Real Estate Agents Authority

New Zealand Residential Property Sale and Purchase Agreement Guide

This guide has been prepared and approved by the Real Estate Agents Authority

Important things to know:

1. A sale and purchase agreement is a **legally binding** contract.

2. The real estate agent is **working for the seller** of the property, but must treat the buyer fairly.

3. You need to understand the difference between a **conditional** and an **unconditional** agreement.

4. You can **negotiate** the conditions you require in a sale and purchase agreement.

5. Make sure you **read** and **understand** the sale and purchase agreement before signing it.

6. It is recommended that you get your **lawyer to check** the sale and purchase agreement before you sign it.

Introduction

Buying or selling a home is one of the biggest financial commitments you will ever make. There are several relatively complicated stages to negotiate and there are a number of things to look out for.

When you are buying or selling residential property you should always have a written sale and purchase agreement. This is the legal document that forms the contract between the buyer and the seller.

This guide provides information about sale and purchase agreements, tells you where you can get more information, what to expect from a real estate agent[1] and what to do if there is a problem.

This guide only relates to the sale of residential property.
This guide is just that – guidance. You should not rely on it for legal advice. It's been prepared by the Real Estate Agents Authority (REAA), a Crown entity established by the Real Estate Agents Act 2008.

This is a guide to the sale and purchase agreement that you will be asked to sign if you wish to buy or sell residential property.

[1] Real estate agent or agent are general terms that refer to an agent, branch manager or salesperson.

Whether you are a buyer or a seller, the agent must provide you with a copy of this guide before you sign a sale and purchase agreement, and ask you for written acknowledgement that you have received it. If you require more information, you can consult your lawyer. Information is also available on the REAA's website: **www.reaa.govt.nz.**

Why do I need a sale and purchase agreement?

A sale and purchase agreement provides certainty to both the buyer and the seller as it sets out in writing all the agreed terms and conditions. It is a legally binding contract.

Can I negotiate?

The seller and buyer can negotiate, through the agent, on price and conditions until they both reach agreement.

Important things to know:

- ✓ You should have a written sale and purchase agreement.
- ✓ Always read the sale and purchase agreement before signing it.
- ✓ Have your lawyer check the sale and purchase agreement before you sign it.
- ✓ Both the buyer and seller can negotiate changes to the price and conditions.
- ✓ A sale and purchase agreement is a legally binding contract.

The sale and purchase agreement

Your agent will probably use the Auckland District Law Society and Real Estate Institute of New Zealand form (the ADLS form).

Your sale and purchase agreement should include the following:

- ✓ The name(s) of the seller(s) and buyer(s).
- ✓ The address of the property.
- ✓ The type of title (freehold, leasehold etc.).
- ✓ The chattels that are to be sold with the property (e.g. whiteware, drapes, television aerial etc.).
- ✓ The price.
- ✓ The rate of interest that the buyer must pay on any overdue payments.
- ✓ Any deposit that the buyer must pay.
- ✓ Any conditions the buyer wants fulfilled before the contract is agreed.
- ✓ The date on which the agreement will become unconditional if there are conditions.
- ✓ The settlement date (the date the buyer pays the remainder of the amount for the property, usually the day when the buyer can move into the property).

Conditions in the document

The buyer will usually want to have some or all of the following conditions fulfilled before the contract is agreed:

- ✓ **Title search** – this is done by the buyer's lawyer to check who the legal owner of the property is and to see if anyone else has any claim over the property.
- ✓ **Finance** – this refers to the buyer arranging payment, normally a loan, by a specified date.
- ✓ **Valuation report** – normally required by a lender, this report is an estimate of the property's worth on the current market.
- ✓ **Land Information Memorandum (LIM) report** – provided by the local council, this report provides information on things such as rates, building permits and consents, drainage and planning.
- ✓ **Building inspection report** – these help determine how sound the building is and what might need to be repaired.
- ✓ **Engineer's report** – similar to the above but more focused on the section and structure of the property.
- ✓ **Sale of another home** – the buyer may need to sell their home in order to buy another.

General or standard clauses

A sale and purchase agreement also includes clauses that set out general obligations and conditions. It helps to understand what these mean as you will need to comply with them. Examples may include:

- **Access rights** – what access the buyer can have to inspect the property before settlement.
- **Default by buyer** – the buyer may have to compensate the seller e.g. interest payments.
- **Default by the seller** – the seller may have to compensate the buyer e.g. accommodation costs.
- **Insurance** – makes sure the property remains insured until the settlement date and outlining what will happen if any damage does occur.

Your lawyer will explain these clauses.

When does the buyer pay the deposit and the full amount?

When the seller and buyer have agreed on all aspects of the sale and purchase agreement, any deposit is usually paid to the real estate agent by the buyer. This money is initially held in the agent's trust account.

The agent usually takes their commission from the deposit when the contract becomes unconditional. This is agreed between the seller and the agent as set out in the agency agreement[2]. The seller should make sure that the deposit is large enough to cover the agent's commission.

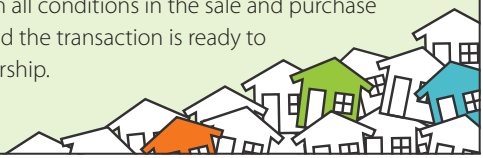
The buyer pays the remainder of the amount for the property on the day of settlement, usually through their lawyer. The settlement day is usually the date when the buyer can move into the property.

Before the sale and purchase agreement becomes unconditional and if the sale doesn't go ahead because some of the conditions haven't been met, the buyer may be entitled to have the deposit refunded in full.

However, once the offer becomes unconditional you won't be able to get your deposit back if you change your mind for any reason.

What is the difference between a conditional and an unconditional agreement?

- ✓ **Conditional** refers to the sale and purchase agreement having a set of conditions that are to be met, such as the buyer's current house being sold, a building inspection being carried out, or finance being secured.
- ✓ **Unconditional** refers to when all conditions in the sale and purchase agreement have been met and the transaction is ready to proceed to a change of ownership.



[2] Refer to the Real Estate Agents Authority's *New Zealand Residential Property Agency Agreement Guide*.

Can I cancel the agreement if I change my mind?

You cannot cancel a sale and purchase agreement just because you have had second thoughts about buying or selling the property concerned.

In general, once you have signed a sale and purchase agreement and the conditions set out in it have been met, you will have to go ahead with the sale/purchase of the property.

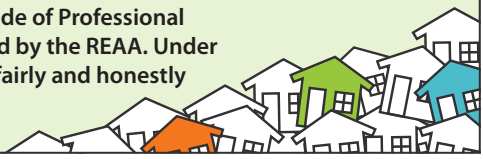
What can I expect from an agent?

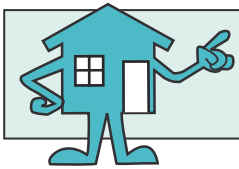
The agent works for and is paid by the seller. The agent must therefore carry out the seller's instructions (as set out in the agency agreement) and act in the interests of the seller.

Agents also have clear responsibilities to buyers even though they are representing the seller.

When you are buying a property, ask the agent questions. Be specific about what you want to know.

All agents are bound by the Code of Professional Conduct and Client Care, issued by the REAA. Under the Code, agents have to deal fairly and honestly with all parties.





A copy of the Code of Professional Conduct and Client Care is available from **www.reaa.govt.nz** or by calling **0800 for REAA** (0800 367 7322).

What if my agent or someone related to them wants to buy the property?

If your agent, or anyone related to them, wants to buy your property, they must get your written consent to do this.

It is important to consult your lawyer throughout the buying and selling process.

Who pays the agent?

Real estate agents in New Zealand work on behalf of sellers and it is the sellers who pay the agents. An agent who is marketing a property on behalf of a seller cannot ask a buyer to pay for their services.

The agent is acting for the seller and does not have the same duty to a buyer as they do to the seller.

What is a buyers' agent?

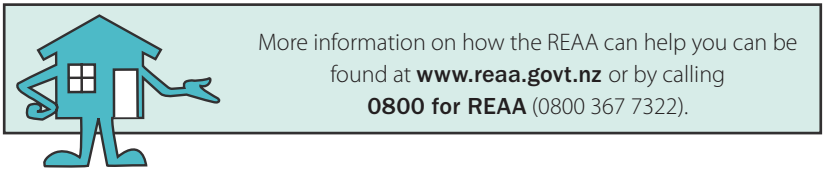
Buyers' agents are common in some other countries. They are agents who are employed by buyers to locate properties and sometimes to negotiate purchases on the buyer's behalf. If you employ a buyers' agent you should still have a written agency agreement and will have to pay for their services.

What if there's a problem?

If you are concerned about the behaviour of an agent, you should discuss any concerns you have with the agent or their manager. Agents are required to have in-house complaints resolution procedures.

If this does not work or if you do not wish to go through this process, you can contact the REAA.

The REAA has a number of ways it can help with your concerns. This includes sending the agent a compliance advice letter, arranging alternative dispute resolution or processing the matter as a complaint. When you contact the REAA they will help you identify the best way of dealing with your concern.



More information on how the REAA can help you can be found at **www.reaa.govt.nz** or by calling **0800 for REAA** (0800 367 7322).

You can get more information from...

There are several places you can go for help and advice including:

- ✓ The Real Estate Agents Authority (REAA) at **www.reaa.govt.nz** or call **0800 for REAA** (0800 367 7322).

  The REAA can provide information and assistance on a wide range of issues and is responsible for dealing with concerns about real estate agents.
- ✓ Your lawyer.
- ✓ Community Law Centres **www.communitylaw.org.nz.**
- ✓ Citizens Advice Bureau **www.cab.org.nz.**
- ✓ Ministry of Consumer Affairs **www.consumeraffairs.govt.nz.**
- ✓ NZ Law Society Property Section **www.propertylawyers.org.nz.**
- ✓ Consumer Build **www.consumerbuild.org.nz.**

Real Estate Agents Authority

The Real Estate Agents Authority (REAA) was established by the New Zealand government to ensure high professional standards in the real estate industry and to promote increased protection for people who are buying or selling property.

www.reaa.govt.nz info@reaa.govt.nz @reaanz

0800 for REAA (0800 367 7322) or (04) 471 8930

Scan to find out more about buying and selling property.

To the best of the Real Estate Agents Authority's knowledge, the information in this guide is accurate at the date shown below. However, the requirements on which this information is based can change at any time and the most up-to-date information is available at www.reaa.govt.nz [Version 1.2 12 February 2014].

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