

Buying a Home – The Legal Process

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The following is a brief outline of the various stages of the home buying process. Note: Where transactions are completed through the new E-Dealing procedure different steps are involved post confirmation of contracts.

Preparation of Offer

Before you submit an offer there are a number of key details that need to be determined:

- Purchase price.
- Deposit (usually 5-10%).
- Settlement/possession dates.
- Identifying the chattels/furniture passing on the sale.
- Special conditions to be included, e.g. title approval, finance, LIM report, builder's report, valuation, sale of existing home.

Documentation

Once the essential terms of your offer are settled they need to be incorporated into a formal offer document. The Real Estate Institute and Auckland District Law Society have prepared an Agreement for Sale & Purchase form which is varied by REINZ and the ADLS from time to time. It is widely accepted and appropriate for most transactions. It is customary for the document to be prepared by the Real Estate Agent or the purchaser's solicitor where there is no Real Estate Agent. The wording of conditions are critical. We recommend that conditions be drafted by a solicitor. You should certainly have any offer prepared for you perused by a solicitor before you sign it. It may be too late afterwards.

The Contract

Once your offer is submitted it will either be accepted, rejected or you will embark on negotiations with the vendor. It is usual for those negotiations to be handled by the Agent with any amendments to the contract being approved by your solicitor. Every time the contract form is amended and submitted to the other party it is, in law, the rejection of the previous offer and the making of a counter-offer. When the document is accepted without amendment and signed then the contract is formed.

Post Contract

Once the contract has been signed and dated, the Agent sends signed copies to the solicitors for the vendor and purchaser. The purchaser's solicitor will immediately obtain a search of the title and any relevant documents recorded against the title. Copies will then be provided to the purchaser. The general conditions of the standard contract contain provisions allowing a purchaser to object if there are problems with the title.

Satisfying Conditions

At the same time as the title is searched, the purchaser is normally required to take steps to fulfill any other special conditions of the contract. For example, if the contract is subject to finance or a valuation report, then steps should be taken to satisfy these conditions. The purchaser should also at this time check with the Council to ensure that all Council requirements have been satisfied and in particular that any additions or alterations have obtained the requisite consents. Many purchasers obtain a LIM (Land Information Memorandum) report from the Council. The LIM sets out information the Council has on the property. Councils make a charge for providing LIMs. LIMs take varying times to prepare but must be produced by the Local Authority within ten working days of being ordered.

Confirmation

Once the purchaser is satisfied that the special conditions can be fulfilled, then the purchaser's solicitor confirms to the vendor's solicitor that the contract is unconditional.

Post Confirmation

Once the contract has been confirmed we update the Land Information New Zealand website (Landonline) for managing the transfer of land titles with the details of your transaction. Documents are completed on behalf of parties through the completion of signed Authority and Instruction forms (A&Is) which enables both the Vendors and the

Purchaser's solicitors to make the necessary changes to the title of the property being purchased. The vendor's solicitor prepares a settlement statement which adjusts the rates and any other outgoings and incomings on the property as at the proposed settlement/possession date.

Loan and Mortgage Documentation

If the purchaser is borrowing money from a financial institution, then following confirmation and before settlement all loan and mortgage documents need to be completed by the purchaser. Mortgage instructions are sent by the lending institution to the purchaser's solicitor for preparation of the security documents and execution. The details of the mortgage are added to Landonline by the solicitor. The purchaser needs to arrange insurance cover for the property from the possession/settlement date. Once the documentation has been completed, the purchaser's solicitor completes a certificate requesting the financial institution to draw down the loan on the settlement/possession date.

Inspection

Prior to settlement/possession, the purchaser should inspect the property to ensure that no damage has been done and to ensure that the property and all chattels are in the same condition as at the date of signing the contract. If the inspection reveals any damage, junk or missing chattels then the purchaser's solicitor should be notified immediately.

Possession / Settlement

On the possession/settlement date, the purchaser's solicitor uplifts the purchaser's loan advance and any cash contribution from the purchaser and pays over the full settlement figure by way of a bank cheque. The purchaser is entitled to vacant possession of the property as soon as moneys have been paid to the Vendor's solicitor but not before.

Post Settlement

In exchange for the settlement moneys, title passes to the purchaser by means of the release of the Landonline documents from the Vendor's solicitor to the Purchaser's solicitor. The title is updated immediately with the discharge of the existing mortgage, the transfer of title to the purchaser and the mortgage registered. A copy of the updated title is provided to the purchaser as part of the purchaser's solicitor's settlement report.

Following settlement, the vendor's solicitor notifies the Council and Quotable Value which record the names of the new owners of the property.

General

There is a widespread misconception that house conveyancing transactions are routine. At every stage of the process considerable skill and experience is required if potentially serious problems are to be avoided. You need to have confidence that you are being well represented. You will not want to be at a disadvantage to the other party to the transaction. The correct advice at the right time can often be critical to achieving the outcome you are seeking.

If you would like to instruct us on a conveyancing transaction contact [Michael Hofmann-Body](#).