

# Buying & Selling Property Guide



Let the Wakefields Lawyers Property Team take the complexity out of your next home sale or purchase!

Our property law team has been helping people to buy and sell their homes for over 30 years. We specialise in residential property sales and purchases – especially for first home buyers. We understand that this is an exciting (and sometimes scary) time for our clients, that's why we have created this eBook to simplify the process step by step.

We offer fixed pricing packages tailored to your needs. This price certainty means that you won't get an unexpected bill on move-in day

no matter how many questions you ask along the way. Our dedicated property law team have seen it all before and can help you with anything such as guidance on your best offer, applying for your Kiwi saver funds, how to choose a real estate agent and what to do when a potential purchaser makes an offer with unusual conditions.

If you're looking for simple and practical legal advice on your next property transaction then you're in the right place! Flick through this book and get in touch when you're ready to start making your next big move.



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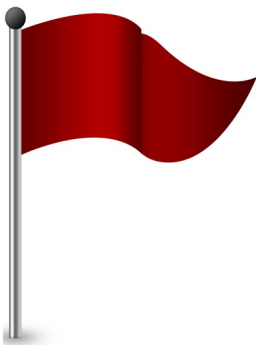
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## ***First Home Buyers***

*look out for this helpful flag so you can easily tell which sections relate to you specifically.*

## Purchasing A Property

Buying a home, whether it's your first or one of many, is an exciting and sometimes stressful undertaking. The Wakefields Lawyers Property Team is able to support you every step of the way and help you make sense out of a very complicated process with many different elements.

While every home is different, here's the basics of what you need to know when it comes to getting your finances together, making an offer on a property and the road to settlement day.

*"The Wakefields Lawyers Property Team is able to support you every step of the way and help you make sense out of a very complicated process with many different elements."*



## ***Financing your purchase***

Possibly the most vital element of any property purchase is price. You'll probably have a good idea of how much you are willing and able to spend when you start looking but it's a good idea to talk to your bank or mortgage broker before you fall in love with a property that might be out of your budget!

There are a number of different ways that you can finance a property purchase. A lot of purchasers, especially first home buyers, use a combination of methods to reach their goals. While we're lawyers and not financial advisors we can't give advice on what's best for you, we can however get you in touch with a financial advisor to discuss your needs. Here's an overview on the different methods:

- ▶ Lending from a bank;
- ▶ Savings;
- ▶ Loan and/or gift from family members;
- ▶ Withdrawal from your KiwiSaver fund; and
- ▶ HomeStart Grant.

*"Talk to your bank or mortgage broker before you fall in love with a property that might be out of your budget!"*





## ***Bank Lending/Mortgage***

In order to obtain lending from a bank you can either apply directly to the bank or use a mortgage broker. Mortgage brokers have access to seek lending for you from most banks (Kiwibank are the general exception to this). It's best to apply to your bank or start speaking with a mortgage broker as early on in the process as possible as it can take time to get approval.

In most situations, you don't pay the brokers for arranging your mortgage for you, rather they will earn a commission from the bank – your broker will explain this to you and what applies in your particular scenario.

There are two stages of approval that you'll get for your mortgage:

- ▶ Approval from the bank to lend to you as a person/couple etc. – this can be done before you find the house you wish to buy and is commonly known as pre-approval.
- ▶ Approval from the bank to lend to you in relation to the particular property you wish to buy – this can only be done once you find the house you want to buy, then the bank requires certain information in respect of the property, normally:
  - ▶ The address of the property
  - ▶ The sale and purchase agreement (it doesn't have to be signed so long as it is in a form you don't expect to change)
  - ▶ Information in relation to any disclosures or issues with the property which the bank need to be aware of in order to make their decision – this normally consists of the disclosure statement provided by the agent to you.



## ***Loan and/or Gift from Family***

It has become more common in recent years for first home buyers to borrow or be gifted money from a family member to enable them to purchase a property.

The family member lending to you should also seek the advice of their lawyer as there are certain things that they need to consider such as whether the lending is to you, or you and your partner, how it may affect any future application they may make for a residential care home subsidy and the implications of gifting versus loaning.

If you are borrowing money from a family member as well as a bank, the bank will usually require you to agree that their mortgage repayments will take precedence over the repayments to your family member. However, every bank and situation is unique so make sure you discuss the structure and source of your finance with your lawyer as soon as possible.

*"The family member lending to you should also seek the advice of their lawyer."*





## **KiwiSaver Withdrawal**

Many first time buyers will want to withdraw funds from their KiwiSaver to assist with the purchase of their home. There are some minimum criteria to make this withdrawal, in particular, you must have been a member of KiwiSaver for at least 3 years and intend to live in the property (i.e. you can't use it to buy an investment property).

*"you must have been a member of KiwiSaver for at least 3 years and*

There are also some restrictions on the type of property you purchase as most providers will not allow you to make a withdrawal if you are purchasing a company share apartment (which are fairly uncommon) outside of retire communities.

### **Making An Application**

#### **Stage one**

You advise your particular KiwiSaver provider that you are looking to make a withdrawal and provide the information they request. They send you a letter letting you know whether you qualify for a withdrawal and if so, an estimate of the amount you can withdraw. This part of the process can be done before you have found a house you wish to buy.

#### **Stage two**

Once you have found a house and have a signed and dated Agreement for Sale and Purchase, you complete the application to withdraw your funds. You will need to visit your lawyer at this stage to complete a statutory declaration. There are a number of other documents, including a letter from us, which need to be sent with the application. We are able to assist you with this ensuring that all the necessary information is provided so that you don't have any delays in getting the funds through.

If you are intending to use your KiwiSaver to fund your deposit under the sale and purchase agreement you will need to include a condition in your offer about when the deposit will be paid. Your lawyer will be able to help you with this condition and deal with the practical elements of paying this for you.

There limited circumstances where you may be able to make a withdrawal from your KiwiSaver when you're not purchasing your first home. If you think this is something that might be applicable for you then we're able to help with that process as well.

*If you lived outside of New Zealand for any period of time since contributing to your Kiwi saver Scheme you'll need to check your*





## **HomeStart Grant**

You may be eligible for a HomeStart Grant from Housing New Zealand if you meet the applicable criteria:

- ▶ You are buying your first home;
- ▶ You have been regularly contributing to a KiwiSaver scheme for at least 3 years;
- ▶ You meet the income cap thresholds;
- ▶ You have a 10% deposit available (which can include KiwiSaver withdrawals, the HomeStart Grant and savings); and
- ▶ The purchase price of the property is within the regional house price cap (as at April 2019 these are \$500,000 for existing

*As with KiwiSaver, we can help you with your application for a HomeStart grant and ensure that everything is completed correctly on time.*





## Different Ways A Property Can Be Sold

There are a number of different ways that a vendor may choose to sell their property, they each have different advantages and disadvantages. A vendor will select the method that they feel best suits their needs with regard to getting the best price, getting the property sold quickly or simply following the market trend.

With the exception of auctions, a purchaser may choose to include conditions (**see page (x)**) on their offer, or make their offer unconditional. In a competitive market the highest price may not always be the winning offer if there are more favorable conditions, or lack thereof, on a lower offer.

Here are the various selling methods that you may come across as a purchaser:

- ▶ **Auction:** This is a public sale of the property by bidding process. The winner of an auction automatically enters into an unconditional agreement, however it is possible to agree an addendum to this agreement with the vendor and agent beforehand.
- ▶ **Tender:** This is where the vendor accepts offers put forward from multiple potential purchasers. The property listing will normally state whether the vendor will consider offers before the tender deadline or whether the offers will only be considered after the tender has closed. The vendor will usually compare offers and make a decision based on a balance of price and conditions, meaning that it's not necessarily the highest offer that will win.
- ▶ **Deadline sale:** The property is marketed for a set period of time with a deadline date for offers. This can be similar to a tender, however the vendor will more often consider offers before the advertised deadline. If you are making an offer in this situation, the agent may encourage you to move quickly if there are already interested parties putting offers on the table.
- ▶ **Price by negotiation:** The property is advertised for sale, as a potential purchaser you put an offer in as to what you think the property is worth. The vendor can come back and negotiate on the price or other terms of the agreement with you.
- ▶ **Advertised price:** Fairly straightforward, the vendor advertises the price that they wish to get for the property.
- ▶ **Buyer Enquiries Over (BEO):** BEO is similar to price by negotiation in that you make an offer and the vendor may then negotiate, however with a BEO the listing gives you a figure that the vendor wants to sell in excess of.

## What Is the Record of Title To a Property and Why Is It Important?

The Record of Title to a property (often shortened to just “Title”) contains interests which could impact upon what you can and cannot do with the property. There are a few different types of titles that a property can have in New Zealand. The three types that you will most commonly



### ***Freehold (aka Fee Simple)***

This is the most common type of ownership in New Zealand. If you purchase a property with a freehold title it means it's free from any interest from any entity other than yourself. You are able to use the land for any purposes (in accordance with local regulations) without consent from any other party.

A freehold title may still have other types of interests registered on it though, these can include things like:

- ▶ A right to use drains, pipes, lines etc. that run over, through or under neighbouring or other nearby properties for your utilities, telecommunications etc.;
- ▶ The rights of other properties to use drains, pipes, lines etc. that run over, through or under the property for their utilities, telecommunications etc.;
- ▶ A right of way, which is a right for you to cross land owned by others on foot or in vehicles (the right of way will specify this). This may be because you need to use a driveway owned by your neighbour to access your property;
- ▶ A right of way for owners of other properties cross that part of your property;
- ▶ A restriction on any structures built on the property that may relate to the height of any structures, or the number of stories or the number of buildings; and

Interests in relation to fences (who is liable to contribute to the cost of them etc.).

## Cross Lease

With a cross lease title you will own a share of the freehold interest in all the cross lease development land, together with a leasehold interest in one of the dwellings in the development. The number of separate flats in the cross lease development dictates the undivided share in the underlying land that you will own. If there are 5 separate flats in the development, you will own an undivided 1/5th share in the underlying cross lease land. The other undivided shares in the underlying land are owned by the owners of the other flats in the development.

In addition to owning a share of the underlying 'fee simple' (freehold) estate in the development land, you will also have a leasehold interest in the flat itself, whereby you 'lease' the dwelling from the land-owners, usually under the terms of a 999 year lease. Under the lease you will have exclusive use of the flat and you will share the common areas, and responsibility for their maintenance, with the other flat owners.

The Landlord of each of the flats in the cross lease development comprises all the owners of the fee simple estate in the underlying land. Accordingly, if you purchase a cross lease property, you will become a Landlord as well as being a Tenant.

### **Things to do when considering purchasing a cross lease property:**

- ▶ Check the flats plan. This plan indicates the layout, shape and dimensions of the property and it is absolutely imperative that the flats plan mirrors the external layout of the property. If it doesn't, the title is defective. This can be very costly to fix and involves, amongst other things, the work of a surveyor to draw up a new flats plan and obtaining the consent of other cross lease owners in the development.
- ▶ Check for any structural alterations to the property (e.g. an extension) or any structures not connected to the property like a sleep-out or garage. This amounts to a breach of the cross lease if alterations have been made without the consent of the other owners, who could require these alterations to be pulled down/put back to the original form at your cost. Also, any structural alteration that is attached to the property and enclosed, which changes the footprint of the property (e.g. an extension) needs to be reflected on the flats plan. Practically, ask the person who carries out your building inspection to record any structural alterations they become aware of during their inspection.
- ▶ Check that Council consent was obtained for any works that required it. (This goes for whatever type of property you are purchasing, not just a cross lease.) Again, ask the person who carries out your building inspection to record any works they believe would, or may, have required Council consent.
- ▶ Read through the cross lease. You should familiarise yourself with the terms of the cross lease so you know what you can and can't do in relation to the property. Understanding these terms is something your lawyer can help you with.

*"If you purchase a cross lease property, you will become a Landlord as well as being a Tenant."*



## ***Unit Title***

Unit Title properties are unique in that the owners within the unit title development have obligations towards each other. When you buy into a 'unit title' development you are essentially buying into, and agreeing to participate in, a community. The property will consist of a Principal Unit and may also have Accessory Units (e.g. a car parking space).

The owners of all the units in the development comprise what is known as the "body corporate". On purchasing a unit you automatically become a member of the body corporate. The body corporate purchases insurance for all the buildings on the development and carries out other responsibilities like maintaining common areas. The cost of this is usually charged back to the owners of the units via a levy.

There are normally Body Corporate Rules in place which contain the Rules that each owner of a unit needs to abide by. These rules will be unique to each body corporate and can cover things like keeping pets in the building and renting out your property. You'll need to understand the rules of the body corporate if you are looking at purchasing a unit title property and ensure that they fall in line with your intentions. Your lawyer will be able to review the rules for you and ensure that you understand everything completely from the outset.

We would recommend that you have your solicitor prepare a report on the title to the property so you're aware of what interests are registered against the property so you can consider how these may impact upon your plans for the property.

*"On purchasing a unit you automatically become a member of the body corporate."*



## Conditional VS Unconditional Offers

As mentioned previously, in most purchasing situations you are able to specify conditions on an offer that you make to purchase a property. The majority of purchasers will have conditions of some sort on their offer, especially if you are needing mortgage financing or have not been able to complete your due diligence (building report, LIM report, Methamphetamine contamination testing etc.) prior to submitting the offer.

Vendors prefer unconditional offers because once they accept such an offer, the contract is binding (subject to the standard terms and conditions of sale). Conditional offers enable a purchaser to undertake investigations or resolve certain matters after their offer has been accepted but before the expiry of the condition deadline (depending upon what the particular condition refers to).

### ***How do I decide what kind of offer to submit?***

There are a number of factors you will want to consider and each purchaser's situation will be as unique as the property they are wanting to purchase. As a start, ask yourself:

- ▶ How much time have I had before my offer needs to be submitted?
- ▶ What investigations do I need to do on this property?
- ▶ Do I need final approval from the bank?
- ▶ How much do I want this property?

*"Of the upmost importance is submitting an offer that you are comfortable with and doesn't leave you exposed to any risk. "*

Of the upmost importance is submitting an offer that you are comfortable with and doesn't leave you exposed to any risk. While it can be tempting to think 'she'll be right' and submit an offer with fewer, or even nil, conditions in an effort to secure your dream home, this could end up costing you more in the long term.





## What Conditions Can You Include in Your Offer on a Property?

There is no limit to the conditions you can include, but you should ensure that they are reasonable and practical while still meeting your needs. The most common conditions you might consider putting on your offer are:

### ***Securing suitable finance***

- ▶ This enables you to ensure you can obtain finance on terms acceptable to you in order to complete the purchase of the property. The typical period of time to satisfy or waive this condition is 10 working days from the date of the agreement, but this is negotiable.
- ▶ The (ADLS) template wording of this condition means you are required to do all things which may reasonably be necessary to enable the condition to be satisfied – i.e. actively seek finance. We would often recommend an alternate wording which achieves the same result, but removes the onus from you to do *all things* which may reasonably be necessary.

### ***Land Information Memorandum (LIM)***

- ▶ A LIM is a report prepared by the local council giving information regarding the property such as building consents, drainage and water information, rates and zoning. The standard time period for satisfaction/refusal of this condition is 15 working days from the date of the agreement.
- ▶ Including a LIM condition in the agreement enables you to obtain and review the information contained in the report and check it is acceptable to you.
- ▶ The wording of this condition is extremely important. The template wording provided by the ADLS does not necessarily let you cancel the agreement based on the contents of the LIM and instead gives the vendor the opportunity to undertake remedial works. You may be comfortable with this, as the vendor could see it as more favourable than the alternative



### ***Building Inspection Report***

- ▶ This condition enables you to obtain a builder's report for the property and the standard time for it to be satisfied/refused is within 10 working days of the date of the agreement. This will give you further information on the condition of the structure and identify any issues or causes for concern.
- ▶ As with the LIM condition, the wording of this one is extremely important. The ADLS standard wording puts considerable onus on you, stating that report should be satisfactory on the basis of an *objective assessment* i.e. would any reasonable purchaser, on reading that report, have found it satisfactory?
- ▶ Again, this could be something you are comfortable with to provide a more appealing offer to the vendor. However, our recommendation would be against taking that risk and we can help you with alternative wording. This would protect you and enable you to cancel the agreement if the report is not satisfactory to you in all respects, based entirely on a *subjective assessment*.

### ***Solicitor's Approval***

- ▶ This condition usually makes the agreement conditional upon your lawyer approving the agreement as to form, content and title. If your lawyer does not approve the agreement then it can be cancelled without any liability on you.
- ▶ Again, there is template wording that is more restrictive, or we can help you with alternate wording that offers you a bit more protection.

### ***Insurance***

- ▶ An insurance condition allows a purchaser the time to check the availability of insurance for the property. This is becoming more and more important. The time period for satisfaction/refusal of this condition is normally 5 working days. The insurance does not need to be purchased, simply a quotation that is available until at least the day after settlement will suffice. We would recommend you seek the details of the current insurer of the property from the agent so you can seek a quotation from them.

### ***Methamphetamine Testing***

- ▶ You may wish to insert a condition into the agreement which makes the agreement conditional upon you obtaining a methamphetamine testing report which is satisfactory in all respects to you.

### ***General Due Diligence***

- ▶ From a purchaser's perspective, if there are a number of conditions that you wish to include in an agreement, it is likely to be easier to insert what is called a general due diligence clause. This covers off most matters upon which a purchaser is likely to want to cancel an agreement. However, from a vendor's perspective, this is a particularly unfavourable clause as it basically entitles a purchaser to cancel an agreement for any reason.
- ▶ The above conditions are the common conditions that are come across but they are not all the conditions that can be inserted – there may be conditions that are appropriate to your particular circumstances or the property itself – we can assist you with these.







## The Practicalities of Making an Offer

The standard form of agreement used in New Zealand to buy and sell a property is the Auckland District Law Society (ADLS) template called “Agreement for Sale and Purchase of Real Estate” (or “Particulars and Conditions of Sale of Real Estate by Auction” for an auction).

Normally, a draft version of the document is prepared by the real estate agent and provided to potential purchasers to amend in light of their offer (except the auction form of the agreement, save for any agreement made prior to auction). Once you are satisfied with the agreement you would then return it to the real estate agent to present to the vendor.

The agent should then give you a timeline to hear back regarding any decisions by the vendor. Depending on the type of sale they have chosen, this may be very quick or it may take longer.

If the purchase is between private individuals where no real estate agent is involved (called a “private treaty”), the purchaser’s solicitor will usually prepare the offer document using the same ADLS form. This is then submitted to the vendor for their consideration.

Your lawyer will be able to help and guide you with the form of the offer and amend it to ensure it accurately reflects the offer you wish to make and any conditions.





## **Your Offer Was Accepted! Now What?**

This is one of the most exciting elements of purchasing a property, if the vendor has accepted your offer, the real estate agent will email a copy of the agreement to you and to your lawyer. Your lawyer will then get in touch with you about the next steps.

### ***If your offer was unconditional***

- ▶ The deposit will be payable except if the agreement says otherwise. Your lawyer will then work with you to ensure everything is ready for settlement day, but for now you can (hopefully) relax for a short time!

### ***If your offer contained conditions***

- ▶ You now have the specified number of days to work on each of the conditions to determine if these can be fulfilled and you wish to progress with your purchase of the property. Your lawyer will advise you of the timings involved and whose responsibility it is to progress the conditions e.g. if it's a title condition, it's for your solicitor to review and report on the title to you, if it's a builder's report condition, this is for you to arrange. Normally you would just put the company carrying out the inspection in touch with the real estate agent so they can arrange timely access to the property.
- ▶ Once you can confirm the conditions are satisfied, let us know as we need to formally confirm this to the vendor's lawyer and the real estate agent. This will normally trigger the payment of the deposit except if the agreement says otherwise.
- ▶ If the conditions are not satisfied and you wish to cancel the agreement we will also be able to handle this awkward conversation on your behalf.

## Once Your Offer Is Unconditional

The hard part is over! If you've made it this far then there is light at the end of the tunnel and your lawyer will help guide you through. The next steps are...

- ▶ If you're getting financing, you'll meet with your bank or broker to agree the structure of the financing – this will enable the bank to email your solicitor with the loan documentation for signing by you.
- ▶ You'll meet with your lawyer to receive advice on and sign the loan documentation (if applicable) and other documentation required in order to transfer the property. You'll also sign any other paperwork needed for things like a Kiwi saver withdrawal or Home Start Grant application.
- ▶ Your lawyer will send the necessary documentation to your lender, Kiwi saver provider etc. in anticipation of settlement.
- ▶ If the property is a Unit Title, the vendor's lawyer will provide your lawyer with a pre-settlement disclosure statement.
- ▶ Your lawyer will carry out a guaranteed search at Land Information NZ to check that nothing has changed on the title to the property since you entered into the agreement. This search guarantees a window of time for the transfer to you to be registered without anyone else being able to register anything against the title. This is particularly important from a lender's perspective.
- ▶ Your lawyer will take into account any deposit you have paid, any KiwiSaver or Home Start Grant monies and any funds you need to pay on settlement (i.e. for an apportionment of Council rates) and let you know the final figure that will need to be paid into their trust account to actually purchase the property.
- ▶ You'll carry out a pre-settlement inspection (see page [x] for more details).
- ▶ You'll arrange building insurance for the property (noting the interest of your lender if you're obtaining bank financing).
- ▶ You'll also need to arrange practical matters such as arranging furniture removals, contents insurance, utility providers for the property for after settlement, cancelling these matters if you're selling a property as well as buying a new one, cancelling direct debits etc.





## Buying “Off the Plans”

Buying off the plans is where you enter into an agreement to purchase land and have a property built on that land. The sale and purchase agreement you would enter into for buying off the plans is very different to a sale and purchase agreement you would enter into to purchase a property that has already been built – an off the plans agreement is much more detailed and needs to account for a number of different scenarios. There are a number of matters that we would want a sale and purchase agreement for an off the plans purchase to include when acting for a purchaser.

There are also a lot of variables when entering into this type of agreement so it's best to talk to your lawyer early if you're looking at doing this and they can help you understand the agreement and work out what suits your needs.

*“The sale and purchase agreements for buying off the plans are very different to the one you would enter into to purchase a property that has already been built.”*





## What Entity Should Own the Property?

Should you own it in your individual name/s, in a company or a trust? This is a question we can help you with in consultation with your accountant as what might be best for you legally might not be best for you financially and vice versa.

### ***Speak to an accountant***

We would highly recommend that you speak to an accountant as to the potential tax implications/requirements of renting out the property.

### ***Other points***

- ▶ Ensure you put the tenancy in writing and that it is appropriate for the type of tenancy you are entering into – the Tenancy Services website ([www.tenancy.govt.nz](http://www.tenancy.govt.nz)) has a form of tenancy agreement you may wish to use;
- ▶ If you already own your property and have granted a mortgage to the bank, check your mortgage documents to see if you are entitled to rent out the property – at the least you're likely to need to notify/obtain the consent of your lender **before** you rent out the property;
- ▶ You'll need special insurance called Landlords Insurance if you are renting out your property;
- ▶ If you own a Unit Title property you'll need to check the Body Corporate Rules to see if there are any restrictions or requirements in relation to renting out your property. The same goes with checking your lease if you own a cross lease property; and
- ▶ Speak to a mortgage broker or directly to a bank if you're looking to purchase a residential property to rent out as the deposit that a bank requires you to have are normally higher than those required for buying to live in the property.

*"You'll need special insurance called Landlords Insurance if you are renting out your property."*





## Pre-Settlement Inspections

In most circumstances, you have the right to carry out a pre-settlement inspection of the property you are about to purchase. This means you (or a trusted representative) visit the property on one occasion to check the condition of everything (i.e. the property, chattels and fixtures) included in the sale. You are then able to visit again on or before settlement to confirm compliance with any agreement made to carry out any work on any element that did not comply with the terms of the agreement on the first inspection.

Practically speaking, a purchaser should check the property has not been damaged since the Agreement was entered into and the various appliances are in reasonable working order. If you find anything that has been damaged or is not working, you should talk to your lawyer in the first instance who can negotiate on your behalf and advise you of your options.

The property doesn't have to be clean and tidy. If you want it to be clean and tidy then you need to include a clause in the Agreement to specify this – you'd like to think that a vendor would do this in any event but this is not necessarily the case. Rubbish does however need to have been removed by the vendor prior to settlement.

### ***Exceptions to the rule***

- ▶ Where the property is occupied by tenants and those tenants are continuing to occupy the property after settlement, you do not have an automatic right to carry out a pre-settlement inspection and a clause will need to be included in the Agreement specifically granting this right.
- ▶ Where a chattel is being included in the sale on an “as is where is” basis, you are deemed to have accepted the item with all faults and there is no obligation on the purchaser to provide the chattel in a reasonable working order.

### ***What happens if I find any issues?***

Not all defects are required to be fixed by the vendor, nor can you claim compensation from the vendor for all defects. However, damage discovered at the pre-settlement inspection that does give rise to a “right to compensation” can hopefully be sorted prior to the settlement date e.g. a broken window pane. If not, the vendor may agree to you withholding funds from the settlement proceeds (to be held in the lawyer's trust account) until the work is completed, or possibly deduct the expected costs of fixing the damage from the purchase price.

## What Happens on the Day of Settlement?

After what might have been a long process you'll reach the day you've been waiting for – settlement day, the day you get the keys to your new home! Understandably, you will be both excited and a little nervous on the day of settlement but your trusty lawyer will have you covered and ensure that everything is taken care of. The main steps that happen from a legal perspective on the day of settlement are:

- ▶ We receive all the money required to complete the purchase into our Trust Account. This includes money from any mortgages, HomeStart Grants, KiwiSaver withdrawals and any money you are contributing from your personal accounts (your personal contribution and KiwiSaver funds may be with us before settlement day but mortgages and HomeStart Grants only arrive on settlement day).
- ▶ We will keep you informed around when the money arrives in our account – this can be at any time during the day. Different banks have different procedures and processing times depending on how many mortgages they are setting up that day. We get notification from your lender as soon as they send your money to our account.
- ▶ As well as all the funds you need to complete the purchase, we also need to receive what's known as a 'letter of undertaking' from the vendor's lawyer. An undertaking is effectively a promise from them to say that once we transfer the money to them, they will 'release' the property title allowing us to register it in your name.
- ▶ Once we have the undertaking and correct funds we will make the transfer to complete the settlement and give you a call to confirm. Once the vendor's lawyer has received the settlement money, they'll let the real estate agent know that they can release the keys to you.
- ▶ Congratulations – you've got a house! There is still some work for us to complete, such as registering the title to the property and the mortgage in favour of your lender, submitting notice to the relevant council that you now own the property, sending the updated title and signed documentation to your bank and sending any remaining original documents to you along with a copy of the updated title.





## Purchasing an Investment Property

Purchasing a property to rent out for the first time can be exciting but daunting too! Below are some tips for you to consider when looking to purchase a residential property to rent out:

### **Does the property meet the current (and any anticipated) regulations for renting out a residential property?**

The key responsibilities of a landlord renting out a residential property are contained in the Residential Tenancies Act 1986 (eg bond, maintenance etc.) including the Healthy Home Standards. The Healthy Homes Standards set minimum requirements for:

- ▶ **Heating** – Rental homes must have fixed heating devices in the main living area, which can warm rooms to at least 18°C.
- ▶ **Insulation** – Rental homes must have ceiling and underfloor insulation which either meets the 2008 Building Code, or (for existing ceiling insulation) is at least 120mm thick.
- ▶ **Ventilation** – Rental homes must have the right size extractor fans in kitchens and bathrooms, and opening windows in the living room, dining room, kitchen and bedrooms.
- ▶ **Moisture and drainage** – Rental homes must have efficient drainage and guttering, down-pipes and drains. If a rental home has an enclosed subfloor, it must have a ground moisture barrier if it's possible to install one.
- ▶ **Draught-stopping** – Rental homes must have no unnecessary gaps or holes in walls, ceilings, windows, floors, and doors that cause noticeable draughts. All unused chimneys and fireplaces must be blocked.

All private rentals must comply with the insulation requirements by 1 July 2019. From 1 July 2021, all private rentals must comply with the remaining standards within 90 days of any new tenancy. There are different deadlines for other types of rental accommodation including boarding houses. Other statutes that a landlord needs to be aware of include the Health and Safety at Work Act 2015 and the Building Act 2004.

We would recommend you speak with a person experienced with these matters and perhaps arrange for a property manager to undertake an appraisal of the property **before you rent out the property (or if you are buying to rent, before or as a condition of your offer)** so you



## The Overseas Investment Act

On 22 October 2018, changes came into force in relation to the Overseas Investment Act 2005 (**OIA**).

One of the main changes was that residential land and lifestyle land has been brought into the definition of sensitive land.

Whether you can buy residential or lifestyle land now depends upon your residency status in New Zealand (or that of the person you are buying the property with – see *spousal exemption* below). There are 3 basic categories:

- ▶ You can buy residential land and lifestyle land without the consent of the Overseas Investment Office (**OIO**) if:
  - ▶ you are a New Zealander, Australian or Singaporean;
  - ▶ you have a New Zealand, Australian or Singaporean Permanent Resident Visa and have lived in New Zealand for at least 183 days in the past 12 months; or
  - ▶ you have a New Zealand Resident Visa and have lived in New Zealand for at least 183 days in the past 12 months.
- ▶ You need to apply for consent/exemption from the OIO to buy one home to live in if:
  - ▶ You have a New Zealand Permanent Resident Visa or Resident Visa and have **not** lived in New Zealand for at least 183 days in the past 12 months; or
  - ▶ You have an Australian or Singaporean Permanent Resident Visa and have **not** lived in New Zealand for at least 183 days in the past 12 months.
  - ▶ You **cannot** buy residential land or lifestyle land if you don't have a Resident Visa.

It generally isn't enough to hold a Work, Student, Visitor or Working Holiday Visa.

There are a few exemptions available. The main exemption is what is known as the *spouse or partner exemption*. If you are a couple and one of you fulfils the requirements and the other does not, then the other person can "piggy back" off that right and does not need to seek consent.

If you do need the consent of the OIO to purchase a property, you will need to indicate this on any offer that you make on a property. We can assist you with the application process.

## Selling a Property

There are so many decisions you need to make when selling a property – from the type of sale you'll hold to weighing up the pros and cons of different offers from potential purchasers.

While a lot of those decisions have to be yours, our Property Team can help you understand what all the different options mean and how they work for you and your goals.

*“our Property Team can help you understand what all the different options mean and how they work for you and your goals.”*



## Real Estate Agent or Private Sale?

When selling a property the first decision you have to make is do you want to employ a real estate agent to sell the property for you, or do you want to sell the property privately yourself?

An agent normally has good knowledge on the local area and the skill to manage the sale process for you including negotiating with any potential buyers where necessary. You pay an agent a commission for their help in selling your property. If you sell the property privately yourself, you won't pay commission to the agent but you will need to manage the sale process yourself including open homes, advertising etc.

You'll be working closely with your agent at an emotional time so it's important you choose an agent you get on well with, you may know an agent from a referral from a friend or you may have an agency you particularly want to work with, or you may want to use the same agent who sold you the property. It's quite normal to meet with multiple agents to find someone who feels right to you.

If you decide to employ an agent to help sell your home, you'll need to sign an agency agreement with them. We can review this for you before you sign it and help you understand what it means as an independent party.

### ***Determining Price***

You may be wondering how you determine what your property is worth. Most homeowners may have some idea what they might get, but there are a lot of variables in the market and it's

not always easy to find other properties to compare to. There are a couple of ways you can gauge this – asking a local agent to undertake a current market appraisal of your property (they often do this for free) can be a good start. You can employ a registered valuer to provide you with a valuation, which they will charge a fee for. You can also do your own research online to find out what properties near to yours sold for – there are some websites that specialise in providing this information, some are free and some charge a fee so be sure to check they are up to date for recent sales. You can also look at the rateable value of your property – this is the value the local authority uses to determine the rates payable on the property – this is unlikely to be market value but it's something a buyer may use to decide how much to offer.

How flexible you are on price may also determine what type of sale you will use to sell your property.

### ***Type of Sale***

There are different ways you can sell your property, see page [x] for more information on the different types. Your agent will help you decide which method you wish to use. There are many factors that go into this decision such as the area you're selling in, how quickly you're looking to sell and whether there are any major issues with the property. An agent can also advise you of things you can do to the property to increase its appeal/saleability e.g. some minor repairs, dressing the house etc.



## Sale & Purchase Agreements

Whether you look to sell your property privately or via an agent, you will need a sale and purchase agreement, tender agreement or an auction contract (depending on the method you choose). If you sell privately, your lawyer can prepare the draft documentation for you, if you sell via an agent, the agent will normally prepare the draft agreement/contract. It's always a good idea to get your lawyer to review the agreement and advise you on it as well.

*"If you sell privately, your lawyer can prepare the draft documentation for you, if you sell via an agent, the agent will normally prepare the draft agreement/contract."*

The standard form sale and purchase agreement includes a number of obligations you're required to comply with including:

- ▶ Keeping the property insured until settlement
- ▶ Allowing the purchaser access to carry out a pre-settlement inspection (except where the property is tenanted where there are different provisions involved)
- ▶ Providing items (chattels) in reasonable working order (except where being sold on an "as is, where is" basis)
- ▶ Warranting that all alterations carried out to the property had local authority consent where required and where appropriate a Code of Compliance Certificate was obtained.

### Conditions

When you receive any offers, your lawyer can talk you through the effect of any conditions or clauses included by a potential purchaser. See page [x] for more detail on the common conditions that purchasers may include.

A purchaser may also might want to include a clause whereby you agree (at your own cost) to repair certain things They may also request that a certificate of acceptance from the local authority be obtained for work/alterations at the property where consent was not obtained prior.

If the purchaser is also in the process of selling

their own home it's common for their offer to be conditional on the sale of their property.

Before accepting an offer with any such clauses, it's important that your lawyer review the wording for you. You need to ensure you can meet any requirements imposed in the timeframes given.

*What conditions or clauses may you want to include as a vendor though? This depends on the circumstances of your sale, but you may wish to consider:*

### Better offer clause/cash out clause

this gives you the right as the vendor to say to the purchaser that you've received a better offer for the property. This doesn't necessarily mean a better price but it could be unconditional or a settlement date that works better for you. Once this clause is activated, the purchaser has a few days (normally anything between 3-5 working days) to declare their offer unconditional or you have the right to cancel the agreement and move forward with the other offer.

### Defective title

If you are selling a cross lease property and there is a defect in title in relation to the flats plan, we would recommend including a clause confirming the purchaser is aware of this and can't raise any requisitions on this.

### As is, where is

Certain items (chattels) included with the sale of the property are sold on an "as is, where is" basis, meaning that you don't have to put them into reasonable working order for settlement, they're sold to the purchaser in their current order.

As with purchasing, there's a number of different conditions you can put on the agreement, so make sure you discuss any questions or concerns you have with your lawyer who can advise you on what may work for you.



## Disclosures

We are often asked what by vendors what they need to tell (or disclose to) potential purchasers about a property when selling it. The bottom line is that you need to disclose any defects you are aware of, big or small.

Your agent can't disclose any defects unless you consent to them doing so. That said, licenced agents have clear obligations not to mislead a vendor or potential buyer, or withhold any information, so if you do not consent to the disclosure of a defect the agent will be required to stop working for you.

While it's not up to the agent to uncover any hidden defects in a property, they must tell any prospective buyers what they do know. Under the Real Estate Agents Act 2008, if licensed real estate agents suspect that a property may have a defect then they are obliged to ask the seller about it, or advise potential buyers of any risks.

As part of the pre-sale process you need to consider whether you wish to rectify any issues before putting the property on the market, before settlement or simply wish to disclose to a potential purchaser but don't wish to rectify beforehand (recognising the impact this could have on any offers). Certain issues will cause more problems than others e.g. unconsented alterations after 1 January 1993 can be problematic where a potential buyer is obtaining mortgage finance.

If you do not disclose a defect to a purchaser or mislead a purchaser then you could be liable for loss or damages caused to the purchaser because of this. So while it might be tempting to keep it to yourself, you're much better to be safe than sorry!

*"If you do not disclose a defect to a purchaser or mislead a purchaser then you could be liable for loss or damages caused to the purchaser because of this."*

## Tenants

It's incredibly important that if you are selling a property which is tenanted and you're selling it with vacant possession, you serve the correct notice on the tenants to ensure you can meet the settlement date detailed in the sale and purchase agreement. You will also need to deal with the bond etc.



## What Happens Between Going Unconditional and Settlement Day?

If you're using a real estate agent, they are required to hold any deposit payable by the purchaser for 10 working days from receipt. The deposit can be released to you before the 10 working days have expired so long as the purchaser agrees to this. Practically, the agent will send the deposit **less** their commission to your lawyer's trust account, who will send it on to you (unless they need to retain it for another property you are purchasing).

You need to keep in mind that circumstances may arise where the deposit becomes refundable, for example if the building burns down prior to settlement. In this case, your obligation to the agent to pay commission is likely to still stand. An uncommon scenario but one to be aware of nonetheless!

If you have a mortgage secured over your property, your lawyer will contact your lender and ask for their authority to discharge the mortgage from the title (subject to repaying the mortgage). We normally receive an indicative figure prior to settlement which we will send to you for you to check but your lender is only able to provide us with the final figure to repay to them on the morning of settlement. When we receive this, we'll check with you that this figure is correct from your perspective before paying it.

The purchaser is entitled to carry out a pre-settlement inspection prior to settlement. They normally do this 1-3 working days prior to settlement (see page [x] for more information on this). Under the terms of the standard form sale and purchase agreement, you are required to provide any items included with the sale (except where sold on an "as is, where is" basis) in reasonable working order and are required to remove all rubbish from the property.



*"If you're using a real estate agent, they are required to hold any deposit payable by the purchaser for 10 working days from receipt. "*

## Tax Liabilities On The Sale Of A Property

We are not tax experts or financial advisors, so therefore recommend you speak to a tax expert or an accountant in relation to any tax liability that you could incur on the sale of your property. However, there are some basic things that you need to be aware of when selling your property:

### ***Bright-line test***

If you entered into an agreement to purchase residential property on or after 29 March 2018 and sell it within 5 years, you'll need to consider if it is taxable under the bright-line test (If a property was purchased on or after 1 October 2015 through to 28 March 2018, the bright-line test will look at whether the property was sold within 2 years).

Properties are excluded under the bright-line if the property was your main home, transferred as part of an inheritance or transferred to you as an executor/ administrator of a deceased estate.

Looking at this is part of our standard procedure when working with you to sell your property, so we can help you to figure out if you have any potential tax liabilities when selling.

### ***Residential land withholding tax (RLWT)***

on 29 March 2018, the sale of New Zealand residential property by an offshore RLWT person may now be required to have RLWT withheld if it is sold within 5 years of purchase. This will only apply to properties where an agreement to purchase was entered into on or after 29 March 2018.

RLWT will therefore apply if:

- ▶ a sale amount is paid or payable on or after 1 July 2016, and
- ▶ the property sold is New Zealand residential land, and
- ▶ the seller:
  - ▶ has purchased the property on or after 1 October 2015 through to 28 March 2018 inclusive, and owned the property for less than two years before selling, or
  - ▶ has purchased the property on or after 29 March 2018 and owned the property for less than five years before selling, and
  - ▶ is an offshore RLWT person.

If you want some more information on if this might apply to you we will be able to help you with a basic checklist to determine your RLWT situation.

### ***Regular pattern***

if you have a “regular pattern” of transactions in respect of buying and selling residential property, you may not be able to utilize the “main home” tax exemption and thus may be liable for tax. Whether you have a regular pattern of transactions that will mean you cannot use the exemption will depend upon the number of similar transactions and the intervals of time between them. The IRD has advised that it will be a matter of fact and degree whether you have a regular pattern of such transactions.

## What happens On The Day Of Settlement?

Once you're through all the negotiations and conditions, it's now time to wait and prepare for settlement day. If you're selling the home you live in you'll have lots to prepare with organising movers, changing over utilities and updating addresses. Once settlement day comes, your lawyer will handle the process of the transaction for you. The main steps that you can expect on the day of settlement are:

- ▶ If there is a mortgage to be repaid, a few days before settlement your lender will indicate to us the amount to be repaid. We will receive a final figure on the day of settlement, which we will check with you is correct. As part of the sale we need to 'discharge' the mortgage from the property's title, so if the amount from the sale of the property is not enough to cover the mortgage you will need to transfer further funds for that (or arrange another mortgage). You would usually know this in advance.
- ▶ Once that figure is confirmed we will be able to provide a letter of undertaking to the purchaser's solicitor – this letter is like a 'promise' that when they pay the settlement money over, we will release the property to them.
- ▶ Once we receive the settlement money into our trust account, we 'release' the property with Land Information NZ so that the purchaser's lawyer can register it in their name.
- ▶ We'll let you and the agent know settlement has occurred and the agent can release the keys to the purchaser.
- ▶ We will repay the loan money to your lender and pay any necessary rates or other bills associated with the property.



*"Once settlement day comes, your lawyer will handle the process of the transaction for you."*



## Protecting Your Investment

A home is likely to be the biggest purchase any of us will make. At any stage of your home-ownership cycle it's advisable to get a 'legal health check-up' done to ensure that your affairs are in order and will protect your investment for years to come.

Here are the main ways that you can put some legal protection in place. If you're ever unsure or if your (or your family's) circumstances ever change then you should review what will work best for you.

*"A 'legal health check-up' is done to ensure that your affairs are in order and will protect your investment for years to come."*



## Relationship Property Agreements

Relationship property agreements, also known as contracting out agreements, are a tool that you can use to protect your property from any future potential claims made under the Property (Relationships) Act 1976.

The Act gives little protection to pre-relationship assets and with few exceptions, provides for the equal split of all assets held by a couple (whether jointly or individually) on their separation.

The only reliable way to effectively protect pre-relationship assets is by having a relationship property agreement in place.

You and your partner should consider entering into an agreement if:

- ▶ One or both of you have been in a previous failed relationship;
- ▶ One of you brings substantially more wealth to the relationship;
- ▶ There is an expectation of a substantial third party gift or inheritance to one of you;
- ▶ One or both of you have children from a previous relationship; or
- ▶ One or both of you has an interest in a third party trust, partnership or company.

Depending on your circumstances there will be a number of things that you may want to include in such an agreement but the first things to consider are:

- ▶ What property is to be owned together and in what shares;
- ▶ What property is to remain as 'separate property';
- ▶ Any future property or inheritance that should remain as 'separate property';
- ▶ What should happen on the death of either of you; and
- ▶ How the relationship property should be dealt with on separation.



## Wills

Your will is probably the most important legal document that you will ever sign. This one document ensures that your assets and the people and things you love are taken care of after you're gone.

It can be very difficult to think about what we want to happen to ourselves and our assets when we die. While it's unpleasant, getting your will sorted out helps to relieve financial and emotional strain and provide guidance at a time when your family needs it the most.

No matter the circumstance, having a will makes sure all of your wishes are understood when you pass away, as well as outlining to your loved ones your funeral wishes. If you're in the position where a will isn't in place, the law determines how your assets are divided, who they go to and what happens to the people who are depending on you, so it's very important to have one.

If you don't have a will, we highly recommend sorting that out when you purchase your first home.

### ***What if I don't have a will?***

To die without a will means that you die 'intestate'. If this happens, your personal assets ('estate') will be distributed in accordance with the provisions on the Administration Act 1969. Many people mistakenly believe that this will result in all of their assets going to their spouse or partner. However, this is often not the case. For example:

- ▶ If you are survived by your spouse/partner and you have a child/children, then your spouse/partner will receive all of your personal chattels; \$155,000; and 1/3 of what is left. Your children will be entitled to the remaining 2/3; and
- ▶ If you are survived by your spouse/partner and you have parents who survive you, then your spouse/partner will receive all of your personal chattels; \$155,000; and 2/3 of what is left. Your parents will be entitled to the remaining 1/3.

We recommend that you review your will every two years or so. In particular, if you have entered into marriage; you have had children; your relationship has dissolved; you have purchased new property; or your wishes have changed, then it is important that you update your will.



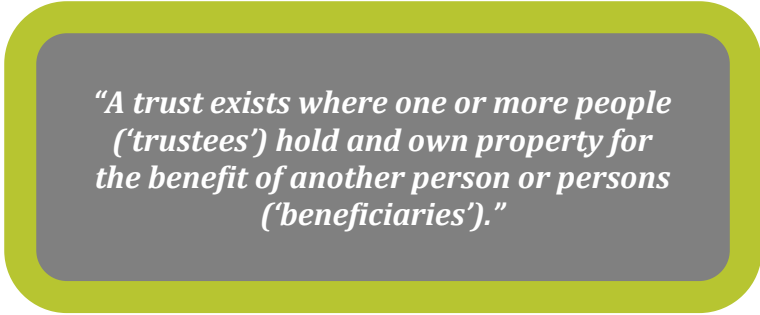
## Family Trusts

Family trusts are extremely popular tools for protecting your assets both during your lifetime and after.

You will have worked hard to purchase a property for the benefit of yourself and your loved ones. However, even with the best of intentions, situations can arise which may place these assets at risk. A family trust can be tailored to your family's needs and goals, they are a flexible and enduring structure with which to organise and manage succession planning affairs.

A trust exists where one or more people ('trustees') hold and own property for the benefit of another person or persons ('beneficiaries'). A family trust is a trust set up to benefit particular members of a family.

It is estimated that one in every ten people in New Zealand has a trust and we believe that they are something that every Kiwi family should consider.



*"A trust exists where one or more people ('trustees') hold and own property for the benefit of another person or persons ('beneficiaries')."*

### **Benefits of having a trust**

- ▶ Providing a credible, professional and independent structure for future administration and distribution of your estate to loved ones.
- ▶ Preserving assets for the continued use and enjoyment of family (e.g. the family home) and the ability to cater for any special needs of a loved one (e.g. a child with a disability).
- ▶ Confidentiality and anonymity regarding ownership of assets, as family trusts are not publicly registered and therefore can be kept confidential.
- ▶ Possible tax planning benefits.
- ▶ Adding complexity to the structure of your affairs, making it more difficult for any future claimant to access certain assets and providing protection from any future relationship property and creditor claims.
- ▶ General flexibility to deal with law changes such as protection against various forms of wealth tax that may be introduced in the future (ex. death duties or inheritance tax).

We're a technology savvy office and operate on the basis that quality legal services should be accessible and affordable for everyone. We can discuss with you what your family's goals are and offer a number of fixed price packages to meet your needs.



## Enduring Powers of Attorney

Have you ever wondered who would look after your affairs if you weren't able to? Who would pay your bills, look after your bank accounts and deal with your home? Who would make decisions about your personal care if you weren't able to communicate your wishes? An Enduring Powers of Attorney operates to give a person or persons of your choice the right to act legally on your behalf in respect of these matters.

Without this document, the selected person wishing to make legal decisions on your behalf must apply to the Court under the Protection of Personal and Property Rights Act 1998 ('PPPR Act'). This process takes time, is expensive, and may result in the appointment of an attorney that you would otherwise not have chosen. Not to mention that your wishes may not be known and therefore won't be able to be followed. This can be prevented if you we assist you and your attorney to put together your EPAs, for both your property, and your personal care and welfare.

Appointing an attorney places significant power and responsibility on that person's shoulders. It is vital that you choose someone who is capable and willing to perform the tasks required. Most importantly your attorney must be someone that you trust to handle your affairs.

*"An Enduring Powers of Attorney operates to give a person or persons of your choice the right to act legally on your behalf in respect of these matters."*



### ***EPA in relation to property***

An EPA in relation to property allows the appointed attorney to make legal decisions in respect of your property (i.e. your land, houses, shares, bank accounts and all other possessions and debts). You may also wish for the EPA to have effect immediately (i.e. while you are still capable as well as after you lose mental capacity) or only upon the loss of your mental capacity. Depending on your circumstances, an attorney may need to sell property, obtain a mortgage, pay for your medical care and/or manage your business, so it is not a document that should be entered into lightly.

### ***EPA in relation personal care & welfare***

An EPA in relation to personal care & welfare allows the appointed attorney to make legal decisions in respect of your personal care, but only after you have lost your mental capacity. Despite entering into an EPA in relation to personal care & welfare, the law does place some restrictions on the attorney. For instance, they cannot enter into marriage or adoption on your behalf or refuse medical treatment intended to save your life.

### ***Safeguards***

Because the powers conferred on the appointed attorney are so significant, there are a number of safeguards that have been provided for in the PPPR Act to ensure that the powers are not abused. These include:

- ▶ Strict requirements are to be met to establish the loss of mental capacity. You may specify in your EPA which medical practitioner you wish to establish the loss of mental capacity.
- ▶ The PPPR Act requires an attorney to promote your best interests as paramount.
- ▶ More than one attorney may be appointed to act either jointly or separately in respect of an EPA in relation to property. NB: Only one attorney may be appointed for an EPA in relation to personal care & welfare.
- ▶ You may require an attorney to consult with or provide information to other named persons before making their decisions.

*“Appointing an attorney places significant power and responsibility on that person’s shoulders. It is vital that you choose someone who is capable and willing to perform the tasks required.”*



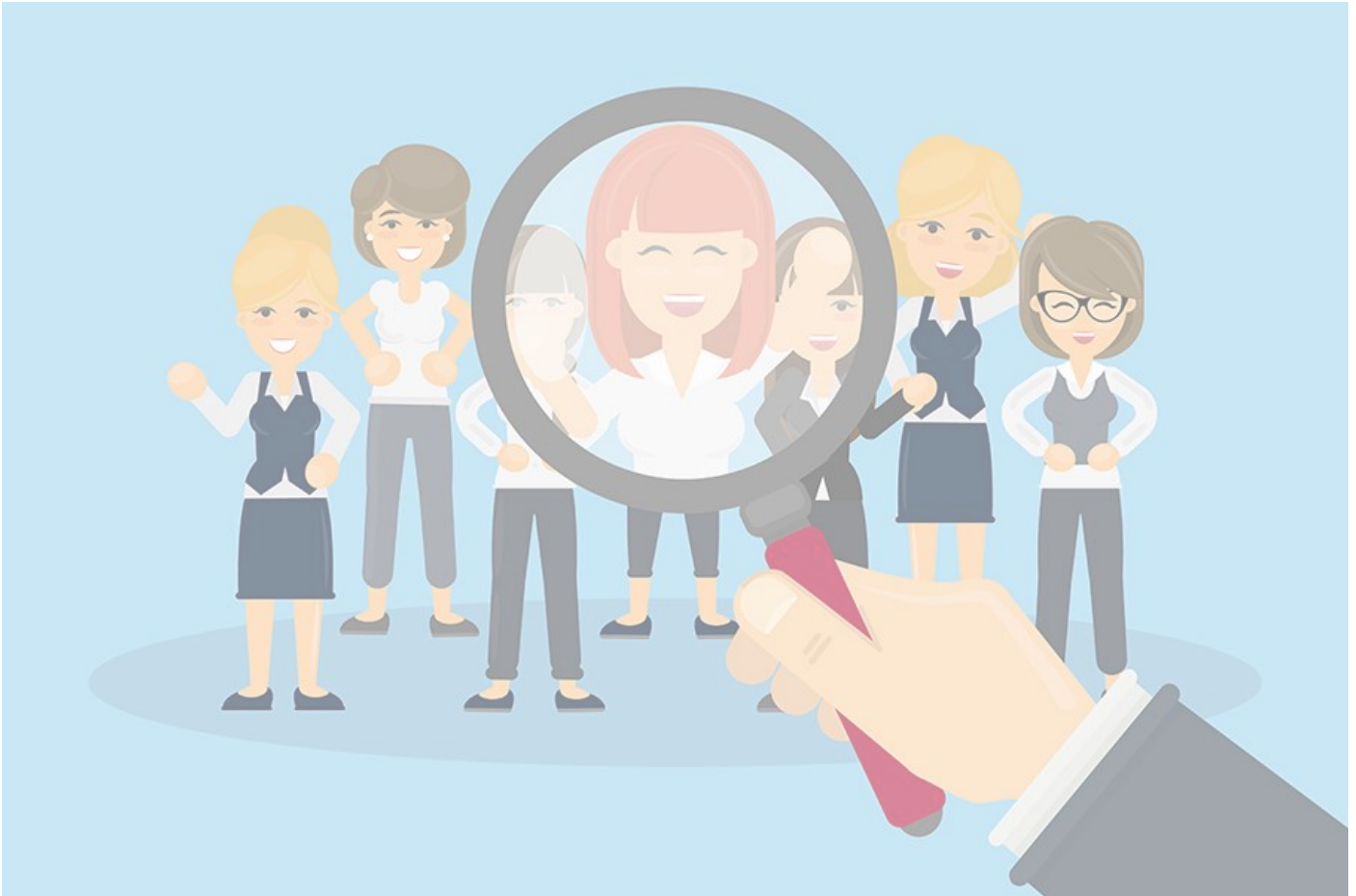
# Anti-Money Laundering/Client Due Diligence

The purpose of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**Act**) is to detect and deter money laundering and the financing of terrorism. 'Money Laundering' is a term for the process of disguising ('laundering') the illegal origins of the money from criminal activity. People who finance terrorism use similar methods to disguise their identity and the movement of money to terrorist organisations.

All law firms, banks, real estate agents and a number of other agencies handling money for others are required to report to the Department of Internal Affairs on any suspicious financial transactions.

This means that we are legally obligated to positively identify our clients (and sometimes related individuals and/or the source of their funds) before we begin acting on any instructions from you. This ID verification isn't just limited to new clients – even if we've known a client for years we would still need to request this information, so please don't be offended or discouraged if we suddenly ask you to prove who you are. It's not personal; we would even have to ID our own mothers!

Once we hold a record of this information, we will not need to ask you for it again until the form of identification you have provided has expired.



Wakefields Lawyers appreciates your time in reading over our Property Guide. We hope this guide helps you whether you're buying or selling a property. Wakefields Lawyers is here to make this exciting, but at times stressful process easy for you. As mentioned before, our dedicated property law team have seen it all before and can help you with anything such as guidance on your best offer, applying for your Kiwi saver funds, how to choose a real estate agent and what to do when a potential purchaser makes an offer with unusual conditions.

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