

# PARTICULARS AND CONDITIONS OF SALE OF REAL ESTATE BY AUCTION

This form is approved by the Real Estate Institute of New Zealand Incorporated and by Auckland District Law Society Incorporated.

## AUCTION DETAILS

Auctioneer: PGG Wrightson Real Estate Limited - Sloane Morpeth

Place of Auction: Papamoa Surf Club, 651 Papamoa Beach Road, Papamoa

Date and Time of Auction: Tuesday 7th May 2024, 12:00pm

Licensed Real Estate Agent acting for Vendor: PGG Wrightson Real Estate Limited - Dave and Karen McLaren

**Vendor:** Janet Anne Whiteside as to a 1/2 share and Janet Anne Whiteside and Douglas John Lyon as to a 1/2 share as Executors

**The vendor is registered under the GST Act in respect of this transaction and/or will be so registered at settlement:** **Yes/No**  
If "Yes", Schedule 3 must be completed by the parties.

## PROPERTY

**Address:** 87 Princess Road, Bellevue, Tauranga, Bay of Plenty

<b>Estate:</b>	<b>FREEHOLD</b>	<b>LEASEHOLD</b>	<b>STRATUM IN FREEHOLD</b>
	<b>STRATUM IN LEASEHOLD</b>	<b>CROSS LEASE (FREEHOLD)</b>	<b>CROSS LEASE (LEASEHOLD)</b>

If none of the above are deleted, the estate being sold is the first option of freehold.

### Legal Description:

**Area (more or less):**

863 sqm

**Lot/Flat/Unit:**

Lot 1

**DP:**

DPS 382367

**Record of Title (unique identifier):**

329302

## TENANCIES

Particulars of any tenancies are set out in Schedule 2 or another schedule attached to this agreement by the parties.

### 1.0 Conditions of sale

- 1.1 The property and the chattels included in the sale are sold on these Particulars and Conditions of Sale, the General Terms of Sale and any Further Terms of Sale.
- 1.2 GST will be payable in accordance with the statement of the purchase price in the Memorandum of Contract.
- 1.3 The GST date is (clause 14.0): N/A
- 1.4 The settlement date is: 21 June 2024 or an alternative date acceptable to both parties
- 1.5 The interest rate for late settlement is 15.00 % p.a.

### 2.0 Conduct of auction

- 2.1 The property is offered for sale subject to a reserve price and, subject to the reserve price being met, the highest bidder whose bid is accepted by the auctioneer shall be the purchaser.
- 2.2 The auctioneer may nominate the sum by which the bidding can be raised.
- 2.3 The auctioneer may refuse any bid.
- 2.4 The auctioneer or the licensed real estate agent acting for the vendor in respect of the sale may submit a bid on behalf of any person. The auctioneer shall identify a person so acting before the commencement of bidding.
- 2.5 The vendor may bid personally, or by a representative, or through the auctioneer, provided that the bid is less than the reserve price. The auctioneer shall identify each vendor bid as it is made.
- 2.6 The vendor may withdraw the property at any time before it has been sold and without declaring the reserve price.
- 2.7 If a dispute arises concerning any bid, the auctioneer may determine the dispute or re-offer the property at the last undisputed bid.
- 2.8 The purchaser shall immediately on the completion of the auction:
  - (a) sign the Memorandum of Contract, failing which the auctioneer may sign on behalf of the purchaser;
  - (b) pay to the vendor's licensed real estate agent the deposit being 10% of the purchase price unless otherwise agreed; and
  - (c) complete its GST information in Schedule 3, if applicable.

**SCHEDULE 1****List all chattels included in the sale**

(Strike out or add as applicable. If necessary complete on a separate schedule or the further terms of sale)

<del>Stove</del>	( )	Rangehood	( )	Wall/under bench oven	( )	Cooktop	( )
Dishwasher	( )	<del>Kitchen waste disposal</del>	( )	Light fittings	( )	Smoke detectors	( 2 )
<del>Burglar alarm</del>	( )	Heated towel rail	( )	Heat pump	( )	Garage door remote control	( )
Garden shed	( )	Blinds	( )	Curtains	( )	Drapes	
Fixed floor coverings		<del>Bathroom extractor fan</del>					

Bathroom extractor fan (ensuite) and heater, Swimming pool pump, filtration system and accessories, Sky TV aerial, Log burner, Raised vegetable garden.

Both parties should check that Schedule 1 (list of chattels) includes an accurate list of all items which are included with the sale and purchase (in addition to, or as part of any building).

**SCHEDULE 2****Residential Tenancies****Name of Tenant(s):****Rent:****Term:****Bond:****Commercial/Industrial Tenancies**

(If necessary complete on a separate schedule)

**1. Name of Tenant(s):****Rent:****Term:****Right of Renewal:****Other:****2. Name of Tenant(s):****Rent:****Term:****Right of Renewal:****Other:****3. Name of Tenant(s):****Rent:****Term:****Right of Renewal:****Other:**

# GENERAL TERMS OF SALE

## 3.0 Definitions, time for performance, notices, and interpretation

### 3.1 Definitions

- (1) Unless the context requires a different interpretation, words and phrases not otherwise defined have the same meanings ascribed to those words and phrases in the Goods and Services Tax Act 1985, the Property Law Act 2007, the Resource Management Act 1991 or the Unit Titles Act 2010.
- (2) "Accessory unit", "owner", "principal unit", "unit", and "unit plan" have the meanings ascribed to those terms in the Unit Titles Act.
- (3) "Agreement" means this document including the front page, these General Terms of Sale, any Further Terms of Sale, and any schedules and attachments.
- (4) "Associated person", "conveyancer", "offshore RLWT person", "residential land purchase amount", "RLWT", "RLWT certificate of exemption" and "RLWT rules" have the meanings ascribed to those terms in the Income Tax Act 2007.
- (5) "Building", "building consent", "code compliance certificate", "commercial on-seller", "compliance schedule" and "household unit" have the meanings ascribed to those terms in the Building Act.
- (6) "Building Act" means the Building Act 2004.
- (7) "Building warrant of fitness" means a building warrant of fitness supplied to a territorial authority under the Building Act.
- (8) "Cleared funds" means an electronic transfer of funds that has been made strictly in accordance with the requirements set out in the PLS Guidelines.
- (9) "Commissioner" has the meaning ascribed to that term in the Tax Administration Act 1994.
- (10) "Default GST" means any additional GST, penalty (civil or otherwise), interest, or other sum imposed on the vendor (or where the vendor is or was a member of a GST group its representative member) under the GST Act or the Tax Administration Act 1994 by reason of non-payment of any GST payable in respect of the supply made under this agreement but does not include any such sum levied against the vendor (or where the vendor is or was a member of a GST group its representative member) by reason of a default or delay by the vendor after payment of the GST to the vendor by the purchaser.
- (11) "Electronic instrument" has the same meaning as ascribed to that term in the Land Transfer Act 2017.
- (12) "Going concern", "goods", "principal place of residence", "recipient", "registered person", "registration number", "supply", "taxable activity" and "taxable supply" have the meanings ascribed to those terms in the GST Act.
- (13) "GST" means Goods and Services Tax arising pursuant to the Goods and Services Tax Act 1985 and "GST Act" means the Goods and Services Tax Act 1985.
- (14) "Landonline Workspace" means an electronic workspace facility approved by the Registrar-General of Land pursuant to the provisions of the Land Transfer Act 2017.
- (15) "Leases" means any tenancy agreement, agreement to lease (if applicable), lease, sublease, or licence to occupy in respect of the property, and includes any receipt or other evidence of payment of any bond and any formal or informal document or letter evidencing any variation, renewal, extension, review, or assignment.
- (16) "LIM" means a land information memorandum issued pursuant to the Local Government Official Information and Meetings Act 1987.
- (17) "LINZ" means Land Information New Zealand.
- (18) "Local authority" means a territorial authority or a regional council.
- (19) "OIA consent" means consent to purchase the property under the Overseas Investment Act 2005.
- (20) "PLS Guidelines" means the most recent edition, as at the date of this agreement, of the New Zealand Law Society Property Law Section Guidelines, issued by the New Zealand Law Society.
- (21) "Proceedings" means any application to any court or tribunal or any referral or submission to mediation, adjudication or arbitration or any other dispute resolution procedure.
- (22) "Property" means the property described in this agreement.
- (23) "Purchase price" means the total purchase price stated in this agreement which the purchaser has agreed to pay the vendor for the property and the chattels included in the sale.
- (24) "Regional council" means a regional council within the meaning of the Local Government Act 2002.
- (25) "REINZ" means the Real Estate Institute of New Zealand Incorporated.
- (26) "Remote settlement" means settlement of the sale and purchase of the property by way of the purchaser's lawyer paying the moneys due and payable on the settlement date directly into the trust account of the vendor's lawyer, in consideration of the vendor agreeing to meet the vendor's obligations under clause 5.8(2), pursuant to the protocol for remote settlement recommended in the PLS Guidelines.
- (27) "Residential (but not otherwise sensitive) land" has the meaning ascribed to that term in the Overseas Investment Act 2005.
- (28) "Rules" means body corporate operational rules under the Unit Titles Act.
- (29) "Secure web document exchange" means an electronic messaging service enabling messages and electronic documents to be posted by one party to a secure website to be viewed by the other party immediately after posting.
- (30) "Settlement" means (unless otherwise agreed by the parties in writing) the moment in time when the vendor and purchaser have fulfilled their obligations under clause 5.8.
- (31) "Settlement date" means the date specified as such in this agreement.
- (32) "Settlement statement" means a statement showing the purchase price, plus any GST payable by the purchaser in addition to the purchase price, less any deposit or other payments or allowances to be credited to the purchaser, together with apportionments of all incomings and outgoings apportioned at the settlement date.
- (33) "Tax information" and "tax statement" have the meanings ascribed to those terms in the Land Transfer Act 2017.
- (34) "Territorial authority" means a territorial authority within the meaning of the Local Government Act 2002.
- (35) "Title" includes where appropriate a record of title within the meaning of the Land Transfer Act 2017.
- (36) "Unit title" means a unit title under the Unit Titles Act.
- (37) "Unit Titles Act" means the Unit Titles Act 2010.

- (38) "Working day" means any day of the week other than:
- (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day;
  - (b) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday;
  - (c) a day in the period commencing on the 24th day of December in any year and ending on the 5th day of January in the following year, both days inclusive;
  - (d) the day observed as the anniversary of any province in which the property is situated;
  - (e) the day on which a public holiday is observed to acknowledge Matariki, pursuant to the Te Kāhui o Matariki Public Holiday Act 2022; and
  - (f) any other day that the Government of New Zealand declares to be a public holiday.

A working day shall be deemed to commence at 9.00 am and to terminate at 5.00 pm.

3.2 Unless a contrary intention appears on the front page or elsewhere in this agreement:

- (1) the interest rate for late settlement is equivalent to the interest rate charged by the Inland Revenue Department on unpaid tax under the Tax Administration Act 1994 during the period for which the interest rate for late settlement is payable, plus 5% per annum; and
- (2) a party is in default if it did not do what it has contracted to do to enable settlement to occur, regardless of the cause of such failure.

3.3 Time for Performance

- (1) Where the day nominated for settlement or the fulfilment of a condition is not a working day, then the settlement date or the date for fulfilment of the condition shall be the last working day before the day so nominated.
- (2) Any act done pursuant to this agreement by a party, including service of notices, after 5.00 pm on a working day, or on a day that is not a working day, shall be deemed to have been done at 9.00 am on the next succeeding working day.
- (3) Where two or more acts done pursuant to this agreement, including service of notices, are deemed to have been done at the same time, they shall take effect in the order in which they would have taken effect but for clause 3.3(2).

3.4 Notices

The following apply to all notices between the parties relevant to this agreement, whether authorised by this agreement or by the general law:

- (1) All notices must be served in writing.
- (2) Any notice under section 28 of the Property Law Act 2007, where the purchaser is in possession of the property, must be served in accordance with section 353 of that Act.
- (3) All other notices, unless otherwise required by the Property Law Act 2007, must be served by one of the following means:
  - (a) on the party as authorised by sections 354 to 361 of the Property Law Act 2007, or
  - (b) on the party or on the party's lawyer:
    - (i) by personal delivery; or
    - (ii) by posting by ordinary mail; or
    - (iii) by email; or
    - (iv) in the case of the party's lawyer only, by sending by document exchange or, if both parties' lawyers have agreed to subscribe to the same secure web document exchange for this agreement, by secure web document exchange.
- (4) In respect of the means of service specified in clause 3.4(3)(b), a notice is deemed to have been served:
  - (a) in the case of personal delivery, when received by the party or at the lawyer's office;
  - (b) in the case of posting by ordinary mail, on the third working day following the date of posting to the address for service notified in writing by the party or to the postal address of the lawyer's office;
  - (c) in the case of email;
    - (i) when sent to the email address provided for the party or the party's lawyer on the back page; or
    - (ii) any other email address notified subsequently in writing by the party or the party's lawyer (which shall supersede the email address on the back page); or
    - (iii) if no such email address is provided on the back page or notified subsequently in writing, the office email address of the party's lawyer's firm appearing on the firm's letterhead or website;
  - (d) in the case of sending by document exchange, on the second working day following the date of sending to the document exchange number of the lawyer's office;
  - (e) in the case of sending by secure web document exchange, on the first working day following the date of sending to the secure web document exchange.
- (5) Any period of notice required to be given under this agreement shall be computed by excluding the day of service.

3.5 Interpretation and Execution

- (1) If there is more than one vendor or purchaser, the liability of the vendors or of the purchasers, as the case may be, is joint and several.
- (2) Where the purchaser executes this agreement with provision for a nominee, or as agent for an undisclosed or disclosed but unidentified principal, or on behalf of a company to be formed, the purchaser shall at all times remain liable for all obligations on the part of the purchaser.
- (3) If any inserted term (including any Further Terms of Sale) conflicts with the General Terms of Sale the inserted term shall prevail.
- (4) Headings are for information only and do not form part of this agreement.
- (5) References to statutory provisions shall be construed as references to those provisions as they may be amended or re-enacted or as their application is modified by other provisions from time to time.
- (6) Reference to a party's lawyer includes reference to a conveyancing practitioner (as defined in the Lawyers and Conveyancers Act 2006) engaged by that party, provided that all actions of that conveyancing practitioner (including without limitation any actions in respect of any undertaking or in respect of settlement) must strictly accord with the PLS Guidelines.

**4.0 Deposit**

- 4.1 The purchaser shall pay the deposit to the vendor's licensed real estate agent immediately on the completion of the auction or, where the property has been sold prior to, or subsequent to, the auction, on the execution of this agreement by both parties, time being of the essence.
- 4.2 If the deposit is not paid as set out in clause 4.1, the vendor may cancel this agreement by serving notice of cancellation on the purchaser.
- 4.3 The deposit shall be in part payment of the purchase price.
- 4.4 If the property is a unit title, the person to whom the deposit is paid shall hold it as a stakeholder until the latest of the following matters:
- (1) a pre-contract disclosure statement that complies with section 146 of the Unit Titles Act, and a pre-settlement disclosure statement that complies with section 147 of the Unit Titles Act, have been provided to the purchaser by the vendor within the times prescribed in those sections; and/or
  - (2) all rights of delay or cancellation under sections 149, 149A, 151, or 151A of the Unit Titles Act that have arisen have been waived or have expired without being exercised; and/or
  - (3) this agreement is cancelled pursuant to sections 149A or 151A of the Unit Titles Act.
- 4.5 Where the person to whom the deposit is paid is a real estate agent, the period for which the agent must hold the deposit as a stakeholder pursuant to clause 4.4 shall run concurrently with the period for which the agent must hold the deposit under section 123 of the Real Estate Agents Act 2008, but the agent must hold the deposit for the longer of those two periods, or such lesser period as is agreed between the parties in writing as required by section 123 of the Real Estate Agents Act 2008.

**5.0 Possession and Settlement****Possession**

- 5.1 Unless particulars of a tenancy are included in this agreement, the property is sold with vacant possession and the vendor shall so yield the property on the settlement date.
- 5.2 If the property is sold with vacant possession, then subject to the rights of any tenants of the property, the vendor shall permit the purchaser or any person authorised by the purchaser in writing, upon reasonable notice:
- (1) to enter the property on one occasion prior to the settlement date for the purposes of examining the property, chattels and fixtures which are included in the sale; and
  - (2) to re-enter the property no later than the day prior to the settlement date to confirm compliance by the vendor with any agreement made by the vendor to carry out any work on the property, the chattels and the fixtures.
- 5.3 Possession shall be given and taken on the settlement date. Outgoings and incomings in respect of the settlement date are the responsibility of and belong to the vendor.
- 5.4 On the settlement date, the vendor shall make available to the purchaser keys to all exterior doors that are locked by key, electronic door openers to all doors that are opened electronically, and the keys and/or security codes to any alarms. The vendor does not have to make available keys, electronic door openers, and security codes where the property is tenanted and these are held by the tenant.

**Settlement**

- 5.5 The vendor shall prepare, at the vendor's own expense, a settlement statement. The vendor shall tender the settlement statement to the purchaser or the purchaser's lawyer a reasonable time prior to the settlement date. If the property is a unit title, the vendor's settlement statement must show any periodic contributions to the operating account that have been struck prior to the settlement date (whether or not they are payable before or after the settlement date) and these periodic contributions to the operating account shall be apportioned. There shall be no apportionment of contributions to any long-term maintenance fund, contingency fund or capital improvement fund.
- 5.6 The purchaser's lawyer shall:
- (1) within a reasonable time prior to the settlement date create a Landonline Workspace for the transaction, notify the vendor's lawyer of the dealing number allocated by LINZ, and prepare in that workspace a transfer instrument in respect of the property; and
  - (2) prior to settlement:
    - (a) lodge in that workspace the tax information contained in the transferee's tax statement; and
    - (b) certify and sign the transfer instrument.
- 5.7 The vendor's lawyer shall:
- (1) within a reasonable time prior to the settlement date prepare in that workspace all other electronic instruments required to confer title on the purchaser in terms of the vendor's obligations under this agreement; and
  - (2) prior to settlement:
    - (a) lodge in that workspace the tax information contained in the transferor's tax statement; and
    - (b) have those instruments and the transfer instrument certified, signed and, where possible, pre-validated.
- 5.8 On the settlement date:
- (1) the balance of the purchase price, interest and other moneys, if any, shall be paid by the purchaser in cleared funds or otherwise satisfied as provided in this agreement (credit being given for any amount payable by the vendor under clause 5.12 or 5.13, or for any deduction allowed to the purchaser under clause 7.2, or for any compensation agreed by the vendor in respect of a claim made by the purchaser pursuant to clause 11.2(1), or for any interim amount the purchaser is required to pay to a stakeholder pursuant to clause 11.8);
  - (2) the vendor's lawyer shall immediately thereafter:
    - (a) release or procure the release of the transfer instrument and the other instruments mentioned in clause 5.7(1) so that the purchaser's lawyer can then submit them for registration;
    - (b) pay to the purchaser's lawyer the LINZ registration fees on all of the instruments mentioned in clause 5.7(1), unless these fees will be invoiced to the vendor's lawyer by LINZ directly; and

- (c) deliver to the purchaser's lawyer any other documents that the vendor must provide to the purchaser on settlement in terms of this agreement, including where this agreement provides for the property to be sold tenanted, all leases relating to the tenancy that are held by the vendor and a notice from the vendor to each tenant advising them of the sale of the property and directing them to pay to the purchaser as landlord, in such manner as the purchaser may prescribe, all rent or other moneys payable under the leases.

5.9 All obligations under clause 5.8 are interdependent.

5.10 The parties shall complete settlement by way of remote settlement in accordance with the PLS Guidelines. Where the purchaser considers it necessary or desirable to tender settlement, this may be effected (in addition to any other valid form of tender) by the purchaser's lawyer providing to the vendor's lawyer a written undertaking that:

- (1) the purchaser is ready, willing, and able to settle;
- (2) the purchaser's lawyer has certified and signed the transfer instrument and any other instruments in the Landonline Workspace for the transaction that must be signed on behalf of the purchaser; and
- (3) the purchaser's lawyer holds in their trust account in cleared funds the amount that the purchaser must pay on settlement.

#### **Last-Minute Settlement**

5.11 If due to the delay of the purchaser, settlement takes place between 4.00 pm and 5.00 pm on the settlement date ("last-minute settlement"), the purchaser shall pay the vendor:

- (1) one day's interest at the interest rate for late settlement on the portion of the purchase price paid in the last-minute settlement; and
- (2) if the day following the last-minute settlement is not a working day, an additional day's interest (calculated in the same manner) for each day until, but excluding, the next working day.

#### **Purchaser Default: Late Settlement**

5.12 If any portion of the purchase price is not paid upon the due date for payment, then, provided that the vendor provides reasonable evidence of the vendor's ability to perform any obligation the vendor is obliged to perform on that date in consideration for such payment:

- (1) the purchaser shall pay to the vendor interest at the interest rate for late settlement on the portion of the purchase price so unpaid for the period from the due date for payment until payment ("the default period"); but nevertheless, this stipulation is without prejudice to any of the vendor's rights or remedies including any right to claim for additional expenses and damages. For the purposes of this clause, a payment made on a day other than a working day or after the termination of a working day shall be deemed to be made on the next following working day and interest shall be computed accordingly; and
- (2) the vendor is not obliged to give the purchaser possession of the property or to pay the purchaser any amount for remaining in possession, unless this agreement relates to a tenanted property, in which case the vendor must elect either to:
  - (a) account to the purchaser on settlement for incomings in respect of the property which are payable and received during the default period, in which event the purchaser shall be responsible for the outgoings relating to the property during the default period; or
  - (b) retain such incomings in lieu of receiving interest from the purchaser pursuant to clause 5.12(1).
- (3) If the parties are unable to agree upon any amount payable under this clause 5.12, either party may make a claim under clause 11.0.

#### **Vendor Default: Late Settlement or Failure to Give Possession**

5.13 (1) For the purposes of this clause 5.13:

- (a) the default period means:
  - (i) in clause 5.13(2), the period from the settlement date until the date when the vendor is able and willing to provide vacant possession and the purchaser takes possession; and
  - (ii) in clause 5.13(3), the period from the date the purchaser takes possession until the date when settlement occurs; and
  - (iii) in clause 5.13(5), the period from the settlement date until the date when settlement occurs; and
- (b) the vendor shall be deemed to be unwilling to give possession if the vendor does not offer to give possession.
- (2) If this agreement provides for vacant possession but the vendor is unable or unwilling to give vacant possession on the settlement date, then, provided that the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement:
  - (a) the vendor shall pay the purchaser, at the purchaser's election, either:
    - (i) compensation for any reasonable costs incurred for temporary accommodation for persons and storage of chattels during the default period; or
    - (ii) an amount equivalent to interest at the interest rate for late settlement on the entire purchase price during the default period; and
  - (b) the purchaser shall pay the vendor an amount equivalent to the interest earned or which would be earned on overnight deposits lodged in the purchaser's lawyer's trust bank account on such portion of the purchase price (including any deposit) as is payable under this agreement on or by the settlement date but remains unpaid during the default period less:
    - (i) any withholding tax; and
    - (ii) any bank or legal administration fees and commission charges; and
    - (iii) any interest payable by the purchaser to the purchaser's lender during the default period in respect of any mortgage or loan taken out by the purchaser in relation to the purchase of the property.
- (3) If this agreement provides for vacant possession and the vendor is able and willing to give vacant possession on the settlement date, then, provided the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement, the purchaser may elect to take possession in which case the vendor shall not be liable to pay any interest or other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in clause 5.13(2)(b) during the default period. A purchaser in possession under this clause 5.13(3) is a licensee only.

- (4) Notwithstanding the provisions of clause 5.13(3), the purchaser may elect not to take possession when the purchaser is entitled to take it. If the purchaser elects not to take possession, the provisions of clause 5.13(2) shall apply as though the vendor were unable or unwilling to give vacant possession on the settlement date.
- (5) If this agreement provides for the property to be sold tenanted then, provided that the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement, the vendor shall on settlement account to the purchaser for incomings which are payable and received in respect of the property during the default period less the outgoings paid by the vendor during that period. Apart from accounting for such incomings, the vendor shall not be liable to pay any other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in clause 5.13(2)(b) during the default period.
- (6) The provisions of this clause 5.13 shall be without prejudice to any of the purchaser's rights or remedies including any right to claim for any additional expenses and damages suffered by the purchaser.
- (7) If the parties are unable to agree upon any amount payable under this clause 5.13, either party may make a claim under clause 11.0.

#### Deferment of Settlement and Possession

5.14 If:

- (1) this is an agreement for the sale by a commercial on-seller of a household unit; and
  - (2) a code compliance certificate has not been issued by the settlement date in relation to the household unit,
- then, unless the parties agree otherwise (in which case the parties shall enter into a written agreement in the form (if any) prescribed by the Building (Forms) Regulations 2004), the settlement date shall be deferred to the fifth working day following the date upon which the vendor has given the purchaser notice that the code compliance certificate has been issued (which notice must be accompanied by a copy of the certificate).

5.15 In every case, if neither party is ready, willing, and able to settle on the settlement date, the settlement date shall be deferred to the third working day following the date upon which one of the parties gives notice it has become ready, willing, and able to settle.

5.16 If:

- (1) the property is a unit title; and
- (2) the settlement date is deferred pursuant to either clause 5.14 or clause 5.15; and
- (3) the vendor considers on reasonable grounds that an extension of time is necessary or desirable in order for the vendor to comply with clause 10.3,

then the vendor may extend the settlement date:

- (a) where there is a deferment of the settlement date pursuant to clause 5.14, to the tenth working day after the date upon which the vendor gives the purchaser notice that the code compliance certificate has been issued, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice; or
- (b) where there is a deferment of the settlement date pursuant to clause 5.15, to the tenth working day after the date upon which one of the parties gives notice that it has become ready, willing, and able to settle, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice.

#### New Title Provision

5.17 (1) Where:

- (a) the transfer of the property is to be registered against a new title yet to be issued; and
- (b) a search copy, as defined in section 60 of the Land Transfer Act 2017, of that title is not obtainable by the tenth working day prior to the settlement date,

then, unless the purchaser elects that settlement shall still take place on the agreed settlement date, the settlement date shall be deferred to the tenth working day after the date on which the vendor has given the purchaser notice that a search copy is obtainable.

- (2) Clause 5.17(1) shall not apply where it is necessary to register the transfer of the property to enable a plan to be deposited and title to the property to be issued.

### 6.0 Residential Land Withholding Tax

6.1 If the vendor does not have a conveyancer or the vendor and the purchaser are associated persons, then:

- (1) the vendor must provide the purchaser or the purchaser's conveyancer, on or before the second working day before the due date for payment of the first residential land purchase amount payable under this agreement, with:
  - (a) sufficient information to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction whether section 54C of the Tax Administration Act 1994 applies to the sale of the property; and
  - (b) if the purchaser or the purchaser's conveyancer determines to their reasonable satisfaction that section 54C of the Tax Administration Act 1994 does apply, all of the information required by that section and either an RLWT certificate of exemption in respect of the sale or otherwise such other information that the purchaser or the purchaser's conveyancer may reasonably require to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction the amount of RLWT that must be withheld from each residential land purchase amount;
- (2) the vendor shall be liable to pay any costs reasonably incurred by the purchaser or the purchaser's conveyancer in relation to RLWT, including the cost of obtaining professional advice in determining whether there is a requirement to withhold RLWT and the amount of RLWT that must be withheld, if any; and
- (3) any payments payable by the purchaser on account of the purchase price shall be deemed to have been paid to the extent that:
  - (a) RLWT has been withheld from those payments by the purchaser or the purchaser's conveyancer as required by the RLWT rules; and
  - (b) any costs payable by the vendor under clause 6.1(2) have been deducted from those payments by the purchaser or the purchaser's conveyancer.

6.2 If the vendor does not have a conveyancer or the vendor and the purchaser are associated persons and if the vendor fails to provide the information required under clause 6.1(1), then the purchaser may:

- (1) defer the payment of the first residential land purchase amount payable under this agreement (and any residential land purchase amount that may subsequently fall due for payment) until such time as the vendor supplies that information; or
  - (2) on the due date for payment of that residential land purchase amount, or at any time thereafter if payment has been deferred by the purchaser pursuant to this clause and the vendor has still not provided that information, treat the sale of the property as if it is being made by an offshore RLWT person where there is a requirement to pay RLWT.
- 6.3 If pursuant to clause 6.2 the purchaser treats the sale of the property as if it is being made by an offshore RLWT person where there is a requirement to pay RLWT, the purchaser or the purchaser's conveyancer may:
- (1) make a reasonable assessment of the amount of RLWT that the purchaser or the purchaser's conveyancer would be required by the RLWT rules to withhold from any residential land purchase amount if the sale is treated in that manner; and
  - (2) withhold that amount from any residential land purchase amount and pay it to the Commissioner as RLWT.
- 6.4 Any amount withheld by the purchaser or the purchaser's conveyancer pursuant to clause 6.3 shall be treated as RLWT that the purchaser or the purchaser's conveyancer is required by the RLWT rules to withhold.
- 6.5 The purchaser or the purchaser's conveyancer shall give notice to the vendor a reasonable time before payment of any sum due to be paid on account of the purchase price of:
- (1) the costs payable by the vendor under clause 6.1(2) that the purchaser or the purchaser's conveyancer intends to deduct; and
  - (2) the amount of RLWT that the purchaser or the purchaser's conveyancer intends to withhold.

## 7.0 Risk and insurance

- 7.1 The property and chattels shall remain at the risk of the vendor until possession is given and taken.
- 7.2 If, prior to the giving and taking of possession, the property is destroyed or damaged, and such destruction or damage has not been made good by the settlement date, then the following provisions shall apply:
- (1) if the destruction or damage has been sufficient to render the property untenable and it is untenable on the settlement date, the purchaser may:
    - (a) complete the purchase at the purchase price, less a sum equal to any insurance moneys received or receivable by or on behalf of the vendor in respect of such destruction or damage, provided that no reduction shall be made to the purchase price if the vendor's insurance company has agreed to reinstate for the benefit of the purchaser to the extent of the vendor's insurance cover; or
    - (b) cancel this agreement by serving notice on the vendor in which case the vendor shall return to the purchaser immediately the deposit and any other moneys paid by the purchaser, and neither party shall have any right or claim against the other arising from this agreement or its cancellation;
  - (2) if the property is not untenable on the settlement date, the purchaser shall complete the purchase at the purchase price less a sum equal to the amount of the diminution in value of the property which, to the extent that the destruction or damage to the property can be made good, shall be deemed to be equivalent to the reasonable cost of reinstatement or repair;
  - (3) if the property is zoned for rural purposes under an operative District Plan, damage to the property shall be deemed to have rendered the property untenable where the diminution in value exceeds an amount equal to 20% of the purchase price; and
  - (4) if the amount of the diminution in value is disputed, the parties shall follow the same procedure as that set out in clause 11.8 for when an amount of compensation is disputed.
- 7.3 The purchaser shall not be required to take over any insurance policies held by the vendor.

## 8.0 Title, boundaries and requisitions

- 8.1 The vendor shall not be bound to point out the boundaries of the property except that on the sale of a vacant residential lot which is not limited as to parcels the vendor shall ensure that all boundary markers required by the Cadastral Survey Act 2002 and any related rules and regulations to identify the boundaries of the property are present in their correct positions at the settlement date.
- 8.2 The purchaser is deemed to have accepted the vendor's title to the property and the purchaser may not make any requisitions or objections as to title.
- 8.3 The vendor shall not be liable to pay for or contribute towards the expense of erection or maintenance of any fence between the property and any contiguous land of the vendor but this proviso shall not enure for the benefit of any subsequent purchaser of the contiguous land; and the vendor shall be entitled to require the inclusion of a fencing covenant to this effect in any transfer of the property.

## 9.0 Vendor's warranties and undertakings

- 9.1 The vendor warrants and undertakes that at the date of this agreement, the vendor has not:
- (1) received any notice or demand and has no knowledge of any requisition or outstanding requirement:
    - (a) from any local or government authority or other statutory body; or
    - (b) under the Resource Management Act 1991; or
    - (c) from any tenant of the property; or
    - (d) from any other party; or
  - (2) given any consent or waiver, which directly or indirectly affects the property and which has not been disclosed in writing to the purchaser.
- 9.2 The vendor warrants and undertakes that at the date of this agreement the vendor has no knowledge or notice of any fact which might result in proceedings being instituted by or against the vendor or the purchaser in respect of the property.
- 9.3 The vendor warrants and undertakes that at settlement:
- (1) The chattels included in the sale listed in Schedule 1 and all plant, equipment, systems or devices which provide any services or amenities to the property, including, without limitation, security, heating, cooling, or air-conditioning, are delivered to the purchaser in reasonable working order, but in all other respects in their state of repair as at the date of this agreement (fair wear and tear excepted).

- (2) All electrical and other installations on the property are free of any charge whatsoever and all chattels included in the sale are the unencumbered property of the vendor.
  - (3) There are no arrears of rates, water rates or charges outstanding on the property and where the property is subject to a targeted rate that has been imposed as a means of repayment of any loan, subsidy or other financial assistance made available by or through the local authority, the amount required to remove the imposition of that targeted rate has been paid.
  - (4) Where an allowance has been made by the vendor in the settlement statement for incomings receivable, the settlement statement correctly records those allowances including, in particular, the dates up to which the allowances have been made.
  - (5) Where the vendor has done or caused or permitted to be done on the property any works:
    - (a) any permit, resource consent, or building consent required by law was obtained; and
    - (b) to the vendor's knowledge, the works were completed in compliance with those permits or consents; and
    - (c) where appropriate, a code compliance certificate was issued for those works.
  - (6) Where under the Building Act, any building on the property sold requires a compliance schedule:
    - (a) the vendor has fully complied with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;
    - (b) the building has a current building warrant of fitness; and
    - (c) the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.
  - (7) Since the date of this agreement, the vendor has not given any consent or waiver which directly or indirectly affects the property.
  - (8) Any notice or demand received by the vendor, which directly or indirectly affects the property, after the date of this agreement:
    - (a) from any local or government authority or other statutory body; or
    - (b) under the Resource Management Act 1991; or
    - (c) from any tenant of the property; or
    - (d) from any other party,
 has been delivered forthwith by the vendor to either the purchaser or the purchaser's lawyer, unless the vendor has paid or complied with such notice or demand. If the vendor fails to so deliver or pay the notice or demand, the vendor shall be liable for any penalty incurred.
- 9.4 If the property is or includes part only of a building, the warranty and undertaking in clause 9.3(6) does not apply. Instead the vendor warrants and undertakes at the date of this agreement that, where under the Building Act the building of which the property forms part requires a compliance schedule:
- (1) to the vendor's knowledge, there has been full compliance with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;
  - (2) the building has a current building warrant of fitness; and
  - (3) the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.
- 9.5 The vendor warrants and undertakes that on or immediately after settlement:
- (1) If the water and wastewater charges are determined by meter, the vendor will have the water meter read and will pay the amount of the charge payable pursuant to that reading; but if the water supplier will not make special readings, the water and wastewater charges shall be apportioned.
  - (2) Any outgoings included in the settlement statement are paid in accordance with the settlement statement and, where applicable, to the dates shown in the settlement statement, or will be so paid immediately after settlement.
  - (3) The vendor will give notice of sale in accordance with the Local Government (Rating) Act 2002 to the territorial authority and regional council in whose district the land is situated and will also give notice of the sale to every other authority that makes and levies rates or charges on the land and to the supplier of water.
  - (4) Where the property is a unit title, the vendor will notify the body corporate in writing of the transfer of the property and the name and address of the purchaser.

## 10.0 Unit title provisions

- 10.1 If the property is a unit title, sections 144 to 153 of the Unit Titles Act require the vendor to provide to the purchaser a pre-contract disclosure statement and a pre-settlement disclosure statement in accordance with the Unit Titles Act. The requirements of this clause 10.0 are in addition to, and do not derogate from, the requirements in the Act.
- 10.2 If the property is a unit title, then except to the extent the vendor has disclosed otherwise to the purchaser in writing prior to the parties entering into this agreement, the vendor warrants and undertakes as follows as at the date of this agreement:
- (1) The information in the pre-contract disclosure statement provided to the purchaser was complete and correct to the extent required by the Unit Titles Act.
  - (2) Apart from regular periodic contributions, no contributions have been levied or proposed by the body corporate
  - (3) There are no unsatisfied judgments against the body corporate and no proceedings have been instituted against or by the body corporate.
  - (4) No order or declaration has been made by any Court or Tribunal against the body corporate or the vendor under any provision of the Unit Titles Act.
  - (5) The vendor has no knowledge or notice of any fact which might result in:
    - (a) the vendor or the purchaser incurring any other liability under any provision of the Unit Titles Act;
    - (b) any proceedings being instituted by or against the body corporate; or
    - (c) any order or declaration being sought against the body corporate or the vendor under any provision of the Unit Titles Act.

- (6) The vendor is not aware of proposals to pass any body corporate resolution relating to its rules nor are there any unregistered changes to the body corporate rules.
  - (7) No lease, licence, easement, or special privilege has been granted by the body corporate in respect of any part of the common property.
  - (8) No resolution has been passed and no application has been made and the vendor has no knowledge of any proposal for:
    - (a) the transfer of the whole or any part of the common property;
    - (b) the addition of any land to the common property;
    - (c) the cancellation of the unit plan;
    - (d) the deposit of an amendment to the unit plan, a redevelopment plan, or a new unit plan in substitution for the existing unit plan; or
    - (e) any change to utility interest or ownership interest for any unit on the unit plan.
- 10.3 If the property is a unit title, not less than five working days before the settlement date, the vendor will provide:
- (1) a certificate of insurance for all insurances effected by the body corporate under the provisions of section 135 of the Unit Titles Act; and
  - (2) a pre-settlement disclosure statement from the vendor, certified correct by the body corporate, under section 147 of the Unit Titles Act.
- 10.4 If the property is a unit title, then except to the extent the vendor has disclosed otherwise to the purchaser in writing prior to the parties entering into this agreement, the vendor warrants and undertakes as at the settlement date:
- (1) Other than contributions to the operating account, long-term maintenance fund, contingency fund, or capital improvements fund that are shown in the pre-settlement disclosure statement, there are no other amounts owing by the vendor under any provision of the Unit Titles Act.
  - (2) All contributions and other moneys payable by the vendor to the body corporate have been paid in full.
  - (3) The warranties at clause 10.2(2), (3), (4), (5), (6), (7), and (8) are repeated.
- 10.5 If the property is a unit title and if the vendor does not provide the certificates of insurance and the pre-settlement disclosure statement under section 147 of the Unit Titles Act in accordance with the requirements of clause 10.3, then in addition to the purchaser's rights under sections 150, 151 and 151A of the Unit Titles Act, the purchaser may:
- (1) postpone the settlement date until the fifth working day following the date on which that information is provided to the purchaser; or
  - (2) elect that settlement shall still take place on the settlement date, such election to be a waiver of any other rights to delay or cancel settlement under the Unit Titles Act or otherwise.
- 10.6 If the property is a unit title, each party specifies that:
- (1) any email address of that party's lawyer provided on the back page of this agreement, or notified subsequently in writing by that party's lawyer, shall be an address for service for that party for the purposes of section 205(1)(d) of the Unit Titles Act; and
  - (2) if that party is absent from New Zealand, that party's lawyer shall be that party's agent in New Zealand for the purposes of section 205(2) of the Unit Titles Act.

## 11.0 Claims for compensation

- 11.1 If the purchaser has not purported to cancel this agreement, the breach by the vendor of any term of this agreement does not defer the purchaser's obligation to settle, but that obligation is subject to the provisions of this clause 11.0.
- 11.2 The provisions of this clause apply if:
- (1) the purchaser claims a right to compensation (and in making such a claim, the purchaser must act reasonably, but the vendor taking the view that the purchaser has not acted reasonably does not affect the purchaser's ability or right to make such a claim) for:
    - (a) a breach of any term of this agreement;
    - (b) a misrepresentation;
    - (c) a breach of section 9 or section 14 of the Fair Trading Act 1986;
    - (d) an equitable set-off, or
  - (2) there is a dispute between the parties regarding any amounts payable:
    - (a) under clause 5.12 or clause 5.13; or
    - (b) under clause 7.2.
- 11.3 To make a claim under this clause 11.0:
- (1) the claimant must serve notice of the claim on the other party on or before the last working day prior to the settlement date, time being of the essence (except for claims made after the settlement date for amounts payable under clause 5.12 or clause 5.13, in respect of which the claimant may serve notice of the claim on the other party at any time after a dispute arises over those amounts); and
  - (2) the notice must:
    - (a) state the particular breach of the terms of this agreement, or the claim under clause 5.12, clause 5.13 or clause 7.2, or for misrepresentation, or for breach of section 9 or section 14 of the Fair Trading Act 1986, or for an equitable set-off; and
    - (b) state a genuine pre-estimate of the loss suffered by the claimant; and
    - (c) be particularised and quantified to the extent reasonably possible as at the date of the notice; and
  - (3) the claimant must not have made a prior claim under this clause 11.0 (to the intent that a claimant may make a claim under this clause 11.0 on only one occasion, though such a claim may address one or more of the elements in clause 11.2).
- 11.4 If the claimant is unable to give notice under clause 11.3 in respect of claims under clause 11.2(1) or clause 11.2(2)(b) on or before the date that notice is due under clause 11.3(1) by reason of the conduct or omission of the other party, the notice may be served on or before the working day immediately preceding the last working day on which settlement must take place under a settlement notice served by either party under clause 12.1, time being of the essence.

- 11.5 If the amount of compensation is agreed, it shall be deducted from or added to the amount to be paid by the purchaser on settlement.
- 11.6 If the purchaser makes a claim for compensation under clause 11.2(1) but the vendor disputes that the purchaser has a valid or reasonably arguable claim, then:
- (1) the vendor must give notice to the purchaser within three working days after service of the purchaser's notice under clause 11.3, time being of the essence; and
  - (2) the purchaser's right to make the claim (on the basis that such claim is valid or reasonably arguable) shall be determined by an experienced property lawyer or an experienced litigator appointed by the parties. If the parties cannot agree on the appointee, the appointment shall be made on the application of either party by the president for the time being of the Auckland District Law Society. The appointee's costs shall be met by the party against whom the determination is made or otherwise as determined by the appointee.
- 11.7 If the purchaser makes a claim for compensation under clause 11.2(1) and the vendor fails to give notice to the purchaser pursuant to clause 11.6, the vendor is deemed to have accepted that the purchaser has a valid or reasonably arguable claim.
- 11.8 If it is accepted, or determined under clause 11.6, that the purchaser has a right to claim compensation under clause 11.2(1) but the amount of compensation claimed is disputed, or if the claim is made under clause 11.2(2) and the amount of compensation claimed is disputed, then:
- (1) an interim amount shall be paid on settlement by the party required to a stakeholder until the amount of the claim is determined;
  - (2) if the parties cannot agree on a stakeholder, the interim amount shall be paid to a stakeholder nominated on the application of either party by the president for the time being of the Auckland District Law Society;
  - (3) the interim amount must be a reasonable sum having regard to the circumstances, except that:
    - (a) where the claim is under clause 5.13 the interim amount shall be the lower of the amount claimed, or an amount equivalent to interest at the interest rate for late settlement for the relevant default period on such portion of the purchase price (including any deposit) as is payable under this agreement on or by the settlement date;
    - (b) neither party shall be entitled or required to undertake any discovery process, except to the extent this is deemed necessary by the appointee under clause 11.8(4) for the purposes of determining that the requirements of clauses 11.3(2)(b)-(c) have been met.
  - (4) if the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer, an experienced litigator, or, where the claim for compensation is made under clause 7.2, an experienced registered valuer or quantity surveyor appointed by the parties. The appointee's costs shall be met equally by the parties, or otherwise as determined by the appointee. If the parties cannot agree on the appointee, the appointment shall be made on the application of either party by the president for the time being of the Auckland District Law Society;
  - (5) the amount of the claim determined to be payable shall not be limited by the interim amount;
  - (6) the stakeholder shall lodge the interim amount on an interest-bearing call deposit with a bank registered under the Reserve Bank of New Zealand Act 1989 in the joint names of the vendor and the purchaser;
  - (7) the interest earned on the interim amount net of any withholding tax and any bank or legal administration fees and commission charges shall follow the destination of the interim amount; and
  - (8) apart from the net interest earned on the interim amount, no interest shall be payable by either party to the other in respect of the claim for compensation once the amount of the claim has been determined, provided that if the amount determined is in excess of the interim amount, the party liable to make payment of that excess shall pay interest to the other party at the interest rate for late settlement on the amount of that excess if it is not paid on or before the third working day after the date of notification of the determination, computed from the date of such notification until payment.
- 11.9 Where a determination has to be made under clause 11.6(2) or clause 11.8(4) and the settlement date will have passed before the determination is made, the settlement date shall be deferred to the second working day following the date of notification to both parties of the determination. Where a determination has to be made under both of these clauses, the settlement date shall be deferred to the second working day following the date on which notification to both parties has been made of both determinations. However, the settlement date will only be deferred under this clause 11.9 if, prior to such deferral, the purchaser's lawyer provides written confirmation to the vendor's lawyer that but for the resolution of the claim for compensation, the purchaser is ready, willing, and able to complete settlement.
- 11.10 The procedures prescribed in clauses 11.1 to 11.9 shall not prevent either party from taking proceedings for specific performance of this agreement.
- 11.11 A determination under clause 11.6 that the purchaser does not have a valid or reasonably arguable claim for compensation under clause 11.2(1) shall not prevent the purchaser from pursuing that claim following settlement.
- 11.12 Where a determination is made by an appointee under either clause 11.6 or clause 11.8, that appointee:
- (1) shall not be liable to either party for any costs or losses that either party may claim to have suffered in respect of the determination; and
  - (2) may make an order that one party must meet all or some of the reasonable legal costs of the other party, and in making such an order the appointee may without limitation take into account the appointee's view of the reasonableness of the conduct of the parties under this clause.

## 12.0 Notice to complete and remedies on default

- 12.1
- (1) If the sale is not settled on the settlement date, either party may at any time thereafter serve on the other party a settlement notice.
  - (2) The settlement notice shall be effective only if the party serving it is at the time of service either in all material respects ready, willing, and able to proceed to settle in accordance with this agreement or is not so ready, willing, and able to settle only by reason of the default or omission of the other party.
  - (3) If the purchaser is in possession, the vendor's right to cancel this agreement will be subject to sections 28 to 36 of the Property Law Act 2007 and the settlement notice may incorporate or be given with a notice under section 28 of that Act complying with section 29 of that Act.

- 12.2 Subject to clause 12.1(3), upon service of the settlement notice the party on whom the notice is served shall settle:
- (1) on or before the twelfth working day after the date of service of the notice; or
  - (2) on the first working day after the 13th day of January if the period of twelve working days expires during the period commencing on the 6th day of January and ending on the 13th day of January, both days inclusive, time being of the essence, but without prejudice to any intermediate right of cancellation by either party.
- 12.3
- (1) If this agreement provides for the payment of the purchase price by instalments and the purchaser fails duly and punctually to pay any instalment on or within one month from the date on which it fell due for payment then, whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling up the unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable.
  - (2) The date of service of the notice under this clause shall be deemed the settlement date for the purposes of clause 12.1.
  - (3) The vendor may give a settlement notice with a notice under this clause.
  - (4) For the purposes of this clause a deposit is not an instalment.
- 12.4 If the purchaser does not comply with the terms of the settlement notice served by the vendor then, subject to clause 12.1(3):
- (1) Without prejudice to any other rights or remedies available to the vendor at law or in equity, the vendor may:
    - (a) sue the purchaser for specific performance; or
    - (b) cancel this agreement by notice and pursue either or both of the following remedies, namely:
      - (i) forfeit and retain for the vendor's own benefit the deposit paid by the purchaser, but not exceeding in all 10% of the purchase price; and/or
      - (ii) sue the purchaser for damages.
  - (2) Where the vendor is entitled to cancel this agreement, the entry by the vendor into a conditional or unconditional agreement for the resale of the property or any part thereof shall take effect as a cancellation of this agreement by the vendor if this agreement has not previously been cancelled and such resale shall be deemed to have occurred after cancellation.
  - (3) The damages claimable by the vendor under clause 12.4(1)(b)(ii) shall include all damages claimable at common law or in equity and shall also include (but shall not be limited to) any loss incurred by the vendor on any bona fide resale contracted within one year from the date by which the purchaser should have settled in compliance with the settlement notice. The amount of that loss may include:
    - (a) interest on the unpaid portion of the purchase price at the interest rate for late settlement from the settlement date to the settlement of such resale; and
    - (b) all costs and expenses reasonably incurred in any resale or attempted resale; and
    - (c) all outgoings (other than interest) on or maintenance expenses in respect of the property from the settlement date to the settlement of such resale.
  - (4) Any surplus money arising from a resale shall be retained by the vendor.
- 12.5 If the vendor does not comply with the terms of a settlement notice served by the purchaser, then, without prejudice to any other rights or remedies available to the purchaser at law or in equity the purchaser may:
- (1) sue the vendor for specific performance; or
  - (2) cancel this agreement by notice and require the vendor forthwith to repay to the purchaser any deposit and any other money paid on account of the purchase price and interest on such sum(s) at the interest rate for late settlement from the date or dates of payment by the purchaser until repayment.
- 12.6 The party serving a settlement notice may extend the term of the notice for one or more specifically stated periods of time and thereupon the term of the settlement notice shall be deemed to expire on the last day of the extended period or periods and it shall operate as though this clause stipulated the extended period(s) of notice in lieu of the period otherwise applicable; and time shall be of the essence accordingly. An extension may be given either before or after the expiry of the period of the notice.
- 12.7 Nothing in this clause shall preclude a party from suing for specific performance without serving a settlement notice.
- 12.8 A party who serves a settlement notice under this clause shall not be in breach of an essential term by reason only of that party's failure to be ready, willing, and able to settle upon the expiry of that notice.

### 13.0 Non-merger

- 13.1 The obligations and warranties of the parties in this agreement shall not merge with:
- (1) the giving and taking of possession;
  - (2) settlement;
  - (3) the transfer of title to the property;
  - (4) delivery of the chattels (if any); or
  - (5) registration of the transfer of title to the property.

### 14.0 Goods and Services Tax

- 14.1 If this agreement provides for the purchaser to pay (in addition to the purchase price stated without GST) any GST which is payable in respect of the supply made under this agreement, then:
- (1) the purchaser shall pay to the vendor the GST which is so payable in one sum on the GST date;
  - (2) where the GST date has not been inserted on the front page of this agreement the GST date shall be the settlement date;
  - (3) where any GST is not so paid to the vendor, the purchaser shall pay to the vendor:
    - (a) interest at the interest rate for late settlement on the amount of GST unpaid from the GST date until payment; and
    - (b) any default GST;
  - (4) it shall not be a defence to a claim against the purchaser for payment to the vendor of any default GST that the vendor has failed to mitigate the vendor's damages by paying an amount of GST when it fell due under the GST Act; and
  - (5) any sum referred to in this clause is included in the moneys payable by the purchaser on settlement pursuant to clause 5.8(1).
- 14.2 If the supply under this agreement is a taxable supply, the vendor will deliver a tax invoice to the purchaser on or before the GST date or such earlier date as the purchaser is entitled to delivery of an invoice under the GST Act.

- 14.3 (1) Without prejudice to the vendor's rights and remedies under clause 14.1, where any GST is not paid to the vendor on or within one month of the GST date, then whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling up any unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable.
- (2) The date of service of the notice under this clause shall be deemed the settlement date for the purposes of clause 12.1.
- (3) The vendor may give a settlement notice under clause 12.1 with a notice under this clause.

### 15.0 Zero-rating

- 15.1 The vendor warrants that the statement on the front page regarding the vendor's GST registration status in respect of the supply under this agreement and any particulars stated by the vendor in Schedule 3 are correct at the date of this agreement and will remain correct at settlement.
- 15.2 The purchaser warrants that any particulars stated by the purchaser in Schedule 3 are correct at the date of this agreement.
- 15.3 Where the particulars stated on the front page and in Schedule 3 indicate that:
- (1) the vendor is and/or will be at settlement a registered person in respect of the supply under this agreement;
- (2) the recipient is and/or will be at settlement a registered person;
- (3) the recipient intends at settlement to use the property for making taxable supplies; and
- (4) the recipient does not intend at settlement to use the property as a principal place of residence by the recipient or a person associated with the recipient under section 2A(1)(c) of the GST Act,
- GST will be chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act.
- 15.4 If GST is chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act, then on or before settlement the purchaser will provide the vendor with the recipient's name, address, and registration number if any of those details are not included in Schedule 3 or they have altered.
- 15.5 (1) If any of the particulars stated by the purchaser in Schedule 3:
- (a) are incomplete; or
- (b) alter between the date of this agreement and settlement,
- the purchaser shall notify the vendor of the particulars which have not been completed and the altered particulars as soon as practicable before settlement.
- (2) The purchaser warrants that any added or altered particulars will be correct as at the date of the purchaser's notification.
- (3) If the GST treatment of the supply under this agreement should be altered as a result of the added or altered particulars, the vendor shall prepare and deliver to the purchaser or the purchaser's lawyer an amended settlement statement, if the vendor has already tendered a settlement statement, and a credit note or a debit note, as the case may be, if the vendor has already issued a tax invoice.
- 15.6 If
- (1) the particulars in Schedule 3 state that part of the property is being used as a principal place of residence at the date of this agreement; and
- (2) that part is still being so used at the time of the supply under this agreement,
- then, the supply of that part will be a separate supply in accordance with section 5(15)(a) of the GST Act.
- 15.7 If
- (1) the particulars stated in Schedule 3 indicate that the recipient intends to use part of the property as a principal place of residence by the recipient or a person associated with the recipient under section 2A(1)(c) of the GST Act; and
- (2) that part is the same part as that being used as a principal place of residence at the time of the supply under this agreement,
- then the references in clauses 15.3 and 15.4 to "the property" shall be deemed to mean the remainder of the property excluding that part and the references to "the supply under this agreement" shall be deemed to mean the supply under this agreement of that remainder.
- 15.8 If the particulars stated on the front page and in Schedule 3 indicate in terms of clause 15.3 that GST will be chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act, but any of the particulars stated by the purchaser in Schedule 3 should alter between the date of this agreement and settlement, such that GST no longer becomes chargeable on the supply at 0%, then:
- (1) the purchase price shall be plus GST (if any), even if it has been expressed as being inclusive of GST (if any) in the Memorandum of Contract; and
- (2) if the vendor has already had to account to the Inland Revenue Department for the GST which is payable in respect of the supply under this agreement and did so on the basis that in accordance with clause 15.3 the GST would be chargeable at 0%, the purchaser shall pay GST and any default GST to the vendor immediately upon demand served on the purchaser by the vendor (and where any GST or default GST is not so paid to the vendor, the purchaser shall pay to the vendor interest at the interest rate for late settlement on the amount unpaid from the date of service of the vendor's demand until payment).

### 16.0 Supply of a going concern

- 16.1 If there is a supply under this agreement to which section 11(1)(mb) of the GST Act does not apply but which comprises the supply of a taxable activity that is a going concern at the time of the supply, then, unless otherwise expressly stated in this agreement:
- (1) each party warrants that it is a registered person or will be so by the date of the supply;
- (2) each party agrees to provide the other party by the date of the supply with proof of its registration for GST purposes;
- (3) the parties agree that they intend that the supply is of a taxable activity that is capable of being carried on as a going concern by the purchaser; and
- (4) the parties agree that the supply made pursuant to this agreement is the supply of a going concern on which GST is chargeable at 0%.
- 16.2 If it subsequently transpires that GST is payable in respect of the supply and if this agreement provides for the purchaser to pay (in addition to the purchase price without GST) any GST which is payable in respect of the supply made under this agreement, then the provisions of clause 14.0 of this agreement shall apply.

**17.0 Limitation of liability**

- 17.1 If a person enters into this agreement as trustee of a trust and is not a beneficiary of the trust, then that person will be known as an “independent trustee” and clauses 17.2 and 17.3 will apply.
- 17.2 The liability of an independent trustee under this agreement is limited to the extent of the indemnity from the assets of the trust available to the independent trustee at the time of enforcement of that indemnity.
- 17.3 However, if the entitlement of the independent trustee to be indemnified from the trust assets has been lost or impaired (whether fully or in part) by reason of the independent trustee’s act or omission (whether in breach of trust or otherwise), then the limitation of liability in clause 17.2 does not apply, and the independent trustee will be personally liable up to the amount that would have been indemnified from the assets of the trust had the indemnity not been lost.

**18.0 OIA Consent not required**

- 18.1 The purchaser warrants that the purchaser does not require OIA Consent or that the purchaser has obtained OIA Consent.

**19.0 Counterparts**

- 19.1 This agreement may be executed and delivered in any number of counterparts (including scanned and emailed PDF counterparts).
- 19.2 Each executed counterpart will be deemed an original and all executed counterparts together will constitute one (and the same) instrument.

**20.0 Agency**

- 20.1 If the name of a licensed real estate agent is recorded on this agreement, it is acknowledged that the sale evidenced by this agreement has been made through that agent whom the vendor has appointed as the vendor’s agent according to an executed agency agreement.
- 20.2 The scope of the authority of the agent under clause 20.1 does not extend to making an offer, counteroffer, or acceptance of a purchaser’s offer or counteroffer on the vendor’s behalf without the express authority of the vendor for that purpose. That authority, if given, should be recorded in the executed agency agreement.
- 20.3 The vendor shall be liable to pay the agent’s charges including GST in accordance with the executed agency agreement.

**21.0 Collection of sales information**

- 21.1 The agent may provide certain information relating to the sale to REINZ.
- 21.2 This information will be stored on a secure password protected network under REINZ’s control and may include (amongst other things) the sale price and the address of the property, but will not include the parties’ names or other personal information under the Privacy Act 2020.
- 21.3 This information is collected, used and published for statistical, property appraisal and market analysis purposes, by REINZ, REINZ member agents and others.
- 21.4 Despite the above, if REINZ does come to hold any of the vendor’s or purchaser’s personal information, that party has a right to access and correct that personal information by contacting REINZ at [info@reinz.co.nz](mailto:info@reinz.co.nz) or by post or telephone.

**22.0 COVID-19 / Pandemic Provisions**

- 22.1 The parties acknowledge that the Government of New Zealand or a Minister of that Government may, as a result of public health risks arising from a Pandemic, order restrictions on personal movement pursuant to the COVID-19 Public Health Response Act 2020 (or other legislation), and the effect of such restrictions may be that personal movement within or between particular regions is unlawful for the general population of those regions.
- 22.2 Where such a legal restriction on personal movement exists either nationally or in the region or district where the property is located:
- (1) The settlement date will be the later of:
    - (a) the date that is 10 working days after the date on which the restriction on personal movement in the region or district in which the property is located is removed; or
    - (b) the settlement date as stated elsewhere in this agreement.
  - (2) Nothing in the previous provisions of this clause is to have the effect of bringing forward a date specified in this agreement.
- 22.3 Clause 22.2 applies whether such legal restriction on personal movement exists at, or is imposed after, the date of this agreement, and on each occasion such restriction is imposed.
- 22.4 Neither party will have any claim against the other for a deferral of the settlement date under this clause 22.0.
- 22.5 For the purposes of this clause 22.0, “Pandemic” means the COVID-19 pandemic, or such other pandemic or epidemic that gives rise to Government orders restricting personal movement.

## FURTHER TERMS OF SALE

Refer further terms of sale



## Further Terms Of Sale for Auction

*Whiteside & Lyon*

*87 Princess Road, Bellevue*

### **23.0 Vendor and Purchaser Acknowledgements**

#### **23.1 Legal, Technical and Other Advice**

The vendor and purchaser both acknowledge that before signing this agreement that it has been recommended that they seek legal, technical, and other advice or information and that they have either obtained that advice or information: or have included a provision in this Agreement to obtain that advice or information; or have decided not to do so of their own accord.

#### **23.2 Tax and Legal Advice**

The vendor and purchaser both acknowledge that before signing this agreement that they have been: Recommended to seek professional advice (Tax and Legal advice) before entering into any negotiations, particularly regarding the tax treatment of a transaction so that they understand the tax and legal consequences of any purchase price allocations.

#### **23.3 Complaints and Dispute Resolution**

The vendor and purchaser both acknowledge that before signing this agreement that they have been made aware of the Agents in house complaints and disputes resolution procedure and that a copy is located and available on the Agent's website [www.pggwre.co.nz](http://www.pggwre.co.nz) under the Code of Conduct tab. The vendor and the purchaser have also been advised that they may access the REAA complaints process and additional information at [www.reaa.govt.nz](http://www.reaa.govt.nz) without first using the in-house process and that any use of the in-house process does not preclude them making a complaint to the REAA.

*Initials .....*

**SCHEDULE 3****(GST Information – see clause 15.0)**

This Schedule must be completed if the vendor has stated on the front page that the vendor is registered under the GST Act in respect of the transaction evidenced by this agreement and/or will be so registered at settlement. Otherwise, there is no need to complete it.

<b>Section 1 Vendor</b>	
1(a) The vendor's registration number (if already registered):	
1(b) (i) Part of the property is being used as a principal place of residence at the date of this agreement.	Yes/No
(ii) That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No
(iii) The supply of that part will be a taxable supply.	Yes/No
<b>Section 2 Purchaser</b>	
2(a) The purchaser is registered under the GST Act and/or will be so registered at settlement.	Yes/No
2(b) The purchaser intends at settlement to use the property for making taxable supplies.	Yes/No
<b>If the answer to either or both of questions 2(a) and 2(b) is "No", go to question 2(e)</b>	
2(c) The purchaser's details are as follows:	
(i) Full name:	
(ii) Address:	
(iii) Registration number (if already registered):	
2(d) The purchaser intends at settlement to use the property as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption).	Yes/No
<b>OR</b> The purchaser intends at settlement to use part of the property (and no other part) as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act. That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No
2(e) The purchaser intends to direct the vendor to transfer title to the property to another party ("nominee").	Yes/No
<b>If the answer to question 2(e) is "Yes", then please continue. Otherwise, there is no need to complete this Schedule any further.</b>	
<b>Section 3 Nominee</b>	
3(a) The nominee is registered under the GST Act and/or is expected by the purchaser to be so registered at settlement.	Yes/No
3(b) The purchaser expects the nominee at settlement to use the property for making taxable supplies.	Yes/No
<b>If the answer to either or both of questions 3(a) and 3(b) is "No", there is no need to complete this Schedule any further.</b>	
3(c) The nominee's details (if known to the purchaser) are as follows:	
(i) Full name:	
(ii) Address:	
(iii) Registration number (if already registered):	
3(d) The purchaser expects the nominee to intend at settlement to use the property as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption).	Yes/No
<b>OR</b> The purchaser expects the nominee to intend at settlement to use part of the property (and no other part) as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act. That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	Yes/No

## BEFORE BIDDING AT THE AUCTION

- If you are the successful bidder or you sign this agreement before or after the auction, this sale will be legally binding on you.
- If you are the successful bidder, the auctioneer may sign the Memorandum of Contract on your behalf if you should fail or refuse to do so.
- It is recommended you seek professional advice before bidding, or if you sign this agreement before or after the auction, before signing. **You should always get legal advice before bidding at the auction and throughout the buying and selling process.**
- ADLS and REINZ accept no liability whatsoever in respect of this document and any agreement which may arise from it.
- The vendor should check the correctness of all warranties made under clause 9, clause 10, and elsewhere in this agreement.
- In the case of a unit title, before the purchaser bids at the auction or signs this Memorandum of Contract, the vendor **must** provide to the purchaser a pre-contract disclosure statement under section 146 of the Unit Titles Act.
- The transaction may have tax implications for the parties and it is recommended that both parties seek their own professional advice regarding the tax implications of the transaction before signing, including:
  - the GST treatment of the transaction, which depends upon the GST information supplied by the parties and could change before settlement if that information changes; and
  - the income tax treatment of the transaction, including any income tax implications of purchase price allocation.

### PROFESSIONAL ADVICE SHOULD BE SOUGHT REGARDING THE EFFECT AND CONSEQUENCES OF BECOMING THE SUCCESSFUL BIDDER AT THE AUCTION.

#### MEMORANDUM OF CONTRACT

**Date of Memorandum:**

 At, or prior to, or subsequent to, the auction (*delete as applicable*),

**PURCHASER'S NAME:**

and/or nominee ("the purchaser")

became the purchaser of the property by being the highest bidder, or by agreeing with the vendor to purchase the property.

The vendor agrees to sell and the purchaser agrees to purchase the property and chattels included in the sale for the purchase price stated below in accordance with the terms and conditions of this agreement.

**Purchase price: \$**
**Plus GST (if any) OR Inclusive of GST (if any).**

If neither is deleted, the purchase price includes GST (if any).

**Deposit: \$**
**Acknowledgements**

Where this agreement relates to the sale of a residential property and this agreement was provided to the parties by a real estate agent, or by a licensee on behalf of the agent, the parties acknowledge that they have been given the guide about the sale of residential property approved by the Real Estate Authority and a copy of the agency's in-house complaints and dispute resolution process.

The person or persons signing this agreement acknowledge that either:

- (a) they are signing in a personal capacity as the 'vendor' named on the front page or 'purchaser' named above, or
- (b) they have authority to bind the party named as 'vendor' named on the front page or 'purchaser' named above.

**WARNING** (*This warning does not form part of this agreement*)

**Before signing**, each party should read this entire contract and should obtain all relevant professional advice.

This is a binding contract. Once signed, you will be bound by the terms of it and there may be no, or only limited, rights to terminate it.

**Signature of Purchaser(s) or Auctioneer:**
**Signature of Vendor(s) or Auctioneer:**
**Name:**
**Director / Trustee / Authorised Signatory / Agent / Attorney \***
*Delete the options that do not apply*
*If no option is deleted, the signatory is signing in their personal capacity*
**Name:**
**Director / Trustee / Authorised Signatory / Agent / Attorney \***
*Delete the options that do not apply*
*If no option is deleted, the signatory is signing in their personal capacity*
**Name:**
**Director / Trustee / Authorised Signatory / Agent / Attorney \***
*Delete the options that do not apply*
*If no option is deleted, the signatory is signing in their personal capacity*
**Name:**
**Director / Trustee / Authorised Signatory / Agent / Attorney \***
*Delete the options that do not apply*
*If no option is deleted, the signatory is signing in their personal capacity*

\* If this agreement is signed under:

- (i) a Power of Attorney – please attach a **Certificate of non-revocation** (available from ADLS: 4098WFP or REINZ); or
- (ii) an Enduring Power of Attorney – please attach a **Certificate of non-revocation and non-suspension of the enduring power of attorney** (available from ADLS: 4997WFP or REINZ).

Also insert the following wording for the Attorney's Signature above:

*Signed by [full name of the donor] by his or her Attorney [attorney's signature].*

**PARTICULARS AND CONDITIONS OF SALE OF REAL ESTATE BY AUCTION****Address of Property:**

87 Princess Road, Bellevue, Tauranga, Bay of Plenty

**VENDOR:**

Janet Anne Whiteside as to a 1/2 share and Janet Anne Whiteside and Douglas John Lyon as to a 1/2 share as Executors

**VENDOR'S LAWYERS:**

Firm: Lyon O'Neale Arnold

Individual Acting: Doug Lyon

Email: admin@lyon-oneale.co.nz

Contact Details: PO Box 746  
Tauranga 3110

Ph: 07 928 4422

Fax: 07 928 4420

**Email Address for Service of Notices** (clause 3.4): admin@lyon-oneale.co.nz**PURCHASER:**

Contact Details:

**PURCHASER'S LAWYERS:**

Firm:

Individual Acting:

Email:

Contact Details:

**Email Address for Service of Notices** (clause 3.4):**Auctioneer:**

PGG Wrightson Real Estate Limited - Sloane Morpeth

Licensed Real Estate Agent listing property: PGG Wrightson Real Estate Limited (Tauranga)  
PGG Wrightson Real Estate

Manager: Mike McCullough

Salesperson: David McLaren dmclaren@pggwrightson.co.nz (027 223 3366)

Second Salesperson: Karen McLaren Karen.mclaren@pggwrightson.co.nz (027 555 0421)

Contact Details:

Unit 7

4 Te Puna Road Tauranga 3174

Ph: 07 571 5795 tauranga@pggwre.co.nz

Licensed Real Estate Agent under Real Estate Agents Act 2008

**© Auckland District Law Society Inc. (ADLS) & Real Estate Institute of New Zealand Inc. (REINZ)**

**IMPORTANT WARNING:** All copyright in and associated with this form and its contents is owned by ADLS & REINZ. A user of this form only acquires a limited non-exclusive licence to use it *once within a single transaction only*. The standard ADLS & REINZ contract terms apply, which also prohibit any form of distribution, on-selling, or reproduction, including copying, digitising or recreating the form by any means whatsoever. ADLS & REINZ monitor the use of this form and may take enforcement action against any person acting in breach of these obligations. Copying or digitising this form and altering its standard text, without clearly identifying the alterations, is prohibited, and, in addition to copyright infringement, may also be a breach of the Fair Trading Act 1986 and misrepresentation.



**RECORD OF TITLE**  
**UNDER LAND TRANSFER ACT 2017**  
**FREEHOLD**  
**Search Copy**



  
R.W. Muir  
Registrar-General  
of Land

**Identifier** **329302**  
**Land Registration District** **South Auckland**  
**Date Issued** 17 August 2007

**Prior References**  
SA55A/561

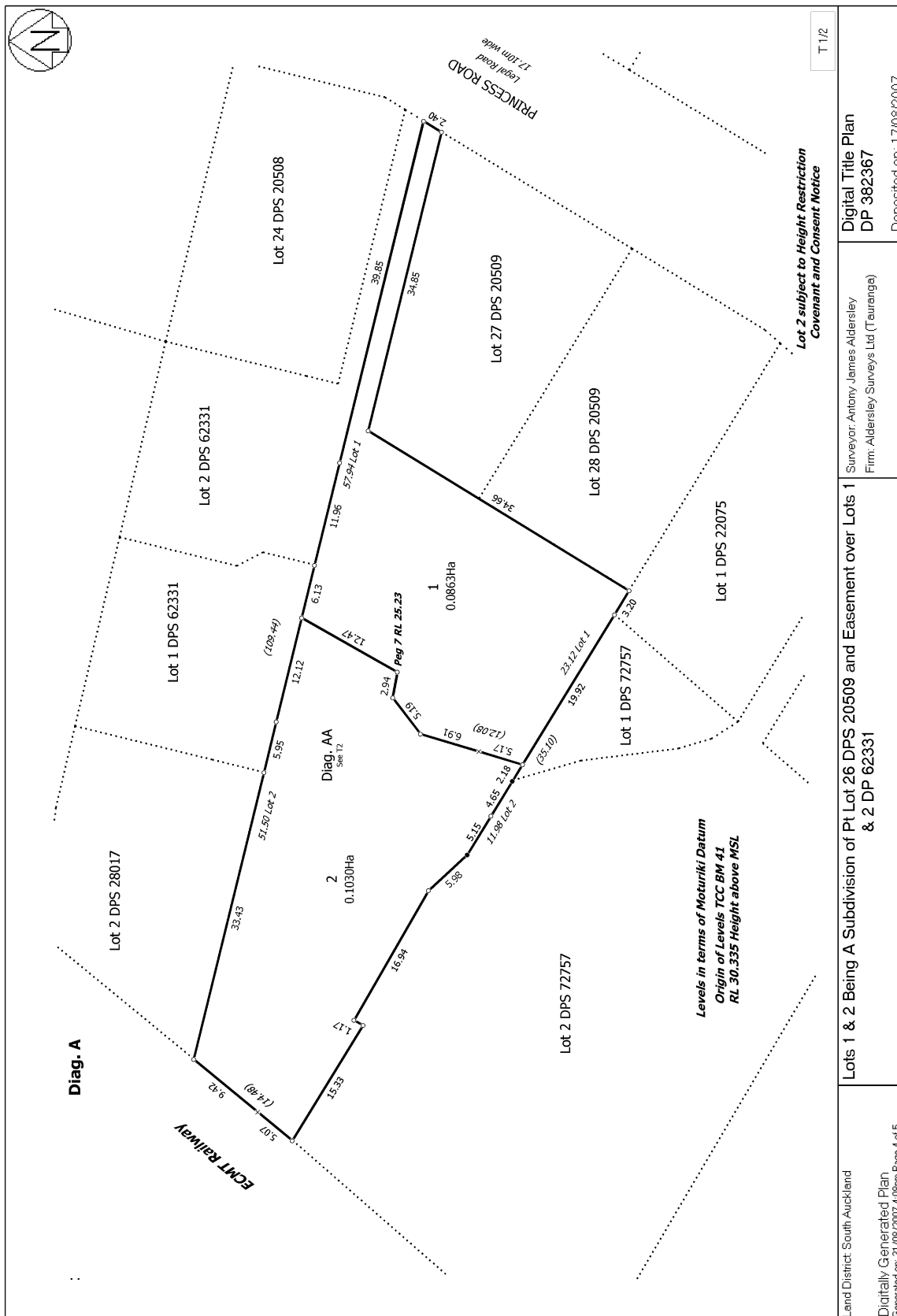
---

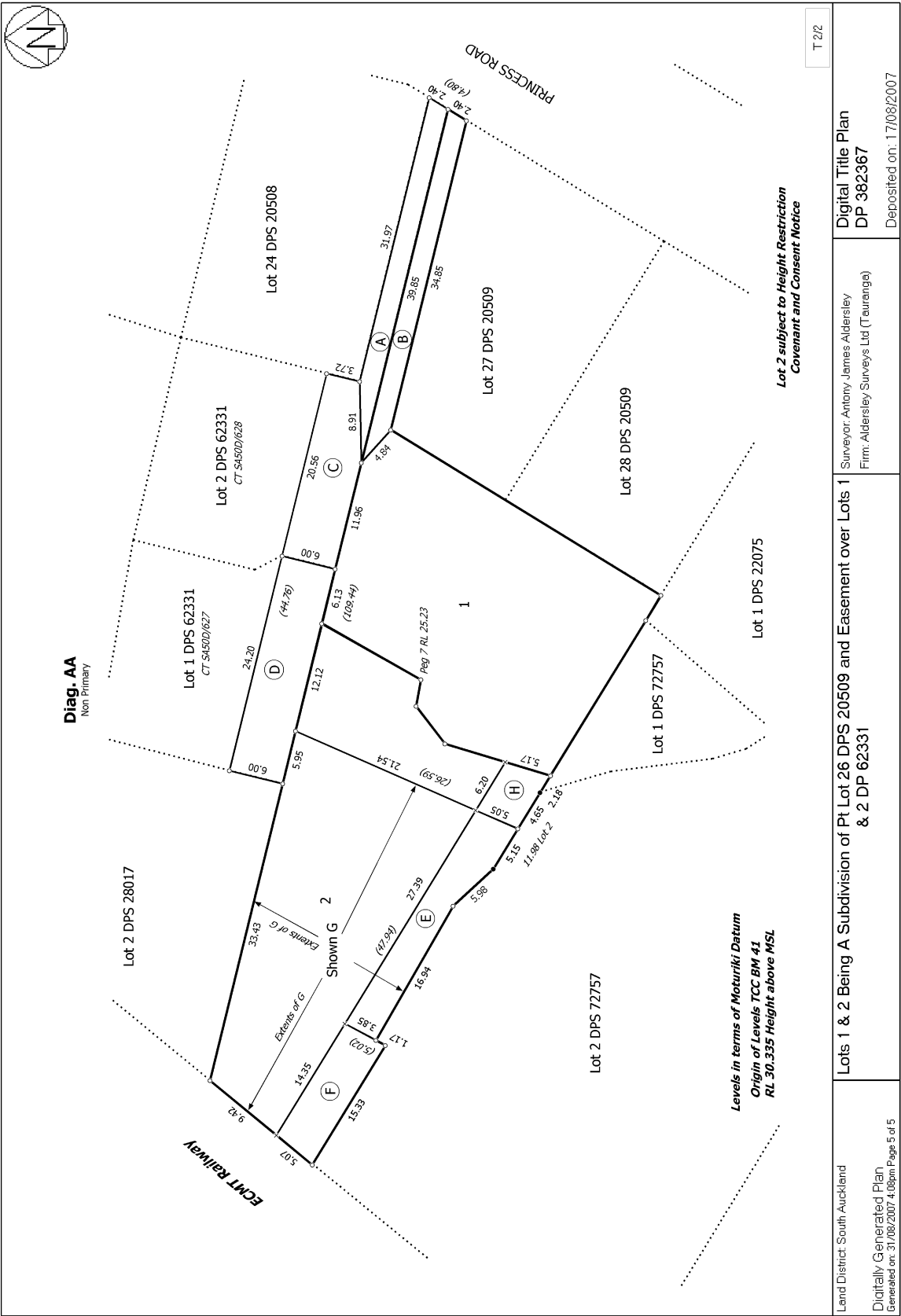
**Estate** Fee Simple  
**Area** 863 square metres more or less  
**Legal Description** Lot 1 Deposited Plan 382367  
**Registered Owners**  
Janet Anne Whiteside as to a 1/2 share  
Janet Anne Whiteside and Douglas John Lyon as to a 1/2 share as Executors

---

**Interests**

Appurtenant hereto is a right of way specified in Easement Certificate H036351.3  
Subject to a right of way over part marked B on DP 382367 specified in Easement Certificate H036351.3  
The easements specified in Easement Certificate H036351.3 are subject to Section 351E (1) (a) Municipal Corporations Act 1954  
Subject to a right (in gross) to convey electricity over part marked B on DP 382367 in favour of Powerco Limited created by Easement Instrument 7506963.3 - 17.8.2007 at 9:00 am  
The easements created by Easement Instrument 7506963.3 are subject to Section 243 (a) Resource Management Act 1991  
Subject to rights of way and rights to convey water, electricity, telecommunications, computer media & gas over part marked B on DP 382367 created by Easement Instrument 7506963.4 - 17.8.2007 at 9:00 am  
Appurtenant hereto are rights of way, rights to drain water and rights to convey water, electricity, telecommunications, sewage, computer media & gas created by Easement Instrument 7506963.4 - 17.8.2007 at 9:00 am  
The easements created by Easement Instrument 7506963.4 are subject to Section 243 (a) Resource Management Act 1991  
Land Covenant in Easement Instrument 7506963.4 - 17.8.2007 at 9:00 am  
12406777.1 Mortgage to Heartland Bank Limited - 24.3.2022 at 4:12 pm





# Acknowledgement and Statements By Prospective Purchaser

Prospective purchaser:

For trusts, include names  
of all trustees

Address of property:

Agent:

Office:

I/we, as a prospective purchaser/s of the property described above hereby acknowledge that before signing an Agreement for Sale and Purchase of Real Estate or, in the case of a sale by auction, bidding at the auction for the Property that: -

## 1. Approved Guide **[delete if not applicable]**

The Agent gave me/us a copy of the Real Estate Authority's "Residential Property Sale and Purchase Agreement Guide".

Initial

## 2. Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act)

The Agent advised me/us that:

- a. my/our solicitor is required to conduct customer due diligence on me/us for the purposes of the AML/CFT Act; and
- b. I/we will be required to provide certain identification and proof of address documentation to my solicitor, including a New Zealand tax number; and
- c. if I/we fail to provide the required information, or my/our solicitor cannot complete his/her customer due diligence in a manner satisfactory to him/her then I/we may not be able to satisfy any conditions in the Agreement for Sale and Purchase and/or complete settlement under the Agreement for Sale and Purchase; and
- d. if I/we fail to complete the purchase of the Property then I/we may incur liability to the vendor, and forfeit my/our deposit.

Initial

## 3. Overseas Investment Act 2005 (OIA)

The Agent advised me/us that:

- a. purchases of residential and certain other New Zealand property are subject to the OIA, and
- b. if I/we are not New Zealand citizens, then I/we should discuss the potential purchase of the Property with our solicitor prior to bidding at an auction or entering into an Agreement for Sale and Purchase;
- c. if I/we require OIA consent to complete the purchase of the Property, but do not have consent and the Agreement for Sale and Purchase is not subject to me/us getting consent, then I/we will be in breach of the OIA and:
  - i.) potentially be liable for fines of up to \$300,000; and
  - ii.) may not be able to complete the purchase of the Property and therefore may incur liability to the vendor and forfeit my/our deposit.
- d. if I/we am unsure as to whether OIA consent is required for my/our purchase, then I/we should make the Agreement for Sale and Purchase conditional on obtaining OIA consent;
- e. as auction sales are generally unconditional, I/we should not bid at any auction unless I/we are satisfied that I/we do not require OIA consent to purchase the Property;
- f. if the Property is residential land, my/our solicitor will require me/us to complete a Residential Land Statement certifying my/our eligibility to purchase the Property for the purposes of the OIA.

Initial

## 4. Complaints and Disputes

The Agent has advised me/us:

- a. of the Agents in house complaints and disputes resolution procedure located on the Agent's website, [www.pggwre.co.nz](http://www.pggwre.co.nz) under the Code of Conduct tab;
- b. that we may access the Real Estate Authority complaints process ([www.rea.govt.nz](http://www.rea.govt.nz)) without first using the in house process, and that any use of the in house process does not preclude us making a complaint to the REA.

Initial

# Acknowledgement and Statements By Prospective Purchaser

## 5. Legal, Technical and Tax Advice

The Agent has advised me/us:

that I/we seek professional advice (tax and legal advice) relating to the Agreement for Sale and Purchase and any technical advice pertinent to the property and my/our purchase of the property before signing an Agreement for Sale and Purchase and, that I/we seek professional advice before entering into any negotiations regarding the tax treatment of a transaction so that I/we understand the tax and legal consequences of any proposed allocations.

Initial

## 6. Disclosures by Agent

I/we confirm and acknowledge that the following statements, matters, or documents were specifically stated to us or disclosed to us during the sale and marketing process and prior to entering into and signing this Contract:

Initial

## 7. Purchaser relationships

I am not/we are not **[delete as necessary]** a related person (as defined in section 137 of the REA Act 2008) of the Agent, PGG Wrightson Real Estate Limited (PGGWRE), or an officer or shareholder of PGGWRE.

Initial

## 8. Multiple offer **[delete if not multiple offer]**

The agent advised me/us that there is another prospective purchaser who has signed an offer on the property. The agent read the multiple offer form to me/us and I/we have signed it and have been given a copy for my/our records.

Initial

## 9. Mycoplasma bovis **[complete for all cattle farm and lifestyle block purchases]**

The Agent has advised me/us:

- a. of the risks posed by Mycoplasma bovis (Mbovis) to farms and lifestyle blocks and that the presence or suspected presence of Mbovis may have an impact on a sale and purchase transaction, including on settlement of the transaction;
- b. that after signing an Agreement for Sale and Purchase (ASAP) the Mbovis status of the property and the way Mbovis is addressed in New Zealand may change;
- c. to take legal advice before entering into any ASAP, so that:
  - i.) my lawyer can explain to me the potential impact of Mbovis being discovered or suspected on the Property
  - ii.) the ASAP can be prepared to address my specific requirements relating to Mbovis, including warranties about the Mbovis status of the property and what should happen if Mbovis is discovered or suspected on the Property after the ASAP has been signed. This cannot happen if I/we do not take that advice.
- d. **[delete if legal advice has been taken]** that, as I/we have elected not to take legal advice before signing an ASAP, the ASAP should include a condition enabling me to take legal advice about the potential impact of Mbovis being discovered on the property, and agree with the vendor any Mbovis related provisions to be included in the ASAP, including warranties about the Mbovis status of the property and what should happen if Mbovis is discovered or suspected on the Property after the ASAP has been signed. I/we have instructed the Agent to **include/not include** **[delete as necessary]** that condition in the Agreement for Sale and Purchase, **and acknowledge the risks posed by the failure to include that condition** **[delete if condition added]**.

Initial

## Signed by me/us as prospective purchasers:

Signature	Signature	Signature	Signature
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Name <input type="text"/>	Name <input type="text"/>	Name <input type="text"/>	Name <input type="text"/>
Office <input type="text"/>	Office <input type="text"/>	Office <input type="text"/>	Office <input type="text"/>
Date <input type="text"/> / <input type="text"/> / <input type="text"/>	Date <input type="text"/> / <input type="text"/> / <input type="text"/>	Date <input type="text"/> / <input type="text"/> / <input type="text"/>	Date <input type="text"/> / <input type="text"/> / <input type="text"/>

# Auction Day - Buyers Guide



Buying a property at a PGG Wrightson Real Estate auction can be an exciting and rewarding experience.

This guide is designed to give you confidence to bid at a PGG Wrightson Real Estate auction. If you have any specific questions after reading this guide, please feel free to discuss them with your legal adviser or the real estate salesperson conducting the sale.

## Conduct of the auction:

1. **Particulars and Conditions of Sale of Real Estate by Auction**  
is a document that contains the conditions of sale under which the property is offered and information on how the sale will be conducted. It also contains any of the vendor's special terms of sale. You should familiarise yourself with this document and/or seek legal advice before bidding at auction.
2. **Buyer Registration**  
Buyers may be required to register prior to bidding. This is at the discretion of the salesperson conducting the sale.
3. **Opening Bid**  
The auctioneer will generally call for an opening bid or offer from the floor. Don't be afraid to call out a realistic opening bid to start the auction. It's important where the bidding ends, not where it starts.
4. **Vendor Bidding**  
The auctioneer may be instructed by the vendor to bid (make counter-offers) on their behalf. This is called vendor bidding and may occur up to the vendor's reserve price. The auctioneer is required to declare when he/she is bidding on behalf of the vendor.
5. **False or Dummy Bidders**  
PGG Wrightson Real Estate auctions are conducted in accordance with the REINZ Auction Code of Practice, which does not allow unauthorised bidding by any other party.
6. **Third Party Bidding**  
You may wish to have someone bid on your behalf if you can't attend the auction or if you feel nervous about bidding yourself. You can instruct your lawyer, a family member or your agent to bid on your behalf, as long as they have your written authority and acknowledgement that they may be required to sign the binding Memorandum of Contract on your behalf. Third party bidding forms are available from your agent.

## 7. Telephone Bidding

If you are unable to attend the auction but still wish to bid, you can instruct your agent to relay your bids by telephone. This is called telephone bidding and is now common practice. You will need to provide your written authority to the agent and acknowledge that you will complete all the relevant documentation if you are the successful bidder. Telephone bidding forms are available from your agent.

## 8. The Bidding Process

To be successful at auction you should confirm your interest to the salesperson that showed you through the property. They will be able to advise you when to place a bid and what increases you should make.

When the auctioneer declares that "the property is on the market", it means that the bidding has reached or exceeded the vendor's reserve and that the highest bidder will be the new owner.

## 9. The 'Call Down'

The auctioneer will generally offer the property to the highest bidder three times. This is referred to as the 'call down'. The auctioneer will then call for the third and final time and then announce the property is 'SOLD'. Feel free to bid at any time during the call down.

## Some more handy tips to make sure you are informed and prepared to bid at auction:

- Decide on your best and final price – Decide the maximum amount you are prepared to pay for the property and stick to it. Don't let someone else's spirited bidding put you off going to your limit.
- Bidding – When you are bidding, do so with confidence and speed. Respond quickly when someone is bidding against you.
- Make yourself visible – Make your bids obvious by raising your hand or a sheet of paper. Once you have the auctioneer's attention, maintain eye contact with him at all times.

*Should you require any help or have any questions, please feel free to approach one of our sales team at any time. Good luck and good bidding!*

- 3.5 Where the seller does not provide the auctioneer with a written reserve prior to the auction, the auctioneer should announce that the property is to be sold without reserve and no bid should be made by or on behalf of the seller at the auction.
- 3.6 In making a bid on behalf of the seller at the auction, the auctioneer should exercise his/her independent judgement.
- 3.7 Where in advance of the auction, any contractor/employee of the member or the auctioneer has been requested to bid for a prospective buyer, whether that buyer is present or absent, the auctioneer will announce that fact and identify those contractors/employees who will be so bidding.
- 3.8 The auctioneer should ensure that the amount of any bid is clearly stated.
- 3.9 The auctioneer may refuse any bid.
- 3.10 The auctioneer should resolve any disputed bid in accordance with the terms and conditions of sale governing the auction.
- If such terms and conditions do not specify how disputed bids are to be resolved, then the auctioneer should resolve any disputed bid in accordance with the Particulars and Conditions of Sale by Auction 4th Edition (or any document approved by the REINZ in substitution thereof).
- 3.11 Under no circumstances will a bid by or on behalf of the seller be exercised by the auctioneer at or in excess of the seller's reserve price.
- 3.12 The auctioneer will always clearly announce if the property is about to be sold under the hammer.
- 3.13 Subject to the reserve price being reached, the highest bidder should be the buyer.
- 3.14 If the seller so instructs, the auctioneer will announce during the course of the auction that in the event of the property being passed in the highest bidder will have the first right of purchase of the property at the seller's reserve price.

#### **4. After the Auction**

- 4.1 If a property is passed in at auction, no post auction advertising for the property should make any reference to any seller bid made for the property at the auction.

# Selling your property?

**REA**  
REAL ESTATE AUTHORITY  
TE MANA PAPAWHENUA

---

New Zealand Residential Property  
Agency Agreement Guide





## This guide tells you...

what an agency agreement is

what the real estate professional should tell you before you sign an agency agreement

what's in an agency agreement

what happens if you have a problem

where to go for more information

### Where to go for more information

This guide is available in other languages. You can find translated copies of this guide on [rea.govt.nz](https://rea.govt.nz) and [settled.govt.nz](https://settled.govt.nz).

The New Zealand Residential Property Sale and Purchase Agreement Guide is also available on [settled.govt.nz](https://settled.govt.nz). The guide tells you more about the agreement you sign with the person who buys your property.

**We welcome any feedback you have on this publication.**

The information in this guide was accurate when published. However, the requirements this information is based on can change at any time. Up-to-date information is available at [rea.govt.nz](https://rea.govt.nz).

# Key things to know about agency agreements

---

- An agency agreement is a legally binding contract between you, the seller of the property, and a real estate agency.
- Sole agency agreements and general agency agreements allow different things.
- You can negotiate what's in an agency agreement, including the timeframe it covers, how much commission you'll pay and any expenses you'll pay.
- Your real estate professional must verify your identification to meet obligations under New Zealand's anti-money laundering legislation.
- You need to read and understand the agency agreement before you sign it.
- You should also get legal advice before you sign.
- The agency agreement is only available in English. You may need assistance interpreting it if English is not your primary language.
- You must be given a copy of the signed agency agreement within 48 hours of it being signed.

## What an agency agreement is

---

An agency agreement gives the real estate agency the right to market your property for sale. It sets out all the terms and conditions of your contract, such as what your real estate professional will do for you and what you'll pay them.

If you use a real estate agency to sell your property, you must sign an agency agreement with them first. This is called listing your property.

While an individual real estate professional may sign you up, your contract is between you and the real estate agency they work for. Depending on the conditions of the agency agreement, once you've listed your property, any real estate professional in the agency can help you sell it. It is important to remember that all real estate professionals in the agency you list with are working for you – even if they find their own buyers.

### Check...

First, check that your real estate professional is licensed. Use the public register at [rea.govt.nz](https://rea.govt.nz) to check their details and see if they've had any complaints upheld against them in the last 3 years.

If you deal with an unlicensed person, it can make it harder to get help if things go wrong and the Real Estate Authority may be limited in the way we can help you.



# What's in an agency agreement

The layout and content of agency agreements can vary between real estate agencies, but it should include the following things.

## Details about the property for sale

- The address of your property.
- The chattels to be sold with your property, for example, whiteware or curtains.
- Details about your property, for example, land area and number of bedrooms and bathrooms.

## Information that needs to be shared with the buyer

- Whether there is any part of the property that doesn't have building consent or a code compliance certificate.
- If the property has any faulty building materials like asbestos or Dux Quest piping.
- If there are any planned developments nearby that might affect the property.

You need to make sure that any details you give the real estate professional are accurate. If you don't, the buyer may be able to take legal action against you.

## Details about you and the real estate agency

- Your name, address and other contact details. (The real estate agency will need to verify your identity so they can meet their obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.)
- The name and contact details of your lawyer or conveyancer.

- The name of the real estate professional mainly responsible for marketing and selling your property.
- The real estate agency's name and address.

## Who has the authority to sell the property?

If you're not the only owner of the property, all owners must sign the agency agreement or you must show you have the authority to sign for all owners.

## Confirmation that you've been given a copy of this guide

Your real estate professional is legally obliged to give you a copy of this guide before you sign an agency agreement. They also have to get your written confirmation that you've received it.

## Details of what you authorise the real estate agency to do

The agency agreement appoints your chosen real estate agency and sets out what you authorise them to do. For example:

- advertise your property for sale at the price, in the way and on the conditions you've agreed to
- arrange inspection of your property by prospective buyers
- receive a deposit on your behalf
- take their commission from the deposit.

## The type of agency agreement and how long it lasts

The agency agreement will state whether it's a sole agency or general agency agreement, when it starts, when it ends and how to end it. It is up to you and the real estate agency to agree how long the agreement will last.

It is important to tell the real estate professional everything you know about the property. A real estate professional is required to disclose known defects of a property to the potential buyer. You may not instruct the real estate professional to withhold any information about the property. A real estate professional may cancel an agency agreement if you instruct them not to disclose known defects.

The real estate professional must give you a copy of the signed agency agreement within 48 hours of it being signed.

# Sole agency and general agency agreements allow different things

A sole agency agreement gives one real estate agency the exclusive right to market and sell your property.

A general agency agreement gives more than one real estate agency the right to market your property. You'll sign a separate agreement with each real estate agency but should only pay a commission to one agency. The real estate agencies must tell you if there is a risk of you paying two commissions.

If you sign a sole agency agreement, there are some things you should be aware of:

- You shouldn't sign another agency agreement with anyone else. If you do, you may have to pay both real estate agencies a commission when your property sells.
- If you sell the property privately with a sole agency agreement in place, you will still need to pay the real estate agency a commission when you sell.
- You or the real estate agency can cancel a sole agency agreement at the end of 90 days if that sole agency agreement was for longer than 90 days. Ending the agency agreement must be done in writing.
- In some cases, cancelling a sole agency agreement means it becomes a general agency agreement. You'll need to cancel this too if you don't want to continue with the real estate agency.

You can ask questions, get independent advice, talk to more than one real estate professional and negotiate what's in the agency agreement. You can negotiate timeframes, commission, expenses or services. Make sure you and your lawyer are happy with the agreement before you sign it.

## Details of any rebates, discounts or commissions the real estate professional may receive

If a real estate professional gets a discount, rebate or commission on any services they arrange for you and you're paying for, they have to tell you. For example, a real estate professional may receive a discount on the cost of advertising your property in a newspaper.

## Avoid paying two commissions

REA introduced standard clauses that offer you protection when it comes to paying commission. These REA-approved clauses help protect you by:

- reducing the likelihood of you being charged commission by two agencies
- clarifying when the agency agreement ends and when you need to pay a commission.

Not all agencies choose to use REA's standard clauses. We recommend you only use agencies that use them. Ask your real estate professional about these clauses before you sign.

## Cancelling your agency agreement

It can be difficult to cancel the agency agreement once you have signed it, so think carefully before you put pen to paper. If you change your mind immediately after signing, you can cancel the agreement by 5pm on the first working day after the real estate professional has given you a copy of the agreement. You must cancel in writing, for example, by letter or email.

If you signed an agency agreement as a result of a real estate professional door knocking with their services and later change your mind, you have up to 5 working days to cancel the agreement.

If you do choose to cancel your agency agreement and quickly list with a new real estate agency, be sure to check with your lawyer about what commission obligations you might have to the first real estate agency.

# What you need to know before you sign an agency agreement

---

## A written estimate of your sale price

This is the real estate professional's best estimate of the price they expect your property could sell for based on sales of similar properties in your area. This is referred to as an appraisal or a current market appraisal.

## How they recommend selling your property

The real estate professional should recommend the best way of selling your property, for example, by advertised price, tender, auction or deadline sale. They will set out in the agency agreement how you've agreed to sell and what marketing you've agreed they'll do.

The agency agreement will include a listing price if your property is being marketed with an advertised price but not if it's being sold by another method.

## What commission you'll pay

They should tell you what commission you'll have to pay them, when you'll have to pay and how this payment is calculated. Commissions can vary between agencies, so you may want to compare different agencies or negotiate with your preferred real estate agency. The real estate professional must explain the formula used and give you an estimate in dollars of the commission you'll pay if your property sells at

their estimated price. Usually, the real estate agency will take the commission out of the deposit once your agreement for sale and purchase becomes unconditional.

## What expenses you'll pay for

Usually, you pay extra for marketing the property, but you don't have to pay extra if you don't want to. You can negotiate on this cost.

Ask what marketing is provided for free by the real estate agency, for example, they may put details of your property in their office or on their website.

You need to consider the cost of extra marketing against the possible benefit. The real estate agency should prepare a detailed marketing plan explaining what you're paying for and when. Remember, you'll have to pay for the extra marketing even if your property doesn't sell.

## When the agency agreement ends

When the agency agreement ends, the real estate professional and real estate agency are no longer authorised to act for you. The agency agreement must have a set date or a timeframe from the time the agreement is signed for when the agreement ends. The agreement must also say under what circumstances you might have to pay commission after the agreement ends.

## Remember...

Remember, the real estate professional and any of their colleagues from the same agency work for you, and you pay them for their services. Make sure you're happy with their approach before you decide to sign an agency agreement with them. If you are unsure about any terms in the agency agreement, seek independent legal advice.

Real estate professionals have to hold a licence in New Zealand to sell property. This allows REA to set and uphold high professional standards of conduct expected from licensed real estate professionals through rules, standards and guidelines. Real estate professionals must adhere to a Code of Conduct and meet ongoing continuing professional development training to maintain their licence.

## What happens if you have a problem

If something has gone wrong, first discuss your concern with the real estate professional or their manager. All agencies must have in-house procedures for resolving complaints.

If you can't resolve the issue with the real estate agency or you don't feel comfortable discussing it with them, you can contact the Real Estate Authority (REA). We can help in a number of ways if your complaint is about the real estate professional. For example, we can help you and the real estate professional or agency to resolve

the issue and remind them of their obligations under the Real Estate Agents Act 2008. When you contact us, we'll work with you to help you decide the best thing to do.

Call us on **0800 367 7322**, email us at [info@rea.govt.nz](mailto:info@rea.govt.nz) or visit us online at [rea.govt.nz](http://rea.govt.nz)

## About settled.govt.nz



### Settled.govt.nz guides you through home buying and selling.

Buying or selling your home is one of the biggest financial decisions you will make. It's a complex and sometimes stressful process with potentially significant emotional and financial impacts if things go wrong.

**Settled.govt.nz** provides comprehensive independent information and guidance for home buyers and sellers. You can find information about the risks and how they can impact you and get useful tips on how to avoid some of the major potential problems.

**Settled.govt.nz** will help to inform and guide you through the process from when you're thinking of buying or selling right through to when you're moving in or out. You'll find valuable information, checklists, quizzes, videos and tools. From understanding LIMs, to sale and purchase agreements, to when to contact a lawyer, **settled.govt.nz** explains what you need to know.

**Settled.govt.nz** is brought to you by the Real Estate Authority – Te Mana Papawhenua (REA).

### For more information

For more information on home buying and selling, visit [settled.govt.nz](http://settled.govt.nz) or email [info@settled.govt.nz](mailto:info@settled.govt.nz)



# About the Real Estate Authority – Te Mana Papawhenua (REA)

REA is the independent government agency that regulates the New Zealand real estate profession.

Our purpose is to promote and protect the interests of consumers buying and selling real estate and to promote public confidence in the performance of real estate agency work.

## What we do

Our job is to promote a high standard of conduct in the real estate profession and protect buyers and sellers of property from harm.

- We provide independent information for people who are buying and selling property through our [settled.govt.nz](https://settled.govt.nz) website.
- We provide guidance for real estate professionals and oversee a complaints process.
- We license people and companies working in the real estate industry.

- We maintain a Code of Conduct setting out the professional standards real estate professionals must follow.
- We maintain a public register of real estate professionals that includes information about disciplinary action taken in the last 3 years.

The Real Estate Agents Authority is a Crown agent, established under the Real Estate Agents Act 2008. The Real Estate Authority is the operating name of the Real Estate Agents Authority.

## For more information

To find out more about  
REA, visit [rea.govt.nz](https://rea.govt.nz),  
call us on **0800 367 7322**  
or email us at  
[info@rea.govt.nz](mailto:info@rea.govt.nz)

