



# PURCHASING A PROPERTY

It's exciting to find the property you have been looking for! However, the various property purchase requirements, conditions and jargon can be quite daunting, which often dims a bit of the fun. Below, we've set out an overview of the process, which is aimed to provide some guidance on the property purchasing process, and hopefully make it a simple, easy and overall enjoyable experience.

## FINDING A PROPERTY

Once you have found a property you wish to make an offer on, the Real Estate Agent (if you are using one) will usually provide you with an Agreement for Sale and Purchase ('**Contract**').

There are various ways a property can be sold, such as a negotiated contract, a tender, or an auction. Where a Real Estate Agent is involved, they will be able to provide you with advice around the sale process specific to the property you wish to purchase.

***NB:** If a Real Estate Agent is not involved in the process, it is usual for the purchaser's Lawyer to prepare the Contract.*

## LEGAL PRE-CONTRACT ATTENDANCES

These attendances can relate to a number of matters, including reviewing the Contract before submitting it to the seller, and drafting the basic Contract (where a Real Estate Agent is not involved). Sometimes it may be appropriate to undertake a legal review of the title to the property separately before submitting a purchase offer, particularly if you do not want to make the offer conditionally on Approval of Title.

## ONCE THE CONTRACT IS SIGNED

Once the Contract has been signed by both you and the seller, the purchase offer has been accepted. This means both parties are bound by the Contract, and can generally only withdraw from it if one or more of the conditions contained in the Contract (if it is a conditional Contract) are not satisfied.

## PAYMENT OF DEPOSIT

The general 'deposit' provisions of the standard form Contract provide for the deposit to be paid immediately upon the Contract being signed by both parties. However, for a purchaser, it is recommended that those general 'deposit' provisions be amended, so that the deposit is only payable if and when the Contract goes unconditional. Usually the deposit is paid directly to the Real Estate Agent (where there is one involved).

## CONDITIONS

When making a purchase offer, you need to consider the conditions you would like to make the Contract subject to. Common (**and highly recommended**) conditions include:

- ◆ **Approval of Title:** Your Lawyer's approval of the title to the property. This involves a title search & report, which sets out any legal issues that arise;
- ◆ **Land Information Memorandum (LIM):** A LIM is a special Council report on the property that includes all the information that the Council has on file. This can include information on storm water, sewer drains, rates, building consents, code compliance certificates and requisitions, if the property is identified as "leaky"; and any other information the Council holds;
- ◆ **Builders Report:** You may wish to have a qualified builder or building inspector undertake an inspection of the property, and provide you with a report of their findings; and
- ◆ **Approval of Finance:** If you need a mortgage to complete the purchase, the Contract needs to be made conditional upon you arranging that finance. ***NB:** Pre-approval of finance is not the same as unconditional approval. You will need to ensure that your finance offer is unconditional — ie. that any conditions set by the bank have been met by you, or you are able to meet them prior to settlement of the purchase.*

***NB:** If you make a purchase offer without putting any conditions in the Contract, this is considered an 'unconditional offer'. You will be bound to the purchase of the property if the seller accepts your offer and signs the contract.*

## GOING UNCONDITIONAL

A Contract is 'unconditional' when the conditions are satisfied (eg. you are happy with the Title, LIM & Builders Report or have had Finance approved). Once a Contract is 'unconditional', the Contract is binding on both parties and the transaction must proceed.

If you are purchasing the property with your partner or another person, then, at this stage, thought needs to be given to how the property will be owned. This is best discussed with your Lawyer, but examples of ownership include Joint Tenancy, Tenants in Common, or a Family Trust. Now would also be a good time to speak with your Lawyer about a Property Sharing Agreement between the involved parties. A Property Sharing Agreement sets out your respective rights and obligations in respect of the use, maintenance, development, income and disposition of the property. You may also wish to consider making or updating your Will(s). A discussion with your Lawyer around these issues is very important and could provide you with significant protection in the future.

## LOAN AND TRANSFER DOCUMENTATION

Before settlement you will have to sign any loan documentation (if you have arranged any Finance for the property) and the property transfer documentation.

Your bank will prepare the relevant loan documentation and will send it to your Lawyer with instructions to prepare the required mortgage and disclose all the bank documentation to you.

Your Lawyer will also prepare the property transfer documentation.

Once all this documentation is ready, your Lawyer will contact you to make a time for you to come into the premises and sign it. You will need to bring original 'government issued' photographic identification (eg. your drivers license or passport) with you to that meeting so that your Lawyer can make certified copies. The identification that you bring must also be current.

## CASH CONTRIBUTION TO BE PAID INTO YOUR LAWYER'S TRUST ACCOUNT

On the settlement date, your Lawyer will receive the mortgage funds from the bank directly into their trust account. Your Lawyer will also require any additional payment contribution from you to make up the purchase price. Your Lawyer will let you know how much is required from you within a preliminary flow of funds and will give you their banking details so that you can arrange the funds to be transferred to them prior to settlement.

## PRE SETTLEMENT INSPECTION

Before the settlement date, you have a right to inspect the property to ensure that it is in the same state as when you signed the Contract, and that no damage or any changes have occurred since then. If there are any issues which come to light following the pre-settlement inspection, you should notify your Lawyer immediately.

## CONFIRMATION OF SETTLEMENT

Your Lawyer will let you know once settlement has taken place, and that you can collect the keys from the Real Estate Agent (if one is involved) or some other nominated person.

## POST-SETTLEMENT REPORT

Following settlement, your Lawyer will provide you with a final report which sets out the details of the purchase, including a final statement flow of funds which shows the movement of money through the Lawyer's trust account. You will also receive a copy of the Landonline computer register title for the property showing your newly transferred name(s).

## MORE INFORMATION

If you're thinking about purchasing a property, need some advice or have any questions — give us a call or send us an email for more information.

### Wellington Office:

Level 2, Zephyr House, Te Aro, Wellington 6011

### Kapiti Office:

116 Rimu Road, Paraparaumu 5032

### Otaki Office:

208 Main Highway, Otaki 5512

### Foxton Office:

74 Main Street, Foxton 4814

### Postal Address:

PO Box 8091, Wellington 6143

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Incorporating Simco Lawyers

**Disclaimer:** This information is intended as a guide only. We always recommend you speak with a lawyer regarding your specific situation and needs.

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