



New Zealand Residential Property Sale and Purchase Agreements Guide

Important things to know:

- A sale and purchase agreement is a legally binding contract.
- The real estate agent is working for the seller of the property, but must treat the buyer fairly.
- You need to understand the difference between a conditional and an unconditional agreement.
- You can negotiate the conditions you require in a sale and purchase agreement.
- It is recommended that you get your lawyer to check the sale and purchase agreement before you sign it.

Introduction

Buying or selling a home is one of the biggest financial commitments you will ever make. There are several relatively complicated stages to negotiate and there are a number of things to look out for.

In New Zealand there are several ways to sell and buy a home, including:

Auction,

Tender,

Advertised/fixed price or

By negotiation

Regardless of the method used you should always have a written sale and purchase agreement.

This is a guide to the Sale and Purchase Agreement that you will be asked to sign if you wish to buy or sell residential property. It is a legal document that forms the contract between the buyer and seller of property. This guide also tells you where you can get more information, how to make complaints and what to expect from an agent. This guide only relates to the sale of residential property.

This guide is just that - guidance. You should not rely on it for legal advice. It's been prepared by the Real Estate Agents Authority, a crown entity established by the Real Estate Agents Act 2008.

Whether you are a buyer or seller, the agent* must provide you with a copy of this guide before you sign a sale and purchase agreement and ask you for written acknowledgement that you received it. If you require more information you can consult your lawyer.

*Real estate agent or agent are general terms that refer to an agent, branch manager or salesperson

Why do I need a sale and purchase agreement?

A sale and purchase agreement provides certainty to both the buyer and the seller as it sets out in writing all the agreed terms and conditions. It is a legally binding agreement.

What is negotiation?

Put simply the process of negotiation starts when a buyer asks the real estate agent selling the property to take an offer to the seller. The agent prepares a sale and purchase agreement that includes the price and any conditions that the buyer wants to include. The agent takes the sale and purchase agreement to the seller and if it's accepted, the seller will sign it and the agreement becomes binding. If necessary, the seller and buyer can negotiate, through the agent, until the buyer and seller agree on a price and any conditions.

What's important?

- You should have a written sale and purchase agreement.
- Have your lawyer check the sale and purchase agreement before you sign it.
- The buyer and seller can make changes to the price and conditions during the negotiation process.

The sale and purchase agreement

A real estate agent will probably use one of two forms of sale and purchase agreements:

- Auckland District Law Society and Real Estate Institute of New Zealand form (the ADLS form).
- Real Estate Institute of New Zealand form (the REINZ form).

What's important?

Have your lawyer check the sale and purchase agreement before you sign it.

As currently drafted, there are some key differences between the REINZ and ADLS sale and purchase forms that you need to be aware of. Your lawyer can explain the differences to you and may advise you to use one of these forms in preference to the other.

Your sale and purchase agreement should include the following:

- the name(s) of the seller(s) and buyer(s).
- the address of the property.
- type of title (freehold, leasehold etc.)

- the chattels that are to be sold with the property (e.g. whiteware, drapes, television aerial etc.)
- the price.
- the rate of interest that the buyer must pay on any overdue payments.
- the deposit that the buyer must pay.
- the date on which the agreement will become unconditional if there are conditions.
- the settlement date (the date the buyer pays the remainder of the amount for the property, usually the day when the buyer can move into the property).
- any conditions the buyer wants fulfilled before the contract is agreed.

Conditions in the document

Buyers will usually want to have some or all of the following conditions fulfilled before the contract is agreed.

- Title search - this is usually done by the buyer's lawyer to check who the legal owner of the property is and to see if anyone else has any claim over the property.
- Finance - this refers to the buyer arranging payment, normally a loan, by a specified date.
- Valuation report - normally required by a lender, this report is an estimate of the property's worth on the current market.
- Land Information Memorandum (LIM) report - provided by the local council this report provides information on things such as rates, building permits and consents, drainage and planning.
- Building Inspection report - these are becoming more common and help determine how sound the building is and what might need to be repaired.
- Engineer's report - similar to the above but more focused on the section and structure of the property.
- Sale of another home - the buyer may need to sell their home in order to buy another.

General or Standard Clauses

A sale and purchase agreement also includes clauses that set out general obligations and conditions. It helps to understand what these mean as you will need to comply with them. Examples may include:

- Access rights - what access the buyer can have to inspect the property before settlement.
- Default by buyer - the buyer may have to compensate the seller e.g. interest payments.

- Default by the seller - the seller may have to compensate the buyer e.g. accommodation costs.
- Insurance - ensuring the property remains insured until settlement date and outlining what will happen if any damage does occur.

Your lawyer should explain these clauses. If you want to make changes to any of these clauses you should ask your lawyer to do this before you sign the agreement.

When does the buyer pay the deposit and the full amount?

When the seller and buyer have agreed on all aspects of the sale and purchase agreement a deposit (usually of 5 -10% of the sale price) is paid to the real estate agent by the buyer. This money is initially held in the agent's trust account.

The agent usually takes their commission from the deposit when the contract becomes unconditional. This is agreed between the seller and the agent as set out in the Agency Agreement*. The seller should make sure that the deposit is large enough to cover the agent's commission.

The buyer pays the remainder of the amount for the property on the day of settlement, usually through their lawyer. The settlement day is usually the date when the buyer can move into the property.

Before the sale and purchase agreement becomes unconditional and if the sale doesn't go ahead because some of the conditions weren't met, the buyer may be entitled to have the deposit refunded in full.

However once the offer becomes unconditional you won't be able to get your deposit back if you change your mind for any reason.

Conditional refers to the sale and purchase agreement having a set of conditions that are to be met, such as the buyer's current house being sold, a building inspection being carried out, or finance being secured.

Unconditional refers to when all conditions in the sale and purchase agreement have been met. It's important to understand that when a sale and purchase agreement becomes unconditional it is legally binding and the transfer of ownership must take place.

* Refer to the Real Estate Agents Authority's Guide to New Zealand Residential Property Agency Agreements.

Can I cancel the agreement if I change my mind?

You cannot cancel a sale and purchase agreement just because you have had second thoughts about buying or selling the property concerned.

In general, once you have signed a sale and purchase agreement and the conditions set out in it have been met, you will have to go ahead with the sale/purchase of the property.

What if my agent or someone related to them wants to buy the property?

If your agent, or anyone related to them, wants to buy your property, by law, they must get your written consent to do this.

More information on this situation can be found in the Conflict of Interest Fact Sheet or by calling 0800forREAA (0800 367 7322).

What can I expect from an agent?

The agent works for and is paid by the seller. The agent must therefore carry out the seller's instructions (as set out in the agency agreement) and act in the interests of the seller. Agents also have clear responsibilities to buyers even though they are representing the seller.

When you are buying a property ask the agent questions. Be specific about what you want to know.

All agents are bound by the Code of Professional Conduct and Client Care, issued by the Real Estate Agents Authority. Under the Code, agents have to deal fairly and honestly with all parties.

The Code sets the minimum standard expected from agents and acts as a reference point for discipline through Complaints Assessment Committees that the Authority administers.

A copy of the Code of Professional Conduct and Client Care is available from here or by calling 0800forREAA (0800 367 7322).

Does a buyer have to use an agent to buy property?

It is up to the seller to decide if they use a real estate agent to sell their property. They may decide not to use an agent and to sell privately. If the seller is using an agent(s) the buyer will need to use one of these agents to buy the property.

Whatever you do it's really important to use your lawyer at each step.

Who pays the agent?

Real estate agents in New Zealand work on behalf of a seller and it is the seller who pays the agent. An agent who is marketing a property on behalf of a seller cannot ask a buyer to pay for his or her services.

Because the agent is engaged and paid by the seller the agent does not and cannot have the same duty to a buyer as they do to a seller.

What is a buyers' agent?

Buyers' agents are common in some other countries. They are agents who are employed by a buyer to locate a property and sometimes to negotiate the purchase on the buyer's behalf. If you employ a buyers' agent you should still have a written agency agreement and will have to pay for their services.

More information on buyers agents can be found in the Buyers' Agent Fact Sheet or by calling 0800forREAA (0800 367 7322).

What if there's a problem?

If you are concerned over some aspect of the service you received from a real estate agent you should in the first instance discuss any concerns you have with the agent or their manager. Agents are required to have in-house complaints resolution procedures.

If this does not work or if you do not wish to go through this channel you can complain directly to the Real Estate Agents Authority.

More information on the Authority's complaints process can be found on the website www.reaa.govt.nz or by calling 0800forREAA (0800 367 7322) and requesting a copy of the How to Make a Complaint brochure and/or the Complaint Form.