

MURDOCH PRICE

Barristers & Solicitors

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BUYING A HOUSE?

INFORMATION SHEET FOR PURCHASERS

For further information contact your advisor at Murdoch Price Limited or our Registered Legal Executives:

Lyn McCarthy

Frankie Pabla

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1. AML & CFT ACT REQUIREMENTS

The Anti-Money Laundering and Countering Financing of Terrorism Act 2009 applied to lawyers from 1 July 2018. We are required to verify the identity of all of our clients and associated parties (e.g. trustees, directors, shareholders, beneficiaries) even if we have been acting for them for many years. Also verification as to source of cash funds and other information may be required. It is also a requirement for us to review any information you have already supplied, so please bear with us if we have to keep updating information.

Before we can proceed further, we will require from you:

1. A copy of your current passport **AND** your proof of address e.g. land rates invoice, water rates invoice, bank statement that is dated no older than 3 months;
OR
2. A copy of your current drivers licence with a copy of your birth or marriage certificate **AND** your proof of address e.g. land rates invoice, water rates invoice, bank statement that is dated no older than 3 months;
AND
3. Your IRD number and the IRD number of your purchasing entity if you are not purchasing in your personal name. If your Trust, company or partnership is the purchasing entity and it does not have an IRD number, we will have to apply for one on your behalf at an additional cost once your agreement conditions are satisfied (i.e. once the agreement becomes unconditional).

This information can be scanned and emailed to us, but we will need to sight the originals when you come to the next appointment. Otherwise you will need to provide copies certified by an authorised person (solicitor, justice of the peace or other person authorised to take statutory declarations).

If you are unable to provide the above then please contact us to discuss what alternatives may be acceptable.

2. OIA RESIDENTIAL LAND STATEMENT

The Government passed legislation towards the end of 2018 to prevent non-residents from purchasing residential land except in certain circumstances. Any purchaser entering an agreement to purchase residential land after 22 October 2018 is required at law to complete an Overseas Investment Act Residential Land Statement ("OIA Statement"). If you signed the OIA Statement with the land agent, we are still required to hold it on your behalf. Please forward to us a copy of any OIA Statement you have signed, otherwise we will prepare the necessary OIA Statement and arrange for you to sign it.

3. DEPOSIT

The deposit is paid to a stakeholder on trust for the parties (e.g. the vendor's solicitor or agent). It is deducted from the purchase price on settlement.

If the purchase does not proceed because the conditions of the agreement are not satisfied then the deposit is refunded to you.

If you default in payment on settlement after the conditions are satisfied then you risk losing the deposit and may also have to pay additional compensation to the vendor.

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4. TITLE SEARCH

The standard purchase agreement permits only 10 working days from the date of the agreement to raise any requisitions (objections) as to the title to the property. Therefore it is necessary for us to obtain a search copy of the title on your behalf as soon as we receive the agreement.

We do not normally send you a copy at that stage unless there is some aspect of the title requiring comment.

Just prior to settlement we obtain a special search copy of the title known as a government guaranteed search (Section 172A title search). This protects you against any adverse documents being registered against the title for a period of two months to enable time to settle the purchase and complete registration of the transfer of the title to you. Mortgagees insist on a Section 172A title search.

5. LOCAL AUTHORITY (COUNCIL)
LAND INFORMATION MEMORANDUM (LIM)

This is a formal enquiry request to the local council in which the council advises as to any known requisitions (outstanding council requirements) and other matters affecting the property. Vendors do not always disclose council requisitions. Some mortgagees require a current LIM report. We can obtain the LIM on your behalf and will require council's fee from you for this purpose. The cost varies from council to council.

Where applicable some Councils (for instance Auckland Council) will have a property file for searching in addition to the LIM report. This usually contains the plans of any buildings, resource consent information, building consents, etc but is an additional cost. We strongly recommend the property file is obtained as it has more of the building detail in it. The cost is usually \$50-\$100 in addition to the LIM report, depending on whether it is urgent or not.

6. DISBURSEMENTS

These are expenses we pay to other people (mostly the government and the council) on your behalf. As these expenses have increased considerably over the years we may require you to pay a contribution towards these expenses at an early stage of the transaction. We credit such payment against the total cost to you when forwarding final statements.

7. CONDITIONS

The most common conditions are the arranging of finance, the sale of your existing home, a building report, and the obtaining of a LIM report. If written notification of satisfaction or waiver of the conditions is not given to the vendor by the conditional date then either you or the vendor can cancel the agreement and the deposit is refunded. Unless otherwise stated in the agreement the time for notification expires at 5pm.

Methamphetamine ("P") contamination of houses resulting from manufacture has become a real issue. The costs of de-contamination can be expensive (\$40,000 is not unusual) and in extreme cases involves the demolition of the house. We recommend obtaining a "P" inspection report through a reputable provider.

Houses may have structural defects notwithstanding these not being identified in the LIM. We recommend obtaining a building report and drainage report from qualified persons.

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8. PAYMENT OF BALANCE OF PURCHASE PRICE

We will send you a statement or advise you by letter or telephone (with a subsequent statement) as to the amount required to settle. The balance to settle not covered by the mortgage finance is required from you in cleared funds (e.g. by way of bank transfer) no later than 10.30am on the day BEFORE settlement.

Otherwise, you can simply call at the Bank by 10.30am on the day of settlement and ask for a bank transfer to be arranged for you. Direct credit to our trust account confirmed by your bank by email as cleared funds will be required.

9. UPLIFTING OF MORTGAGE MONEYS

In most cases we uplift the money from your mortgagee (Bank or other lender) on the day of settlement, after we have sent the mortgagee a certificate confirming you have signed all mortgage and other relevant documents and the title and arrangements for settlement are in order. This should be done at least 2 days prior in order to facilitate settlement, avoid penalties and to assist you being able to gain possession as early as possible on the settlement date.

10. COSTS & EXPENSES

Payment of our fees and expenses is required before settlement. If the purchase does not proceed we send an account to you for work performed and expenses.

The base fee covers all matters normally incidental to a purchase. If any extensions to dates or any disputes or problems arise then we reserve the right to charge an additional fee.

11. CHATELS

The chattels that must be left in the property by the vendor are as stated in the agreement for sale and purchase. These are usually stove, TV aerial, fixed floor coverings, blinds, drapes and light fittings.

It is not permissible for the vendor to change any of the chattels between the date of first inspection by you and the date of possession e.g. curtains.

The vendor warrants to deliver the chattels in their state of repair as at the date of agreement (fair wear and tear excepted). If this is not the case, you can claim compensation but cannot refuse to settle.

12. FIXTURES

Fixtures must be left in the property by the vendor as they form part of the property. In broad general terms a fixture is fixed to the house or land and a chattel is movable but the difference between a fixture and a chattel can sometimes be difficult to decide.

13. BUILDING PERMITS (CONSENTS)

The vendor is required to have a building permit or consent for any building works the vendor has carried out. Please let us know if you are aware of any addition or alterations that are not shown as being completed in accordance with a building permit or consent in the LIM (see paragraph 5 above for LIM).

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14. TITLE TRANSFER

Prior to settlement we will have you sign any loan documentation and an Authority and Instruction form to us and accompanying Tax Information form which are required by Land Information New Zealand (LINZ) as a pre-requisite to transfer of title on settlement.

15. INSPECTION (Pre-settlement)

You or your nominee are entitled to inspect the property on one occasion prior to the settlement day to examine the state of repair of the property and the chattels and fixtures and any work the vendor has undertaken in the agreement. You are required to give reasonable notice in writing and we suggest you liaise with the vendor's agent as to the time for an inspection.

If anything is wrong which the vendor has to remedy then you are entitled to a further inspection before settlement to ensure compliance by the vendor.

16. SETTLEMENT

The settlement date is usually also the possession date and is often a Friday. On the settlement date we pay the balance of the purchase price to the vendor's solicitors in exchange for the keys and title transfer. Unless otherwise stated in the agreement the last time for payment is 5pm. However, if we do not receive the moneys for the purchase before 4.00pm on the day of settlement, then the vendor is entitled to charge interest for late settlement until the next working day, e.g. three days from Friday to Monday.

We would need to have your moneys the day before settlement, the mortgage moneys and moneys from a sale of your property (if any) by 2.30pm on settlement day to be sure of settling by 4.00pm to avoid the late settlement interest penalty. The moneys we require from you (see paragraph 8 above) may include a contingency for late settlement which we will refund after settlement if not required.

17. POSSESSION AND KEYS

Possession is given when the vendor vacates the property and makes the keys available to you. The vendor will not usually give possession until the balance of the purchase price is paid by us to the vendor's solicitors.

Under the agreement possession is to be given on the settlement day at the moment the purchase moneys are accepted by the vendor's solicitors unless you arrange with the vendor for another time or another day.

Possession day is usually a Friday but if you and the vendor are agreeable, can be some time over the weekend. A common arrangement is for the vendor to vacate by midday on the Saturday leaving the key to the property at a pre-arranged hiding place.

Another method is the vendor leaving the key with the vendor's agent with instructions not to hand same to you until the vendor's solicitors confirm receipt of the balance of the purchase price.

It is best to avoid difficulties by arranging in advance direct with the vendor a mutually acceptable time, day and place for vacation of the property and transfer of the keys.

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18. SETTLEMENT DEFAULT

If you default in paying the balance of the purchase price on the settlement date then in addition to late settlement penalty interest (*see paragraph 16 above - "Settlement"*) the vendor can serve a settlement notice requiring settlement within 12 working days.

Failure to settle within that period entitles the vendor to forfeit the deposit and claim additional compensation for costs, expenses and losses incurred as a result of the default. Such losses can include a loss on re-sale of the property by the vendor.

19. RATES

We pay your share of rates for the current year/instalment to the vendor's solicitors on settlement. The vendor pays current rates/instalment and any arrears. The vendors solicitors usually undertake to do this on behalf of the vendor.

20 WATER RATES

The Vendor is responsible for arranging and paying for a final reading of the water meter (if any). Most vendors' solicitors personally undertake to do this on behalf of vendors but not all solicitors will give such undertakings.

21. HOUSE INSURANCE

We recommend that you arrange for your insurance to commence from the date the agreement becomes unconditional as problems can arise in the event of damage to the house before possession if the vendor's insurance cover is inadequate.

If you are borrowing money on mortgage then prior to drawdown of the loan funds your mortgagee will require confirmation from your insurance company (not your broker) of the insurance cover including confirmation that the current premium has been paid and the noting of the name of the mortgagee on the policy. We suggest you have your insurance company send an email to us confirming the insurance details (which is to include noting the interest of your mortgagee).

22. CONTENTS INSURANCE

We leave you to arrange new or transfer of existing cover.

23. TRANSIT INSURANCE

If this is not covered by your removal contractor (or is inadequately covered) then obtain an extension to your contents insurance to cover transit to your new destination.

24. TELEPHONE AND INTERNET CONNECTIONS

We leave you to arrange the new connections.

25. POWER

When you take possession of the house, you should notify the Power Company of the change of ownership otherwise the power could be disconnected or you could end up with the vendor's past power bill.

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26. SWIMMING POOLS/SPA POOLS

It is an offence under the Fencing of Swimming Pools Act to fill and use a swimming pool/spa pool without compliance with the pool fencing requirements. Some pools were built before the Act and do not comply.

An inspection by the local authority (Council) is required if the pool is not registered with the local authority. Whether it is registered will usually appear on the LIM report (see paragraph 5 above for LIM).

The vendor may not always be liable to comply with the requirements depending upon the particular circumstances and the conditions of the agreement.

27. CROSS LEASE/UNIT TITLES

If you are purchasing a property with a cross lease title or a unit title then additional considerations apply. We will provide additional information if that is the case.

28. TAX ON HOUSE SALES - FOR FUTURE REFERENCE

(a) Everyone – Bright Line Test

If you purchased a property between 1 October 2015 and 28 March 2018 and enter into a sale agreement within 2 years of the purchase then tax will be payable on the profit even if the settlement date is after the 2 year period.

If you purchased a property after 29 March 2018 and enter into a sale agreement within 5 years of the purchase then the tax will be payable on the profit even if the settlement date is after the 5 year period.

There are some exceptions. The date of acquisition is mostly the date of registration against the title whereas the date of sale is mostly the date of signing a sale agreement.

There is an exemption if the house is your main home but that cannot be claimed if you have claimed it more than twice in 2 years.

The bright line test is in addition to all other tax rules e.g. if you purchase a house with the purpose of re-sale at a profit then tax is payable even if you sell it after the relevant period.

Tax on property sales are complex. We are happy to provide general advice but you may need specialist tax accounting advice.

(b) Off-shore Persons – Residential Land Withholding Tax (RLWT)

If you are classed as an off-shore person and the bright line test applies then the main home exemption does not apply and RLWT will have to be paid by your solicitor to IRD from the sale proceeds.

IRD has first claim and that may not leave enough to repay your mortgages, agent's commission and legal costs. That could prevent your sale from taking place and you would be in default. You need to discuss this with us immediately.

The definition of an off-shore person is wide and can include a NZ citizen living abroad or a trust or company in which a beneficiary or shareholder is a NZ citizen living abroad. The rules are complex. Discuss with us immediately.

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29. USE OF THIS INFORMATION SHEET

We have provided this information sheet as a client service and have tried to anticipate the most common questions that arise in this type of transaction.

The law and procedures are complex and can change rapidly. This information sheet is a guide only. Please contact your legal adviser as Murdoch Price Limited to discuss your particular circumstances or issues.