



Hayman Lawyers
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Purchasers general advice

Purchasing a house – basics of the agreement

To assist you, below is some general advice on sale and purchase agreement which is not tailored to your particular circumstances, the particular property or the particular sale and purchase agreement you are looking at.

Deposit

The deposit in the agreement is the cash you can pay as a show of good faith, not the amount of equity the bank need you to have.

The deposit is recorded on the front page. You can choose to put a percentage or a dollar figure. We recommend that the deposit is payable upon the agreement becoming unconditional (not upon signing). If it is not paid on time the vendor can cancel the agreement or charge penalty interest on the unpaid deposit.

You should have the deposit funds available when you submit the offer. It should not be more than amount you can pay, for example \$5,000, if that is the funds you have available.

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Settlement date

The settlement date is the date where you pay the balance of the price and receive ownership of the property.

You can pick a certain date (must be a working day) or have settlement be "x working days after this agreement becomes unconditional".

If you are not using a Kiwisaver first home withdrawal then we recommend there be at least 10 working days between the unconditional date and settlement. Any less than 5 working days means there is a high chance you will default on the settlement date and incur penalties.

If you are using the Kiwisaver first home withdrawal then we recommend settlement be at least 16 working days from the unconditional date as they will not process applications until the agreement is unconditional (when the funds are being used for settlement) and some providers can take up to 15 working days to process the application.

The Kiwisaver first home withdrawal application should be carefully checked for the requirements and time frames. Some providers offer pre approval and we recommend this be obtained if possible (some only give you an estimate and say they expect you can withdraw around that amount as at the date of that email as long as you meet certain requirements, check that email and the application carefully).

KiwiSaver

If you can get pre approval from your Kiwisaver provider then we strongly recommend you do. You should carefully check the criteria to make sure you meet it. See also our comments on settlement date above and find further general information in "Kiwisaver for a first Kiwi home".

Conditions

It is up to you as the purchaser to do your own due diligence. This can be by doing all investigation and/or inquires prior to making an offer OR by adding conditions into the agreement.

We recommend you ignore the conditions on the front of the agreement if they are there (clause 9 conditions) and add any conditions you want to the further terms of sale.

Some common conditions are: finance, insurance, LIM approval, valuation, electrical report and meth testing.

A due diligence clause could be added if you are not sure what reports you want to get. A due diligence condition will catch a building report and LIM.

If you need finance and insurance we strongly advise that those conditions be added. Finance and insurance should always be their own conditions.

We strongly recommend you have the insurance condition so you can check the cost of insurance and that you get insurance. Since the earthquakes it can be very difficult or costly to get insurance and even if the property is currently insured there is no guarantee the current insurer will also insure the property for you.

If you are getting a mortgage, we strongly recommend that, unless you have an unconditional written offer of finance for the property, you include a finance condition.

Time frame for conditions

Generally, we see people put 10 working days. We recommend that it should be no less than 5 working days unless you are sure you will be able to approve the condition in that time. For example we have seen people put 1 working day for insurance as they have decided they want to get a verbal quote in writing.

General warnings about conditions

We warn that if something is not included as a condition and you later notice something, such as if you did not include a building report condition and discovered the property has asbestos in the ceiling, you would still be bound to proceed and have no right to complain. Also, if you confirm a condition, such as finance, and later find out you cannot get finance you will not be able to cancel the contract because you cannot get finance as you had already confirmed that condition. We can check the wording of any conditions for you.

LIMS/Council records

A key reason to look at LIMS/Council records is to check if work done was approved and signed off.

Any build or structural change (for example a new room added on or a sky light being added) should have received a permit if it was pre 1992 or a code compliance certificate (or certificate of acceptance) for anything done from 1992 onwards. If work did not get the relevant sign off then there could be issues with financiers and insurers.

There is an exemption for certain really old work which did not get a permit and is deemed an "an existing situation". If you noticed there was work that did not get a permit or code compliance certificate, then please contact us to discuss.

Chattels being sold with the property (Usually schedule 2 & 3)

Check these carefully. If a chattel is not written in the contract it is not included in the sale. A chattel is anything that is not fixed, for example a bed or a spa. If you do not want to buy any chattel written here you will need to cross it out and initial the change.

Front page (usually)

Make sure "and/or nominee" and "inclusive of GST (if any)" is not crossed out.
The full names of the purchasers should be recorded.

Signing

You should initial each page and sign on the specified page with the signature lines.

Changes and anything handwritten in

Anything handwritten in or amended/changed (such as writing in a chattel) must be initialled by everyone.

Warnings about reports provided by the vendor and/or agents

We note that if the vendor and/or agent has provided any reports that there is no contractual relationship between you and who gave the report (for example the council or the builder). Therefore, if there is something wrong in the report you will not have a claim against whoever did the report.