types of homes are affected?

These laws apply to homes that are classed as 'residential' or 'lifestyle' on the District Valuation Roll. You can check properties on websites, such as www.qv.co.nz, or ask the local council.

Everyone must make a 'Statement'

All buyers must complete a Residential Land Statement to say whether they are eligible to buy. Your conveyancer can help you do this.

If you must apply or cannot buy, it is especially important that you first talk to your conveyancer before you sign the sale and purchase agreement. If you need to sign it urgently, you can make the agreement conditional on the consent of the Overseas Investment Office.

If you need consent, but sign an unconditional agreement without it, you may face significant penalties. If you make a false statement, you could be fined up to $300,000.

Apply for consent

To apply to the Overseas Investment Office for consent to buy one home to live in visit www.linz.govt.nz/oio/live.

Learn more

This leaflet gives general guidance for people who want to buy a home to live in. There are special rules for overseas people who want to invest in New Zealand property, but not live in it, including buying rental property or land that is rural or next to a lake, river, reserve or the sea.

These rules are complex, and you will need the help of a New Zealand property lawyer. Visit the Overseas Investment Office at www.linz.govt.nz/oio to learn more.

RES00016j-2011

INVESTING IN NEW ZEALAND

From 22 October 2018

	New Zealanders and Residents who live here; and New Zealand-owned companies and trusts	Residents who live overseas; and businesses that are more than 25% overseas-owned or controlled	Australian and Singaporean: Citizens; and Permanent Residents who live in New Zealand	Other overseas people
Buying one home to live in	OK TO BUY	CONSENT REQUIRED	OK TO BUY	WON'T GET CONSENT
Developing residential land	OK TO BUY	CONSENT REQUIRED	OK TO BUY	CONSENT REQUIRED
Buying forestry	OK TO BUY	CONSENT REQUIRED	CONSENT REQUIRED*	CONSENT REQUIRED
Investing in significant business assets	OK TO BUY	CONSENT REQUIRED	CONSENT REQUIRED	CONSENT REQUIRED
Investing in other sensitive land	OK TO BUY	CONSENT REQUIRED	CONSENT REQUIRED	CONSENT REQUIRED

This is a general overview, and there are exceptions. Learn more at linz.govt.nz/oio

OVERSEAS INVESTMENT OFFICE

Land Information New Zealand
Toitū te whenua

*Australian citizens can buy forestry rights without consent

OVERSEAS INVESTMENT OFFICE

Land Information New Zealand
Toitū te whenua

Residential Land Statement

Section 51A of the Overseas Investment Act 2005

Please complete Part 1a for an individual or Part 1b for a non-individual (including company, trust or other entity).

A separate statement is required for each individual. One statement may be provided on behalf of a company, trust or other entity (see the guidance document for more information).

Part 1a Individual

☐ I am an individual completing the statement for myself (*purchasing the residential land in your own name*)

Am I eligible to buy under the Overseas Investment Act 2005?

(Tick which one applies)

☐ Yes, I am a current New Zealand citizen

☐ Yes, I am an Australian or Singaporean citizen buying residential land only

☐ Yes, I hold a New Zealand residence class visa **or** I am an Australian or Singaporean Permanent Resident buying residential land only **and all** of the following applies:

- I have been residing in New Zealand for at least the immediately preceding 12 months; and
- I am a tax resident in New Zealand; and
- I have been present in New Zealand for 183 days or more in the immediately preceding 12 months

☐ Yes, I am an Australian or Singaporean Citizen **or** I am an Australian or Singaporean Permanent Resident buying residential land that is **also** sensitive for another reason **and** I have consent from the Overseas Investment Office

→ Please provide Overseas Investment Office case number

☐ Yes, I have consent from the Overseas Investment Office, or an exemption applies

→ Please provide Overseas Office case number, or statutory reference

Part 1b Non-individual (including company/trust/other entity)

(Tick which one applies)

☐ I am completing the statement for a body corporate, company, partnership or other entity

☐ I am completing the statement on behalf of trustees of a trust, or for someone else under an enduring power of attorney

→ Please attach a certificate of non-revocation if you are acting under an enduring power of attorney

Is the non-individual eligible to buy under the Overseas Investment Act 2005?

(Tick which one applies)

☐ Yes, the non-individual is neither an "overseas person" nor an "associate" of an "overseas person" as defined in the Overseas Investment Act 2005

☐ Yes, the non-individual has consent from the Overseas Investment Office, or an exemption applies

→ Please provide Overseas Office case number, or statutory reference

If you require consent and have not applied, or an exemption does not apply, contact the Overseas Investment Office or seek legal advice.

Part 2

Name(s)

What is the full name(s) of the individual or non-individual that will appear on the Record of Title as the new owner(s)?

Part 3

The residential land being acquired

What is the Record of Title reference for the residential land, or the street address?

Part 4

Signature

I certify that all of the information in this statement is true and correct.

Your name

Signature

Date signed

Position or office held (if signing as an authorised person)

You must provide this statement to your conveyancer or lawyer

The conveyancer or lawyer will rely on the information provided in the statement in giving effect to the acquisition of the interest in residential land.

Providing a statement that is false or misleading is an offence under the Overseas Investment Act 2005 and you may be liable for a penalty of up to $300,000.

Unit title guidance

The Unit Titles Act 2010 includes disclosure requirements for buying and selling unit title properties. This page outlines what your obligations are and the types of disclosure required.

Unit Titles Act 2010

The Unit Titles Act 2010 includes disclosure requirements for buying and selling unit title properties such as apartments and townhouse developments. Vendors must supply formal disclosures to buyers at two separate stages of a transaction:

- Before any sale and purchase agreement is signed.
- Before the settlement date.

These disclosure requirements only apply to unit title developments. You can tell if a property is a unit title development because the record of title will state either 'stratum in freehold' or 'stratum in leasehold'. If in doubt, check with a lawyer or licensed conveyancing practitioner.

For more information:

- Read the Unit Titles Act 2010 at legislation.govt.nz/act/public/2010/0022/latest/DLM1160440.html
- Read more about unit title ownership at settled.govt.nz/buying-a-home/finding-a-property/understanding-types-of-ownership/#:~:text=Unit%20title%20ownership%20also%20referred,in%20the%20record%20of%20title

Unit Titles Amendment Act changes to disclosure

The Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Act 2022 (Amendment Act) made a number of changes to the Unit Titles Act 2010, including alterations to the disclosure requirements which came into effect on 9 May 2023. The amendments are intended to improve the information provided to prospective buyers of units, as well as governance of multi-unit properties and higher-density complexes.

Licensees need to be fully aware of the changes to disclosure obligations, and the potential consequences for vendors if adequate pre-contract and pre-settlement disclosure is not provided.

Read more about the Amendment Act at hud.govt.nz/our-work/unit-titles-act-2010/

The two stages for disclosure

The Amendment Act specifies new and fuller disclosure requirements for buying and selling unit title properties and requires a wider range of information to be provided to prospective purchasers. It also provides purchasers with additional rights if requirements are not met.

These disclosure requirements came into force 9 May 2023.

Stage 1: Pre-contract disclosure statement

The pre-contract disclosure statement provides prospective buyers with information about the property they are looking to buy. It includes basic information about the unit and the development.

There is now a distinction between a pre-contract disclosure statement for the sale of an existing development and an off-the-plans development, with each requiring different information to be provided to potential buyers.

Vendors must provide a pre-contract disclosure statement to buyers before a sale and purchase agreement is signed. The pre-contract disclosure statement should be completed as early as possible, preferably before marketing the property. You should explain this to your vendor. You will also need to talk to your vendor about how the required information can be collected and explain that they should seek legal advice before completing the form.

When you have the signed and dated pre-contract disclosure statement, provide it to all potential buyers as early as you can, for example, at open homes. At the very latest, it must be provided to the buyer before the buyer enters into a sale and purchase agreement. The buyer will acknowledge receipt of the pre-contract disclosure statement in the sale and purchase agreement.

The pre-contract disclosure statement must include certain prescribed information. A list of the new prescribed information can be found in Regulation 33 of the Unit Titles Regulations 2011 legislation.govt.nz/regulation/public/2011/0122/latest/DLM3695764.html%20.

RES00016m-2407

The pre-contract disclosure statement can be completed using the templates created by the Ministry of Business, Innovation and Employment. These are examples of how to successfully provide the required information under Regulation 33.

Download pre-contract disclosure statement templates at unittitles.govt.nz/forms-and-resources/

There was previously a prescribed form outlining the information required for the pre-contract disclosure statement – Form 18 from the Unit Titles Regulation 2011 – but this has been repealed under the Amendment Act.

There are consequences for the failure to make a pre-contract disclosure. If a vendor fails to provide the buyer with a complete and accurate disclosure, the buyer can cancel the sale and purchase agreement for the unit title property or delay settlement, (subject to strict notice periods).

Stage 2: Pre-settlement disclosure

Vendors must provide a pre-settlement disclosure Vendors must also provide a pre-settlement disclosure statement to buyers when a sale and purchase agreement has been signed and before the transaction has settled. This disclosure must be accompanied by a certificate provided by the body corporate that certifies the information in the statement is correct.

Like the pre-contract disclosure statement, there is different information required for the pre-settlement disclosure statement for off-the-plans sales, and sales of existing developments.

The purpose of the pre-settlement disclosure statement is to give the buyer additional information once the sale and purchase agreement has been entered into, and before settlement date.

The pre-settlement disclosure statement must include certain prescribed information. A list of that prescribed information can be found in Regulation 34 of the Unit Title Regulations 2011 https://www.legislation.govt.nz/regulation/public/2011/0122/latest/LMS958249.html. We recommend you use the pre-settlement disclosure statement templates.

Download pre-settlement disclosure statement templates at unittitles.govt.nz/forms-and-resources/

Just like the pre-contract disclosure statement, there are also consequences for failing to provide a pre-settlement disclosure statement, or if it is incomplete or inaccurate.

The vendor must provide the pre-settlement disclosure statement no later than the 5th working day before the settlement date. If it is not provided by this time, the buyer can either:

- delay settlement until the 5th working day after it is provided, or
- cancel the sale and purchase agreement by giving 10 days' notice.

Vendors should prepare this statement with assistance from their lawyer or licensed conveyancing practitioner and are expected to meet the related costs.

Additional disclosure on request

Vendors no longer need to provide an additional disclosure statement on request from a buyer. This requirement was repealed as part of the recent changes to the Unit Titles Act. A buyer can still request for further information should they want to, but there is no formal requirement by the vendor to provide it.

What this means for you

Talk to your vendor about the need to provide a pre-contract disclosure statement as early as possible and preferably before you start marketing the property. Also ensure that the vendor is aware that a pre-settlement contract disclosure is needed before the settlement of the sale, and within the appropriate timeframe.

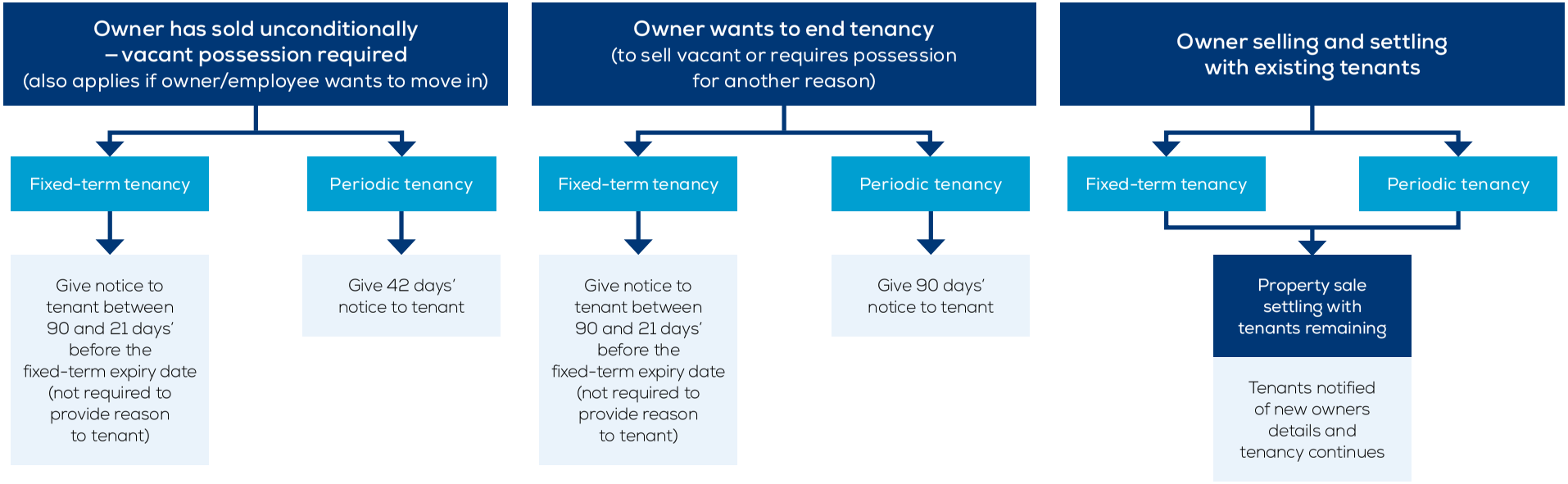
Show your vendor the recommended pre-contract disclosure statement and pre-settlement disclosure templates and discuss how the information can be collected to complete it. Explain to your vendor that they must sign the pre-contract disclosure statement and that they should get legal advice if they are unclear about what this means.

RES00016m-2407

Notice periods to end fixed-term and periodic tenancies

BARFOOT & THOMPSON
LICENSED REAA 2008

Effective 30 January 2025



Tooltips

- Use of the word 'sell' and 'selling' means listing the property on the market for sale.
- Ensure tenants are properly informed that the property is to be sold (avoid $1,800 fine).
- If the owner wishes to list the property empty, they should give the tenant(s) 90 days' notice (periodic tenancy) or notice within the relevant time period (fixed-term tenancy).
- If vacant possession is required, allow 100 days between going unconditional and settlement for cleaning, maintenance and general checks.
- Properties can be sold with an existing tenant on a fixed-term, however all terms and conditions continue under the new ownership.
- For periodic tenancies, a reason for giving notice is only required for an unconditional sale, if the owner or their family member will be moving in to the property or it will be used for the owner's employees or contractors (all 42 days).
- For fixed-terms, no reason is required to end the fixed-term on its expiry date but relevant notice must be given.
- Reasons for providing notice must be genuine and able to be proven with evidence (to avoid maximum $6,500 fine and compensation).
- Consider carefully **when** notice is given to avoid a tenant claim that it is retaliatory (wholly or partly motivated by a tenant complaining or exercising their rights or MBIE involvement). Resolve any complaints or issue before giving notice.
- The Tribunal may order a retaliatory notice to be overturned, compensation and a fine/damages (up to $6,500 fine).

Inland Revenue
Te Tari Taake

IR1229
July 2024

Bright-line property tax

For residential property sold from 1 July 2024

RES00016o-2407

Introduction

On 1 October 2015 the bright-line test was introduced applying to residential property bought and sold within a certain period of time (bright-line period). Since 2015, a number of changes have been made to the test.

This guide explains:

- how the bright-line test applies for residential property sold from 1 July 2024
- the exclusions for main home, business premises and farmland
- rollover relief for ownership transfers of inherited property, relationship property and transfers between associated persons
- what expenses you can deduct from this income for tax purposes
- what bright-line income to include in your income tax return
- what happens if you sell the property for a loss.

This guide is not intended for people in the business of property speculating, dealing, developing or building who include property sales as business income in their income tax return. If you have purchased and sold several residential properties or you're a commercial operator, we recommend you consult a tax agent. However, it's still your responsibility to be aware of your tax obligations.

For information on how the bright-line test applies to residential property sold before 1 July 2024, see our guide **Bright-line property tax – IR1227**.

Note

Properties affected by a North Island adverse weather event and purchased by the Crown or local authority are not taxable under the bright-line test. For more information refer to **ird.govt.nz/2023-weather-events**

The information in this guide is based on current tax laws at the time of printing.

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ird.govt.nz

Go to our website for information and to use our services and tools.

- Log in or register for myIR - manage your tax and entitlements online.
- Calculators and tools - use our calculators, worksheets and tools, for example, to check your tax code, find filing and payment dates, calculate your student loan repayment.
- Forms and guides - download our forms and guides.

Forgotten your user ID or password

Request these from the myIR login screen and we'll send them to the email address we hold for you.

How to get our forms and guides

You can get copies of our forms and guides at **ird.govt.nz/forms-guides**

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Part 1 - Bright-line test

The bright-line test taxes profit made on the sale of residential property when it is sold within a certain period of time (bright-line period) and no exclusions or rollover relief apply.

The bright-line test also applies to New Zealand tax residents who buy and sell residential property overseas.

Your intention or purpose for purchasing or selling the property is not relevant.

Note

There are other land taxing rules that should be considered before the bright-line test.

You can use the **Property tax decision tool** on our website to work out if you need to pay tax on the sale of your property under the land taxing rules, including the bright-line test. For more information go to **ird.govt.nz/bright-line**

Residential property

Residential property includes:

- land with a house on it
- land the owner has an arrangement to build a house on
- land the owner can build a house on under the district plan rules.

Residential property does not include farmland or land used predominantly as business premises, unless it is a business providing accommodation in a dwelling that is not the owner's home. For more information, see Part 2 - Exclusions.

Example

Robert buys a section zoned for residential purposes in June 2024. He plans to build a home for his family. His situation changes and he sells the section in August 2025.

Even though there is no house on the land at the time of sale, the bright-line test applies.

Bright-line period

The bright-line period begins with the bright-line start date and ends with the bright-line end date.

For residential property sold on or after 1 July 2024, the bright-line test looks at whether your bright-line end date for the property is within 2 years of your bright-line start date.

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Example

Mia purchases a property with a bright-line start date of 5 January 2022, which she uses as a rental property. She sells the property on 27 July 2024.

The bright-line end date for the property is after 1 July 2024. However, because it is more than 2 years after the bright-line start date, any profit on the sale is not taxable under the bright-line test.

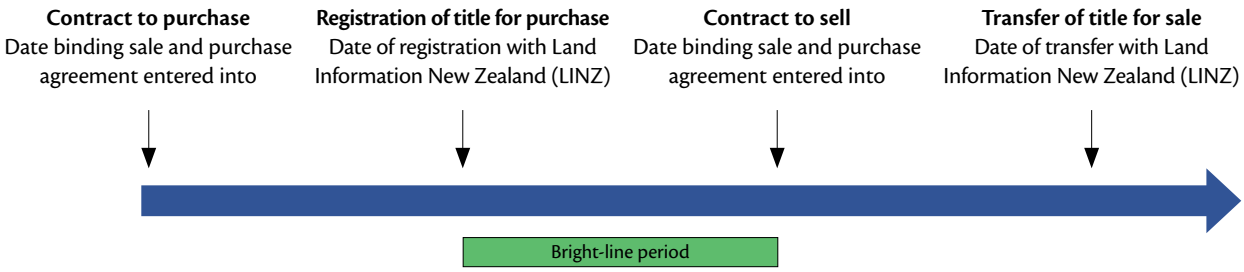
Note

For property sold before 1 July 2024, the bright-line test works differently. For more information, see our guide **Bright-line property tax – IR1227**.

Bright-line start and end dates

For a standard purchase of property, the bright-line period starts from the date the transfer of the property's legal title is registered to you under the Land Transfer Act 2017 (usually the settlement date).

For a standard sale, the bright-line period ends when you enter into a binding sale and purchase agreement to sell the property (even if some conditions like getting finance or a building report still need to be met).



Example

Marie signs an agreement to buy a residential property on 19 March 2023 for short-stay accommodation. The transfer to Marie is registered on the title with LINZ on 17 May 2023.

She decides to sell the property and signs an agreement on 26 July 2024. The transfer is registered on the title on 31 August 2024.

The start date for the bright-line period is 17 May 2023 (the day the transfer to Marie is registered) and the end date is 26 July 2024 (the day the agreement for sale is entered into).

There are other situations that do not follow the standard land sale process. For these situations, there are separate rules for when the bright-line period starts and ends.

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Start date

The table below shows various types of purchase and acquisition and the date the bright-line period starts for each.

Type of purchase/acquisition	Date to use
Standard purchase of a property	Date the transfer of the property is registered to you with Land Information New Zealand (LINZ) (usually the settlement date)
Subdivided land – property you have subdivided	The original date of registration for the undivided property
Off the plans – property acquired relying on the completion of a land development or subdivision	Date you entered into a sale and purchase agreement
Change of trustee – land transferred from a trustee of a trust to another trustee of the trust	Bright-line start date for the original trustee
Joint tenancy converted to a tenancy in common or tenancy in common converted to a joint tenancy	To the extent the person's share in the land is unchanged, the bright-line start date for the land before the tenancy was converted
Purchase where no registration happens before the sale date	Date you acquired an interest in the property
Freehold estate converted from a lease with a perpetual right of renewal	Date you were first granted the leasehold estate
Land outside New Zealand	Date the transfer of the property is registered to you under foreign laws

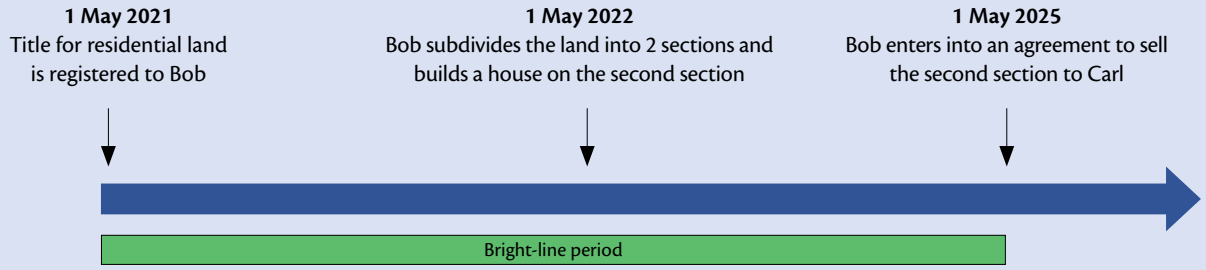
For more information on what start date to use, go to **taxtechnical.ird.govt.nz** and refer to **Question we've been asked (QB) 17/02: Date of acquisition of land, and start date for 2-year bright-line test**.

RES00016o-2407

Subdivided land

When land is subdivided, the start date for the bright-line period is the date the legal title for the undivided land was originally registered to the owner under the Land Transfer Act 2017.

Example



The start date for the bright-line period is 1 May 2021 and the end date is 1 May 2025. Bob's sale of the second section to Carl is not taxable under the bright-line test because the bright-line end date is not within 2 years of the bright-line start date. Bob has owned the property for more than 2 years. However, Bob may still need to consider whether any of the other land taxing rules apply.

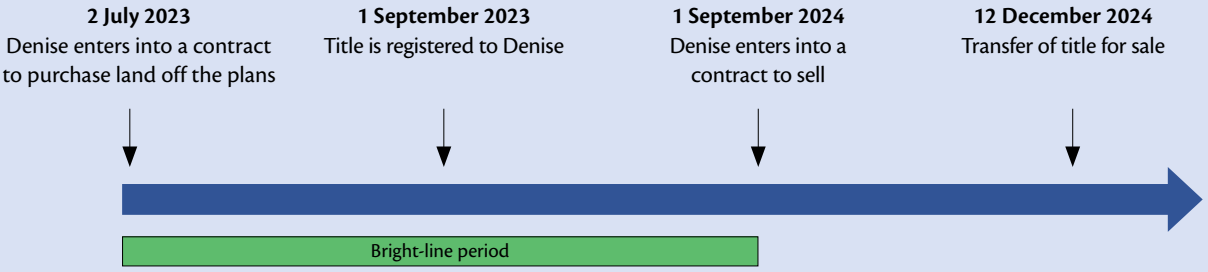
For more information go to **taxtechnical.ird.govt.nz** and refer to our **Question we've been asked (QB) 18/16: Income tax – bright-line test – main home exclusions – sale of subdivided section**.

Off the plans

A purchase off the plans occurs when a person enters into a contract to purchase a parcel of land being developed or subdivided. At the time the person enters into the contract, the title does not yet exist (as the land needs to be subdivided or developed before a separate title can be issued). The person agrees to be registered on the title once it exists.

In this situation, an earlier start date for the bright-line period is used. The start date is the date the person enters into an agreement to buy the land.

Example



The bright-line test applies because the bright-line end date of 1 September 2024 (the date Denise entered into a contract to sell) is within 2 years of the bright-line start date 2 July 2023 (the date Denise entered into a contract to buy the property off the plans). Any profit on the sale is taxable.

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Freehold estate converted from a lease with a perpetual right of renewal

When a person has a lease with a perpetual right of renewal which they then convert into freehold land, the start date for the bright-line period is the date the person is first granted the lease. This is consistent with other tax provisions that treat a lease with a perpetual right of renewal similar to freehold estates.

Example

The start date for Kelly's bright-line period is 1 July 2023 (the date the lease with perpetual right of renewal was first granted) and the end date is 1 August 2024 (the date she entered into an agreement to sell the land).

Any profit made by Kelly on the sale of the land is taxable under the bright-line test because the bright-line end date is within 2 years of the bright-line start date.

Contract with purchaser and/or nominee

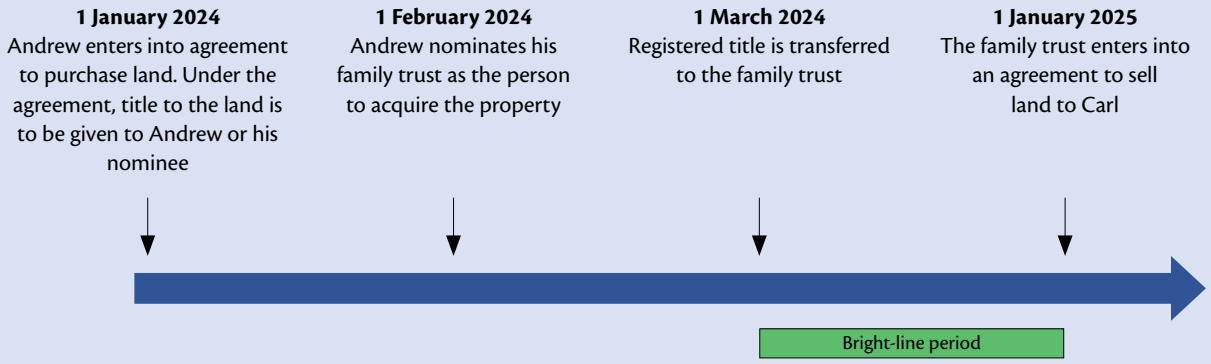
Often when someone enters into a contract to buy land, the person is named as the purchaser and/or nominee. Before settlement, the person may choose to nominate someone else to complete the purchase, for example a family trust.

In this situation, the bright-line period starts for the nominee on the date the transfer of title is registered to them (this typically happens on the settlement date). If there is no registered transfer of the land, the bright-line period will start on the date they were nominated as purchaser.

This situation will not give rise to any potential bright-line implications for the nominator (the original named purchaser). This is because the nominator does not transfer their interest in the land to the nominee when they make the nomination (there is no disposal). When the legal title is transferred to the nominee, the nominator's interest in the land simply ceases to exist, it is not disposed of.

RES00016o-2407

Example



Andrew acquired an interest in the land (the right to purchase the land) on 1 January 2024 (the date he entered into the sale and purchase agreement). The nomination of the family trust as purchaser does not give rise to any bright-line implications for Andrew. This is because Andrew did not transfer his interest in the land to the family trust when he made the nomination, so there is no disposal of land by him. On settlement when legal title transferred to the family trust, Andrew's interest in the land ceased to exist and it was not disposed of.

The bright-line period starts on 1 March 2024 for the family trust which is the day legal title to the property is registered to the trust.

End date

The table below shows various types of sales and disposals and the date to use for the bright-line end date. This can include situations where a property is disposed of but there is no agreement in place to dispose of it.

If more than 1 type of sale or disposal applies, then use the earliest date for your bright-line end date.

Type of sale/disposal	Date to use
Standard sale of a property	Date you entered into a sale and purchase agreement
Gifting of property	Date the gift was made
Compulsory acquisition by the Crown, a local authority or a public authority	Date of compulsory acquisition
Mortgagee sale	Date the property is disposed of by or for the mortgagee because the mortgagor defaulted (usually the settlement date)
Disposals not covered above	Date you disposed of the property

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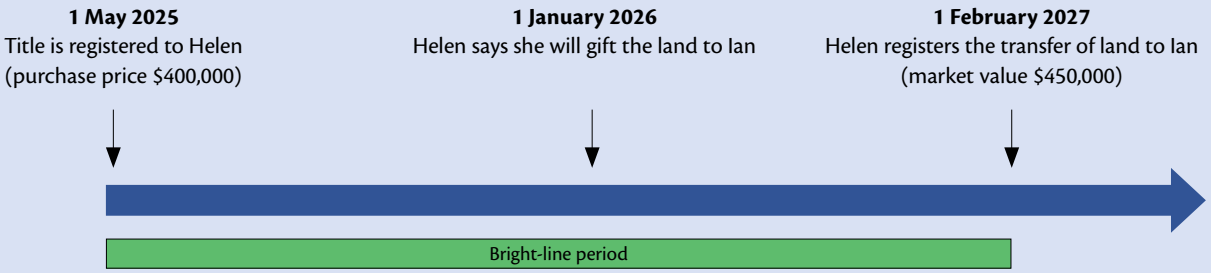
Gifts

For gifts, the end date for the bright-line period is the date the person makes the gift of the residential property. This is the date you have done everything necessary to transfer the property to the new owner. This means for a gift of residential property, it is generally the date the interest is registered to the new owner.

Example



The start date for the bright-line period for Helen is 1 May 2025 (the date title is registered to Helen) and the end date is 1 February 2027 (the date title is transferred to Ian). Helen's disposal of the land will be taxed under the bright-line test because she disposed of the land by gifting it to Ian within 2 years of the bright-line start date.

Under ordinary tax rules, gifts of land are treated as if they are transferred at market value. As a result, Helen is deemed to have transferred the land to Ian at market value and $50,000 is taxable.

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Master Build Guarantee v Building Act warranties

Master Build Guarantee

A Master Build Guarantee is a 10-year guarantee that protects a homeowner when renovating or building a home. It protects the owner for a 10-year period.

While the property is being built the 'Non Completion Cover' protects the owner if the builder is unable to complete the building working and the deposit is lost; the owner has to pay more than the original contract price to get the work finished; and the cost of any remedial work.

After the build is completed the 'Materials and Workmanship' cover protects the property owner if there is a problem with the expected standard of the work carried out by the builder or with the materials that have been used in the building work.

The maximum cover for all claims throughout the life of the Guarantee is the value of the building contract up to a maximum of $1,000,000.

Process

A Master Build Guarantee will only apply to work carried out by a registered master builder. It is not automatic and must be applied for by both the property owner and the master builder and sent to Master Build Services. Application must be submitted to Master Build Services before building work commences and is not valid until the property owner and the builder have received acceptance confirmation.

To ensure on-going cover once the building project is completed both the property owner and the builder must sign a Notice of Practical Completion form to Master Build Services.

A Master Build Guarantee, once accepted and approved by Master Build Services can be transferred multiple times within its 10-year limit but only remains in force for the original 10 years. All transfers need Master Build Services approval and are dependent on the new owner having filled out and signed a Request of Transfer form supported by a full property inspection report.

Master Build Services will not be responsible for any defects in the property that could have reasonably been expected to be discovered during the inspection.

The Request for Transfer form must be sent to Master Build Services by the new owner within 90 days of settlement and must be accompanied by the building inspection report and a copy of the sale and purchase agreement. Once application has been made, Master Build Services will advise the new owner if the Transfer Application has been accepted or declined.

Building Act warranties

All residential building work is covered by 'implied warranties'. These warranties apply for up to 10 years regardless of whether there is a written contract or what the contract terms are and regardless of the cost of the building project.

The 'implied warranties' are automatic and cover almost all aspect of building work from compliance with the Building Code to good workmanship. A breech of these warranties is a breach of contract.

There is no cap to the limit of a claim under the Building Act warranties only that the loss must be provable in law.

Process

To activate a claim under 'implied warranties', the property owner is expected to resolve the issues though the negotiation process that should be set out in the building contract. If the contract builder does not fix the breach the property owner may engage another tradesman to repair the work. Any disputes that the property owner may have with the builder in regard to defects or workmanship require court action to be taken to prove loss or damage.

Subsequent owners of a property can bring proceedings for a breach of any of the 'implied warranties' notwithstanding that they were not a party to the contract in which the warranties were implied.

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Enforcement

Master Build Guarantees and Building Act Warranties are two totally different products.

Master Build Guarantees are formed by way of performance contract between the property owner/the builder/and Master Build Services. They are enforceable through the Contracts Act under contract performance with Master Build Services.

Building Act Warranties are 'implied' under law. They are enforceable under the Building Act by legal process.

Red flags

When purchasing a property that is being advertised/marketed with a 'Master Build Guarantee' it is the purchaser's responsibility to ensure that they take the steps necessary to complete the Request for Transfer form within 90 days of settlement and make application to Master Build Services for the transfer approval.

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BARFOOT & THOMPSON
LICENSED REAA 2008

Information sheet for buyers and sellers

- Buying off the plans/subdivision
- Subject to issue of code compliance certificate
- Subject to issue of certificate of title

Overview

Buyers of properties 'off the plans/subdivision', 'subject to issue of certificate of title', or 'subject to issue of a code compliance certificate' (new builds/sections) need to be aware that there are risks associated with these types of transactions.

Subdivisions and developments can take many months and sometimes years to complete. Whilst every endeavour may be made by the seller to complete the resource and building consent processes, the building/subdivision work, the code compliance certificate process and to obtain the Record of Title by the dates specified in the sale and purchase agreement, there can be many factors that might delay this happening.

There are occasions where the seller may not be able to deliver the property and the documentation to the purchaser within the time frames specified. Unless this is clearly understood at the time the sale and purchase agreement is entered into, these delays have the potential to place the purchaser in a position of financial and personal stress.

It is critical in each and every agreement that sellers and purchasers seek their own independent professional and legal advice to understand the risks involved in entering into these types of transactions and how the various clauses in the agreement operate. It is strongly recommended that this advice is obtained before signing the agreement for sale and purchase.

Performances clauses; obtaining consents/documentation

In almost every transaction of this type, the sale and purchase agreement should contain a number of performance clauses that deal exclusively with the responsibilities of the parties and which set out the dates by which certain actions must be completed.

While the performance clauses in the contract require the seller to take necessary actions and/or obtain required documentation within specified time frames, there are many outside influences that may impact on the seller's ability to actually meet those time frames. Examples of the various matters that can result in sellers being unable to meet time frames and settlement dates are set out in the attached schedule.

Sunset clauses

Given that delays can and do occur, all sale and purchase agreements for new builds/sections should contain sunset provisions. A sunset provision may form part of a performance clause or it may be a stand-alone clause (sunset provision).

Sunset provisions enable either the seller or buyer to cancel the sale and purchase agreement if an event or action has not occurred by a certain date.

For a purchaser, the events giving rise to the right for the purchaser to cancel under a sunset provision could be that the record of title has not issued or construction has not been completed by a specified date. For the seller, the event giving rise to the right to cancel could be that a certain number of properties have not sold in a given period and/or construction has not started by a certain date.

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Both purchaser and seller need to be aware of the potential implications of a sunset provision and what it means for them.

Purchasers need to be aware that although a sunset provision sets out the circumstances in which they can cancel the agreement, it also means that for the period that has been allowed in the agreement for the seller to complete the performance clauses (and this can often be a period of months), the purchaser will be locked into the agreement and they will have lost the opportunity to purchase another property during that time.

Whether it is the seller or the purchaser who exercises the sunset provision, the purchaser may find that prices have increased and they are no longer in a position to buy property for the funds they have available. Bank lending criteria and the purchaser's personal circumstances may also have changed in the intervening period, making it more difficult for the purchaser to purchase another property.

Again, sellers and purchasers must seek their own independent professional or legal advice to ensure that they understand what the various clauses in the agreement, including the sunset provisions, mean for them. It is strongly recommended that purchasers and sellers get this advice before signing the sale and purchase agreement.

Further guidance

Attached to this information sheet is further guidance including:

- Examples of potential delays in the issue of title and code compliance certificate process.
- An overview of the process for issue of code compliance certificates, certificate of title, and the subdivision process.

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Conditional settlement

Examples of issues that can result in sellers not being able to meet time frames

When settlement is conditional on the issue of title, settlement could be delayed for any of the following reasons:

- Further information requests delaying the processing and determination of the application for resource consent
- Public or limited notification of resource consent application
- Submissions in opposition to notified resource consent application
- Decline of resource consent application
- Objection to decision by developer to conditions of resource consent
- Appeals to the Environment Court by developer or submitters
- Season/weather affecting ability to carry out works required by resource consent conditions
- Availability of contractors or materials affecting ability to carry out works required by resource consent conditions
- Availability of surveyor to complete survey plan
- Non-approval of survey plan by council or LINZ
- Non-compliance with consent conditions
- Non-approval of completion certificate
- Non-payment of resource consent fees or development contributions
- Third-party documents and approvals (e.g. Vector or Watercare Services Limited)
- Council documents (e.g. consent notices and covenants)
- Developer documents (e.g. covenants)
- Mortgagee's consent
- Inconsistency between survey plan and other third party, Council and developer documents
- Congestion in LINZ
- Any other reason.

On the issue of a code compliance certificate

When settlement is conditional on the issue of a code compliance certificate, settlement could be delayed for any of the following reasons:

- Further information requests delaying the processing and determination of the application for building consent
- Decline of building consent application
- Application to MBIE for determination
- Season/weather affecting ability to carry out works required by building consent
- Availability of contractors or materials affecting ability to carry out works required by building consent
- Failure to request inspections
- Failure to meet required standards during inspections
- Failure to apply for code compliance certificate
- Failure to provide required certifications and documents with application for code compliance certificate
- Non-compliance with building consent
- Requirement to carry out remedial work
- Non-payment of council fees or development contributions
- Any other reason.

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Overview of process for issue of code compliance certificate

1. Developer lodges application for building consent with the council under the Building Act 2004

2.
   - Council reviews and assesses building consent application
   - Further information may be requested from the developer

3. Building consent is granted subject to conditions

4. Developer commences construction of building in accordance with building consent

5. Council carries out inspections of building work at key stages of construction

6.
   - On completion of building work, the developer applies for a code compliance certificate
   - Producer statements from engineers, consultants and sub-consultants may be provided to support the application

7. Council carries out a final inspection

8. A code compliance certificate is issued if the council is satisfied on reasonable grounds that the building work complies with the building consent and the specified systems in the building are capable of performing to the performance standards set out in the building consent

RES00016q-2210

Overview of process for issue of titles

1. Submit to Council application for subdivision – Consent
2. Council review Subdivision Consent Application against subdivision rules (may request future information)
3.
   - Council grant Subdivision Consent (subject to any conditions)
   - May also be subject to appeal
4. Developer implements any construction required as part of Consent
5. Developer Surveyor drafts and prepares Survey Plan to be submitted to Council for approval pursuant to Section 223 Resource Management Act
6. Council issue 223 certificate
7. Surveyor submits Survey Plan to Land Information New Zealand for approval as to survey
8. Land Information New Zealand approves plan as to survey
9. Finalise completion of any consent conditions
10. Request from Council Certificate pursuant to Section 224c of the Resource Management Act confirming conditions of consent satisfied
11. Council grants 224c Certificate
12. Developers solicitor lodges documentation with Land Information New Zealand for issue of new titles
13. Land Information New Zealand issues new titles

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The subdivision process

The council's authority and obligation to control subdivisions in their district/city comes from the Resource Management Act 1991; the Local Government Act 2002; and the Local Government Act 1974.

The following is a summary of the process for establishing a subdivision:

1 **Feasibility/assessment/budget costing**

The developer/owner

- Determines with a qualified surveyor the physical work required for subdivision, costs of completion and any other issues.
- Gets legal advice on any issues such as the inclusion of easements, land covenants, proposed sale of subdivided land, finance required and the ownership structure of the land.
- Confirms with the council the land can be subdivided.

2 **Topographical survey/scheme plan of development prepared**

- The developer applies for resource consent for the proposed subdivision from the Council.
- The surveyor prepares a scheme plan showing the new lots to be created.

3 **Resource Consent Application and Issue of Consent**

- The developer submits the scheme plan and the application for the subdivision consent to council.

4 **Site construction**

- Works required to satisfy conditions of consent are required to be completed before a separate title for each lot can be issued. These may be physical works such as:
  - Constructing roads/access ways
  - Installing drainage and utilities (sewage/water/electricity)

5 **Preparation of new title documentation**

- The surveyor prepares the survey plan, finalising the areas and dimensions of the proposed lots.
- When the survey plan is completed, the developer's lawyer prepares the documentation required for the issue of new titles. This might include drafting easement, consent notices, bonds, and obtaining the consent of any mortgagee.

6 **Section 223/224(c) survey plan approval from Council**

- The Council will issue a Section 223 Certificate. A Section 223 certificate is a confirmation by the council that the work specified on the survey plan is in accordance with what was approved by the council as part of the subdivision consent.
- Once the Section 223 Certificate has been signed, a formal application needs to be made by the developer to the council for the issue of a Section 224(c) Certificate. A Section 224(c) Certificate requires council engineering officers to undertake a site inspection, review the supporting documentation supplied with the application, confirm that the relevant development contributions have been paid, and undertake a check of each condition of resource consent to confirm that they have been complied with to the satisfaction of Council.
- When the Section 224(c) Certificate has been signed, application can be made to Land Information New Zealand for the issue of separate titles.

7 **Land Transfer Survey and lodge survey approval with Land Information New Zealand (LINZ)**

- The surveyor can lodge a new survey plan with LINZ once the section 223/224(c) certificates have been issued and all the legal documentation has been finalised.
- A land transfer survey involves investigating old survey plans and information. Calculations are carried out to define the existing and new boundary positions and a new Title Plan is prepared.

8 **Lawyer applies for new Titles**

- The lawyer lodges the legal documentation with LINZ for the issue of the new Certificates of Title for each lot.

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