



AC Law
55 Paremata Road
Paremata
Porirua City 5024
P: 04 233 9058
F: 04 233 9560
M: 027 226 7235
E: alan@aclaw.co.nz
www.aclaw.co.nz

Sellers Guide & Notes

So you're looking at selling a property in New Zealand? Below is a guide pointing out a few tips from a legal and conveyancing viewpoint, and some notes as to who does what in the sale process. We trust that you'll find the content informative. If you require any further explanation 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))" which 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. It is not intended to be exhaustive, or to take the place of legal advice.

The guide is intended for general information purposes only. It should not be acted upon without specific advice related to your own particular individual circumstances.

1. Usual Form

- a. The standard agreement is usually used, but there is no law to say it must be. It is possible the agreement you have signed is not on the standard agreement terms, in which case you should seek further legal advice. It is also possible that the agreement you have signed contains additional warranties, promises.
- b. **Contractual Warranties - (Significant Binding Promises)**

The warranties in the standard agreement are given firstly in respect of your actions up until the date you enter into the agreement. Then secondly for the time between the date of both parties signing the agreement and settlement day. (The day for payment and usually possession). They include warranties:

- i. that you have not received, nor have any knowledge of, any requisitions or outstanding requirements in respect of the property from any local or government authority. For example, a notice to fence a swimming pool, or that a building does not comply with the building code - which you have not disclosed to the purchaser;
- ii. that you have not given any consent or waiver in relation to any application under the Resource Management Act, either directly or indirectly affecting the property, which has not been disclosed in writing to the purchaser. This could extend to, for example, a consent you have given relating to neighbours or neighbouring property developments;

- iii. that no electrical or other installations on the property are subject to a security interest e.g. on hire purchase;
 - iv. that all chattels you have agreed to sell to the purchaser will be in the same state of repair on settlement day, as they were when the contract was signed, (subject to a fair wear and tear exception). This means you will have to fix any chattels which break down before settlement, (except where the breakdown is by reason of fair wear and tear);
 - v. that, where you have done/or had done, any work to the property which required a building consent, you obtained the consent, that the work was carried out in accordance with the consent, and that where appropriate you obtained a "code compliance certificate" of completion;
 - vi. that you have complied with all obligations, (if any) imposed on you under the Building Act in relation to building warrants of fitness etc. Building warrants of fitness are generally more applicable to commercial or rental income properties. They are not required in respect of most private dwellings;
 - vii. in the case of a unit title property, (if applicable), that all body corporate levies have been paid, that there are no unsatisfied judgments outstanding against the body corporate, that copies of all insurances arranged by the body corporate will be made available to the purchaser five working days before settlement, and that a certificate will be provided under section 36 of the Unit Titles Act 1972 within the same period. A section 36 certificate is usually given by the secretary of the Body Corporate and sets out, amongst other things, the amount of the contributions payable and whether or not your contributions are up to date. You must ensure that the Body Corporate is able to give the appropriate certificate. If you are unable to provide a copy of the relevant insurance policies, or section 36 certificate in time, the purchaser may be able to delay settlement, (but still take possession of the property), until the 5th working day after you provide the information.
- c. The full extent of the warranties which you give are set out in clauses 6 and 7 of the standard agreement.
 - d. If you are not in a position to give any particular warranty, then you should seek legal advice immediately.

2. Cross Leases and Unit Titles, (only if applicable)

Note usually you will hold a freehold/fee simple title. *(You may wish to skip this paragraph if your title is fee simple)*

- a. If your house is on a cross lease or unit title, there are special provisions in the standard agreement relating to this type of ownership.
- b. In the case of a cross lease, if there have been any alterations to the flat or unit since the Flat Plan was deposited, (e.g. conservatories and garages), then the consent in writing of all other owners should have been obtained. If alterations extend the dimensions of the flat or unit and are

enclosed, then the flat plan should have been amended to show the alteration. If this is not the case, then under clause 5 of the standard agreement, the Purchaser can require you to rectify the plan and the title.

- c. If the purchaser makes a requisition, you must advise the purchaser within five working days whether you are prepared to satisfy it. If you are unwilling to satisfy it, and advise the purchaser within five working days to this effect, **then** the purchaser has a further five working days to waive the requisition. If the purchaser does not waive the requisition, either you, or the purchaser can cancel the agreement. If you do not respond to the purchaser's requisition within the five working day period, you will be deemed to have accepted the requisition, and **must** comply with it. **The time limits are very important.**
- d. In the case of buildings and structures, erected on your "exclusive use" areas after the deposit of the original flat plan, then the purchaser generally has no right to requisition, provided the consent of the other owners was obtained to the building or structure. You can, however, be requisitioned to provide a copy of the written consent. If you cannot satisfy the requisition, and advise the purchaser within the five working day period, **then** unless the purchaser waives the requisition, either party may cancel.
- e. Similar provisions apply in respect of Unit Titles, except that to remedy the defect you will need to obtain the consent of the body corporate, and deposit a redevelopment plan or a new unit plan. You may also need to register transfers and other documents before you can provide good title to the purchaser, (expensive).
- f. It is therefore important:
 - i. if your property is a cross lease or unit title property; and
 - ii. you have made any alterations to it, (or are aware of any alterations which have been made to it), which are not shown on the cross lease plan or unit plan; and
 - iii. for which the written consent of the other owners, (or in the case of a unit title, the body corporate) was not obtained; and/or
 - iv. in respect of which a new flat plan or unit plan was not deposited; **that** you immediately seek legal advice, preferably before signing the agreement.

3. **Goods & Services Tax**

- a. Usually Goods & Services Tax will not be payable on the sale of your own house. However, if you are a "registered person" for GST purposes, it is important to check the legal position, and to ensure the contract clearly states whether the purchase price is inclusive of GST, or not. If the matter is not covered in the agreement and you are liable for GST, **then** it must be met out of the proceeds of settlement/sale.

4. Tenants – (if applicable)

- a. If the property you are selling is tenanted, the contract should clearly state whether the property is sold with "vacant possession" or "subject to existing tenancies".
- b. Except in the case of a "fixed term" tenancy, and unless otherwise agreed with the Tenant, the property must be sold subject to the leasing. Where you agree to sell a tenanted property, (not being a fixed term tenancy), with vacant possession, you are required at law to give the tenant at least **42 days notice**, to vacate the premises. Therefore you need to ensure that settlement occurs at least 42 days after the date on which the agreement becomes unconditional, to give you time to give notice to the tenant.
- c. Where the property is tenanted you should let us know immediately. (PLEASE NOTE, these comments refer, (as applicable) to us/your Solicitor).
- d. In the case of a fixed term tenancy, unless the term expires before the settlement date, then as noted above you will need to sell "**subject to** existing tenancies".
- e. Where the property is sold subject to existing tenancies, then you must give notice to the tenants of the purchaser's name, address, and occupation at the time of sale. Rental will be apportioned along with rates on settlement day. If the tenant has paid a bond, then arrangements will need to be made to transfer this to the purchaser.

5. Important Dates

- a. **The agreement includes a number of important dates. These include the dates on which certain of the conditions in the contract are to be satisfied, and the possession and/or settlement date.**

Your legal advisor assists in legally confirming: -

- b. The conditional dates, which are the dates on which the various conditions in the agreement must be satisfied. For example, the agreement may be subject to the purchaser selling another property, obtaining finance, or various reports.
- c. The settlement date, (usually the same as the possession date), is the date on which the purchaser is required to pay the purchase price, (through your Solicitor). This is the date on which you must hand over the keys of the property. Having previously signed the necessary documentation provided by your Solicitor authorising the registration of the property into the purchaser's name, (with Land Information New Zealand). You must also obtain discharge(s) of all mortgages, (through your Solicitor), and charges affecting the property, (if any) on that date. Generally speaking you must vacate your house no later than the settlement date.
- d. Where the agreement refers to 'working days' you need to be aware that in addition to weekends and public holidays not counting as working days, the period commencing on 24th December and ending on 5th January the following year are not considered to contain any working days, for the purposes of the agreement.

6. Insurance

- a. Make sure your house is insured for its full value until settlement date, (preferably on inflation adjusted, full replacement terms with an insurance rider).
- b. If for any reason the house suffers major damage and becomes un-tenantable prior to settlement, **then** the purchaser may elect to cancel the contract if the damage has not been put right by settlement, even though the contract has become unconditional.
- c. You should **only** cancel your existing insurances after settlement has taken place.

7. Rates

- a. Please pay all rates bills that fall due for payment before settlement date. This will usually include an initial "over" payment of both local authority and regional council rates. Rates will be fairly apportioned between you and the purchaser as at settlement date, by the Vendor's Solicitor, i.e. any over payments refunded. Where the rates have not been fixed for the rating year by the settlement date, estimates and allowances may be made to cover the position. The rates are included as adjustments on the "settlement statement" given by the Purchaser's Solicitors to the Seller's solicitors before settlement.
- b. Where your property is on a water meter you must arrange for the meter to be read, and pay for your water use up until the settlement date.
- c. Your Solicitor will make the arrangements to ensure that the relevant council is aware of the sale/change of ownership. You will need to cancel any automatic credit or debit authorities you have given for rates, insurance, and power etc.

8. Telephone and Power Connections

- a. It is your responsibility to arrange directly with the telephone company for the transfer and disconnection of your phone. You must also arrange with the Electric Power Supply Authority and the Gas Authority for final electricity and gas meter readings to be taken, and for accounts up to settlement date to be forwarded to you at your new address.

9. Legal Formalities

- a. In most cases registration of the transfer of the property out of your name, and into the name of the purchaser, is affected electronically by your Solicitor. Your mortgagee, (lender, if any), will also give your Solicitor authority to discharge its mortgage electronically.
- b. Before your Solicitor can proceed to register the transfer to the purchaser your Solicitor will need to sign the appropriate documentation, and your Solicitor will also need photographic proof of your identity. Acceptable forms of identification are your NZ current drivers licence or passport, and a copy of a utilities account. Your Solicitor will contact you to make the necessary arrangements. Once you give your Solicitor your authority, it is irrevocable if settlement proceeds.

- c. As noted, if you have mortgage(s), the mortgage will need to be discharged by your Solicitor before settlement. This will usually mean the amount secured by the mortgage must be repaid by your Solicitor (usually) on settlement, or arrangements made with your lender if this is not to occur.
- d. Sometimes the mortgagee will charge you a fee for early repayment, or for breaking a term loan, and an administration charge in connection with the execution of the discharge. (Comment - these are ordinarily at your cost, despite any fixed legal services/fees quote.)

10. Settlement, Possession and Keys

- a. On settlement, the title to the property and discharges of all mortgages, are dealt with by your Solicitor, in exchange for receipt of the sale price. The property then ceases to be yours.
- b. Keys, security codes, remotes, are normally required to be handed over on settlement through the land agent, or by your solicitor. Although occasionally the parties make some private arrangement. Subject to your Solicitor's advice, you should not allow the purchaser into (early) possession until settlement has actually taken place. You could be severely disadvantaged if for any reason some unexpected difficulty arises, causing settlement to be postponed, or even avoided, or if damage occurs on the property.
- c. Unless the agreement provides otherwise, the purchaser is entitled to clear, tidy and vacant possession of the property on the settlement date. If for any reason you are not in a position to move out by the settlement date, then you should try and make some mutually satisfactory arrangement with the purchaser. If you do not, you may have to pay interest or rental to the purchaser. The former calculated at the default rate shown on the contract on the whole of the purchase price, less any deposit paid or due, and the latter being a fair rental for the property from the possession date in the contract until possession is actually given. In addition, you may be liable to the purchaser in damages, (including the purchaser's costs of temporary, alternative accommodation).

11. I hope that these notes have given you a broad overview as to the process of selling your property

PLEASE NOTE: All information and notes contained in this guide are generalised and 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 contracts. Every set of circumstances contains differences; therefore this is a guide only, not legal advice for an individual to act on. We are happy to give a competitive free price quote.