

Terrace End Law.

Below is additional information entitled **WHAT YOU SHOULD KNOW AND THINGS TO DO WHEN SELLING YOUR HOME** in relation to the deposit, cash out clauses, vendor work, rates, notifying change of ownership, house insurance, mortgage, signing, possession, balance of funds, keys, fees and disbursements, tenants and conflicts of interest. We encourage you to read these also.

WHAT YOU SHOULD KNOW AND THINGS TO DO WHEN SELLING YOUR HOME

Conditions

It is quite common for an Agreement to sell a property to be entered into subject to various conditions which the Purchaser or their lawyer asks the agent to include before it is signed. Occasionally, the Agreement will include a condition for the benefit of the Vendor. If, on reflection, your Agreement does not include terms and conditions which you require, please let us know so that we can consider how best to safeguard your interests.

Vendor's Warranties and Undertakings

If the ADLS Form of Agreement has been used then the following warranties are contained within clauses 7.1 to 7.5. Please carefully read these warranties and ensure compliance. Please let us know if there are any with which you cannot comply. Early notice will help minimise difficulties.

Deposit

In most Agreements the deposit is payable upon unconditional but if this is not marked on the front page of the Agreement then it is payable upon the Agreement being signed. The agent will generally organise this and will then deduct their commission and advertising fees from any deposit they receive. If this is a private transaction then you will need to collect the deposit from the Purchaser yourself.

Cash Out Clause

In some Agreements there may also be an "out" clause, which in certain circumstances enables a Vendor to sell the property to another purchaser on terms and conditions acceptable to the Vendor. The Purchaser must be given the specified period of notice in which to make the Agreement unconditional or the Agreement will be terminated. If such a clause is not already included under the heading FURTHER TERMS OF SALE, we recommend that you consider seeking the inclusion of such a clause should a lengthy extension be requested by the Purchaser in due course.

Vendor Work

We particularly draw your attention to the warranties and undertakings contained in the Agreement. You have warranted in the Agreement that if you have carried out any work at the property requiring a building consent that you have obtained the consent and complied with all conditions and where appropriate, a Code Compliance Certificate was issued for the works. If there has been any such work for which no consent or Code Compliance Certificate was obtained please let us know urgently.

The Purchaser is entitled to take possession of the property and chattels in the same condition that they were in at the time they signed the Agreement. If any damage (eg a

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broken window) has occurred subsequently please arrange for it to be repaired promptly so as to avoid unnecessary difficulties with settlement.

Rates and Other Outgoings

We will apportion these as at the date of settlement with you being liable for the period of the rating year up to that date and the Purchaser being liable for the balance of the rating year. We encourage you to pay all rates which fall due before settlement date as soon as possible so when we do our rates check they are up to date. If your property is separately metered for water or other services please let us know so that they can be apportioned on settlement.

Notifying Change of Ownership

At the time of settlement we will send the Local Council and the Regional Council a notice advising details of the sale and change of ownership. In the unlikely event you receive a rates notice which you believe you are not responsible for please forward a copy to us with a brief note and we will review the matter.

House Insurance

For your own protection, you should not cancel your house insurance cover until we have confirmed that settlement has taken place.

Mortgage

If you have a mortgage on your property it will be repaid by us from the proceeds of sale. We will obtain the repayment figure and make all necessary arrangements for the discharge of your existing mortgage.

Signing

Prior to settlement you will need an appointment to attend our office to sign conveyancing papers. Please make this appointment at least 3 clear working days prior to the settlement date. Please note the identification requirements mentioned above. We **cannot settle without this.**

If an appointment at our office prior to settlement is likely to be impractical please let us know as soon as possible and if there is sufficient time we may be able to make arrangements for the papers to be posted to you for signing and return prior to settlement.

Possession

In the interests of an orderly settlement, we ask that you arrange for the property to be vacated as early as possible on the settlement day, ideally no later than lunchtime (unless it is being sold subject to an existing tenancy). Please note the chattels you are selling with the property listed in the Agreement and please make sure that these are left with the property.

Balance of Funds

Our costs will be paid on settlement by deduction from the sale of proceeds.

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When you attend our offices to sign the conveyancing papers, you will need to provide us with an **original deposit slip for the account into which you wish the balance of funds to be paid (for accuracy)**. This will enable us to deposit cleared funds to that account, through my online banking system. If we do not hold your original deposit slip we will be unable to provide this service to you and the funds will be banked manually to your account, thus taking the usual 5 working days to clear.

We will require **unequivocal instructions from you** as to the disbursement of these settlement funds. If we do not have such instructions, then we will not complete the settlement of this transaction until such time as we have received such instructions.

If you are expecting a large balance deposit from the Real Estate Agent, we suggest you let me have your deposit slip as soon as the agreement becomes unconditional enabling me to release this to you electronically also. Where the amount and timing makes it practical to do so we prefer to release balance deposits to our clients rather than place it on deposit.

Please note also that we are not prepared to pay the balance funds to you otherwise than to the party named as Vendor on the Agreement for Sale and Purchase. If you require otherwise we will require the express written authority of the Vendor, in a form satisfactory to us first.

Keys

You have an obligation to make available to the Purchaser keys to all exterior doors, electronic door openers relating to the property and the keys and/or security codes to any alarms which may be situated on the property. If any of these are not available as required please ensure they are available by the settlement date, engaging locksmiths etc if necessary.

Please arrange to deliver keys, electronic door openers and security codes to the offices of the Real Estate Agents (if no agent is involved then to my office) by no later than the day before the settlement date so that settlement is not delayed on due date while the Purchaser's lawyer satisfies themselves as to their whereabouts. You may need to retain a single key to retain access until you have finally moved out which we suggest you leave in an obvious place in the kitchen, such as on the bench.

You do not have to make available keys, electronic door openers and security codes where the property is tenanted and these are held by the tenant.

Tenants

If your property is being sold subject to an existing tenancy then please forward to us the original of the Tenancy Agreement together with a signed Change of Landlord Bond Form for Tenancy Services with the amount of the bond and the bond number completed as soon as the Agreement is unconditional together with details of when the rent has been paid up to so that we can apportion it correctly in our settlement statement. If your property is being managed by a property manager please ask them to provide this to us.

Caveat Emptor - Seller Beware

There is relatively little consumer protection in New Zealand for sellers of property. It is your responsibility to check any Agreement before you sign it and to carry out your own thorough due diligence in respect of any transaction.

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Bright-Line Test AND Residential Land Withholding Tax (RLWT)

The Bright-Line Test is a form of capital gains tax and it applies to sales of residential land acquired after 28 March 2018 and sold within 5 years of acquisition (“*the five year bright-line test*”) and to sales of residential land acquired after 26 March 2021 and sold within 10 years of acquisition (“*the ten year bright-line test*”). There are some exemptions for the “main home” but generally not for investment properties. Also, new builds are subject to the “*five year bright-line test*” only.

Residential Land Withholding Tax applies to sales if the Vendor is an offshore person for the purposes of the legislation. In establishing whether the Vendor is an “offshore person” particular care is required with Trusts and Companies. Some clients may be entitled to either a Certificate of Exemption or to file an interim tax return to claim a refund if the Residential Land Withholding Tax deducted exceeds the actual tax payable.

If the “bright-line test” applies Vendors must provide a signed RLWT declaration (IR1101) to conveyancer before settlement date. If applicable, Vendor’s conveyancer must calculate and deduct Residential Land Withholding Tax on settlement and pay that to Inland Revenue with the RLWT return in prescribed form. If the Vendor and Purchaser are “associated” for tax purposes then the obligation to calculate, deduct and pay RLWT to Inland Revenue is transferred to the Purchaser and the Purchaser’s conveyancer. If RLWT is calculated as zero, a nil return is still required.

These rules are complex. If the “bright-line test” applies and you believe you are or may be an Offshore RLWT Person we recommend that you urgently make an appointment to see us to clarify your position.

If the “bright-line test” applies we, or a Solicitor on our behalf, must sight:

1. New Zealand Passport; or
2. Full New Zealand birth certificate issued on or after 1 January 1998 and a New Zealand driver’s licence or firearms licence; or
3. Overseas passport and your New Zealand residence class visa or citizenship certificate.
4. You must supply us with your New Zealand IRD number. There are no exemptions.

You need to have your signature witnessed by a person authorised to take a statutory declaration when:

- You are associated to the buyer;
- You are completing this form for yourself, are overseas, but have been in New Zealand within the past three years (if you are a New Zealand citizen) or 12 months (if you hold a New Zealand Class Visa);
- You are completing this form on behalf of an organisation and are overseas; or
- Neither you nor the buyer are using a conveyancer.

People authorised to take statutory declarations in New Zealand include:

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- Justices of the Peace, Notary Public and Members of Parliament;
- A person enrolled as a Barrister and Solicitor of the High Court and Registered Legal Executives; or
- The Registrar or a Deputy Registrar of the Supreme Court, Court of Appeal, High Court, or a District Court.

If you are overseas you will need to find someone in the country where you are, who is equivalently authorised.

Overseas Investment Restrictions on Purchase of Residential Land

The Overseas Investment Amendment Act 2018 (effective 22 October 2018) brings residential and lifestyle land into the definition of sensitive land (i.e. land that falls under the category of “residential” or “lifestyle” on the district valuation roll).

The regime generally allows New Zealand citizens or resident-class visa holders who are ordinarily resident here to buy or build a home without having to apply to the Overseas Investment Office for consent. Residents who are not ordinarily resident can either apply for consent, or wait until they become ordinarily resident. Those who hold temporary visas, such as visitor, student, working holiday or work visas, generally won't be able to buy a residential property to live in.

Purchasers do not need OIA consent if:

- Purchaser is a New Zealand, Australian or Singaporean (Passport holder)
- Purchaser holds a New Zealand, Australian or Singaporean Permanent Resident Visa and lives in New Zealand for the 12 months previous to buying the property (and present in New Zealand for at least 183 days in the past 12 months).
- Purchaser holds a New Zealand Resident Visa and lives in New Zealand for the 12 months previous to buying the property (and present in New Zealand for at least 183 days in the past 12 months) and is tax resident in New Zealand.

Purchaser can apply for OIA consent to buy one home to live in if:

- Purchaser holds a New Zealand Permanent Resident or Resident Visa and does not live in New Zealand
- Purchaser holds an Australian or Singaporean Permanent Resident Visa and does not live in New Zealand.

Purchaser cannot buy a home in New Zealand if:

- Purchaser does not have a Resident Visa (e.g. only holds a visitor, student, working holiday, work or other temporary visa).

If the Purchaser does not hold a New Zealand, Australian or Singaporean Passport we will need:

- A copy of the Purchaser's Visa; and

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- A statement from the Purchaser that the Purchaser has lived in New Zealand for the 12 months previous to buying the property and has been present in New Zealand for at least 183 days out of the past 12 months.

OIA applications: Currently, we do not handle OIA applications. Any Purchasers who need OIA consent will either need to lodge this application themselves or refer this matter to an OIA specialist. In any event, there will be additional costs and delays involved.

Refer: www.linz.govt.nz/OIA: for Residential Land Statement which clients must complete before a dealing to transact land is lodged with Land Information New Zealand.

Land Transfer Tax Statement

Before settlement you will be required to complete a Land Transfer Tax Statement.

In the case of individuals, we will require your IRD number(s) and there are no exemptions.

If the selling entity is a Trust or a Company, we will require the IRD number of that entity and there are no exemptions. If your Trust or Company does not already have an IRD number, we recommend you urgently obtain one as we cannot settle this transaction without it. We are told that the current delay is about two weeks.

GST: In relation to a taxable supply

All transactions between parties in circumstances where both Vendor and Purchaser are registered for GST are **compulsorily zero rated** for **GST**.

If the Vendor **is** registered for **GST** but the Purchaser **is not** registered for **GST**, the Vendor may be obliged to pay **GST** to Inland Revenue in respect of the transaction.

If the Vendor **is not** registered for **GST** but the Purchaser **is** registered for **GST**, the Purchaser may be entitled to a **GST** refund in respect of the transaction.

If there is a house on the property the dwelling may be (but not always) an exempt supply.

If you are **GST** registered then we strongly recommend you obtain advice from your accountant regarding the **GST** implications of this transaction so you are quite certain of the consequences.

We will not take any responsibility for the effect or implications of this transaction on GST (whether that be a refund or a payment).

Conflicts of Interest

On occasion we find that the same practitioner from this firm may be asked to act for both the Vendor and the Purchaser or that one practitioner from the firm may be asked to act for the Vendor and another practitioner may be asked to act for the Purchaser.

This situation is not uncommon in a small provincial city like Palmerston North.

If this is the case on this occasion we are proceeding to act for Vendor and Purchaser on the basis of your informed consent. In the event any conflict of interest emerges during the course of this transaction such as a dispute between Vendor and Purchaser then we will

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recommend in these circumstances that both Vendor and Purchaser seek independent legal advice as soon as practicable. If we are incorrect and you do not so consent to these arrangements please urgently let us know so that alternative arrangements can be made for you to receive independent legal advice with another practitioner from outside our firm in respect of this transaction immediately.

If there are any matters about which you are uncertain please do not hesitate to contact us.