

Selling your House

Lawyers play an essential role in the buying and selling of property - you really do need a lawyer in order to get it done (and we're not just saying that!). It's been our job to support clients selling their homes for over 40 years. As you might expect, we've picked up a thing or two in this time. Most importantly, we know that the sale process involves big decisions, a lot of money, and that it's important to do it right.

We're here to help you if you're selling your home. This guide gives you some general background information on what you might expect from the process of selling your home, the key decisions you'll need to consider, and how you will work with your lawyer to ensure it all goes as smoothly as possible. However, background information is not a substitute for specific and personalised legal advice and support. Therefore, if you're selling your home, we recommend that you give us a call so we can give you a hand with your specific circumstances.

Starting at the beginning

If you're thinking about selling your house, you'll need to start by making a few key decisions that crop up early on in the process. It turns out that these early decisions matter! Get your lawyer to help you work through the big ones like:

How: What sale process would you like to use to sell your house?

There are many ways to sell a home. For example, should you:

- Go for a private sale (that, is, without a real estate agent involved) or sell with the help of a real estate agent?
- List the house with one agent? Two agents? Many agents?
- Sell through an auction? A tender process? A negotiated sale?

As your independent advisor, your lawyer is the best person to discuss these decisions with and come to some answers that are suitable for your circumstances and goals with selling your house. They can explain what each option means and how they play out in "real life".

Who: Which Real Estate Agent would you like to market your house for you?

Unless you choose to sell your home privately, it's common to engage an agent that will help you sell the house, and it is even possible to engage more than one agent to help you with this. Whether you choose one, or many, it's important to choose agents that:

- are officially licensed (under the Real Estate Agents Act 2008);
- you trust;
- are experienced; and
- have knowledge of the area that your house is in,

as they will be marketing the house on your behalf to potential buyers. Once you choose an agent, they will ask you to sign an agency agreement and we suggest that you run this by your lawyer so they can explain to you the consequences of the agreement, including the commission arrangements that you are signing up to (that is, what you will pay the agent if they sell the house for you) and expected marketing costs. Once you sign the agency agreement, this is a legally binding document so you want to make sure it is right.

Gathering Offers

If you're using an agent, they will go about marketing and advertising the house once the agency agreement is all signed up. They will likely host open homes and start the process of talking to interested buyers. The sale process you decided on will be an important factor at this stage, as it will determine how interested buyers put in an offer or express their interest. For the sake of this guide, we'll talk about a negotiated sale process (as opposed to an auction or tender process).

Your agent will likely communicate with any interested buyers about putting in an offer on the home. To make an offer, the buyer will usually sign an Agreement for Sale and Purchase that has all the terms of the offer it would like to make, including the **price** that the buyer is willing to pay, **conditions** they would like the agreement to be subject to (if any), the **settlement date**, being the date that the property would legally change hands the **deposit** and various other information about the transaction. (Going forward we'll refer to this Agreement for Sale and Purchase as simply the Agreement.)

Your agent must show you all offers so you can consider them. You're then able to think about the offer and weigh up whether it is a good offer for you. You have a number of options here, which we recommend talking over with your lawyer:

- **Reject:** If you're not happy with the offer, you may reject it. To do this, simply let your agent know that you won't be signing the agreement containing the offer from the buyer.
- **Negotiate:** You may like to go back to the buyer with points for negotiation. For example, you may say that you require a higher price or different terms of the agreement. Your agent and lawyer will help you with the negotiation process - which often involves different versions of the agreement being passed back and forth between the parties. In particular, your lawyer will help you negotiate a deal that will result in the best possible outcome for you, explaining your options and guiding you through this process.
- **Accept:** If you agree to the terms of the Agreement and sign it, you have accepted the offer, which creates a legally binding agreement between you and the buyer.

So, you've got a binding agreement! Now what?

Deposit

The buyer usually pays the deposit once there is a signed Agreement in place, unless another date was negotiated. The buyer will pay the deposit directly to the real estate agent. If the Agreement is conditional, the deposit will be held in the real estate agent's trust account until either:

- the Agreement is cancelled, in which case the deposit is returned to the buyer; or
- the Agreement becomes unconditional, in which case the deposit is paid to you (less the commission and other costs incurred by the agent).

Understanding conditions

Does the signed Agreement contain conditions? This is relevant not only for the deposit, but for the status of the Agreement. If there are conditions, this means that the Agreement is conditional on certain things happening. This way, if those things *don't* happen, the buyer doesn't have to go ahead with the purchase and the Agreement may be cancelled. It is very common for buyers to include conditions, and, in particular, we often see the following conditions (or variations on these) being used:

Approval of title	If this condition is included, the Agreement won't go ahead until the buyer is happy with the title to the property. The title is a legal document that contains key information like the current and previous legal owners of the house, any mortgages or other claims over the house, and certain information about other restrictions on the use of the land, including covenants and easements that relate to the boundaries, driveway rights, and other important stuff.
Sale of house	This condition might be used if the buyer needs to sell their house before buying your house. This means that the Agreement won't go ahead until the buyer has found a buyer for their own house.
Satisfactory Valuation Report	If this condition is used, the Agreement won't go ahead if there is a Valuation Report that the buyer (or the buyer's bank) isn't happy with.
Satisfactory Land Information Memorandum Report	A Land Information Report (or LIM, as we'll call it), is a very important document prepared by the local council specifically about the house and the area it is located in. It will offer all sorts of information such as rates on the property, building permits, code compliance certificates, drainage, planning, zoning and other important things like whether the house is missing any building sign offs, if it was ever a leaky home, or whether it has been contaminated by methamphetamine in the past. The buyer may make the Agreement conditional on receiving a LIM that it is completely satisfied with. Then, if they aren't happy with that they read, they may cancel the Agreement.
Finance Approval	This is probably the most common condition to include in an offer. The buyer can make the Agreement conditional on receiving confirmation from its bank that the bank will lend it enough money to buy your house. If this confirmation isn't received, then the buyer may back out of the purchase.

Satisfactory Builder / Engineer Report	Also a relatively common condition, the buyer may choose to include a condition that allows it to organise a report from a builder and/or engineer on the property. If the buyer isn't happy with any information contained in that report, it may cancel the Agreement.
Satisfactory Methamphetamine Testing Report	Recently it's become common to include conditions relating to testing the house for methamphetamine contamination. The buyer would then have the opportunity to back out of the Agreement if it receives test results that show methamphetamine contamination.

In the case of a signed conditional Agreement, the buyer and the buyer's lawyer will immediately start work on satisfying any conditions included in that Agreement by the deadlines that are set out for each condition. Your lawyer and the buyer's lawyer will be communicating directly about the status of each condition at the relevant deadline, at which time, the buyer will advise whether the condition is satisfied or not. If the condition is not satisfied, the buyer may cancel the Agreement, or possibly ask you to fix up any defects it noticed in its investigations.

Your lawyer plays a very important role in managing this stage of the sale process, which is a very important (and often complicated) component. Your lawyer will help make sure that you're in the best possible position under the terms of the Agreement.

“Going unconditional”

The Agreement will become “unconditional” when all of the conditions are satisfied. If there were no conditions to start with, the Agreement is considered to be an unconditional Agreement on the date of signing.

Declaring that the contract is unconditional is an important stage of the sale and purchase process. This basically means that the Agreement must go ahead - the buyer must buy the house, and you must sell the house. There are limited opportunities from here to get out of the Agreement.

Preparing for settlement

The transaction will actually happen on the “**settlement date**”, the date when money changes hands and you transfer legal ownership of the property to the buyer. The settlement date is also usually the possession date - when you must vacate the house and when the buyer is able to move in.

Here are some things that, together with your lawyer, you will likely consider between your Agreement going unconditional and the settlement date (noting that some circumstances require different steps or considerations).

Sign documents	You'll need to sign an authority that allows your lawyer to register the transaction with New Zealand's Land Information registry.
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Insurance	You'll need to cancel any insurance for the house, effective from the settlement date.
Update information	Your lawyer will update the local council and water provider that there is a change of ownership. However, it's a good idea for you to update the post office and any other service providers that you're changing address.
Move out	Make sure you're organised and ready to move out of the house well before the settlement date.
Inspection	Before the settlement date, the buyer has the right to inspect the house to make sure it's exactly the same as the date you both signed the Agreement. If there are any issues that come up, you may be required to fix them. Your lawyer will guide you through this process, if it becomes relevant.
Mortgage repayment	If you have a mortgage over the property you're selling, you will need to repay the bank the outstanding amount under your loan. Your lawyer will liaise directly with the bank, getting an amount for repayment, and organising the actual payment itself once the money for the house has been received from the buyer.
Money	On the settlement date, the buyer's lawyer will transfer the purchase price over to your lawyer. Your lawyer will then repay the bank the outstanding amount of your loan (if you have one) and then pay you the balance of the purchase price.
Keys	You must make the keys to the house and any access codes available to the agent or your lawyer, and these will be passed on to the buyer once the purchase is finalised.

Congratulations!

Once you've got confirmation from your lawyer that settlement has taken place, the final (and most important) step in the process is to celebrate!

A few notes to end with...

We put together this guide as a very general overview to the process of selling a home. However, there are innumerable factors that may become relevant or crop up in any given transaction that weren't covered here. We can't talk about them all in one guide, so, for the very best guidance and support, we recommend you give us a call so we can work together to make sure you're looked after, taking into account all of the specific circumstances of your home selling journey.

You might also like to look at our other guides for more detailed information on specific aspects of the sale process:

- Unit Titles and Body Corporates
- Methamphetamine Contamination
- Bright Line Test
- Buying and Selling Property - IRD information requirements
- Buying a House



Have a question about selling your house? Or perhaps you just fancy a chat about how this information applies to your situation? If so, we would love to help. You can give us a call or send us an email for more information.

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