

Buying a House

“The ache for home lives in all of us, the safe place where we can go as we are and not be questioned”

Maya Angelou

If there's such a thing as the “Kiwi Dream”, it certainly involves buying your own home. We've helped thousands, if not tens of thousands, of clients over the years with the exciting process of buying their very own home. Even though it's exciting, it can also be terrifying: big decisions, bigger words and even bigger commitments (hello, 30-year mortgage). Don't worry though, we're here to help you through the whole thing. In a general sense, this guide has some background information to help you understand what's involved in buying your very own home. In a more specific sense, give us a call if you're in the market to buy a new house so we can offer you the personalised advice and guidance that you'll need as you set out on this journey.

Operation: Find the perfect house

First things first, it's good to know what you're looking for. Things like location, size and price are key factors that will help you narrow down your search for the dream home. Although, let's be honest, price is probably one of the most important considerations. It's worth working out what your budget is, how much you can afford to borrow, and starting a conversation with your bank about what they are prepared to loan you.

As you go through the house hunting process, you'll no doubt be scouring property websites and open homes. Talking to real estate agents will be useful as you gather information about the houses on the market and whether they suit your needs. The agent will also be able to relay any questions you have back to the owners and help you with information about the purchase process. Agents are required to adhere to many professional obligations, including the requirement that they provide accurate information to potential purchasers like you and treat you fairly. However, it is worth keeping in mind that agents are always working on behalf of the current owners of the house to sell the property, and that they will be paid by the seller when the house is sold.

Making an offer

If you find a house that feels like “the one”, you may consider making an offer to buy it. How does one go about making an offer, you might be wondering? There are different sales processes out there that have different rules and tricks for making an offer. For example, making an offer at an auction is different to submitting an offer through a tender process is different to going through a negotiated contract process. Your lawyer is the best source of information for working out what you have to do in each situation.

Regardless of the sale process, offers are often presented in the form of an “Agreement for Sale and Purchase” (going forward we will call this the Agreement for short). Usually your lawyer or the real estate agent listing the house will help you prepare your offer by filling out the Agreement with the terms of your offer including the **price** you’re willing to pay, the **deposit**, the **settlement date** (i.e., the date the property would legally transfer over to you) and any **conditions** that you would like the Agreement to be subject to.

Understanding how conditions work is a really important part of understanding the offer you will make. Let’s talk a little more about these.

Conditions

When making an offer, you can say that you would like the deal to be conditional on certain things happening. This way, if those things *don’t* happen, you don’t have to go ahead with the purchase. It is very common to include conditions in your offer and we often see the following conditions (or variations on these) being used:

Approval of Title	If this condition is used, the Agreement won’t go ahead until your lawyer reviews, and then approves 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 that might affect you as a buyer, and certain information about other restrictions that might prevent you from enjoying the land, including covenants and easements that relate to the boundaries, driveway rights, and other important stuff. Your lawyer is uniquely qualified to review this and look out for things that would affect you down the track if you bought the house.
Sale	If you need to sell your old/existing house before buying a new house, this is a good condition to put in your offer. This means that the Agreement won’t go ahead until you’ve got a buyer for your own house. This will help you avoid being caught out if you can’t sell your existing house.
Satisfactory Valuation Report	If you use this condition, the Agreement won’t go ahead until you’ve got a Valuation Report on the property that you’re happy with. If you’re getting a loan to help buy the home, often your bank will require a satisfactory Valuation Report too before it will lend you money. A Valuation Report helps the bank be sure it is making a good decision lending money to you for that specific house.
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. You can make the

	Agreement conditional on receiving a satisfactory LIM that you and your lawyer are happy with. Like the approval of title condition, your lawyer is uniquely qualified to review this report and look out for important matters affecting the house you're looking at.
Finance Approval	This is probably the most common condition to include in an offer. If you plan on financing your purchase with a loan from a bank or other institution, it's a good idea to make the Agreement conditional on confirmation from your bank that you have finance in place to complete the purchase. That way, if any financing arrangements fall through, you don't have to go ahead with the purchase.
Satisfactory Builder / Engineer Report	Also a relatively common condition, you can organise a report from a builder and/or engineer on the property if you like to know if there are any major structural or other issues that affect the building. If you're not happy with the information you get back in a report, you can choose to back out of the purchase.
Satisfactory Methamphetamine Testing Report	Recently it's become common to include conditions relating to testing the house for Methamphetamine contamination. You can organise a private company to come and test the house for chemicals. If you're not happy with the results, the condition means that you can cancel the Agreement.

Many of these conditions incur costs that you will need to build into the purchase process if you choose to include them.

Selecting the right conditions for your circumstances is something that your lawyer can help you with. They will also word the conditions in a way that protects you if you need to rely on them to cancel the Agreement. Note that you don't *have to* include conditions if you don't want to, in which case you'll be submitting an "unconditional offer".

Sign, seal and deliver

Once you've got your offer sorted, it's crucial to get it thoroughly checked out by your lawyer before you sign it. Your lawyer can help you understand exactly what you're signing up for. If you and your lawyer give the offer the tick of approval, sign the Agreement and get it back to the Seller (via your lawyer or agent).

Cross your fingers

The seller will take a look and, if happy with the terms, accept your offer by signing the Agreement. However, we should prepare you for the fact that it can be common for buyers and sellers to do a bit of back and forth negotiating the terms of the Agreement. You'll do this by exchanging versions of an Agreement and again, your lawyer's help will be useful here as you go through the negotiation process. It's also possible that the seller simply rejects the offer without giving you the chance to negotiate. You don't have a binding Agreement until you and the seller have both signed the same version of the Agreement and have agreed to the same terms.

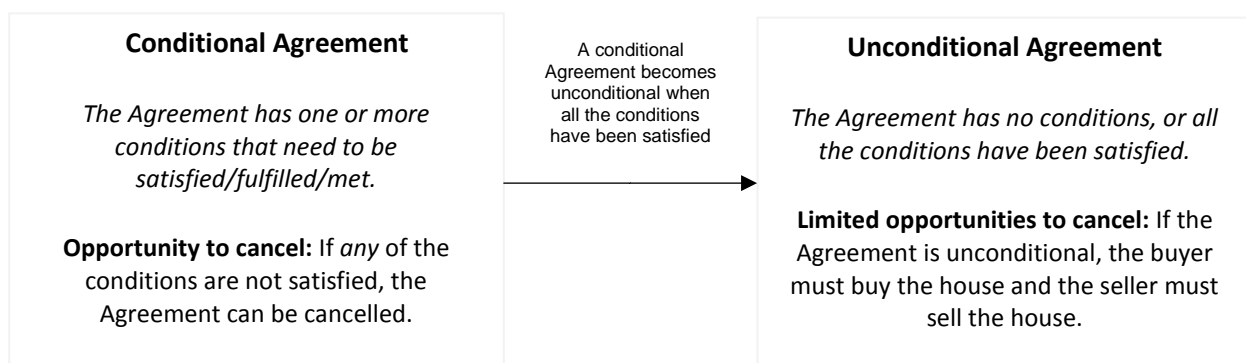
I've got a signed agreement! What next?

What kind of property are you buying?

Properties in New Zealand are classified into different types of "estates". Perhaps you've heard of some of these before, like freehold, leasehold, cross lease, or unit titles. For the purposes of this guide, we are talking, in general terms, about purchasing properties that may be any kind of title. However, it's important to know that there are extra steps, requirements and information to know about if you're buying a certain type of title, particularly a unit title, a leasehold title, or a cross lease title.

Is your Agreement conditional or unconditional?

It's important to know what kind of Agreement you have to understand what happens next. Is the Agreement **Conditional** or **Unconditional**?



Whether your Agreement is conditional or unconditional will determine the next steps in the purchase process:

Deposit

You often have to pay the deposit once there is a signed Agreement in place, unless you negotiated with the seller to pay it at a later date. Your lawyer will help you arrange for payment of the deposit straight to the real estate agent. If you have a conditional Agreement, the deposit will be held in a trust account until either:

- the Agreement is cancelled, in which case the deposit is returned; or
- the Agreement becomes unconditional, in which case the deposit is paid to the seller.

Satisfying conditions

If your Agreement is conditional, you and your lawyer will get cracking on getting the conditions satisfied as soon as the Agreement is signed. There are usually time limits involved in satisfying conditions that become really important. Your lawyer will manage this process and keep you informed about what needs to be done when. This can be a relatively busy time if you have lots of conditions. For example, if you have LIM, Building Report, Valuation Report, Finance and Title conditions, you'll need to work together with your lawyer to get all these confirmations, documents and reports prepared by the relevant parties.

Your lawyer will then help you consider all the relevant information you've gathered. In particular, your lawyer will review the LIM and title for the property in detail and flag any key issues for you to consider.

If any of the conditions *are not satisfied*, you may be able to get out of the Agreement by cancelling it, depending on how the Agreement was worded. Here are some examples of when conditions aren't satisfied:

Approval of Title	You and your lawyer reviewed the title and it showed complicating factors that may affect your investment. For example, maybe there isn't a legal right to use your driveway, or perhaps there is an easement or Agreement that lets your neighbours use the property for something you wouldn't be that happy about. Numerous issues may arise with a review of the title. If you're not happy with the review of the title, this condition will not be satisfied.
Sale	If you haven't been able to enter into an unconditional Agreement to sell your current house, this condition won't be satisfied.
Valuation Report	You reviewed the Valuation Report and it shows the value of the house to be significantly below what you expected, or even below what you agreed to pay. If you're not happy with the Report, or your bank is not satisfied with the report, the condition will not be satisfied.
Land Information Memorandum Report	You and your lawyer reviewed the LIM and it showed things that may affect the value of the house, or highlighted work you'll need to do on it. There are numerous things that may arise from a LIM that may be red flags. For example, perhaps it is missing a code compliance certificate for the back deck, there is an outstanding building permit, the house has been subject to leaky home proceedings or the property is shown to be located in a floodplain. It is your decision whether the LIM is satisfactory to you or not. If you're not comfortable with buying a house that is subject to the information contained in the LIM, then the LIM condition will not be satisfied.
Finance	If you can't get a bank to confirm that it will lend you enough money to complete the purchase, the finance condition will not be satisfied.
Builder / Engineer Report	You reviewed the report from the builder and/or engineer and it shows a few issues with the house. Like other conditions we've talked about, it is your decision whether the Building Report is satisfactory to you or not. If you're not comfortable with buying a house that is subject to the information contained in the Report, then the Building Report condition will not be satisfied.

Methamphetamine Testing	You receive a report that there are traces of chemicals in the house that likely came from methamphetamine being smoked or manufactured. Again, it is your decision whether you're comfortable buying the house after receiving this information. If you are not happy with the results provided to you, the condition will not be satisfied.
--------------------------------	---

If *any* condition is *not satisfied*, you may be entitled to cancel the Agreement. However, to effectively cancel an Agreement, there are certain requirements that must be followed. Therefore, you'll want to talk with your lawyer about how to do it correctly. In some cases, you can also require the seller to fix up any issues that came up during your information gathering process rather than cancelling the Agreement.

If *all* of the conditions *are satisfied*, the Agreement then becomes unconditional.

“Going unconditional”

As we mentioned above, when an Agreement is unconditional, the transaction must go ahead - the buyer must buy and the seller must sell. The transaction will actually happen on the “**settlement date**”, the date when money changes hands and you become the legal owner of the property. This is also usually the possession date - when you are able to move into the house.

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

Legal ownership	Your lawyer will likely ask you about <i>how</i> you want to own the property as there may be several choices depending on your circumstances (all with different legal and tax implications). For example, do you want to own the house in your own name, or in the name of a family trust, or a company? If you're buying the house with your partner, will you buy it jointly or as tenants in common? Do you need to think about a property ownership/sharing Agreement? Your lawyer can help you work through this exercise depending on your circumstances.
Sign documents	<p>There are at least two sets of documents you'll (probably) need to sign before settlement date:</p> <ul style="list-style-type: none"> • Loan Documents: If you're getting a loan from the bank to complete the purchase, the bank will send your lawyers the loan documents that cover all the terms and conditions of the loan you're taking out, including the fact that a mortgage will be registered against the home as security for the loan. Your lawyer will explain the documents and mortgage to you, you'll sign them if you're comfortable with the terms, and then they will be sent back to the bank.

	<ul style="list-style-type: none"> • Property transfer documents: You'll need to sign an authority that allows your lawyer to register the transaction with New Zealand's Land Information registry. • Other documents: Are you relying on Kiwisaver? Getting a loan from your parents? Selling a house in order to buy this one? If so, there will be more documents you need to consider and sign. Your lawyer will help you out with these.
Provide tax information	Depending on your circumstances, you might need to provide tax information to the IRD before the purchase goes ahead. Your lawyer will help you work out your obligations here and you may like to refer to our guide: IRD Information Requirements (link)
Money	Your lawyer will send you a statement showing how much money is needed on the settlement date to buy the house and cover any legal/other fees coming from the transaction. The majority of this money will likely come from your bank, which will deposit the amount of the loan directly into your lawyer's trust account on the settlement date. However, it is very common that you'll need to "top up" that amount with your own money. Your lawyer will give you information about how much you'll need to deposit and how to make this payment.
Insurance	You'll need to arrange insurance for the house that is effective from the date of settlement.
Inspection	Before the settlement date, you have the right to inspect the house to make sure it's exactly the same as when you signed the Agreement. If there are any issues that come up, let your lawyer know straight away so these can be fixed before settlement.

Settlement Day

On the day of settlement, your lawyer takes care of the formalities of settlement by communicating with the bank and lawyer for the seller. In simple terms, your lawyer will receive the money from the bank (if you took out a loan), make the full payment to the seller's lawyer and then formally register the transfer and any other relevant documents (for example, a mortgage) with the land registry office. Your lawyer will let you know when they've completed these formalities and settlement has legally occurred. They will also tell you how to get the keys to the house so you can start moving in.

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 buying 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 buying journey.

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

- Unit Titles and Body Corporates
- Methamphetamine Contamination
- Bright Line Test
- IRD Information Requirements
- Selling your House

Have a question about buying a 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.

Phone: +64 9 486 6827 | Email: info@kevinmcdonald.co.nz | Website: kevinmcdonald.co.nz

The information contained in this guide does not constitute legal advice, nor is it intended as a substitute for personalised legal advice. The information is provided as background information only. Kevin McDonald & Associates assumes no liability for any losses suffered by any person relying directly or indirectly on information in this guide.