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BUYERS GUIDE & NOTES

So you're looking at purchasing a property in New Zealand? Congratulations. Below is a guide pointing out a few tips from a legal and conveyancing viewpoint, and as to who does what in this process. We trust that you'll find the content informative. If you require any further explanation, then we invite you to call us **(04) 233 9058** with any further queries you may have.

The contents of this guide refer to the commonly used, "Real Estate Institute of New Zealand and Auckland District Law Society Agreement for Sale and Purchase (Eighth Edition 2006 (2)". This is called "the standard agreement", or "the agreement" in this guide. The guide highlights a number of important areas of the standard agreement, and some other areas which may be of interest to you. There are of course legal agreements for sale and purchase other than the commonly used standard agreement.

*This Guide is not intended to be exhaustive or to take the place of legal advice. The guide is intended for general information purposes **ONLY - not as legal advice**. It should **NOT** be acted upon without specific advice related to your own particular and individual circumstances.*

1.1 Aspects of Title and Boundaries of your potential purchase

- a) The legal boundaries of the property are usually shown on a plan deposited at Land Information New Zealand ("LINZ") and also, on a much reduced scale, on the certificate of title to the property, (the "title"). We can obtain a copy of the title for you if requested. If the boundaries on the title or plan look different from those in real life, please let your lawyer know immediately.
- b) The title also shows any restrictions or interests which have been registered against the land.
- c) The title will also refer to any rights of way (or easements) giving access to, or running across, the land. These will usually be shown in more detail on the deposited plan at LINZ. It is wise to seek advice on such rights of way.
- d) Your Lawyer will discuss any title issues arising.
- e) The title to land is now a "virtual title", under the new computerised electronic system. You will only end up with a print out of the title, not an original copy as previously occurred.

1.2 Local Authority Requirements

- a) It is important to ensure that the regional and district plans published by the local authority do not prevent you from using the property as you want, (**planning wise**). (Existing residential houses are not usually a problem for existing residential use).
- b) You should check with the Planning Office of the local authority as to what the zoning of the property is, if not existing (urban) residential, and whether there are any restrictions or requisitions affecting the property. The district plan will contain much information about what you can, and cannot do. For example, it will specify any building or subdivisional restrictions which affect the property.
- c) You should also check the council's records to see:
 - i) whether permits were obtained to any previous extensions or alterations to the property, and whether an essential code compliance certificate was issued for the satisfactory completion of those works;

- ii) Please note - unpermitted fire places can invalidate insurance;
 - iii) if the council's records show the property as susceptible to slips, erosion, flooding, etc;
 - iv) whether there are any road widening or other works proposed in the area which may affect the property;
 - v) Any problems with toxic substances; and
 - vi) Any encroachments.
- d) There are two ways of obtaining this information. You can go directly to the council, or you can order a Land Information Memorandum ("LIM") from the council. Tip – find out the cost of a LIM and the time (delay) to obtain. Standard, prudent legal advice is that a LIM should always be obtained.
- e) A LIM should provide you with all the information the council has on the property, and identify any special features or characteristics of the land, including potential erosion, subsidence, slippage, or the likely presence of hazardous contaminants etc. which are not apparent from the district scheme or district plan, but of which the council is aware. It may also assist to identify any unauthorised alterations made to, or improvements on, the land by giving details of building and other consents previously applied for.
- f) The council makes a charge for a LIM. Solicitors are prudent to strongly recommend you obtain a LIM, whether or not the agreement you signed allows for/is subject to a LIM.

1.3 **Goods & Services Tax, ("GST")**

Usually Goods & Services Tax, (GST) is not payable on the purchase of a house for private occupation. This is not always the case. (For example if you buy a new house directly from the builder). The agreement will say on the front page whether the price includes GST, or whether it is payable in addition to the purchase price. If neither of the options are crossed out, the purchase price stated in the agreement will be "inclusive of GST". If GST is payable, then you should check the GST date as sometimes it can occur before settlement.

1.4 **Purchase of New Houses from Builder and Subdivision, (if applicable)**

- a) Where you are purchasing a new house directly from the builder, or a property in a subdivision which has not been completed, additional consideration may apply e.g. GST.
- b) If you are buying a new house or a property in a subdivision, you should tell your Solicitor advisor, before you sign the agreement, as your solicitor can suggest clauses to provide you with additional protection in these circumstances.

1.5 **Form of Ownership**

There are various matters to consider when deciding how you should own a property. Here are some of the options;

- a) **Joint Ownership** – this is where two or more individuals own the property. On the death of one party, the property passes to the survivor/s, irrespective of any provisions in a will. If you are in a subsequent relationship with children from a prior relationship, then you need to consider your situation and take legal advice with regard to inheritances.
- b) **Tenants in common** – this means you own a specified share in the property, either in equal or unequal shares. You can leave your share in the property to beneficiaries named in your Will; or (potentially) sell your share to (say) a third party.

- c) **Joint Family Home** – is designed to give some protection to a spouse and children from business debts of the other spouse. This is only available to “married” couples.
- d) **Family Trust** – can protect a major asset against creditors and other risks, and also provides an effective estate planning tool.
- e) **LAQC** – an ownership structure often used for rental properties – check current IRD position.
- f) **Unequal shares** - If you make unequal contributions to the purchase price, then it would be advisable to record the details in a Property Sharing Agreement. You should talk to your lawyer about this.

1.6 **Property (Relationships) Act**

Another important issue to consider is the possible impact of the Property (Relationships) Act. The provisions of the Act apply to all relationships in the nature of a marriage. In a relationship that last for 3 years a property will generally be divided equally on separation. Remember, you do not have to be living together for three years under the same roof for the Act to apply. This may affect you if you are in a relationship and own, or are buying, a property in your sole name, or in unequal shares. If that is the case, then you need a written Property Agreement with your partner.

Individuals are also at risk if they commence a relationship after buying a property. If that relationship lasts 3 years, the property may become “relationship” property and be divided equally on separation. Single people should seriously consider a family Trust owning their property, so as to protect against this risk. If a relationship commences subsequent to purchase, then you need a Property Agreement with you new partner to protect you.

2.1 **Starting the Process**

Once you have decided that you wish to buy a property, then the next step is to make an offer. If the property is being marketed by a real estate agent the agent will prepare an offer on your behalf, and after signature by you, present it to the seller. If there is no agent then it is normal for the buyers lawyer to prepare the offer.

2.2 **Offer**

Before you make an offer, you must decide on the following:

- The price to be offered, (“purchase price”). It is not disrespectful/highly recommended to bargain, as to the price, (tenders, as an example, are of course different). Your Lawyer can sometimes do this negotiating for you, if requested.
- How much the deposit will be? Normally between 5% and 10% of the purchase price.
- The settlement/possession date. The day you pay the purchase price and take possession of the property.
- Chattels/furniture to be included in the sale. You need to stipulate on the Agreement all chattels/furniture that you expect to receive as part of the purchase price. TIP - take photos if necessary, e.g. for valuable items especially.
- Conditions to be included in offer; (see below).

2.3 **The Agreement for Sale and Purchase – Legally Binding when Signed**

As noted, the standard agreement for sale and purchase is commonly, but not always, used. Commonly called the “ADLS 8th Edition”. This contains the terms the Parties agree are the contract/agreement for the sale. When you sign it, it is an offer by you to the seller to buy the property on the terms set out. Once accepted by the seller it is a legally binding contract. Neither party can withdraw from it, unless the conditions contained in the

contract have not, or cannot reasonably be satisfied, or in certain other circumstances, when the seller is in breach.

2.4 **Conditions**

When considering making an offer you need to decide whether you should include special conditions or not. The real estate agent or your lawyer can help you with these. Common conditions are:

- Your solicitor approving title - (say 5 – 7 working days)
- You obtaining satisfactory finance - (say 5 – 7 working days)
- You obtaining a satisfactory LIM Report – (allow sufficient time)
- You obtaining other satisfactory reports such as a building or valuation report - (say 5 – 7 working days)
- You selling an existing home – say (months).

The conditions will, as noted, have to be satisfied within a certain time period. It is the buyer's obligation to take all reasonable steps to ensure they have satisfied those conditions within that time period. If a buyer does not take such reasonable steps to satisfy the conditions, or there are insufficient reasonable grounds, then the buyer may not be able to withdraw from the contract if those conditions are not satisfied. The Buyer could in fact, be in breach of contract and forced to proceed with the purchase. You should discuss these matters with your lawyer.

2.5 **Confirmation**

On, or before, the date(s) of confirming the conditions, you will need to discuss with your lawyer whether those conditions have been adequately satisfied. If they have, the contract should/will be partially or finally confirmed. Your lawyer will advise the seller's lawyer and the real estate agent, if any, that the conditions are confirmed. Once that confirmation is given, then the contract is binding on both parties and enforceable by both parties.

2.6 **After Confirmation**

Once the contract has been confirmed by your lawyer, they will attend to the legal documentation, including any loan documentation and securities, to enable settlement to take place and for possession to pass to you on the settlement date. You will need to attend to practical aspects such as:

- Moving home
- House owner' Insurance – full replacement, inflation adjusted with an earthquake rider is strongly recommended
- Arranging service providers such as power, gas and telephone
- Advising people, e.g. authorities and organisations of your new address
- Booking a removal company, (if applicable)

2.7 **Insurance**

a) Insurance law changes from 1 April 2013 (new policies) – adopted so far by IAG, Vero, State, AMI, and NZI are all changing to "sum insured"/agreed indemnity value. Others are expected to follow.

- Need to know house m², adjust annually?
- Copy from (*online) table supplied/available from insurer.

- Alternatively it us our recommendation to employ a valuer to do a separate insurance valuation, (e.g. if house has unusual/expensive features – this is important).
 - **Please note – if you elect to use the insurance Company/online supplied table it has been estimated that 80-90% of people will be under insured.**
 - The Sum insured needs to also cover the demolition/site clearance (costs) of a badly damaged dwelling and associated costs.
 - Please note that the sum insured is NOT automatically the RV, purchase price, replacement cost etc. It's the agreed capped cost with your insurer.
 - The 'sum-insured' cover is the amount of protection your insurance policy/Company gives you. This caps the amount that insurers will have to pay out if your house needs to be replaced after a catastrophe.
 - To help, workout the sum insured for your house with online calculators like the one at [*http://need2know.org.nz/what-you-need-to-do/calculator/](http://need2know.org.nz/what-you-need-to-do/calculator/) have been developed for New Zealand conditions. They are reputedly a good place to start.
 - A valuation based insurance is the amount it would take to completely rebuild your home in the event of a disaster – including any demolition and removal costs that might be necessary before rebuilding can even begin. In most cases this is preferable.
 - The cost to rebuild will change every year due to building costs, inflation and rising house prices. It makes sense to do an annual review of the costs. You'll need also need to allow for any renovations you may have completed – if you redid the kitchen, bathroom, balconies, or added an ensuite.
 - You should therefore address the sum insured for your house annually. Your insurance Company probably won't.
- b) If the contract you have signed indicates that the property is at your risk from the date of the agreement, (which is unusual), then you will need to arrange insurance cover from the date of the Agreement. If the property is destroyed before the settlement date, then in these circumstances you may well have to complete the purchase. However, this is probably not so if insurance is the Seller's responsibility up until the settlement date, as is usual.
- c) You should also arrange insurance on your personal possessions.
- d) In the case of Cross Leases and Unit Titles, specific insurance obligations and provisions may apply.

2.8 Rates

- a) Rates are payable to the council each year, usually by instalment. The rating year runs from 1 July to 30 June. Rates are apportioned between buyer and seller as at the settlement date by the Solicitor of the Vendor. The seller is required to see that all general and water rates are paid up to that date and, if not, to give you a credit on settlement. Similarly, if the rates have been paid to a date after the settlement date, you will have to pay back your share of these overpaid rates to the seller, on settlement. The rates adjustments will be calculated by the Seller's Solicitor and are shown on the settlement statement. In some cases regional council rates are levied separately from the local authority's rates, and these will also be apportioned.

- b) Where your property is on a water meter, a special reading of the meter will be obtained by the Seller as at the settlement date, and the full amount due for all consumption to that date will then be paid by the vendor's solicitors.
- c) Your solicitor will take the necessary steps to advise the authorities of your interest (ownership) in the property. Generally no action is required by you, unless you wish to put in place direct debit or automatic payment arrangements etc with the local rating authority(ies).

2.9 Meeting with Your Lawyer

Your lawyer will provide you with a statement setting out the amount required by you to complete the purchase, including legal costs and any other expenses, e.g. LIMS, Mortgage discharge fees etc, additional advice. You will need to see your lawyer prior to the settlement date to sign any required mortgage/loan/authority to act documents, and to arrange payment of the amount/balance required from you. (This money, is to be in cleared and available funds, and should usefully be paid to Lawyer's Trust Account one (1) day before settlement). Also, please bring a current passport or drivers license to this meeting so as to legally establish your identity for the purposes of the legal transfer of the Property.

2.10 Pre- Settlement Inspection

The standard agreement provides that the buyer may inspect the property before the day of settlement to ensure that the property is still in the same condition as when it was first inspected, and that there are no missing or damaged chattels. A follow up inspection is sometimes available, to inspect any outstanding work. If there is a problem you need to notify your lawyer immediately.

2.11 Settlement, Possession and Keys

- a) The possession date shown in the agreement is the date when legal settlement takes place. This is the date on which you are required to pay the balance of the purchase price and any rates or other (rare) apportionments shown on the vendor's settlement statement.
- b) The property should be left vacant and clean and tidy for your occupation, and keys, remotes, security codes will be made available to your Solicitor, or from the agent, unless you advise your Solicitor you have made other arrangements with the seller. You should be very careful about taking possession prior to settlement, as in some circumstances this could involve the insurance risk passing to you. Seek advice.

2.12 Reporting

After settlement, your lawyer will provide you with a full report setting out the financial details of the transaction.

2.13 Miscellaneous Ownership - Cross Lease Titles

As against the more common - Fee simple/Freehold titles (if applicable)

Otherwise you may wish to skip Para 3.1 and 3.2. But please see Para 3.3 Final Notes

- a) If you are purchasing a property on a **cross lease title**, it is important to understand the ownership concepts involved.
- b) Cross leases are often used where more than one house is built on the same piece of land. In a cross lease situation, the freehold interest in the underlying land is owned in shares by the owners of each of the dwelling units (or flats) situated on, or intended to be situated on, the land. For example, if there are three flats on the land, the owner of each flat will typically own an undivided one third share in the fee simple (or underlying freehold title to the land).
- c) The cross lease then defines the areas of the underlying land which are subject to **exclusive occupation rights**, and those areas subject to **shared occupation**. These

areas are then shown on a "flat plan", which gives a diagrammatic perspective of the exclusive and shared use areas.

- d) The exclusive use areas usually include the "flat" and an area surrounding and immediately adjacent to the flat. Typically shared areas are common drive ways giving access to some or all of the flats. Without the cross lease and associated flat plan, it would be impossible to tell who is entitled to occupy which piece of land.
- e) Cross leases are usually for terms of 999 years at a peppercorn rental. The owners of the land are the landlords under the lease, and each flat owner is the tenant in respect of his or her flat. The lease, in addition to identifying those areas to which you are entitled to exclusive possession, sets out the terms and conditions under which you must occupy the flat, (unlike an "uninhibited" fee simple/freehold title).
- f) The standard form of cross lease places several restrictions on the owners of each flat. These may include, for example:
 - i) restrictions on alterations to the flat, or the erection of other buildings on the exclusive use area associated with it, without the consent of the other owners;
 - ii) restrictions on leasing the flat;
 - iii) restrictions as to the colours which may be used in repainting the flat;
 - iv) restrictions on keeping pets.

In addition the standard form cross lease contains provisions setting out:

- g) How the property is to be insured. In some cases each owner is required to take out insurance of his or her flat; in other cases all the owners (in their capacity as lessors) are required to insure all the flats in the development under a single policy, with each person meeting a proportionate share of the premium;
 - i) the obligations of the owners to maintain the common areas or those parts of the land and buildings which are not the responsibility of any particular owner;
 - ii) the maintenance obligations on each owner in respect of his or her flat;
 - iii) the procedure to be followed when there is a dispute amongst owners.
- h) All costs and expenses which are not the responsibility of any particular owner, (for example, maintenance costs relating to a common drive way), are usually shared on a "land share" basis, irrespective of the comparative value of the flats. Therefore, if you own an undivided one half share in the land, you will have to pay 50 percent of those expenses.
- i) Rates are normally assessed separately by the local authority against each owner in respect of his or her interest in the land and the flat.
- j) If you are purchasing a cross lease property, you must ensure that the external appearance of the flat matches that shown on the flat plan. Problems can occur if there have been alterations to the flat which are not shown on the flat plan, particularly if the appropriate consents have not been obtained. In some cases, if the plan has not been amended to reflect the on ground position, there may be a title defect. (This can be expensive to remedy).
- k) Alterations to a cross lease flat, or the erection of additional buildings on the exclusive use area which goes with the flat, usually require the written consent of all the other owners. If you propose making any alterations to the property after you have purchased it, you should check with your legal advisor before proceeding. Depending on the alteration contemplated, you may need to obtain:
 - i) the consent of all the other owners;

- ii) the deposit of a new flat plan redefining the flat. This would involve a resurvey and a variation of the cross lease;
 - iii) a Resource Consent under the Resource Management Act 1991;
 - iv) a Building Consent under the Building Act 2004.
- l) Where alterations or additions have been made to the flat or new structures erected on the property since it was first cross leased, then you may have the right to requisition the title if the correct procedures were not followed. This right of requisition applies in respect of alterations or additions which are both enclosed and attached to the flat itself. You can requisition the title to be rectified to correctly depict the dimensions of the structures now sited on the property. It also applies to stand alone or open structures erected on the "exclusive use" areas discussed above, where you have the lesser right to requisition / to sight the prior written approval of the other flat owners to the erection of such a structure. Time limits apply to your right to requisition the title, and will be set out in the standard agreement.

3.1 Unit Titles - (if applicable, and subject to the new Act) – against the more common – fee simple/freehold – you may wish to skip at Para 3.3 if not applicable

Please note the provisions of this paragraph may have been updated/amended the new Unit Titles Act 2010. Please seek specific legal advice.

- a) If the property you want to buy is a part of a unit title development, it is again important to understand the ownership concept involved, under the new Act (effective perhaps 2011) greater pre-purchase disclosure statement is require of costs and claims which the Body Corporate maybe liable for, or likely to incur.
- b) As with cross leases, unit titles are often used where there is more than one dwelling on the same piece of land. However, unlike a cross lease, you will usually acquire a stratum title in freehold to your unit and any accessory units that go with it.
- c) Accessory units typically comprise carport and garages allocated to a particular unit. They may also comprise exclusive use areas used in conjunction with a unit, and in some cases, things such as letter boxes.
- d) Units and accessory units are shown on a plan lodged at the LINZ and known as the "unit plan". The unit plan will specify the exact dimensions of each principal unit and accessory unit on both a horizontal and a vertical plane. Because of this, the air space above your unit will usually be common property, or in some cases another unit. Any change to the physical shape of a unit therefore requires the consent of the body corporate and the preparation and registration of redevelopment plans. This can be an expensive exercise.
- e) Those parts of the development which are not shown on the unit plan as principal or accessory units will comprise "common property" and, subject to any agreements entered into by the body corporate, will be available for the use of all unit owners. Carports and garages are often shown as accessory units, but may be treated as principle units.
- f) The owners of all the units on the unit plan comprise what is known as the "body corporate". On purchasing a unit you automatically become a member of the body corporate. The body corporate is a bit like a company, but is known by a number (usually the same number as the unit plan). Under the Unit Titles Act 2010 (and the former 1972 Act) it was charged with certain statutory responsibilities, including:
 - i) the (now wider) repair maintenance of any common property, (now only 75% agreement required); and

- ii) arranging replacement body corporate insurance in respect of all units.

- g) The body corporate is required to hold meetings and is empowered to levy each unit holder a share of any outgoings incurred or payable by it. Levies will be made on account of insurance premiums, common property maintenance and secretarial fees. If the unit is situated in a building which is subject to a compliance schedule under the Building Act 2004, and which is required to have a building warrant of fitness, as a member of the body corporate you will be required to meet your share of the compliance costs.
- h) Body corporate levies are allocated according to the unit entitlement of each unit and accessory unit as those entitlements are shown on the unit plan. Therefore if there are a total of ten thousand units and your principal unit and accessory units comprise a total of two thousand units, you will be liable for one fifth of the costs incurred or payable by the body corporate. Body corporate levies will usually be apportioned between the Vendor and you on settlement.
- i) Some body corporates include in the levy, an allowance for cover future maintenance of common property. This spreads maintenance payments over a period of time, and guards against unit holders being called on for large, one off payments. This can be particularly important where there are a large number of connected units in the development, or where the common property includes lifts or other machinery requiring maintenance. The failure to maintain a maintenance fund could see a situation arising where a major maintenance item requires attention, and one or all of the unit owners are unable to meet their share of it.
- j) The body corporate is required to insure all units in the development on a replacement basis. The individual unit owners cannot contract out this liability. You need to satisfy yourself that the cover is adequate. You must take out separate cover for your chattels and personal effects.
- k) Where you need a mortgage, your mortgagee may require you to take out mortgage redemption insurance. This is an additional cover enabling the mortgagee to clear its mortgage in the even of damage or destruction. Mortgage redemption insurance can normally be arranged at a nominal premium with the body corporate insurer.
- l) Certain rules govern the operation of the body corporate and your occupation of your Unit. The rules deal with such matters as your voting rights in respect of body corporate matters, and the procedures for body corporate meetings. They also place some restrictions on the use of your unit; for example, lay down requirements if you want to lease your unit. You must familiarise yourself with the rules. You must ensure any tenants of yours also comply with the rules.

3.2 FINAL NOTE

I hope that you have found this guide has widened your understanding as to the process involved in purchasing a property

All information contained in this guide is to the best of the knowledge of AC Legal. However AC Legal assumes no liability for any losses suffered by any person relying directly or indirectly on information contained in this Guide. We strongly recommend that you consult with us before acting on any information or before signing any documentation. We stress that these are only notes/a useful general guide. We are happy to give a competitive free price quote.