

NZ Certificate in Real Estate (Salesperson) (Level 4)

MODULE 3 – UNIT STANDARD 23137 (V6)

Demonstrate knowledge of the Sale and Purchase Agreement and facilitate a sale of real estate
(Level 5, Credits 5)

Learner Guide



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Introduction

This Learner Guide explores the agreement for sale and purchase of real estate and the facilitation of a sale of real estate on behalf of a client/vendor.

Areas covered are:

- A licensee's legal and professional obligations in relation to sale and purchase agreements, and the transaction process
- The paperwork required and the special requirements when selling tenanted properties, and properties where the Overseas Investment Act applies.
- Understanding the financing options for purchasers.
- The Agreement for Sale and Purchase of Real Estate Certificate Edition 2022, its contents, what the different sections mean, and information that needs to be understood by licensees, vendors, and purchasers and what needs to be included in the contract.
- The licensee's responsibilities after the contract is signed.

Meeting your legal and professional responsibilities

It is extremely important that you meet your **legal** and **professional responsibilities** when you carry out work relating to sale and purchase agreements. Meeting these responsibilities will help you to develop a good reputation and loyal clients and customers. On the other hand, poor practice can have serious professional and legal consequences and make it less likely that others (including clients) will want to work with you.

This section will give you practical information about how to meet your professional responsibilities and obligations when negotiating and completing sale and purchase agreements.

Remember: a salesperson who holds a Licence cannot complete, give advice, or negotiate a sale and purchase agreement, unless the person has had at least 6 months experience, as a licensee. (Section 36(2A) of the Lawyers and Conveyancers Act 2006).

During this time, you should attend as many contract-signing meetings and discussions as possible. This will help you to gain the knowledge and experience you need to become skilled and competent in your role.

Professional competence

Under rule 5.1 of the Code of Conduct, licensees must demonstrate **skill, care, competence, and diligence** at all times. This means that you must behave in a way that meets the legal and professional standards that apply to real estate licensees.

Rule 5.1 A licensee must exercise skill, care, competence, and diligence at all times when carrying out real estate agency work.

'Skill' and 'competence' refer to your abilities as a licensee. You must develop **all** of the necessary skills to do your job as a licensee and be able to apply these appropriately.

This does not mean that you will know exactly what to do in all situations. If you are not sure about the best (and/or legal) course of action in a particular situation, it is not a sign of competence to simply proceed and hope for the best! In some cases, being competent might mean that you recognise when you need guidance or information and seek this out.

This rule also means that you need to work under the direction and control of a supervising agent or branch manager in general. This will help you to develop your skills with **expert guidance**.

Carrying out your work with 'care' and 'diligence' means that you are conscientious and take care in how you do your work. It is not sufficient to know what best practice is; you must actually take the time and effort to follow best practice in **every** situation.

Sound knowledge

Licensees are required to have a sound knowledge of all relevant legislation and professional standards (rule 5.2).

This means that you **must** understand your obligations under the Real Estate Agents Act 2008, the rules from the Code of Conduct, and the Real Estate Agents (Duties of Licensees) Regulations 2009. It also means you must understand your obligations under other relevant consumer protection legislation such as the Fair-Trading Act 1986.

If you fail to meet your obligations under the relevant legislation and standards, you cannot simply claim that you did not understand them. It is your professional and legal responsibility to make sure that you understand **all** your obligations in the first place.

Rule 5.2 A licensee must have a sound knowledge of the Act, regulations, rules issued by the Authority (including these rules) and other legislation relevant to real estate agency work.

Ensuring parties seek appropriate advice

A sale and purchase agreement is a **legally binding** document. It is usually in the client and customer's best interests to obtain **legal** and/or **technical advice** before they sign this agreement. This can include advice in relation to the house or land (such as a weathertightness inspection or geotechnical report) or in relation to the agreement itself (for example, having a solicitor providing advice on the conditions in the agreement).

As a licensee, you are **responsible** for making sure that both clients and customers understand the importance of seeking this advice **before** the agreement is signed.

Under rule 9.7 you **must** inform both clients and customers of their rights to seek independent legal and technical advice. You must also allow them **reasonable time** to seek this advice if they choose to.

Rule 9.7 Before a prospective client, client, or customer signs an agency agreement, a sale and purchase agreement, or another contractual document, a licensee must—

- (a) recommend that the person seek legal advice; and**
- (b) ensure that the person is aware that he or she can, and may need to, seek technical or other advice and information; and**
- (c) allow that person a reasonable opportunity to obtain the advice referred to in paragraphs (a) and (b).**

Under rule 9.8 you **must not** take advantage if they cannot understand the legal implications of a document.

Many people are not familiar with legal documents and/or may find it difficult to understand legal language. It is extremely important that they **understand** the conditions of the agreement and the **implications** of signing it. Particular care must be taken with vulnerable parties, such as people with a limited grasp of English or people who are elderly.

Rule 9.8 A licensee must not take advantage of a prospective client's, client's, or customer's inability to understand relevant documents where such inability is reasonably apparent

Note: Rules 9.7 and 9.8 are also particularly important when dealing with agency agreements and lease agreements.

Avoiding undue or unfair pressure

The real estate industry can be a high-pressure, fast-moving industry to be involved with. As a result, buying, selling, or leasing real estate can be stressful for some clients and customers. Rule 9.2 requires licensees to **avoid** putting clients and customers under undue or unfair pressure.

Rule 9.2 A licensee must not engage in any conduct that would put a prospective client, client, or customer under undue or unfair pressure.

While some level of urgency may be unavoidable, this means you **must not** create a false sense of **urgency** and you **must** make sure parties are given adequate **time** to make decisions. In keeping with rule 9.7, it also means you must allow parties time to seek independent legal and/or technical advice.

Acting honestly and fairly

As with any other real estate agency work, licensees must act in good faith and deal fairly with all parties when carrying out work relating to a sale and purchase (rule 6.2). This includes an obligation to comply with the Human Rights Right Act 1993, which means that you must not **discriminate** when dealing with clients, customers, and other parties.

It is also extremely important that you **do not mislead** customers or clients or act **dishonestly** when dealing with clients or customers. Under rule 6.4, you may not give false information or withhold material information that may affect clients and customers. In other words, you cannot **mislead** customers through what you **say and do**, or what you **do not say** and **do not do**.

This rule reinforces the requirements of the Fair-Trading Act 1986 (Sections 9, 12A, and 14(1)), and the Contract and Commercial Law Act 2017(Section 35(1)).

Rule 6.4 A licensee must not mislead a customer or client, nor provide false information, nor withhold information that should by law or in fairness be provided to a customer or client.

Remember:

- You are **obliged** to carry out real estate work with skill, care, competence, and diligence.
- You have a **responsibility to know and understand** your legal obligations as a licensee. Lack of knowledge is not a defence for failing to comply with your legal obligations.
- You **must make sure** that clients and customers understand the importance of seeking legal and technical advice before they sign a sale and purchase agreement, recommend they do so and give them reasonable amount of time to.
- You **must not take advantage** of people who have a poor understanding of legal documents.
- You **must give** clients and customers adequate time to make decisions and avoid placing unnecessary pressure on them.
- You **must be honest and fair** when dealing with clients and customers.
- You **must not mislead or deceive** clients and customers (including by withholding information).

Non-disclosure of confidential information

Part of dealing fairly with clients and customers is making sure that you **follow the rules** about use and disclosure of personal information. It can be tempting to disclose confidential information if it may help to secure a sale: for example, by mentioning to potential buyers that a seller needs to sell urgently because of a personal situation such as a divorce.

However, rule states that you may only disclose information that is confidential to the client in one or more of the following circumstances:

- The client has provided **written consent**.
- The disclosure to the customer needs to be **in writing**
- You need to defend yourself (for example, if a complaint has been laid against you) (rule 9.17(b)).
- It is necessary to comply with the law (rule 9.17(c)).
- It is consistent with the privacy principles in section 6 of the Privacy Act (rule 9.17 (d)).

Rule 9.18 states that, if it is **necessary** to disclose confidential personal information under Rules 9.17 b, c, or d, you may **only** disclose this information to the appropriate person, to the extent necessary, for the permitted purpose. This aim is to make sure that you disclose as little as practicable for the situation.

Disclosure obligations to customers

Although licensees cannot generally disclose confidential information, they have an **obligation** to disclose **material facts** throughout the sale and purchase process, right up to the point of settlement.

A **material fact** is information that is significant enough to **influence** a party to **act** in a certain way: for example, a known defect that might influence a customer's decision about whether or not to enter into a sale and purchase or lease agreement. A material fact might relate to the **physical** state of a property/space/business or **any other** issues or events that **affect** the property or the agreement.

Useful questions to ask yourself about material facts

To identify any **material facts** that you should disclose to customers, you may find it useful to ask yourself the following questions:

- What do you **know** about the state and circumstances relating to the property or business you are preparing to market? Are there any issues or red flags?
- What **should** you know? What would a reasonably competent licensee be expected to know about the property or business you are marketing? If you are not sure about something, you may need to **investigate** further to make sure you meet your disclosure obligations.
- Is any information you have likely to be **material** to customers – i.e., would it be likely to affect their **decision-making**?

Have you **checked** facts thoroughly before passing on information?

If you **do not know** (or are not sure about) the answer to a question a client or customer asks you, be clear that you do not know the answer. If this is not information that you can obtain, always recommend they **clarify** the information they need by seeking appropriate legal or technical **advice**.

Do not forget that you have an **obligation** to supply **accurate** information but also that you cannot legally **withhold** material information. In addition, you must disclose information you **should** know as a competent licensee (rule 10.7). For example, a competent licensee could reasonably be expected to know that a building with a particular type of cladding is at high risk of weathertightness problems. With the vendors written permission you must disclose this risk if selling a building of this type (in accordance with other disclosure rules). In other words, you **cannot** claim a lack of competence as a reason for failing to disclose.

If the vendor instructs you not to disclose a suspected defect you should seek **guidance** from your supervising agent or branch manager, and then if you are unable to convince the vendor to disclose, you must cancel the agreement under Rule 10.8

Issues that can be considered defects

In many instances, the material facts you need to disclose will be potential or known **defects**.

Examples could include:

- **Unpermitted** building work (refer back to the study guide for 29882 if you need to).
- **Developments** beyond the boundary such as proposed developments (refer back to the study guides for 23134 and 29882 if you need to).
- **Contamination** issues such as methamphetamine (refer back to the study guides for 23141 and 29882 if you need to).
- **Stigmatised materials**. These are materials that may cause problems or hazards. They also include materials that people are often concerned about, even if they are not always a real hazard. Examples include asbestos (which can cause a serious health risk if it is disturbed and inhaled), monolithic cladding (which can be associated with weathertightness issues if used incorrectly), and old electrical wiring (which may be a fire hazard).

Be particularly careful when marketing buildings with materials or features that could indicate potential weathertightness issues. You must discuss any potential weathertightness issues with the seller. The seller may be able to provide written evidence to show that the property is weathertight. Otherwise, you must raise the issue with any potential buyer and strongly suggest they obtain a comprehensive building report. If the seller refuses to give consent for buyers to be informed, you must end the agency contract with them under rule 10.8.

Stigmatised properties. These are properties that are stigmatised for reasons other than physical condition or materials (for example, because a violent crime or suicide has been committed at the location).

You need to take a case-by-case approach to disclosure obligations for stigmatised properties, but it is generally best to **err on the side of disclosure**. The REA provides guidance on stigmatised properties in the information sheet 'Disclosure of Sensitive issues' – see <https://www.rea.govt.nz/assets/Uploads/Resources/Forms/Other-forms/Disclosure-of-sensitive-issues.pdf>.

When deciding whether to disclose, key considerations include:

- The location of the event (an event that occurs in a residential home may be particularly sensitive).
- How long it is since the event happened and whether the property has been used/lived in since.
- The likely reaction of potential buyers and the possible effect on the price.
- Whether the event(s) was publicly known about.

If you need to disclose information about a stigmatised property, you should handle this **sensitively**: for example, by discretely informing potential buyers who have indicated an interest in submitting an offer on the property.

'As is/where is'

'As is/where is' provisions do not cancel disclosure obligations. In an 'as is/where is' sale, the standard seller **warranties** do not apply. The warranties are crossed out in the sale and purchase agreement to show that the seller is **not** making these warranties. For example, an as is/where is sale might mean that a property is being sold on the understanding that it has problems such as unsafe electrical wiring and other building defects.

However, this **does not cancel** a licensee's **disclosure** obligations under rules 6.4 and 10.7. The as is/where is provision affects the seller's responsibilities (including in relation to the condition of the property), but it **does not change** the buyer's **right** to information about that property.

If you are aware (or should be aware) of any information that may be material to a prospective buyer, that information must be **fully disclosed** in writing no later than the point of inducement. In this instance, the usual rules for disclosure apply.

Potential buyers interested in a property being sold 'as is/where is' should be urged to seek independent legal/technical **advice**.

Remember:

- You must not disclose confidential personal information unless you have permission to do so in writing or you need to do so for legitimate legal reasons.
- You must disclose material facts about a property to buyers and sellers up until the point of settlement. This includes property or building defects. Disclosure must be made in writing.
- You must get the seller's permission before you disclose defects. If the seller refuses permission, you must end the agency agreement and stop acting for them and not disclose the information.
- You must verify material facts before you disclose them. If they cannot be verified, you must disclose them but state that they are unverified.
- If a property defect creates a risk (for example, a health and safety hazard), you must recommend that the buyer seeks expert advice.
- It is important to keep up-to-date written records of any material facts you have disclosed.
- If a sale and purchase agreement includes an 'as is/where is' provision, this does not affect your obligations to disclose material facts.

Disclosure of conflicts of interest

Sections 134, 135, and 137 of the Real Estate Agents Act 2008 lay out the legal requirements for when an **agent** or a **related person** (such as a family member) wants to **buy** a property from a client or stands to **benefit** financially from a sale.

The definitions of a licensee and related person are given in Section 137 and include business partners, employees, branch managers, salespersons engaged by a licensee, and entities (such as companies) that are financially connected to the licensee.

- (1) For the purposes of section 134(3), the licensee must give the client a valuation made at the licensee's expense.

Real Estate Agents Act 2008

137 Meaning of licensee and person related to licensee in sections 134 to 136

- (1) In sections 134 to 136, licensee includes, in the case of an agent that is a company, every officer and shareholder of the company.
- (2) For the purposes of sections 134 to 136, a person is related to a licensee if the person is—
 - (a) a partner of the licensee under a partnership agreement:
 - (b) an employee of the licensee:
 - (c) a branch manager or salesperson engaged by the licensee:
 - (d) the licensee's spouse or civil union partner:
 - (e) the licensee's de facto partner:
 - (f) a child, grandchild, brother, sister, nephew, or niece of the licensee or of any person referred to in paragraphs (d) or (e):
 - (g) any other child who is being, or is to be, cared for on a continuous basis by the licensee or any person referred to in paragraph (d) or (e):
 - (h) a grandparent, parent, uncle, or aunt of the licensee or of any person referred to in paragraph (d) or (e):
 - (i) an entity that has an interest in the licensee or an entity in which the licensee has an interest (except where either interest is in quoted financial products within the meaning given for those terms in section 6(1) of the Financial Markets Conduct Act 2013).

Under section 134 of the Real Estate Agents Act 2008, a licensee carrying out real estate agency work for a client (either directly or indirectly) **must** seek that client's **consent** if they wish to buy the property or business being marketed, or an interest in it.

This includes if the licensee has an **interest** in an entity that is a **buyer** (for example, a company). The exception to this is if the interest is in quoted financial products within the meaning given for those terms in section 6(1) of the Financial Markets Conduct Act 2013).

This requirement also applies if the buyer is a person who is **related** to the licensee under the definitions in Section 137.

If a conflict of interest of this type occurs, the licensee **must disclose** it and provide the client with 'Form 2: Client consent for licensee to acquire interest in property,' as prescribed in the Duties of Licensees Regulations 2009. If the client agrees to the purchase once the conflict of interest is disclosed, they must give **consent** by filling out this form.

Form 2 can be found in the Duties of Licensees Regulations 2009 at:

<http://www.legislation.govt.nz/regulation/public/2009/0281/latest/whole.html#DLM2372545>

Real Estate Agents Act 2008

134 Contracts for acquisition by licensee or related person may be cancelled

- (1) No licensee may, without the consent of the client for whom he or she carries out real estate agency work in respect of a transaction, directly or indirectly, whether by himself or herself or through any partner, sub-agent, or nominee, acquire the land or business to which the transaction relates or any legal or beneficial interest in that land or business.
- (2) No licensee may, without the consent of the client, carry out or continue to carry out any agency work in respect of a transaction if the licensee knows or should know that the transaction will, or is likely to, result in a person related to the licensee acquiring the land or business to which the transaction relates or any legal or beneficial interest in that land or business.
- (3) The client's consent is effective only if—
 - (a) given in the prescribed form; and
 - (b) the client is provided with a valuation in accordance with section 135.
- (4) The client may cancel any contract—
 - (a) made in contravention of subsection (1); or
 - (b) brought about by agency work carried out in contravention of subsection (2).
- (5) No commission is payable in respect of any contract of the kind described in subsection (4), regardless of whether the client cancels the contract.
- (6) The client may recover any commission paid in respect of any contract of the kind described in subsection (4) as a debt.
- (7) For the purposes of this section, a person who is the client of an agent in respect of a transaction is also the client of any branch manager or salesperson whose work enables the agent to carry out real estate agency work for that client.
- (8) This section and section 135 have effect despite any provision to the contrary in any agreement.

The licensee **must** also provide the client with a **valuation**, completed at the licensee's expense (Section 135).

The valuation **must** be completed by one of the following:

- An independent registered valuer (in the case of a residential property)
- An independent chartered accountant (in the case of a business).

If the client signs the consent form before receiving the independent valuation, the licensee must:

- Indicate a provisional valuation of the property on the consent form. This should be set at the most recent appraised value of the property. (This is highlighted in the decision for *Tremain Real Estate v REAA* [2018] NZREADT 54).
- Give the client a valuation completed by an independent registered valuer or a chartered accountant (as appropriate) within 14 days of the client signing the consent form.

Real Estate Agents Act 2008

135 Client to be provided with valuation

- (1) For the purposes of section 134(3), the licensee must give the client a valuation made at the licensee's expense.
- (2) The valuation must have been made by—
 - (a) an independent registered valuer; or
 - (b) in the case of a business, by an independent qualified statutory accountant (within the meaning of section 5(1) of the Financial Reporting Act 2013).
- (3) The licensee must give the client the valuation either—
 - (a) before seeking the consent of the client; or
 - (b) with the agreement of the client, within 14 days after obtaining that consent.
- (4) Every consent given under section 134 without the valuation being supplied to the client in accordance with subsection (3) is ineffective.
- (5) Any contract to which the client is a party and to which the consent relates is voidable at the option of the client if—
 - (a) the client gives his or her consent in accordance with subsection (3)(b); and
 - (b) the valuation, when supplied, is greater than the valuation specified in the prescribed form of consent as the provisional valuation.

Be aware that the client can **cancel** any contract relating to the property if the licensee, has **not complied** with the disclosure requirements **or** if the independent valuation provided is **greater** than the provisional valuation.

The provisional valuation must be the appraised value

Under section 134 of the Act, there is **no obligation** for the client to pay the commission if the contract is cancelled in these circumstances.

The contract can be cancelled, and the property returned to the vendor even after settlement has taken place if these procedures are not followed.

If a licensee wishes to purchase a property listed with his/her agency there is also precedent for keeping negotiations with the client 'at arm's length'. This can be accomplished by involving a branch manager or other neutral company licensee to advise the client

This is highlighted in the decision for [Complaint Number 16789](#)

Paragraph 4.14 to 4.26

Disclosure of other benefits for the licensee

Under section 136 of the Real Estate Agents Act 2008, if a licensee (or any related person) **may benefit** financially from real estate work that the licensee is performing, the licensee must provide **written disclosure** to every party who will be involved in that transaction. For example, if you are selling your own or a family member's home or business.

Conflict of interest information must be disclosed **before** or **at** the time that the prospective parties are given any contractual **documents**, such as the sale and purchase agreement.

Real Estate Agents Act 2008

136 Disclosure of other benefits that licensee stands to gain from transaction

- (1) A licensee who carries out real estate agency work in respect of a transaction must disclose in writing to every prospective party to the transaction whether or not the licensee, or any person related to the licensee, may benefit financially from the transaction.
- (2) Subsection (1) does not apply to any matter disclosed under section 128 or 134.
- (3) The licensee must make the disclosure required by subsection (1) before or at the time that the licensee provides the prospective party with any contractual documents that relate to the transaction.
- (4) For the purposes of this section, an agent does not benefit financially from a transaction merely because of any commission payable to the agent under an agency agreement in respect of the transaction.
- (5) A contract entered into in contravention of this section may not be cancelled merely because of that contravention.

The REA advises that this type of disclosure should be handled in a **sensitive** manner. Typically, you should discretely inform potential buyers who have indicated an interest in making an offer on the property. You can find the REA guidance on this at <https://www.rea.govt.nz/real-estate-professionals/what-you-need-to-know/conflict-of-interest> .

Remember – in addition to disclosing material facts

You **must disclose** conflicts of interest, including:

- If you or a related person wants to buy the property
- If you or a related person will benefit financially from the sale.
- Selling your or a related persons property would need to be disclosed under **Section 136**

If you or a related person wishes to buy a property (or an interest in it), you **must**:

- Seek the client's consent, using the prescribed form
- Provide a provisional valuation when seeking consent if the independent valuation is not yet carried out.
- Pay for an independent valuation of the property and provide this to the client (if they have given or expect to give consent)

The client **can cancel** any contract relating to the property if you fail to disclose required information or if the independent valuation is higher than stated in your provisional valuation.

Unsatisfactory conduct and misconduct

If you do not meet the requirements of the Real Estate Agents Act 2008 or the Code of Conduct (the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012), a **complaint** may be made against you and/or your agency.

This is a serious matter and can cause a good deal of **professional damage**. Not meeting the requirements of the Code of Conduct or the Act may result in a finding of **unsatisfactory conduct** or **misconduct** by a CAC or the Disciplinary Tribunal.

Depending on the seriousness of the case, the possible consequences could be:

- Censuring.
- An order to apologise.
- An order to undergo further training or education.
- An order that fees are reduced, cancelled, or refunded to rectify the error or omission.
- A fine.
- An order that costs are paid to the complainant.
- A compensation order.
- An order that the real estate licence be cancelled or suspended.
- An order that your employment is terminated, and that no agent employ or engages you in real estate agency work.

If you breach other consumer legislation, this may also result in court proceedings and legal consequences, as laid out in the relevant legislation. Complainants may seek remedy through the courts under consumer protection law.

The complaints process and disciplinary procedures were covered in the study guide for 26149. Consumer protection law was covered in the study guide for 23136. You may find it useful to refer to those study guides.

Remember:

- If you fail to meet your professional and legal obligations as a real estate agent,
- complaints may be made against you to the Real Estate Authority or the courts.
- There are many potential consequences for breaching professional and legal obligations, including fines, prosecution, and loss of your licence.

Managing sale and purchase process

Making written records and transaction reports

Throughout the sale and purchase process, it is essential to maintain **complete** and **up-to-date notes** recording the details of all listing and sale transactions. This makes sure that you have all of the information you (and your agency) need and can supply information to any other parties when required. It also means you can provide **written evidence** of the details of the transaction if there are queries at a later date.

To keep sufficient written evidence, you must:

- Keep diary notes.
- Keep all email correspondence.
- Maintain an accurate detailed **transaction report** of all relevant details and events relating to the listing during the period of the agency.
- Ensure your notes and reports are complete and kept up to date.
- Keep records of **all written offers** (whether or not they are successful).
- Keep copies of all other written documentation, including evidence that shows you have fulfilled your professional **obligations**.

Your own company or organisation will have its own **processes** for this. Many branch managers require the transaction report to be kept on file and regularly updated by the salesperson. This report will be filed with a copy of the sale and purchase agreement and any other documentation once the sale has been completed.

These documents form an essential part of the company records.

A sample transaction report is in the Portal

Keeping records of written offers

When a buyer makes a written offer, you have specific obligations to keep a **record** of this under rules 10.11 and 10.12.

It does not matter whether the offer was accepted or whether the seller signed a counteroffer. You **must** keep a copy of **every** written offer and supply a copy of it to your real estate agency.

Rule 10.11 If a licensee is employed or engaged by an agent, the licensee must provide the agent a copy of every written offer that the licensee submits.

The real estate agency must keep records of all written offers for a period of 12 months.

Rule 10.12 An agent must retain, for a period of 12 months, a copy of every written offer submitted. This rule applies regardless of whether the offer was submitted by the agent or by a licensee employed or engaged by the agent and regardless of whether the offer resulted in a transaction.

Obtaining information from the Record of Title

When the seller first enters into an agency agreement, the licensee should have confirmed legal **ownership** and the **names** of owner(s) against the owner details provided on the Record of Title in the current **computer register**. (The Record of Title was previously known as a 'Certificate of Title'. You may still hear this name being used.)

When the time comes to complete the sale and purchase agreement, you should **use details** from the Record of Title to complete the relevant fields. This includes reconfirming current ownership, its legal description, and interests. The property's full and correct address is not recorded on the title. To check this information is accurate you could check a copy of the rates demand.

Providing an approved guide to buyers and sellers

Under Section 133, the licensee must give both the buyer and seller a copy of the relevant **approved guide** (published by the REA) **before** a sale and purchase agreement is signed. For residential property sales, you must use the New Zealand Residential Property Sale and Purchase Agreement Guide.

Real Estate Agents Act 2008

133 Approved guide to be provided when contractual document provided

- (1) An agent must ensure that subsection (2) is complied with before a person signs a contractual document if the contractual document—
 - (a) relates to the proposed sale of a residential property in respect of which the agent is carrying out real estate work; and
 - (b) was provided to the person by the agent or by a licensee on behalf of the agent.
- (2) The agent or a licensee on the agent's behalf must have—
 - (a) provided the person with a copy of the approved guide; and
 - (b) received a signed acknowledgment from the person that the person has been given the approved guide.
- (3) In this section—

approved guide means a guide that—

 - (a) is about the sale of residential property;
 - (b) has been approved by the Authority for the purposes of this section.
- (4) A contravention of this section does not affect the validity of any contract.

You must make sure that you have the **latest version** of the guide to give to both the seller and the buyer. Copies of this guide are available from the REA website www.rea.govt.nz/real-estate-professionals/education-and-obligations/guides-for-buyers-and-sellers. It is a good idea to provide the seller with a copy when they first sign the agency agreement.

A standard sale and purchase agreement includes an **acknowledgement** that the signatories received the guide and a copy of the agency's in-house complaint and dispute resolution process . This is located just above the space for signatures. When the buyer and seller sign the contract, they are also signing to **confirm** that they received a copy of the guide and complaint process.

If the sale and purchase agreement relates to a **unit title property**, the acknowledgement also confirms that the buyer received a **pre-contract disclosure statement** in accordance with the Unit Titles Act 2010. The pre-contract disclosure statement must have been provided to the buyer **before** they sign the sale and purchase agreement. Often the pre-contract disclosure statement is provided at an earlier date in prior communications. In this case, you need to refer to the fact that pre-contract disclosure statement has already been provided. When the buyer signs the contract, they are also signing to **confirm** that they have received a copy of the pre- contract disclosure statement. You need to ensure they are aware of this.

Remember:

You **must make** thorough and up-to-date written records in relation to:

- Details of listing and sale transactions (including transaction reports).
- All written offers (for a period of 12 months).
- Contracts and agreements.
- Any activities that were professionally and/or legally required or that may have legal implications (for example, disclosing material facts).
- You **must confirm** legal ownership of a property from the current Record of Title.
- You **must provide** an approved guide and complaint resolution process to both the seller and buyer **before** they sign a sale and purchase agreement. You must also ask both parties to sign an acknowledgement that they received these.
- If the property is a **unit title property**, you must ensure a pre-contract disclosure statement has been provided to the buyer **before** they sign a sale and purchase agreement. Signing the contract confirms that they have received a copy of the pre-contract disclosure statement.

Sale and purchase agreements

Section 24 of the Property Law Act 2007 states that sale and purchase agreements must be in writing and signed by the appropriate parties. This also applies to **lease agreements** (excluding short-term leases).

Property Law Act 2007

24 Contracts for the disposition of land is not enforceable unless in writing.

- (1) A Contract for the disposition of land is not enforceable by action unless-
 - (a) The contract is in writing or its terms and recorded in writing; and
 - (b) the contract or written record is signed by the party against whom the contract is sought to be enforced.
- (2) In this section, disposition does not include-
 - (a) a short-term lease; or
 - (b) a sale of land by order of a court or through the Registrar.

As a licensee, you will play a major role in ensuring that **sale and purchase agreements** are completed **accurately, fully**, and with the **agreement** of both buyers and sellers.

A standard sale and purchase agreement sets out all of the agreed **terms and conditions** of the sale and purchase of a property or business.

A sale and purchase agreement is a **legally binding** contract. It legally requires the parties to the contract to go ahead with the sale/purchase of the property/business once any conditions set out in the sale and purchase agreement are met.

A **conditional** sale and purchase agreement is one that includes **conditions** which must be met by specified dates before the contract can proceed and reach settlement.

An **unconditional agreement** is when **all** conditions in the sale and purchase agreement have been met and the contract is ready to proceed.

Using standard ADLS/REINZ sale and purchase agreements

Any type of written agreement signed by both parties would be legally binding as long as it contained all of the elements for a legally binding contract. However, the following ADLS/REINZ standard agreements are commonly used:

- **Agreement for Sale and Purchase of Real Estate – 10th Edition 2019 (2).**
- **Particulars and Conditions of Sale of Real Estate by Auction - 5th Edition 2020.**
- **Particulars and Conditions of Sale of Real Estate by Tender - 5th Edition 2020.**
- **Agreement for Sale and Purchase of a Business - 4th Edition 2008 (6).**

These agreements are joint copyright forms between the Real Estate Institute of New Zealand Incorporated (REINZ) and the Auckland District Law Society (ADLS).

The purpose of these forms is to make sure agreements are **fair** to all parties and to cover the **different situations** that may occur when buying and selling real estate. It is important to have a good **understanding** of the agreements and how they should be used. You must be able to explain all of the clauses clearly and accurately to both vendors and purchasers.

Be aware that the forms are updated regularly, and you need to make sure you have a copy of the latest edition.

New editions often include important **new** clauses or **changes** to existing clauses. These revisions help to make sure that the forms cover most of the common situations in real estate sales. However, it is possible to **alter** clauses or **add** new clauses if they are needed.

Forms are available through the Real Estate Institute store www.reinz.co.nz and you can find a copy of the Agreement for Sale and Purchase of Real Estate – 11th Edition 2022 in the Portal.

We recommend you have a copy of the Agreement for Sale and Purchase of Real Estate available to make notes on as you work through the following sections.

Remember:

- Sale and purchase agreements **must** be in writing and signed by the appropriate parties.
- Sale and purchase agreements are **legally binding** contracts.
- It is usual to **use standard ADLS/REINZ sale and purchase agreements** as these have been designed to cover most common situations in real estate sales in New Zealand.

Selling tenanted properties

It is important for real estate licensees working on a transaction that involves a **tenanted** property to understand the Residential Tenancies Act 1986. This Act sets out the **rights** and **responsibilities** of landlords and tenants in relation to residential properties and tenancy agreements.

Residential tenancies are those which involve the letting of 'any premises used or intended for occupation by any person as a place of residence'.

There are some key considerations when selling tenanted properties.

Looking after tenants' rights

If you are involved in the sale of a tenanted property, you must make sure that **tenants' rights** under the Act are **upheld** throughout the process. You must also provide **correct information** to clients and customers about how the tenancy of the property affects the sale and purchase process.

Under the Residential Tenancies Act 1986, the landlord of a tenanted property **must inform** the tenants in writing that the property is being put on the market (47(1)). If the landlord is attempting to rent a property that is on the market, they **must** also inform any **prospective** tenants of this (47(2)).

Landlords **must** follow legal requirements when **entering** a tenanted rental property. A landlord has the right to give a real estate licensee access to their tenanted rental property in order to carry out tasks relating to sale of that property, like inspections, appraisals, and viewings (48(3)(d)). This must be done at any **reasonable time**, subject to any **reasonable conditions** set down by the **tenant**.

The tenant may not unreasonably block this access. However, if the tenant does block access, the landlord may not use force or threats to get into the premises when the tenant is present as this can result in **charges** being laid.

Important tenancy information

When preparing to market a tenanted property for sale, it is important to **check** the **details** of the tenancy agreement in place. This will make sure you are fully informed about the conditions of the tenancy and can advise the buyer and seller accordingly. Some investors will prefer to buy a property with tenants already in place so that they do not need to find new tenants. Other buyers may only be interested in the property if the tenants will have moved out by the date of settlement, particularly if they want to move into the property themselves.

If a standard residential tenancy **agreement** is in place, this should help you to identify details such as the **type** of tenancy and, any **variations** or **renewals** of the tenancy agreement (which must be signed by both parties).

The type of tenancy affects whether or not the tenancy can be ended by **giving notice** (giving the buyer vacant possession of the property) or whether the buyer will be obliged to **uphold** an existing tenancy agreement.

If a property being sold is under a **fixed-term** tenancy, the tenants have the **right** to stay in the rental property (under the same conditions) until the **end** of the fixed term. The new owner becomes their landlord and must **honour** the term of the existing tenancy. There may be an occasion when the tenants are willing to negotiate a change to this agreement with the new owner.

If a property is being sold and there is a **periodic tenancy in place**, the existing owner **may end** the tenancy while the property is being marketed by giving at 90 days' written notice. Or the owner/landlord can end the tenancy by giving tenants 90 **days'** written notice after the property has gone unconditional.

If the settlement date does not allow time for the tenants to vacate the property, the buyer **will not** be able to take possession on this date. It is likely that the buyer will then seek **reimbursement** of this cost from the client. The client will then seek reimbursement from you as it was your role to provide appropriate advice concerning dates.

Information about rent payable and rent reviews will be important to customers who want to purchase the property with the intention of **maintaining** the tenancy.

Increases in rent must be made in accordance with the requirements laid out in Section 24 of the Residential Tenancies Act 1986. Note that rent **cannot** be increased at all during a **fixed-term** tenancy unless there is a provision in the fixed-term tenancy agreement that allows this.

Pre-settlement inspection for tenanted properties

The sale and purchase agreement states in Clause 3.2, that when a property is sold with **vacant possession**, the buyer (or authorised person) has the right to complete a **property inspection** to check the **condition** of the property, chattels and any fixtures that are included in the sale.

If the property has been tenanted it is preferable to conduct this inspection after the tenant has vacated the premises but **before settlement**. If the tenancy has ended, the tenants will be required to have vacated the property, removing all of their goods. They must leave the property in a reasonably clean and tidy condition, with all chattels still in place. They must return any keys or security devices that give access to the property.

If the buyer is carrying out pre-settlement inspection, commonly referred to as the 'final inspection' before the tenancy has ended, they must do so while **complying** with the tenants' **legal rights** under the Residential Tenancies Act 1986.

Note: If the property is being sold with the tenancy to continue under new ownership, then there is no right of 'final' inspection under the terms of the agreement.

Remember:

- When selling a tenanted property, you **must** (together with the landlord) **make sure** tenants' rights are upheld, including in relation to:
 - **Informing tenants** in writing that the property is being put on the market.
 - **Informing** any prospective tenants that the property is on the market.
 - **Gaining access** to the property to carry out tasks relating to the sale.
- You **must make sure** you **understand** the conditions of an existing tenancy and how this affects the sale and purchase process.
- You **must provide** accurate information to clients and customers about the tenancy and any implications for the sale and purchase of the property.
- Tenants with fixed-term tenancies **cannot be given notice** to leave until the end of the fixed term. If the property is sold during this term, the new owner will become the new landlord, with the same tenancy contract and conditions in place.
- Tenants with periodic tenancies **can be given notice to leave** by giving at least 90 days written notice if the property is being marketed, or if a sale has already become unconditional and the buyer wants vacant possession.
- If tenants are being **required to vacate** the property before settlement, the buyer should **complete a property inspection** to ensure the property is in appropriate condition.
- Tenants who are moving out **must** leave the property in reasonable condition, return any keys or security devices, and leave all chattels in place.
- If the tenancy is continuing under the new ownership, there is no right to final inspection under the agreement.

Complying with the Overseas Investment Act

The Overseas Investment Act 2005 (OIA) requires an '**overseas person**', or 'an **associate** of an overseas person' to apply for **consent** in order to buy certain types of land or business.

Under Section 7(2), an individual is classed as an 'overseas person' if they are **not** a New Zealand citizen or a New Zealand resident. A resident is someone who holds a **residence class visa** and is **residing in New Zealand** indefinitely under the terms of the OIA. An overseas person may also be a body corporate, a partnership or other body of persons, a trust, or a unit trust.

Note that owning business assets in New Zealand does not entitle an overseas investor to live in this country.

OIA applies to

Sensitive Land

The types of land and business affected by these requirements are:

- Sensitive land or an interest in sensitive land (an 'interest' refers to buying shares in a company that owns sensitive land) (Section 1)

In 2018, the Overseas Investment Amendment Act changed to now classify **all residential and lifestyle** properties as sensitive land. **Restrictions** on the sale of sensitive land under the Overseas Investment Act 2005 now apply to residential and lifestyle properties throughout New Zealand. Land is considered to be a residential or lifestyle property if this is how it is categorised by the relevant district council.

The OIA also classifies a number of other types of land as **sensitive**. For example

- Rural land over 5 Ha
- Land adjacent to the foreshore over 2000m²
- Land on certain offshore islands, if over 4000 m²
- Land of more than 4000 m² that is being held for use as a park or reserve
- Land of more than 4000 m² that adjoins a recreation reserve on the edge of a lake or the sea

Special land has additional requirements attached to it. Any person selling sensitive land that includes special land (foreshore, seabed, riverbed, or lakebed) to an overseas person must offer the Crown the **right to acquire** the special land.

A full definition of sensitive land is given in Schedule 1 of the Overseas Investment Act.

<http://www.legislation.govt.nz/act/public/2005/0082/27.0/DLM358552.html> . However, be aware that this site is not always fully up to date with very recent amendments.

Business assets worth more than \$100 million (Section 13)

Fishing quota or an interest in fishing quota. (Section 10 of the OIA and Sections 56 to 58B of the Fisheries Act 1996.)

Completing the OIA field on a sale and purchase agreement

When completing a sale and purchase agreement, you must make sure that a buyer accurately records whether they need to seek **OIA consent**. If the buyer indicates that they do have to seek OIA consent, you must make sure the agreement is conditional on obtaining this consent and consider the **time** needed for the buyer to obtain this consent (if it is granted).

Clause 9.6 and 9.8 outlines more details

Applications for OIA consent

In accordance with Overseas Investment Act requirements, a buyer who needs OIA consent must make a **written application** to request this from the Overseas Investment Office (OIO). The OIO is part of Land Information New Zealand (LINZ).

A buyer will usually need to get help from a **solicitor** to confirm whether consent is required and to deal with the process of applying for consent. Affected potential buyers must be advised to seek **legal advice** as early as possible in the transaction process.

Criteria for receiving OIA consent

In simple terms, OIA consent depends on whether:

- The applicant satisfies the **investor test** (which means they have good character, business acumen, financial commitment, and are eligible for visas or entry permissions).
- The transaction is likely to **benefit** New Zealand.
- The individual overseas person is ordinarily **resident** in New Zealand or **intends** to reside in New Zealand indefinitely.
- In the case of a company, a partnership, a joint venture, or a trust, all the individuals with control of it are New Zealand **citizens**, ordinary New Zealand **residents** or are **intending** to live in New Zealand indefinitely.
- If the application is for farmland, the land has already been offered for sale on the **open market** to New Zealand citizens and residents. (Note: The farmland must be offered to the open market for a period of 20 working days before it can be sold to an overseas buyer.)

Click to see an [Overview of the Overseas Investment Act 2005](#)




Investing in New Zealand

Here is a general guide to investing in New Zealand

If you are a New Zealand citizen, ordinarily resident in New Zealand, or an entity registered in New Zealand and owned by New Zealanders, you can do any of the below and do not need to contact us.

To find out more please visit our [website](#), as there are some exceptions.

	Overseas people, including international entities	Resident visa holders who live overseas, and entities that are more than 25% overseas owned or controlled	Australian and Singaporean citizens, and Australian and Singaporean permanent residents who live in New Zealand
	Must notify	Must notify	Must notify
Investing in a controlling interest in a business asset under \$100m	Must notify	Must notify	Must notify
Investing in significant business assets over \$100m	Consent required	Consent required	Consent required
Investing in other sensitive land	Consent required	Consent required	Consent required
Buying forestry	Consent required	Consent required	May require consent
Developing residential land	Consent required	Consent required	Ok to buy
Buying one home to live in	Will not get consent	Consent required	May require consent

Overseas Investment Act 2005

7 Who are overseas persons

- (1) The purpose of this definition is to provide that persons are overseas persons if they themselves are overseas persons (for example, not a New Zealand citizen or resident or, for companies, incorporated overseas) or they are 25% (or more) owned or controlled by an overseas person or persons.
- (2) In this Act, overseas person means—
 - (a) an individual who is neither a New Zealand citizen nor ordinarily resident in NZ; or
 - (b) a body corporate that is incorporated outside New Zealand or is a 25% or more subsidiary of a body corporate incorporated outside New Zealand; or
 - (c) a body corporate (A) if an overseas person or persons have—
 - (i) 25% or more of any class of A's securities; or
 - (ii) the power to control the composition of 25% or more of A's governing body; or
 - (iii) the right to exercise or control the exercise of 25% or more of the voting power at a meeting of A; or
 - (d) a partnership, unincorporated joint venture, or other unincorporated body of persons (other than a trust or unit trust) (A) if—
 - (i) 25% or more of A's partners or members are overseas persons; or
 - (ii) an overseas person or persons have a beneficial interest in or entitlement to 25% or more of A's profits or assets (including on A's winding up); or
 - (iii) an overseas person or persons have the right to exercise or control the exercise of 25% or more of the voting power at a meeting of A; or
 - (e) a trust (A) if—
 - (i) 25% or more of A's governing body are overseas persons; or
 - (ii) an overseas person or persons have a beneficial interest in or entitlement to 25% or more of A's trust property; or
 - (iii) 25% or more of the persons having the right to amend or control the amendment of A's trust deed are overseas persons; or
 - (iv) 25% or more of the persons having the right to control the composition of A's governing body are overseas persons; or
 - (f) a unit trust (A) if—
 - (i) the manager or trustee, or both, are overseas persons; or
 - (ii) an overseas person or persons have a beneficial interest in or entitlement to 25% or more of A's trust property.

Remember:

- Under the Overseas Investment Act 2005 (OIA), overseas persons and their associates **must apply for consent** to buy some types of sensitive land or businesses.
- There are a number of types of land that **count as sensitive land**, including almost all **residential and lifestyle** properties.
- If an overseas buyer requires OIA consent, they **must indicate** this on the sale and purchase agreement.
- To receive OIA consent, buyers **must meet** a range of criteria, including that:
- They satisfy the **investor test**.
- The transaction they are proposing is likely to benefit New Zealand.
- They are ordinarily resident in New Zealand (or intend to become resident).
- If an application relates to farmland, it **must** already have been offered for sale on the open market to New Zealand citizens and residents.

Financing a property

Many offers are subject to **finance**. This means that, if the potential buyer is unable to arrange the necessary finance, the sale will not go ahead.

While it is **not** your duty to give financial advice, it is important to understand **financing options** when talking to buyers. You need to understand the position buyers are in and what needs to take place for a sale and purchase agreement to become unconditional.

Completing the finance conditions on a sale and purchase agreement

If the buyer needs finance to purchase the property this must be indicated in the contract and you must allow sufficient time for them to get finance approval. Normally 10-15 working days from date of the contract would be considered a reasonable time. It would be best practice to ask how much they need to borrow and if they have already contacted their lender.

Note that the buyer has an obligation to make **reasonable efforts** to arrange the finance as detailed. Under Clause 9.1(2) if the purchaser wants to cancel the contract due to not being able to arrange finance they must provide a satisfactory explanation supported by evidence that they were unable to secure finance if requested by the vendor.

Requirements for obtaining a home loan

Security on a loan

Before a bank lends money to a buyer, it will want to be sure that the loan is **secure**.

This means that the bank **will not** want to lend more money on a property or business than it is **worth**. It also means that the amount of the loan must be adequately secured against the value of the asset. In other words, there must be a form of **security** in place that means the bank can **recover** its money if needed (for example, if the buyer cannot meet their mortgage repayments).

It is common in New Zealand for the **property being mortgaged** to function as the **security** for the loan. This means that the bank **can sell** the mortgaged property to recover its money if the buyer can no longer make their payments. It is also fairly common for **another** property to be used as **security**: for example, a second property already owned by the buyer or a member of their family.

Providing equity

It is standard practice for banks to insist that the buyer provides equity. When referring to a home loan, the deposit is the amount of **money** that the buyer **must pay** towards the purchase price. The **balance** of the money is supplied by the bank loan.

Equity is made up of a deposit and other funds that are not borrowed from the bank. A deposit is normally required by the vendor, and it is usual practice for the real estate licensee to ask for 10% deposit. If a deposit is less than 10% or the commission due, then you will need to talk to the vendor about the risks involved and when commission is payable.

Deposits

Deposits can increase the likelihood that a buyer will be in a good position to meet their repayments if their financial position worsens, or interest rates rise. For this reason, the Reserve Bank of New Zealand legally requires banks to make sure that most loans for residential properties have a **low** loan-to-value ratio (LVR), which means the buyer pays a deposit of at least **20%** of the **value** of the property.

A few buyers **may** be able to get loans if they do not have a 20% deposit, but this is **less** common.

The deposit must be realistic, collectable and paid in accordance with the terms as specified in the Sale and Purchase Agreement

NOTE: - Funds from KIWI Saver may not be able to be used for the deposit if not readily available. If the deposit is not paid on the required date, the licensee needs to follow up and advise the vendor to allow the vendor to issue the 3 days' notice as per Clause 2.2.

Required documentation

When a potential buyer **applies** for a loan, the bank will often require them to obtain reports and other documentation that help to confirm the property's **value**. These include:

- Registered valuation
- LIM report
- Building report (from an approved building consultant)
- Methamphetamine test results.

Funds for the purchase of a business

A loan for the purchase of a business is **similar** to a home loan in that the bank needs to consider the **security** of the loan.

Before lending against a business purchase, a bank would typically consider:

- The value of the fixtures and fittings, stock, plant, and chattels (which can be sold if the business fails)
- The profitability of the existing business and its cash flow.
- Whether there are any on-going contracts in place which will benefit the buyer
- The security of tenure, if applicable (i.e., how long the business can continue leasing its physical premises under existing or similar conditions)
- Any other equity that the buyer has (such as a property owned by the buyer) that could be used as security for the loan.

A bank is less likely to fund the purchase of a business if it is not profitable, has poor cash flow, does not have ongoing contracts, and/or has a lease which may expire soon.

Mortgage brokers

It is frequently in the **best interests** of the buyer to use a **mortgage broker** to help them obtain finance. Mortgage brokers have strong networks within different lending institutions such as normal trading banks, building societies and 'second tier lenders'.

A good mortgage broker:

- knows which lender will best suit each buyer's situation and is most likely to approve a loan for that buyer
- has links to senior lending officers (within the lending institutions) who may have the authority to approve loans outside the bank's normal lending criteria
- is able to negotiate favourable interest rates and lower set up fees on behalf of their client.

For non-commercial loans, mortgage brokers are paid by the banks or lenders so there is **no charge** to the borrower (the buyer). Like real estate agents, they are paid by way of **commission** from successful settlements and are motivated to help conclude a sale. Mortgage brokers are easily accessed. They are often available in the evenings and at weekends and will go to the buyer's home or meet with them at an agreed location.

Types of mortgages

There are two main types of mortgages which can be used to finance property:

- Table mortgage (principal and interest).
- Interest only mortgage.

Table mortgage

The most common type of mortgage is a table mortgage. The buyer must make **regular payments**, which are made up of a portion of the **principal** and the agreed amount of **interest** (sometimes called 'principal and interest payments'). Mortgages of this type are often for periods of 15 to 30 years, and at the end of that time the whole mortgage will have been **repaid**.

A table mortgage provides the certainty of regular payments and a set date when it will be paid off. Payments are for a **predictable** amount **unless** the buyer has a **floating** interest rate, in which case repayment amounts can increase or decrease as a result of interest rate changes.

Interest only mortgage

An interest only mortgage is one that requires the buyer to make regular payments of the **interest only**. This keeps the monthly payments to a **minimum**. However, at the end of the term, the buyer still **owes** the bank the entire principal.

Interest only mortgages are for **shorter** terms than table mortgages. If they are **not repaid** in full at the end of the term, the bank will often require that the borrower **converts** to a table mortgage with principal and interest payments to make sure that the loan will be paid off.

Interest only mortgages are commonly used by **property investors** and by people who deal in property as they intend to sell each property in a short period of time.

This type of mortgage **can** also be useful for people buying their own home if they have a **low income** but are expecting this to **change** soon so that they can then make larger payments each month.

Interest rates

Interest rates on mortgages **vary** between **different banks** and go up and down in response to changing **economic conditions**. The interest rate that a lender offers will also depend on the type of mortgage and whether the rate is fixed or floating.

Current rates are usually visually displayed in bank windows and online. Mortgage brokers will often send their contacts regular updates on the range of rates available.

Remember, the interest rate charged by the bank will always be higher than the interest it pays on the money it borrows itself - this is how banks make money. It is important for borrowers to check the bank's 'fine print' regarding **penalties** for **costs** or **early repayments**.

Fixed interest

A fixed interest rate means that the interest rate remains the **same** for a **fixed** amount of time. Rates are usually fixed for an agreed period between six months and five years. After this time, it will change to the floating rate unless a new fixed rate is renegotiated.

A fixed rate makes it **easier** for a borrower to budget as **interest** payments remain **constant** for the period. However, if the buyer repays the loan early (for example, if the property is sold) and interest rates have dropped, a bank will usually charge a **penalty** for this.

Floating interest

A **floating** interest rate will go **up and down** as market conditions affect the bank's ability to borrow money. The floating rate is closely tied to the Official Cash Rate (OCR). A floating rate may therefore drop if interest rates fall, but it might go up if interest rates rise.

If the buyer repays the loan early, the bank **does not** charge any **penalty**. Some people like to use a **combination** of fixed and floating interest rates for their mortgage. This allows them to repay a lump sum early if they can afford it, without penalty.

Remember:

- If a sale is **conditional** on finance, the details **must be provided** on the sale and purchase agreement. This includes the date by which the finance must be arranged.
- Buyers **must make** a reasonable effort to **arrange** the finance they have specified.
- Banks expect loans to be **secured** in case the buyer cannot meet their repayments.
- Banks generally **will not lend** 100% of the money and require the buyer to pay a deposit towards the purchase price. Most buyers **will require** a 20% deposit.
- A bank will often **require** buyers to **obtain documentation** that helps to confirm the value of the property before they lend money (for example, LIM reports and building reports).
- If a loan is for the purchase of a business, a bank will need to **value** the business before it will lend money for the purchase.
- Many buyers are **more likely to obtain finance** if they use a mortgage broker, and there is no charge for this service.
- Mortgages may be '**table mortgages**' (which have regular, predictable payments) or '**interest only** mortgages' (which require payment of the interest only).
- Interest rates are either '**fixed**' (which is a fixed amount of interest for a specified time period) or '**floating**' (which rises and falls in accordance with market conditions).

Managing clients and customers

Keeping parties informed

Throughout the process of preparing and presenting offers and managing negotiations, it is essential that licensees provide **clear** and **accurate** information to both clients and customers.

Give thought to the way you communicate. Information and explanations should be **logical** and **easily understood** by people who do not necessarily have real estate experience or expertise.

As a rule, it is often best to **cluster** together the **information** you have to pass onto the buyer or seller so that the discussion is **focused** and **thorough**. For example, you might cluster together a discussion of their legal rights, the difference between conditional and unconditional agreements, requirements for a deposit, and the in-house complaints procedure for your agency.

If you are marketing a property for a seller, you must communicate **regularly** with them and keep them **up to date** about relevant issues (rule 9.3). Unless the client has instructed otherwise, follow up with them after every viewing and/or open home by emailing, phoning, or leaving a note for them. You should let them know the result of the viewing or open home and whether any potential customers have any further interest in the property.

This will help you to maintain a **strong relationship** with the client and ensure that both of you keep up to date throughout the marketing and transaction processes.

In some circumstances, a client may say they only want to be contacted under certain circumstances: for example, if an offer is being made. If a client gives you this type of instruction, you should get this instruction **in writing** and **keep it on file**.

Rule 9.3 A licensee must communicate regularly and in a timely manner and keep the client well informed of matters relevant to the client's interest, unless otherwise instructed by the client.

Communication techniques

It is important to build **rapport** with clients and customers throughout the marketing and transaction process. Building rapport involves developing a **good understanding** of someone and **communicating** well with them. This will help you throughout the marketing and negotiation process, including when you are working with potential buyers.

Rapport can be built with clients and customers using a variety of techniques. These include the following:

- Questioning.
- Active listening.
- Identifying points of agreement and disagreement and offering solutions.

Questioning clients and customers is an effective way of finding out their **understanding** of particular matters and finding out their **wants, needs** and **motivations**. Closed questions result in a short yes or no type of answer. **Open** questions give more insight as they encourage a full and more detailed reply, often including personal opinions.

Active listening involves concentrating fully on what is being said and responding accordingly. You should aim to respond (without interrupting) in a way that **encourages** the person to **continue talking**. You can do this with phrases such as “Yes, I understand”, “Tell me more about that,” and “Do you mean...?” You can also use non-verbal communication such as nodding to show agreement or understanding.

When questioning and listening, it is important to make sure you **understand** what the person is saying. Ask additional **questions** if needed to clarify certain points and make sure you have understood what the other person is saying. Try to **remember** what was said and keep a **detailed record** of any useful information you receive.

Identifying the key points of **agreement** and **disagreement** will often directly influence **negotiations** and whether or not the contract can be **secured**. For example, the price that a buyer offers is often the key issue, but the seller’s decision about whether to accept this price may be affected by other conditions such as timeframe for settlement. See if you can help the parties to identify a middle ground **solution** that is acceptable to **both** of them.

Being able to handle objections during the offer and negotiation process is an essential part of the job!

Objections from a buyer are often raised as a way of eliminating or minimising **questions** in their own mind. Help them by **answering** those questions appropriately and with a genuine response. Use active listening techniques to listen to the objection with **empathy** and make sure you completely understand the issue.

You can then do the following.

- Acknowledge the objection.
- Respond with a statement such as: “apart from (the objection), how do you feel about (xxxx)?”
- Move the negotiation forward by focusing on the positives or possible solutions.

Recognising buying signals

When you are working with buyers, you need to be able to recognise **‘buying signals**. These are indications that a party is **ready** to make an offer and/or finalise the contract. These signals can be non-verbal and verbal.

Non-verbal buying signals can include:

- Nodding.
- Smiling.
- Relaxed posture.
- Uncrossed arms and legs.

Verbal buying signals can include:

- Buyer attachment statements (for example: “I just love the views from the property!”).
- Repeated questions (for example: “So you said... didn’t you?”).
- Risk mitigation questions (for example: “When I order a LIM report that will all be confirmed?”).
- Making comments that other options were more unfavourable (for example: “The other house we viewed was less private than this property.”).

Learning to recognise these signals will help you to respond appropriately and work towards achieving a sale.

Remember:

- You **must keep** clients and customers **well informed**, with clear, accurate, and logical explanations.
- Use good communicating techniques to **build rapport** with clients and customers, including questioning, active listening, and offering solutions.
- You should **learn to recognise** buying signals that indicate when a buyer is ready to make an offer or finalise the contract.

Completing the sale and purchase agreement

Steps to achieving a written offer

Once the buyer is ready to submit a **written offer**, it is your job to provide **guidance** and **advice** so that they can complete the offer successfully.

Remember to provide the buyer with a copy of the relevant **approved guide and the Agency Complaint & Dispute Resolution Process** and ask them to **sign** an acknowledgement that they have received the guide.

If it is a unit title property you will need to also provide a pre-contract disclosure statement and advise the buyer that by signing the Sale and Purchase agreement, they are acknowledging that they have received the disclosure statement.

Explain to the buyer that they are entering into a legally binding contract and make sure they understand their legal obligations once they have made the offer. Make sure they realise that the offer will not be dated until it has actually become an agreement.

You must also advise the buyer that it is likely to be in their best interests to seek legal and/or technical advice before signing the agreement.

Remember that the agreement is not considered to be an offer until it is signed by all of the signatories identified on the agreement as buyer. For example, if a husband and wife are buying a property jointly, the offer is not a legal one until both of them have signed the agreement form.

There are slightly **different** requirements for identifying the correct signatories if an organisation is the buyer, such as a trust or a company. You will find more on identifying the correct signatories in the Obtaining Signatures from the Appropriate Parties section later in this guide.

It is best to explain the **terms** and **conditions** in each section of the sale and purchase agreement as it is filled out.

Make sure that:

- The buyer has read **everything** and confirmed that the information is **accurate**.
- You have **explained** all parts of the contract clearly.
- The buyer **agrees** with all clauses, conditions, and dates in the contract, and **understands** their legal and practical **implications**.

It is generally best to have the buyer **initial** the agreement as you discuss and agree each section. This will make sure the process is **methodical** and **thorough** and that the buyer definitely agrees to every part of the contract.

You will find more on the process of initialling and signing in the rest of this study guide, including in the Getting the Agreement Signed section.

Remember:

- You must provide the buyer with a copy of the approved guide and the agency's in-house complaints and dispute resolution procedure before they make a written offer.
- You must make sure the buyer understands that the offer will be legally binding at the point that it has been accepted by the seller.
- You must advise the buyer to seek legal and technical advice before signing the agreement and ensure they have reasonable amount of time to do so.
- If there is more than one individual buying the property, all of the individual buyers must sign the agreement.
- You must make sure that all of the information in the agreement is complete and accurate.
- You must explain all parts of the contract clearly and ensure that the buyer understands its legal implications in full. This includes making sure that the buyer understands and agrees to all of the clauses, conditions, and dates in the contract.
- You must give a copy of the offer to the buyer as soon as possible after they have signed it.

Front page

Different agents, and solicitors, often have varying opinions on the best wording and method for completing a sale and purchase agreement. The information in the following sections lays out a generally **accepted method**, which you should learn.

The **front page** of the agreement **must** be filled out with details of the following:

- Date of agreement (this refers to the acceptance date and should be completed once all parties have agreed, signed, and initialled).
- The full legal name(s) of the seller(s), buyer(s) and/or authorised persons(s).
- Whether the seller is registered for GST in relation to the transaction.
- The details of the property to be sold, including the full and complete address of the property, and the legal description taken from the Record of Title.
- The purchase price - how much the agreed sale is for.
- The deposit amount, including a description of when this is payable and who it is payable to.
- Whether the price is inclusive of GST or not (if any) and GST date.
- The settlement dates.
- The interest rate that would apply if either party delays settlement.
- Conditions that must be fulfilled before the contract becomes unconditional, including finance, LIM report, building report, OIA consent, and the date of any Land Act/OIA consent (if applicable).
- The details of any tenancies, if applicable.
- The name of the real estate company facilitating the sale.

Note: There is **no need** for the buyer to initial any item on the **front page that has not been altered** when they make their first offer.

However, all parties **must initial** (i.e., sign with their abbreviated signature) **all alterations and variations to the offer or counteroffer, including changes to price, deposit, or dates. Where a selection is to be made, Best Practice is to circle the correct choice, cross out the incorrect choice and initial the choice.**

Parties must also initial **all** additional **clauses** and **changes** to existing clauses, as well as any **mistakes** that need to be reversed. For example, they would have to initial if adding a new clause or crossing out a clause and then needing to add it back in.



Best practice

Where there is a Yes/No option

- Strikeout 'Yes' or 'No' to show the required option.
 - Circle the chosen option.
 - Initial the selection.

Here is an example:

OIA consent required (subclause 9.6):	Yes <input checked="" type="radio"/> No	
---------------------------------------	--	--

Note:

The **Land Act condition** relates to 89(1) of the Act which states that leases or licenses (commonly Crown leases) cannot be transferred without the consent of the Land Settlement Board. The seller must obtain consent by the date shown on the front page of the agreement, or it defaults to the settlement date or 65 days from the date of the agreement /20 days if the contract relates to a property with a residential component and is not sensitive land.

Where an agreement is subject to Land Act or OIA, but a date has not been entered, the confirmation date automatically defaults to the earlier dates referred to above.

An up-to-date Record of Title for the property is the most reliable document to refer to in order to confirm information about the estate and legal description. Property details included in the agreement must be completely accurate and match the details on the property's Record of Title.

A copy of the Record of Title is held electronically by Land Information New Zealand (LINZ). A copy can be ordered through the LINZ website.

Requirement for initials on the front page of the agreement

There are no initials necessary on the front page of the original offer (unless there is an alteration or amendment made prior to presentation to the seller).

The Front Page of The Sale & Purchase Agreement

(11th Edition 2022) in more depth.

Date	<p>This refers to the acceptance date. Fill this in after everything is agreed and everyone has signed and initialled any changes. Write the month as a word, not a figure: for example, 1st August 2013 (not 01/08/13).</p> <p>Various clauses are triggered by this date. As an example, see clause 10.2 relating to LIM report dates.</p>
Vendor details	The full name/s of the seller/s as they appear on the Record of Title. All sellers listed and/or nominated authorised person(s) must sign the agreement.
Purchaser details	<p>Use the full name/s of all buyer/s and/or their authorised person/s. If the buyer is a company, put the full name of the company.</p> <p>If the buyer is a trust, insert the full names of each of the trustees of the trust. Then add the name of the trust after the trustees' names.</p>
GST	This section also requires YES/NO confirmation of whether the seller is registered for GST in relation to the transaction and/or will be registered at settlement. Cross out the option that does not apply and circle the correct option
Property details	Address: This is the physical (street) address: for example, Apartment 3, 12 Summit Rd, Bayview Heights, Hamilton. The full and correct address is especially important, for a property that is difficult to identify (such as an apartment).
Estate:	<p>This is the type of estate (land ownership) for that property. Delete the options that do not apply.</p> <p>Check the Record of Title and select the applicable type of estate by deleting the other options. If no options are deleted, the estate is regarded as FEE SIMPLE (FREEHOLD)</p> <p>Cross lease titles are usually cross lease (fee simple) but can be cross lease (leasehold) in some cases. Strata title can be either stratum in freehold or stratum in leasehold.</p>
Legal Description:	This is the legal description of the property. Use the fullest details possible. Get this information from an up-to-date copy of the Record of Title
Area	The size of the land in square metres or hectares: for example, 709m ² or 20.48ha.
Lot/Flat/Unit	The lot/flat/unit number
DP	The deposited plan numbers.
Unique Identifier or CT:	The Record of Title number
<p>There is space underneath. Use this to enhance the legal description if required: for example, to record a cross lease legal description, a share in common driveway, or a complicated legal description of land to be subdivided.</p> <p>You can also insert multiple legal descriptions if the property has more than one title.</p>	

Payment of purchase price

Purchase price:	This is the total amount that will be paid for the property if both parties agree. Use figures only: for example, \$650,000.00. This makes it simpler to change the price in a counter-offer situation
Plus, GST (if any) OR inclusive of GST (if any):	<p>This records whether or not the purchase price will have GST added to it or not. GST will only need to be paid if the seller has a GST status that requires this.</p> <p>You must delete one option to show whether the purchase price is 'plus GST (if any)' or 'inclusive of GST (if any)'. The 'plus GST' option is for when the seller requires GST to be paid in addition to the purchase price. This is only the case in certain circumstances: for example, if it is a commercial or farm property.</p> <p>If neither option is deleted, the default position is that the purchase price includes GST (if any), and the buyer will not have to pay any additional GST</p>
GST date:	This is the date that the seller must next make a GST payment to the IRD after the agreement has become unconditional. This date only needs to be inserted if the transaction is 'plus GST'. If the GST date has not been inserted, the default position is that the GST date (if applicable) is the settlement date. See clause 14.1.
Deposit:	<p>This must state the amount of the deposit, who it is to be paid to, and when it is to be paid. It is customary for a deposit amounting to 10% of the purchase price to be requested. But the buyer may also offer to pay a set sum they have available for deposit. For example, you might state '\$65,000 payable to Best Realty Trust Account upon execution of this agreement. If the purchaser asks to pay the deposit at a later date for some reason a pre-determined date or stage of the contract should be included. For example, 10% of purchase price payable to Best Realty Trust Account upon this agreement becoming unconditional.'</p> <p>Under clause 2.1, the deposit is payable to either the client or the client's agent; immediately 'on acceptance' (or execution) of the agreement unless otherwise specified. This means that where the deposit will not be paid immediately upon execution of the agreement, you must state clearly when the deposit is due. (For example, 'payable on this agreement becoming unconditional' or 'payable on the 5th working day after the date of this agreement'.)</p> <p>Where a deposit is not paid until the agreement becomes unconditional or if there is no deposit, the contract is still legally binding, but the buyer has not made the same commitment and it is easier for them to not proceed.</p> <p>Ensuring the buyer can pay the deposit as specified in the agreement is particularly important as there are consequences for late payment. Under Clause 2 of the agreement, if the deposit is not paid on the due date, the seller can require payment within three working days of issuing a notice to the buyer. If it remains unpaid (after the three working days) the seller can cancel the contract.</p>

Balance of purchase price to be paid or satisfied as follows: This gives the details of how and when the rest of the purchase price (other than the deposit) will be paid	
Option 1	You will need to complete the sentence with the settlement date. Make sure the date is written in full: for example, 27 th August 2013 (not 27/8/13). Settlement date is the same as possession date, unless otherwise specified
Option 2	You will need to explain this fully in the Further Terms of Sale. This is used in situations that are more complex: for example, if the buyer is to pay partly by cash and partly by other means (for example the seller is leaving finance in as a second mortgage), or some other composite arrangement (for example settlement is partly in cash with the balance by way of trade). Insert a new clause which will identify the amount of cash and the amount of seller mortgage (or other arrangements, as applicable). This provision provides for flexibility for alternative arrangements. Note that the settlement date must fall after all the conditions of the agreement have been satisfied or waived. So, it is a good idea to sort out all the conditions, calculate the last date for a condition to be satisfied then come back to calculate a suitable settlement date.
Interest rate for late settlement:	This is the penalty interest rate if one of the parties' delays settlements. If the buyer defaults, they will be charged on the amount that is still unpaid as at settlement date. The interest rate is negotiable between the parties, just like the price or the settlement date. The default position, clause 1.1(34), is the penalty interest rate charged by the IRD on unpaid tax, plus 5%. Refer to www.ird.govt.nz for details. If the seller delays settlement, the buyer can elect to be paid compensation based on the late settlement interest rate or reasonable costs for accommodation of persons and their household goods.

Conditions

These are the standard common conditions of sale contained within the sale and purchase agreement. You must be thoroughly familiar with all these conditions and be able to explain them clearly and accurately.

Conditions (Clause 9.0)

Finance	If a finance condition is required, the agreement is conditional on the buyer arranging finance on, or before, the finance date which is typically 10-15 working days from date of the agreement or an actual date.
Finance date	This is the date that finance approval must be confirmed by. It is best practice to insert a number of working days from the date of the agreement, rather than an actual date, as the date of the agreement date is yet to be determined as all the parties need to agree on all aspects of the agreement.
LIM required	<p>This indicates whether the sale is conditional on the buyer obtaining and approving a LIM report. If the buyer wants to get a LIM report, select 'Yes' here (by deleting 'No').</p> <p>If neither option is deleted, the default option is that the buyer has chosen NOT to seek a LIM.</p> <p>See Clause 9.3 for conditions relating to LIMs. The standard condition provides 5 days to request a LIM and 10 working days for satisfaction. This can extend up to 25 days if there are any issues with the LIM. Therefore, you need to make sure to allow for this potential when working out your proposed settlement date.</p>
Building report	<p>This indicates whether the sale is conditional on the buyer obtaining and approving a building report.</p> <p>If the buyer wants to get a building report, select 'Yes' here (by deleting 'No'). If neither option is deleted, the default option is that the buyer has chosen NOT to seek a building report. Purchasers have 15 working days to be satisfied with the builders report.</p> <p>See Clause 9.4 for conditions relating to building reports.</p>
Toxicology report	<p>This indicates whether the sale is conditional on the buyer obtaining and approving a toxicology report.</p> <p>If the buyer wants to get a toxicology report, select 'Yes' here (by deleting 'No'). If neither option is deleted, the default option is that the buyer has chosen NOT to seek a toxicology report.</p> <p>See Clause 9.5 for conditions relating to toxicology reports. The standard condition provides 15 working days for satisfaction</p>
OIA Consent	<p>This indicates whether the buyer must obtain consent under the Overseas Investment Act in order to proceed with the sale.</p> <p>If the buyer must apply for consent, select 'Yes' here (by deleting 'No'). If neither option is deleted, this warrants that consent is not needed. If in doubt, it is important to consult with the buyer's solicitor.</p> <p>See Clause 9.6 and 9.8 for conditions relating to OIA consent</p>
Land Act	This is the date by which the seller must have gained consent under the Land Act or OIA (if either are applicable). It is important to get confirmation from the seller's solicitor of the likely date. Do not underestimate the length of time the consent process takes

Tenancies

TENANCIES (if any): The front page requires you to select 'Yes' or "No". and deleting what does not apply

If yes is selected, then you must complete Schedule 3 of the Sale and Purchase Agreement.

This section must be completed if the property has a tenant who is bound by a tenancy agreement which will continue under the new ownership. This is where there is a fixed term tenancy that extends beyond the proposed possession date or where the buyer wishes to retain the current tenant on a periodic tenancy rather than require the landlord to serve notice to obtain vacant possession.

Name of tenant	This is the name of all tenants named on the tenancy agreement
Bond:	This gives the amount of the bond the tenants paid, which was lodged with the Tenancy Tribunal.
Rent:	This specifies the amount of weekly rent paid by the tenant.
Term:	This depends on the type of tenancy in place. If it is for a fixed term, it will be the end date of the tenancy. For periodic tenancy, write 'periodic' as this tenancy will continue until cancelled by notice.
Right of renewal:	<p>This indicates whether the tenant has an automatic right to renew their tenancy if and when the current term expires.</p> <p>Do not complete any parts of this section if the tenancy is a periodic tenancy, and the property is to be sold with vacant possession. It is satisfactory, in this situation, to leave the section blank or you can insert the words 'vacant possession'.</p> <p>But you must make sure the seller knows they have to give 90 clear days' written notice for the tenant to vacate the property (Section 51(1)(c) of the Residential Tenancies Act 1986). This notice cannot be given until the contract becomes unconditional. It is essential that the settlement/possession date takes this into account.</p>
Remember that it is not possible to give notice to end a fixed-term tenancy early. The buyer is bound by a fixed-term tenancy agreement until it expires. If the buyer wants vacant possession, then the settlement date will need to be set down for after the expiry of the fixed term tenancy.	
Sale by	<p>This gives the name of the licensed real estate agency and (if applicable) the name of the franchise, followed by the words Licensed Agent under the REAA 2008 or similar. The name of the salesperson usually appears on the directory page at the back of the agreement.</p> <p>When completing this, you may also include the letters MREINZ, if applicable, to indicate your agency is a member of the Real Estate Institute of New Zealand. This information may be pre-printed on your company's printed agreement form.</p>

Remember:

- You **must** make sure that all the required information is filled out on the front page. This information must be **complete** and **accurate**.
- Take **extra care** to make sure that all Yes/No options on the front page are completed accurately by **crossing out** the option that does not apply, circling the correct option.
- You **must** make sure that **dates** (including dates for any conditions) are appropriate and provide a realistic timeframe for relevant tasks to be completed.
- It is important to **verify** information that could be inaccurate, unclear, or unpredictable. For example, you should verify the property description by checking the Record of Title; if a buyer requires OIA consent, you should check with their solicitor to find out how long this may take. Be specific about when the deposit needs to be paid and who to.

General Terms of Sale

The next eight pages of the Agreement for Sale and Purchase of Real Estate Eleventh Edition 2022 are called the **General Terms of Sale**. These terms are the 'fine print'.

The general terms of sale are made up of several clauses which cover the following:

- 1.0 Definitions, time for performance, notices, and interpretation
- 2.0 Deposit
- 3.0 Possession and settlement
- 4.0 Residential land withholding tax
- 5.0 Risk and insurance
- 6.0 Title, boundaries, and requisitions
- 7.0 Vendor's warranties and undertakings
- 8.0 Unit title and cross lease provisions
- 9.0 Conditions and mortgage terms
- 10.0 Claims for compensation
- 11.0 Notice to complete and remedies on default
- 12.0 Non-merger
- 13.0 Goods and services tax
- 14.0 Zero rating
- 15.0 Supply of a Going Concern
- 16.0 Limitation of liability
- 17.0 Counterparts
- 18.0 Agency
- 19.0 Collection of Sales Information
- 20.0 Covid-19 / Pandemic Provisions

The number of clauses has increased over the years to cover all situations in real estate and to ensure all parties will be **fair** to each other. Be aware if you include any term or comment that conflicts with a general term of the agreement, your new term will override the general term

Always read each new version of the agreements so you are thoroughly **familiar** with the clauses and can **explain** them clearly and accurately. You must make sure you understand **all** of the clauses in the Sale and Purchase agreement in order to become a fully competent licensee.

In addition, remember that you must encourage clients and customers to seek independent legal and/or technical advice **before agreeing** to these and any other terms of sale (Rule 9.7).

Clause 1 - Definitions, time for performance, notices, and interpretation

Clause 1.1 gives important **definitions** for language within the sale and purchase agreement (1.1).

It is particularly important that you understand the definition of a **working day**, which is any day on which it is usual for most people to be working. Under clause 1.1(38), a working day is any day **other** than Saturday, Sunday, or any of the public holidays specified. Clauses and deadlines in sale and purchase agreements often measure time in 'working days'.

Clause 1.3 Time for performance

Time for performance lays out the following conditions:

- (1) Where the day nominated for settlement or the fulfilment of a condition is **not** a working day, then the settlement or date of fulfilment of the condition shall be the **last** working day before the day so nominated.
- (2) Any act done **after 5.00pm** on a working day, or done **on** a non-working day, is treated as though it was done at **9.00am** on the **next succeeding** working day
- (3) Where two or more acts done
- (4) Any subsequent conditions or requirements will not take effect until notice is legally deemed to have been received.

For example, if the buyer sends a notice to the seller after 5pm on a working day to confirm the agreement is unconditional, the notice is deemed to have been received on the next working day.

Clause 1.4 gives the requirements for parties when they **give** and **accept** notices, including the timing and method of delivery. All notices must be served in writing.

For each **method** of serving a notice, there are **different timeframes** for when the notice is deemed to have been served. Clause 1.4(3) identifies these timeframes.

Note: If **email** is used for notices, the notice will be deemed to have been received when a **read receipt** or other form of **reply** is sent back to the sender. It is not deemed to have been received by the return of a delivery receipt, out-of-office reply, or other automated reply.

If the person receiving the email does not want to receive the email and/or does not acknowledge receipt, the notice is deemed **not** to have been served.

Clause 1.5 Interpretation

Clause 1.5(1) confirms that if there is **more than one** vendor or purchaser to the agreement, their liability is **joint** and **several** (they are fully and equally responsible).

Clause 1.5(2) confirms that a purchaser executing an agreement remains **liable in all cases**; for example, if a buyer signs a sale and purchase agreement with provision for a nominee, or as an authorised person on behalf of an unidentified principal or on behalf of a company to be formed, they remain liable for all obligations of the buyer under the agreement.

It may be the case that **extra clauses** must be included, or **existing clauses amended** to suit the property being sold. These should be addressed in the 'Further Terms of Sale' section of the agreement which follows the 'General Terms of Sale'.

Clause 1.5(3) confirms that if a term is inserted in 'Further Terms of Sale' that contradicts a term in the 'General Terms of Sale', the inserted term will **override** the general term.

Clause 2.0 Deposit

Clause 2 requires the buyer to pay the deposit **immediately** upon the execution of the agreement by both parties and/or at another time that is specified in the agreement (Clause 2.1).

It also states that the deposit counts as '**part payment** of the purchase price' (Clause 2.3). (Clause 2.3). A payment of a deposit is negotiable and is part of the purchase price, but most sellers require a deposit, and it is usually between 5-10% of the purchase price.

Make sure the buyer understands **how much** the deposit is, **when** they will have to pay it, and **who** they will need to pay it to – and spell this information out on the front page of the agreement.

If the deposit is **not paid** by the agreed date, the seller may serve written **notice** on the buyer requiring payment. The agreed date will either be **upon execution** of the agreement, **or another date** specified in the agreement (for example, when the contract goes unconditional).

If the deposit is not paid within **three working days** of notice being served, the seller may then serve written notice to **cancel** the agreement (clauses 2.2).

As the deposit is part payment of the purchase price, it is important to clarify who has **legal rights** on the money, and when **legal ownership** is transferred. The deposit is under the legal ownership of the **buyer** until the agreement becomes 'unconditional', at which time ownership legally transfers to the **seller**.

It is **common** and usual practice for the deposit to be paid to the seller's **agent** (the real estate agency listing the property). If the buyer wishes to make payment to the **seller** (via their solicitor), that must be **stated** at the time of writing up the offer.

Sections 122 and 123 of the Real Estate Agents Act 2008 provide clear requirements for how an agent must receive, hold, and pay out deposit money.

Real Estate Agents Act 2008

122 Duty of agent with respect to money received in course of business

- (1) All money received by an agent in respect of any transaction in his or her capacity as an agent must be paid to the person lawfully entitled to that money or in accordance with that person's directions.
- (2) Despite subsection (1), if an agent is in doubt on reasonable grounds as to the person who is lawfully entitled to the money, he or she must take all reasonable steps to ascertain as soon as practicable the person who is entitled and may retain the money in his or her trust account until that person has been ascertained.
- (3) Pending the payment of any such money, the money must be paid by the agent into a general or separate trust account at any bank carrying on business in New Zealand under the authority of any Act and may not be drawn upon except for the purpose of paying it to the person entitled or as that person may in writing direct.
- (4) No money to which this section applies is available for payment of the agent's debts, nor may it be attached or taken in execution under the order or process of any court at the instance of any of the agent's creditors.
- (5) Nothing in this section takes away or affects any just lien or claim that an agent who holds money to which this section applies has against the money.

Real Estate Agents Act 2008

123 Money to be held by agent for 10 working days

- (1) When an agent receives any money in respect of any transaction in his or her capacity as an agent, he or she must not pay that money to any person for a period of 10 working days after the date on which he or she received it.
- (2) Despite subsection (1), a court order or an authority signed by all the parties to the transaction may require the agent to pay the money before the expiry of the period specified in that subsection.
- (3) If at any time while holding any money on behalf of any party to the transaction, the agent receives written notice of any requisitions or objections in respect of the title to any land affected by the transaction, the agent must not at any time pay that money to any person except in accordance with a court order or an authority signed by all the parties to the transaction.

Under Section 122 of the Real Estate Agents Act 2008, payment of the deposit must be made into a **'trust account'**.

Under Section 123, the **'stakeholder'** of that money (either the seller's solicitor or the real estate agent) must hold it for at least **10 working days** from the date it was received. Note that the deposit cannot be disbursed until after the agreement is declared unconditional in all respects, even if it has been in the trust account for 10 working days.

The only **exception** to this is if there is a court order or written agreement from both parties to release the deposit earlier. You **must** make sure that both buyers and sellers understand this.

If the agent or solicitor receives written notice of any **requisitions** or **objections** relating to the property title, they **must not** pay the deposit money to any person except in accordance with a **court order** or an **authority** signed by all the parties to the transaction. Clause 2.4 of the standard sale and purchase agreement requires the agent or solicitor to continue holding the deposit until:

- Any requisition procedure under clause 6 is **completed** (which relates to any issues over the title that may need to be rectified before settlement)

AND

- All conditions are **satisfied** or **waived**

OR

- The agreement is **cancelled** (in accordance with the terms and conditions of the contract).

Unit titles have additional requirements. If the property is a unit title, the deposit must be held until the seller has provided the buyer with a **pre-settlement disclosure statement** and an **additional disclosure statement** (if requested) that has been **certified** correct by the body corporate.

Note: Extreme care needs to be taken to make sure the deposit is paid to the **correct party** and at the **correct time**. The agency should only pay out the deposit on receipt of written notice from the seller's solicitor that all conditions have been satisfied.

Clause 3 – Possession and settlement

‘Settlement’ means the date by which all outstanding money must be paid to the seller and transfer of ownership documents are completed. At this point, the buyer will acquire the title. Clauses 3.5 - 3.10 apply.

‘Possession’ means the right to occupy the property. The possession date is the same as the settlement date unless the agreement states a different date for this. Clauses 3.1 - 3.4 apply.

Unless the agreement provides details of a tenancy, the property is sold with **vacant possession** (no existing tenant in the property) and the buyer is granted the legal right to **occupy** the property (getting the keys, rights of use).

If the property is sold with vacant possession, the buyer has the **right to inspect** the property before the possession date in order to check that everything in the property is as expected (clause 3.2). Note that properties sold with a tenancy in place that will continue under the new ownership do not enjoy this right of inspection.

The buyer is required to **settle** (make final payment) by **4pm** on settlement date.

If the buyer **fails** to meet the **4pm deadline** but still makes final payment **before 5pm** on settlement date, this is termed **‘last minute settlement’**. In this case, the buyer will be required to pay **penalty interest** in accordance with clause 3.11.

The balance of purchase price (the amount that is still owed once any deposit has been deducted) usually has to be **paid** in **cleared** funds on the settlement date. If the buyer **fails to pay** part or all of the purchase price on the date that the payment is due, this is termed **‘late settlement’**. If this happens, the buyer will be required to pay penalty **interest** and any related **expenses** and **damages** in accordance with clauses 3.12 and 3.13. In most cases, the seller may **refuse** to give the buyer possession of the property.

If the seller **fails** to give possession on time, the buyer is entitled to claim penalty **interest** and to have **compensation** for temporary accommodation costs (clause 3.14(2)).

Clause 4 - Residential land withholding tax

If residential property is bought and re-sold within a **two-year period**, it is generally necessary to pay **tax** on any gains under the Income Tax Act 2007 (Section CB6A).

Residential land withholding tax (RLWT) is the final part of this ‘bright-line test’. It helps to make sure that offshore persons or entities meet their New Zealand tax obligations.

Since 1 July 2016, RLWT applies to sales of most New Zealand residential land where **all** of the following criteria apply:

- 20.1.1 The seller **purchased** or acquired the property on or after 1 October **2015**.
- 20.1.2 The seller owned the property for **less than two years** before selling.
- 20.1.3 The seller is an **‘offshore RLWT person’**.

Under the bright-line test, residential land is land which **has** or **could have** a **dwelling** on it under the local council's planning rules. It does **not** include land that is mainly used for business or farmland.

There are **exemptions** for properties that meet particular criteria, including if the property transfer involves the seller's main home.

An individual is an offshore RLWT person if any of the following apply:

- They are a New Zealand citizen and have been overseas for the last three or more years continuously (and are not currently in New Zealand).
- They have a New Zealand residence class visa granted by Immigration New Zealand and have been overseas for the last twelve or more months continuously (and are not currently in New Zealand).
- They are not a New Zealand citizen and do not have a New Zealand residence class visa granted by Immigration New Zealand (regardless of whether or not they are currently in New Zealand).

Definitions of other 'offshore' entities which are affected by the RLWT requirements (such as trusts, companies, partnerships, clubs, and societies) can be found at <http://www.ird.govt.nz/rlwt/glossary/rlwt-glossary-of-terms.html> .

Generally, the **seller** will be **liable** for the RLWT, but the seller's lawyer/conveyancer will be the paying agent for RLWT purposes. In the unusual event that the seller does not have a lawyer/conveyancer, the buyer's conveyancer will be the paying agent. However, if the seller and buyer are associated persons, the **associated buyer** must **withhold** the RLWT.

Clause 4 sets out the process to be followed in situations where the seller does not have a conveyancer or where the seller and the buyer are 'associated persons' (i.e., they are associated with each other under New Zealand's tax laws).

Licensees need to be aware of the circumstances where RLWT might apply but should **refrain** from giving **legal, tax or accounting advice** to clients or customers.

Instead, licensees should recommend parties seek **independent** legal and or technical **advice** at an early stage in the sale process (as required under Code of Conduct rule 9.7).

Clause 5 - Risk and insurance

When property changes hands, it is important for all parties to understand who has **legal ownership** and who is responsible for **insurance** cover.

Clause 5.1 clearly states that the **seller** is **liable** for the property and chattels up until possession is given and taken. For example, if the property catches fire before settlement and the house is no longer habitable, the buyer has a choice to either **cancel** the agreement or **settle** as planned. The criteria for this are laid out in Clause 5.2. If the buyer chooses to settle, the purchase price will be **adjusted** to reflect the reduced value of the property due to the damages. It is important to note that the insurance cover for replacement of a dwelling is not usually transferable to the purchaser (Xu & Diamantina Trust Limited v IAG NZ Ltd).

Clause 6 - Title, boundaries, and requisitions

Under clause 6., the seller (and by extension, the seller's agent) is **not** required to point out **boundaries** of the property. If a buyer wants an accurate representation of the property boundaries, they should obtain a survey. The **exception** is if the property is a **vacant section** which does **not** have a limited number of parcels, in which case the boundaries must be correctly pegged (clause 6.1).

Note that this clause gives the buyer the right to search the title **after** they have signed the agreement in order to make sure they obtain 'clear title'.

If the buyer wants to make any objections or requisition (requests) of title, they must do so within **10 working days** of the date of agreement or by the **settlement date** (whichever is sooner). Otherwise, the buyer is deemed to have **accepted** the seller's title (Clause 6.2(1)).

In other words, the buyer has a **maximum of 10 working days** from signing the agreement to obtain the Record of Title and raise any **objections** to the **title**. Even if settlement is in less than 10 days, no objections or requisitions can be made after settlement.

The agent (or stakeholder) must **hold** the deposit until the buyer has completed their rights to search the title (clause 2.4). If the contract is **cancelled** due to unresolved title issues, the buyer is entitled to a **full refund** of all deposit money but has **no claim to compensation or costs** involved in investigating the title (clause 6.2(4)).

There are additional requirements for **cross lease and unit title** properties. If there have been unapproved, illegal, or unrecorded **alterations or additions** to the footprint of a building on a unit title or cross lease title, the buyer has the right to requisition the title and require the seller to **rectify** these changes under clause 6.3 (1). For example, if the seller of a cross lease property has added a building extension, such as a conservatory, but has not had the flat plan altered to reflect this, the buyer could require them to update the flats plan.

Note that 'alterations' only refers to alterations 'to the external dimensions' of the building (including height extensions) which are 'attached to the leased structure and enclosed' (Clause 6.3(2)).

Clause 7 - Vendor's warranties and undertakings

Clauses 7.1 to 7.5 identify the seller's warranties and undertakings the seller is making under the agreement.

A **warranty** is an assurance by the seller that a fact is true. It usually makes a **promise** about some specific feature or aspect of the property. For example, clause 7.2(2) warrants that the property will not have any charges owing on electrical installations on the property.

An **undertaking** is a pledge or promise by the seller to **do something**. Undertakings are usually for the **benefit of the buyer** and often cover **physical** work on the property to be completed by the seller: for example, repairing a broken window.

The seller **agrees to all** of the stated warranties and undertakings **unless** the agreement is amended before they sign it.

The standard warranties and undertakings include the following:

- The chattels are unencumbered (the seller has paid for them and owns them outright).
- The chattels will be in reasonable working order on settlement date relative to the condition they were in at the date of the agreement.
- Rates, water rates, and other applicable charges will be fully paid and 'up to date' at the date of settlement.
- All building work carried out on the property has the necessary permits /consents and was completed in accordance with these. A Code Compliance register
- has been obtained if applicable.
- There are no local authority (or other) notices or demands affecting the property that have not been disclosed in writing to the buyer. This includes Resource Management Act consents to carry out any works which could affect the seller's property (for example, neighbours building in a way that would affect enjoyment of the property).
- If the property is part only of a building, there has been full compliance with any requirements specified in any compliance schedule on the building and the building has a current warrant of fitness.

If a seller **breaches** a warranty or undertaking but this is not usually sufficient to allow cancellation of the contract, a buyer may be entitled to **compensation** or to a **discount** from the purchase price that is equal to the cost of remedying the breach of warranty. The buyer is **not** entitled to **delay** settlement.

It is important that licensees **explain** the warranties to the seller and the **implications** of breaching any warranties which could be significant.

Sellers should be encouraged to **disclose** any issues and remedies to buyers early in the process to avoid any potential issues or delays later on in the process. Such issues can be addressed as part of the Further Terms of Sale.

Clause 8 - Unit titles and cross lease provisions

Clause 8.1 states that the seller of a unit title property must provide the buyer with a **pre-contract disclosure statement**, which explains prescribed information relevant to the purchase of the unit. This statement must be read and understood **before** the agreement is signed.

The seller must also provide the following documents no later than the **fifth working day** before settlement date:

- A pre-settlement disclosure statement, which contains prescribed information and is certified by the body corporate to show that the information is correct.
- An additional disclosure statement (if required by the buyer).
- A certificate of insurance for any insurances arranged by the body corporate.

These requirements are laid out in sections 144 to 153 of the Unit Titles Act 2010.

A pre-contract disclosure statement form, and an example of a pre-settlement disclosure statement are both available from The Tenancy Tribunal at www.tenancy.govt.nz.

When dealing with a unit title, vendor **warranties** that the seller (client) undertakes generally relate to the **implications** of body corporate provisions that the buyer may not be aware of.

If the seller fails to provide the required information, the buyer can choose to **postpone** settlement until five working days **after** the information has been provided (clause 8.3).

Clause 9.6 addresses **unauthorised** structures that have been built without the appropriate forms of consent on both unit title and cross lease properties. Where an unauthorised structure has been erected on the property, the buyer may demand that the seller obtain the required **consent from lessors/body corporate**. If the seller fails to obtain consent, the buyer may **cancel** the agreement.

Clause 9 - Conditions and mortgage terms

Clause 9 provides requirements and conditions for four standard and common conditions on the front page of the agreement: finance, LIM reports, building reports, Toxicology and OIA consent.

Finance

Clause 9.1 states that, if the buyer inserts **finance conditions** on the front page of the agreement, the agreement is then **conditional** on the buyer arranging finance according to the details they have given. This means that, if the buyer is **unable** to arrange finance in accordance with the details given, they **will not** be **bound** by the agreement.

The buyer must make a **genuine effort** to obtain finance based on the details specified in the agreement and must be able to prove they could not get the finance if they want to void the contract.

Clause 9.2 additionally states that, if a mortgage is required to meet a finance condition stated on the front of the agreement, the mortgage must be subject to the terms and conditions **typically required** from the specified lender for that kind of loan. In other words, the buyer **cannot** claim that finance could not be arranged simply because they **rejected** the standard terms and conditions for the type of mortgage they were seeking.

LIM (Land Information Memorandum)

Clause 9.3 outlines the process and conditions for if the buyer has indicated that they wish to obtain a LIM report. If the buyer selects '**Yes**' in the LIM report field on the front page of the agreement, the agreement is then **conditional** on the buyer **approving the LIM report**.

If the buyer has chosen to obtain a LIM report, they must request it at their **own expense**, on or before, the **fifth working day** after the date of the agreement.

A LIM report is obtained from the local authority and will show information held by the authority about the property. Some of it will be quite **general** and have information about the immediate area: for example, how the area is zoned and whether it is subject to flooding.

Other information will be **specific** to the property, such as any permits or consents issued for buildings or other structures and, if appropriate, whether Code Compliance Certificates were issued at the completion of building construction.

A LIM report will only contain information which the authority has on record. There **may** be relevant information that is **not contained** in the LIM report simply because it is **not known** to the local authority.

For example, under section 7 of the Fencing Swimming Pools Act 1987 it is a legal requirement for the owner of a pool to notify the council of its existence. However, if the Council does not know about the pool, there will be no reference to it.

If the buyer wants to give notice that they have not approved the LIM, they must do so on or before the **fifteenth working day** after the agreement date. They must also specify any work that the seller can do to **remedy** the fault(s) (if a remedy is possible). A buyer is only entitled to **withhold approval** of the LIM report if they have **reasonable** grounds for doing so.

Once the seller has received this information, they must reply to the buyer within **five working days**, stating what they will do (if anything) to **remedy** the identified faults.

Requirement of a LIM report can trigger a **lengthy conditional period** of up to **25 working days** as these issues are sorted through. If the buyer is not happy with the LIM report (with just cause) and the seller does not agree to remedy the faults, the buyer may **cancel** the agreement.

Building report

Clause 9.4 states the **process** and **conditions** if the buyer has indicated that they require a building report.

If the buyer has indicated on the front page that a building report is required, they must then obtain that report (at their own cost) **within 15 working days** of the date of the agreement. The report must be prepared by a suitably **qualified** building inspector who has carried out an objective assessment. Invasive testing may **not** be done without the seller's consent.

If the buyer **withholds approval** based on issues identified in the building report, they are entitled to cancel the agreement but must give the seller a **copy** of the report immediately upon request.

Toxicology report

Clause 9.5 states the **process** and **conditions** if the buyer has indicated that they require a toxicology report.

If the buyer has indicated on the front page that a toxicology report is required, they must then obtain that report (at their own cost) **within 15 working days** of the date of the agreement. Invasive testing may **not** be done without the seller's consent.

If the buyer **withholds approval** based on issues identified in the toxicology report, they are entitled to cancel the agreement.

OIA consent condition

Clause 9.6 If a buyer indicates that they need to seek **consent** under the Overseas Investment Act 2005 (OIA), the agreement is **conditional** upon the buyer receiving that consent **on or before the date** stated on the front page (**Clause 9.6**). The buyer is responsible for paying the **application fee** to seek consent.

If the front page specifies that OIA consent is required but does not give a date, then the buyer must obtain the consent by the **settlement date or 65 working days** from the date of the agreement (whichever comes first) (**clause 9.6**).

There is more information on gaining OIA consent in the Overseas Investment Act 2005 or the pdf in the portal

Land Act

Clause 9.7 If the front page specifies that OIA consent is required but does not give a date, then the buyer must obtain the consent by the **settlement date or 65 working days** from the date of the agreement (whichever comes first) (**clause 9.8**).

Clause 9.10 provides information on how the conditions in clause 10 work in practice. The key points to be aware of are:

- Parties who will benefit from a condition are legally required to carry out the necessary steps for that condition to be fulfilled.
- A condition is only fulfilled once notice of fulfilment has been served by the relevant party.
- If the conditions are not met by the specified date(s), the contract may be extended to allow the time for the relevant problem to be addressed or either party can cancel the agreement by notice.

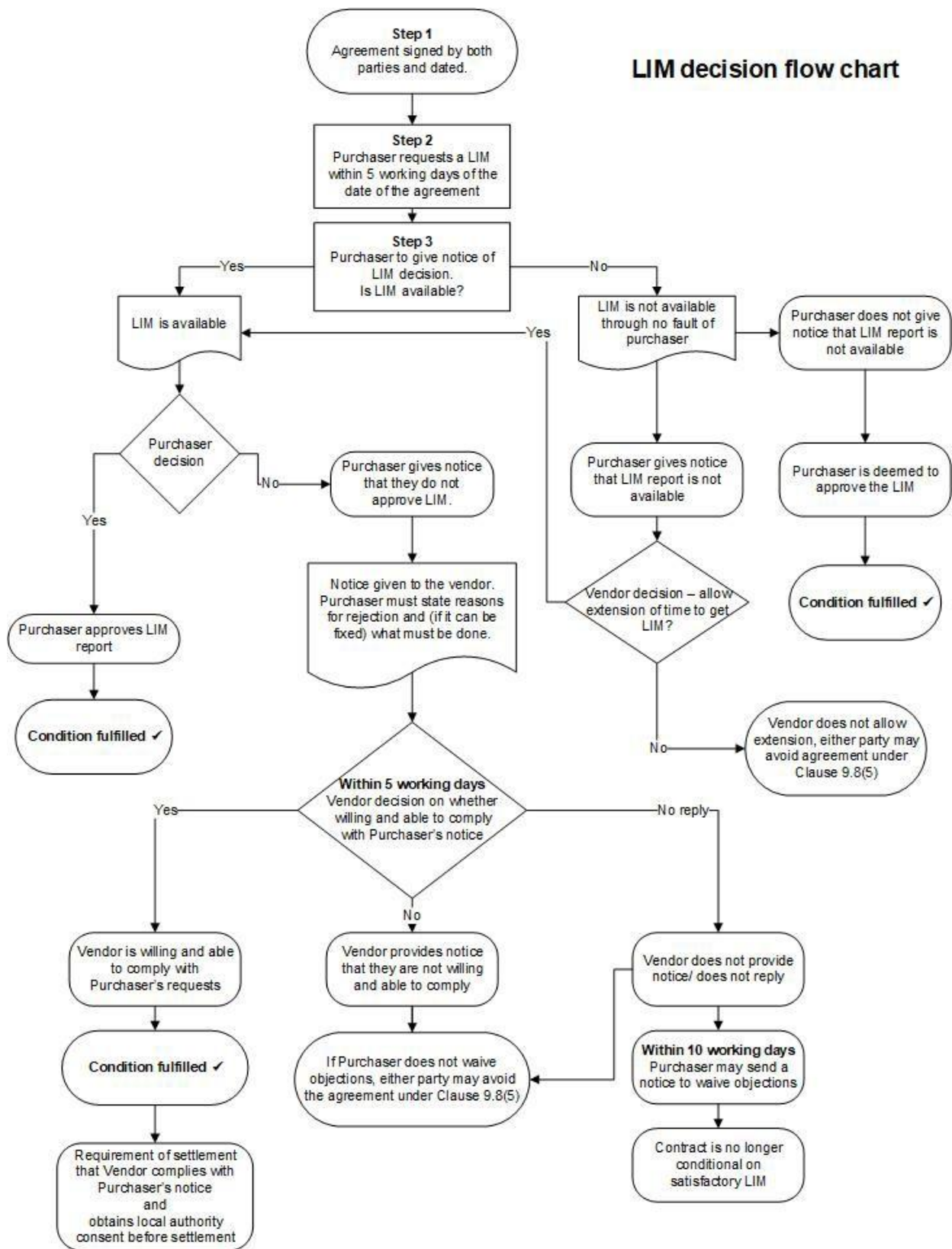
Clause 10 - Claims for compensation

Clauses 10.1 to 10.12 spell out the process for making **compensation** claims. Buyers must serve notice of any claims **on or before** the last working day before settlement (clause 10.3). The notice must clearly state the **nature** of the problem (with specific details and quantities as appropriate) along with a fair **estimate** of the loss suffered by the buyer.

If the seller and buyer agree on the compensation amount, this will be deducted from the purchase price at settlement (clause 10.5). Clause 10.6 contains spells out the process to be followed if the amount of compensation is disputed.

Note: The remedy under this section does not include cancellation. A claim for compensation does not defer the purchasers obligation to settle, however if the claim has not been determined prior to the settlement date and the purchaser is able to settle, then settlement may be delayed until the 2nd working day after the determination has been made.

Lim decision flow chart



Clause 11 - Notice to complete and remedies on default

Clauses 11.1 to 11.8 address settlement notices. A **settlement notice** may be served by either party at any time if the sale is **not settled** on the agreed settlement date so long as the party serving the notice is **able to proceed** in accordance with the terms of the agreement (Clause 11.1).

The party on whom the notice is served is then required to settle **within twelve working days** after the date of the notice being served (with special provisions being made if this period falls in the second week of January) (Clause 11.2).

Clauses 11.3 to 11.7 identify what can be done if one party **defaults** on the agreement once notice has been served: for example, if the buyer **fails to settle** the amount due for payment. Remedies depend on the nature of the situation.

If the **purchaser** does not comply with the terms of the settlement notice served by the vendor, then, subject to subclause 11.1(4). Key points in clauses 11.4 and 11.5. have been emphasised in **bold**.

- (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 subclause 11.4(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 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 as aforesaid shall be retained by the vendor.
- 11.5 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.

Clause 12 - Non-merger

The non-merger clause states that the obligations and warranties of the buyer and seller will **not merge** when the buyer becomes the owner of the property.

This means that **obligations** under the contract will **continue** after the contract is settled. For example, if the seller has a warranty to satisfy, that obligation to satisfy still exists after the contract has been completed.

Clause 13 - Goods and Services Tax

Clause 13 says out the requirements for buyers and sellers to pay **GST**, as indicated on the front page of the agreement. If the buyer is required to pay GST but **has not** done so by the settlement date (or another specified date), the buyer must pay the seller **interest** along with any **default sum** of GST (clause 13.1).

Clause 14 - Zero-rating

Clause 14.1 warrants that the **statement** on the front page regarding the seller's **GST registration status** in relation to the transaction is **correct** at the date of the agreement. Clause 14.2 also warrants that the **details** relating to GST in Schedule 1 are **correct** at the date of the agreement.

The remaining sub-clauses (14.3 to 14.7) clarify the circumstances under which GST must be **paid** and **requirements** for making GST payments.

For more details on completing the GST details on a sale and purchase agreement, see the earlier section 'Payment of purchase price'.

Clause 15 - Supply of a going concern

Following on from the GST provisions, clause 16 relates to the supply of a taxable activity (**going concern**), where **both seller and buyer** are **GST registered** at the time of supply. If a leased commercial property is being sold, the property is considered as being '**nil**' for GST, and the GST will be charged at **zero per cent**. In other words, no GST will be payable by either party.

A sale of a **going concern** must meet the following criteria:

- It must involve supplying a **whole** taxable activity or a **stand-alone** part of a taxable activity from one registered person to another.
- The sale must result in supplying **all** goods and services necessary for the continued operation of the activity.
- Both parties must **agree** in writing that there is a supply of a going concern.
- Both parties must intend that the activity is capable of being **carried on** as a going concern by the buyer.
- The business must be a going concern at the **time of supply** and **carried on** up to the time of the **transfer** to the buyer.

If a sale meets these criteria, it is **zero-rated** (i.e., there is no GST content).

Clause 16 - Limitation of liability

Clause 16 specifically relates to situations where **trustees** operating on **behalf of a trust** are involved in the sale or purchase of property.

Clause 16.1 warrants that:

- **All** trustees approve entering the agreement.
- **Any person** entering into the agreement as a trustee has **authorisation** from the trust to enter the agreement on the trust's behalf.
- The agreement has been properly **signed** in line with the **terms** of the trust.
- Any trustee's rights to be **indemnified** (protected from the trust's assets) **have not** been **lost** or **impaired** by the trustee signing the agreement.

Clause 16.2 **limits** the **liability** of any trustee that is acting purely in a **professional** capacity and has **no rights or interests** in the assets of the trust.

For example, if a property is to be purchased by a family trust made up of a married couple and their solicitor (acting as a professional trustee), clause 17.2 protects the solicitor from personal liability. If the couple defaulted in their obligations under the agreement (e.g., they failed to settle on time), the solicitor would have no liability for this.

Clause 17 - Counterparts

Clause 17 is designed to make it easier to execute the agreement by stating that the agreement may be executed in **two or more** counterparts. This means a party may enter into the agreement by signing a **counterpart copy** and then **sending** it to the other party.

Counterparts may be sent between parties in any **legitimate format** for a contractual agreement, including fax and email.

Clause 18 - Agency

Clause 18.1 states that any licensed real estate agent **named** on the agreement **is the Licensed Agent** who has worked to bring about the sale on behalf of the seller as authorised under their agency agreement.

Clause 18.3 The vendor must therefore **pay** the agent the agreed charges (including GST) for their role in the sale. This clause is no longer sufficient to claim a commission unless there is a pre-existing agency agreement with the seller (Section 126, Real Estate Agents Act 2008).

Clause 19- Collection of Sales information

Clause 19 states that **statistical data** relating to the sale may be provided to REINZ by the agent after the sale has gone unconditional.

This information is stored on a secure password protected network under REINZ's control and may include sale price and address of the property. It will not include the parties' names or personal information as defined under the Privacy Act 1993

Clause 20 - Covid-19/ Pandemic Provisions

If due to the restriction of movement exists either nationally or regionally where the property is located a provision or condition in the agreement has not been satisfied then the date of satisfaction of that provision will be 10 working days after the restrictions have been lifted or the date is inserted in the contract

Settlement will also be delayed by the later of 10 working days after the satisfaction of all clauses or the lifting of the restrictions or the settlement date in the agreement.

Remember:

- The **General Terms of Sale** lay out the 'fine print' of the sale. All information in the rest of the agreement (such as on the front page) is **subject** to the general terms of sale.
- You **must** thoroughly **understand** the General Terms of Sale and be able to **explain**
- them clearly to clients and customers.

The general terms of sale lay out information such as:

- **Definitions** and **interpretations** (including information on how to interpret the contract).
- **What** needs to be done, **who** must do it, **how** it must be done, and **when** it must be done by.
- What each party has a **right to expect** from the other party.
- **Remedies that apply** if one of the parties fails to meet requirements (which may sometimes include cancellation of the contract).

Further terms of sale

Following on from the 'General Terms of Sale' the sale and purchase agreement includes a section for '**Further Terms of Sale**'.

This section is designed for recording any **additional** conditions, warranties, undertakings, and acknowledgements which the parties require or are prepared to accept. Additional clauses can cover any number of requirements and can be for the benefit of **either** party.

Acknowledgements are used to indicate that both parties **accept** a particular event or situation. For example, a clause might acknowledge that a Code Compliance Certificate (CCC) has not been issued for a particular piece of building work and that this will remain the case at settlement.

It is important for parties to understand that **any inserted clause** takes **precedence** over any associated clause under the 'General Terms of Sale'. In other words, if the inserted clause contradicts the existing clause, the inserted clause is the one that applies. In the example given, the vendor warranty regarding CCC in respect of the said works is overridden and the additional condition applies.

As the agreement already includes clauses 1 to 20 in the general terms, the next clause inserted will be numbered 'clause 21', and so on. If an additional clause is required that **supersedes** an existing clause, best practice is to first insert a clause that clearly states a **deletion** of the existing clause.

FURTHER TERMS OF SALE (example)

21.0 Delete sub clause X.X in the General Terms of Sale and substitute:
21.0 Inserted Clause

Note: If the parties agree to inserting additional clauses, both parties must add their **initials** in the margin next to each new clause. This shows that they have accepted the new clauses and these clauses were not added after the agreement was signed.

In some cases, the additional clauses may be printed on separate paper and attached to the agreement (e.g., 'sticky clauses'), rather than being written directly on the page. If this happens, both parties must **initial** these clauses **across the edge** of the paper, so that the initials appear partly on the clause and partly on the form.

Once the clauses have been correctly initialled, the contract will then be **conditional** upon these extra conditions being fulfilled.

REINZ useful clauses

REINZ publishes a '**Useful Clauses**' booklet which contains clauses for many different scenarios that can be inserted into the Further Terms of Sale section of the ADLS/REINZ agreement forms.

If the parties require additional clauses to be added in the 'Further Terms of Sale' section, always **check** to see if a **suitable clause** is available in the latest version of the REINZ booklet first. This will give you easy access to a well-drafted clause.

The clauses below are examples of some common additional clauses that may be required in the 'Further Terms of Sale' section when needed. Be aware that you should always **check** the REINZ 'Useful Clauses' booklet for the most up-to-date version of each clause.

Conditional on the sale of the purchaser's property

Sample clause

Conditional on Sale of Purchaser's Property

This agreement is conditional upon the Purchaser entering into a contract for the sale of the Purchaser's property situated at for \$..... (or such lesser amount as the Purchaser shall accept) and otherwise on terms and conditions satisfactory to the Purchaser which contract is to become unconditional no later than 4.00 pm on [insert date]. The purchaser is to notify the Vendor or the Vendor's solicitor by 5.00 pm on that date that this condition has been satisfied or this agreement will be at an end. This condition is for the sole benefit of the Purchaser.

This clause states that the buyer **may cancel** the agreement if they do not sell their property in time. However, they do not **have to** cancel. The buyer can choose to **waive** this clause if they can fund the purchase some other way.

The normal cut-off time for satisfying conditions is 5.00pm on a working day (see Clause 1.3(1)). If in doubt, legal advice should be obtained.

Sample Conditional upon the purchaser's property sale becoming unconditional clause

Conditional Upon Purchaser's Property Sale Becoming Unconditional

This agreement is conditional upon the existing agreement dated..... for the sale of the Purchaser's property situated at..... to [insert name] becoming unconditional on or before [state time] on [insert date]. The Purchaser is to notify the Vendor or the Vendor's solicitor by 6.00 pm on the date on which the existing agreement becomes unconditional that this condition has been satisfied or this agreement will be at an end. This condition is for the sole benefit of the Purchaser.

If the buyer has already signed a conditional agreement to **sell** their house, this clause allows for that sale to become **unconditional**. If their house sale does not become unconditional, the buyer may **cancel** their agreement to purchase. However, the buyer can also choose to **waive** this clause if they can fund the purchase some other way.

You must take care when using this clause to make sure that it is correctly **linked** to the **time limits** in the buyer's existing conditional contract. You must also make sure that there is **sufficient time** after the time limit set in that agreement to **communicate acceptance** to the seller under this contract.

Sample Escape clause

Escape Clause

If before this agreement becomes unconditional the vendor receives an acceptable offer from a third party to purchase the property, then the vendor may serve on the purchaser a notice requiring the purchaser to advise within working days after service of the notice whether all conditions for the benefit of the purchaser have been satisfied or waived and whether the requisition procedure set out in Clause 6 of this agreement has been completed to the purchaser's satisfaction. If the purchaser does not notify the vendor within the period set out above that the above matters have all been satisfied and that this agreement is accordingly unconditional, then this agreement will immediately terminate.

This clause is for the **seller's** benefit. If the agreement is to be conditional for a lengthy period of time, the seller **may not want to accept** the offer. This is because it will effectively take their property off the market for a long time when there is no guarantee that the sale will eventually become unconditional.

For example, an agreement may be conditional for a long time because the buyer must sell their own house, but it is possible that the buyer's house will not sell during that time. In the meantime, the seller may lose other opportunities to sell their house.

An **escape clause** gives the seller the right to require the buyer to confirm satisfaction or waiver of the conditions in their agreement within the time agreed in the escape clause if the seller gets another offer on their property during the conditional time. If the seller wants to use an escape clause, you should make sure that they decide whether this will be **triggered** if the backup offer is **conditional**.

Escape clauses typically give around **two to five days** for the buyer to make this decision. However, if both parties agree, the time could be anywhere from one day to ten days, or even longer. If the seller receives another acceptable offer, their solicitor will Question the escape clause in the first agreement by giving notice in writing to the buyer.

If the seller receives a **second** offer on their property, that offer will have to contain a **condition** stating that the contract will only take effect if the first contract does not go ahead. The second offer therefore will have to contain a '**backup clause**'.

Sample Backup clause (conditional on expiry of prior agreement)

Conditional on Expiry of Prior Agreement (Backup Agreement)

This agreement is conditional upon a prior agreement for the sale of the property not being confirmed in all respects by [insert time] on[insert confirmation date] being the latest date on which a condition under the prior agreement is to be confirmed, or upon the earlier termination of the prior agreement.

The Vendor agrees not to grant any extension of the confirmation date under the prior agreement and to take all reasonable steps to ensure cancellation or termination on the termination date.

This clause must be inserted into any offers that are received on the property once a conditional sale and purchase agreement has already been signed. It says that the **new** contract (called a backup agreement) can only take effect if the **existing** contract is **terminated**.

Since the prior agreement may contain more than one condition, this clause refers to the last date on which all the conditions must be satisfied. However, if the prior agreement is **terminated earlier**, the backup agreement will **take effect earlier** as well.

Care must be taken to make sure that there is a proper **linkage** between the prior agreement and the 'back up' agreement.

Conditional on specialist's report (sample clause)

Conditional on Specialist's Report

This agreement is conditional on the Purchaser being satisfied with a report on
[describe subject matter of report] to be obtained from

Should the Purchaser in good faith be dissatisfied with any matter contained in the report the Purchaser may terminate this agreement by notice in writing to the Vendor or the Vendor's solicitor, such notice to be received by 4.00 pm on.....[insert date].

If notice is not received within time the Purchaser shall be deemed to have waived the Purchaser's rights under this condition.

This clause allows for a buyer to get a **specialist** to check a particular aspect of the property: for example, if they want an engineer to check land stability on a hill-top section.

The clause must state **which company** will do the test and the **date** by which the seller must be notified if the buyer is not satisfied with the report and is therefore terminating the agreement. Note that this may require you to **adjust dates** in the timeline to allow for the report(s) to be carried out before finance is approved.

The clause allows the buyer to **cancel** the agreement if the report is **unfavourable** and provides **reasonable** cause for cancellation.

Specialist checks may be **required** by a buyer's **bank** in order for them to obtain finance: for example, banks may require a specialist report for the presence of methamphetamine before they approve a mortgage. In this instance, the fulfilment of one condition (finance) is dependent on the fulfilment of another (a satisfactory specialist report).

Drafting specific clauses

Sometimes a clause needs to be **drafted** for a specific situation. These additional clauses must be drafted under the **direction** and **control** of a supervising **agent or branch manager** and may require input from a **legal advisor**.

Drafted clauses must meet the following criteria:

- They are clear.
- They provide certainty.
- They identify which party receives the benefit of the clause.
- They have realistic timeframes (to get things done, other conditions, settlement etc.).
- They clarify the intention and objectives of the parties.
- They set out what will happen if the clause is not satisfied or is breached.

Language should be **formal but plain, so that** it is easy for parties to understand the clause and reduce any risk of confusion. You will need to consider six key things when drafting a clause:

- **Who** is going to do something?
- **What** are they going to do?
- **When** are they going to do it by?
- **What** standards will apply?
- **What** happens if it is not satisfied?
- **Who** has the right to waive it?

The condition should also include a final sentence which states **who has the benefit** of the clause. For example: *'This condition is inserted for the sole benefit of (the party getting the benefit)'*

Drafted clauses represent the wishes of the parties.

- Do not include a condition where a warranty or an acknowledgement would be sufficient
- Do not include a warranty or an acknowledgement where a condition is required.

Remember:

- The **further terms of sale** can be used to **add new** clauses into the agreement. A new clause may be used to **change** an existing General Term of Sale or to **add** additional conditions or acknowledgements.
- Any new clauses in the Further Terms of Sale section **must** be numbered, starting at number 20 (since the General Terms of Sale are numbered up to 19).
- If one party **adds** additional clauses into the Further Terms of Sale section, the other party must also **initial** them to show that they have **accepted** them (unless they wish to change the new clause(s) or withdraw the offer).
- Both parties **must** understand that any inserted clause takes **precedence** over any associated clause in the General Terms of Sale section. If the two clauses do not agree, the new (inserted) clause **must** be followed.
- **Always check** the REINZ 'Useful Clauses' booklet for clauses **before** drafting your own.

If you need to draft any new clauses, you **must ensure** that:

- They are clear and accurate.
- They clarify what standards apply (if applicable).
- They have realistic timeframes (if applicable).
- They identify what the intention is of the clause and who will receive the benefit.
- They state the consequences if the clause is not satisfied, including whether or not one or both of the parties have the right to waive it.
- New clauses **must be drafted under the direction** of a supervising agent or branch manager and may require **legal advice**.

Schedule 1

Schedule 1 provides a space to record **GST details** for both the seller and the buyer. The information in this schedule is essential to the completion of the conditions in clause 13.

Schedule 1 **must** be completed if the seller has stated on the front page of the Agreement for Sale and Purchase of Real Estate 11th Edition 2022 that they are **registered for GST in** relation to the transaction and/or will be registered at settlement.

If the seller has answered '**No**' to the GST question on the front page of the agreement, Schedule 1 does **not** have to be completed.

For more information on GST, see the sections on Clause 13.0.

Schedule 2

Schedule 2 is for listing all **chattels** that are included in the sale. Schedule 2 of the standard sale and purchase agreement form includes some of the most common chattels pre-printed, stove, fixed floor coverings, blinds, curtains, and light fittings. All additional chattels **must** be inserted **before** the sale and purchase agreement is signed.

It is important to be **clear** with both the seller and the buyer as to what a **chattel** is and what a **fixture** is and to confirm the items to be included in the sale.

In general terms, a fixture is **permanently** attached to the land and/or property while a chattel is **not**. Because they are permanent, fixtures **do not** have to be listed on the sale and purchase agreement as it is assumed that they are included. Chattels **do** have to be listed as it is otherwise not clear whether they are included in the sale.

Generally, a fixture would usually leave noticeable **mark** or **damage** if removed. Examples of fixtures include an attached garage or carport, an anchored garden shed, a built-in mantelpiece, built-in bookshelves, vanity units etc.

A chattel can be removed **without** leaving noticeable **marks** or **damage**.

Confirming what will be included in the sale

The list of chattels that are included and excluded in the sale must be confirmed with the seller before listing the property. A chattels list is usually found in the listing agency agreement.

Be aware that some parties may have **different perceptions** of what is and is not a chattel. For example, some people may consider that a washing machine is a fixture because it is bracketed to the wall and has plumbing and wiring fixing it in. However, if it is not physically fixed in, and can be unplugged and removed without causing wall or floor damage, a seller could argue that they consider it to be a chattel and that they do not want it to be part of the sale.

It is important that the agreement **clearly lists** all items that might be considered chattels by either party to avoid confusion or disagreement. **If in doubt** as to whether it is a chattel or a fixture, **insert** it in the agreement as passing ownership with the sale (or confirm that it is not by noting any excluded chattels) to avoid any dispute later.

To avoid arguments, disputes or potential compensation claims later, make sure you include any brand names or a clear description of the chattels. e.g., Miele dishwasher or crystal chandelier.

Chattels with high value and/or appeal may become **part of the negotiation** process: for example, a seller could include a spa pool in the sale to make a deal more attractive or exclude it to accommodate a lower sale price.

Important considerations

It is important to note the following:

- Some pre-printed chattels on the standard sale and purchase agreement may not be included in the sale. If this is the case, they must be crossed out. The pre-printed chattels are otherwise considered to be a valid part of the agreement. For example, the seller may wish to take a set of curtains with them, so these would be excluded from the sale. (For example, insert: 'Curtains in master bedroom not included as chattels.')
- At settlement date, chattels listed in Schedule 2 must be in reasonable working order or the same state of repair as at the date of the agreement.
- Ensure that any chattels included are the unencumbered property of the seller, i.e., the seller owns them outright. If the seller does not own a chattel (for example, if a chattel has been purchased on a hire purchase agreement and the seller has not yet finished paying for it), it cannot be included in the sale.

You must ensure the buyer/authorised person **initials the bottom right-hand corner of the chattels box** to confirm that they understand what is and what is not included in the sale.

Initials are required on **every** printed deletion, alteration, or selection. For any additions, it is acceptable for each signatory to initial the bottom right-hand corner of Schedule 2. Note: Anything added or deleted as a chattel after the initial offer is made requires initialling by both parties to confirm agreement.

Remember:

- Schedule 1 **only** needs to **be completed** if the seller is registered for GST in relation to the transaction.
- Schedule 2 **must always be completed** as it clarifies what chattels are included in the sale.
- Schedule 3 **only** needs to **be completed** if the property has tenants
- Buyers and sellers **may not agree** on the difference between a chattel and a fixture. When in doubt, **always clarify** whether or not an item is included in the sale to avoid later disputes.
- If any of the chattels pre-printed on the standard sale and purchase agreement are **not** actually included in the sale, you **must cross them out** and ask the parties to **initial** the individual deletion(s). Otherwise, these pre-printed chattels **must** be included.

Chattels included in the sale **must be**:

- Owned outright by the seller.
- In reasonable working order or in the same condition at settlement as they were when the agreement was signed.

Additional considerations about conditions

Remember, when drawing up the agreement for sale and purchase, **sufficient time** must be allowed for the fulfilment of any conditions. The **possession and settlement date(s)** must also **consider** time requirements, so all conditions can be satisfied and there is still time available for the solicitors to complete the transfer process (normally a minimum of two weeks.)

If any given condition in the agreement is **not satisfied** by the specified dates, the party who benefits from that condition may Question the right to **terminate** the contract. This means that the contract may **fail**. This is the case regardless of whether the condition is in the General Terms of Sale, or the special conditions inserted under Further Terms of Sale.

The parties **do not know** whether the agreement will go ahead or not until all conditions in an agreement are **satisfied**. For this reason, the solicitors will not yet prepare the documents to transfer the title, arrange for the existing mortgages to be discharged, or arrange for new mortgages to be registered against the property.

Once all **conditions** have been **satisfied**, with written confirmation, the contract finally becomes **unconditional**. The seller has now definitely **sold** the house and the buyer has bought the house. It is at this time that all parties to the contract can move ahead with their plans.

Time requirements for conditions

Since the agency agreement is usually between the real estate agent and the seller, you have a responsibility to consider the **seller's needs** first.

When establishing a settlement date for the sale, the seller may have specific timeframes that need to be allowed for. The **seller's preferred settlement date** also needs to be integrated with the **buyer's requirements** so that both parties are willing to **agree** to the date. For example, you must consider when both parties are willing and able to move house on a specified date. The settlement date can often become part of the **negotiation** process.

In addition to ensuring enough time for conditions to be met, sufficient time must be allowed **between** the date that the contract becomes **unconditional** and the date that it **settles**. Wherever possible, allow at least **two weeks**. While solicitors can often carry out this work in a week or so, they prefer that more time is allowed in case they strike complications (for instance, if one of the parties to the contract is not available when required).

It is important to check that the settlement date does not fall on a weekend or a statutory holiday when you are drawing up an agreement. As we have seen, it is also important to understand what a 'working day' is, as defined in clause 1.1(38).

Exercise on key considerations for calculating a suitable settlement date

Many licensees use their calendar on their phone and then record them on paper, to calculate a suitable settlement date. **Use the calendar to work out a settlement date if the contract was signed on the 20th of March 2021.**

Ensure you have enough days between the signing of the agreement for the clauses to be satisfied.

CONDITION	CLAUSE	DAYS TO SATISFY	
Finance date:	Clause 9.1	Usually 10-15 working days	From the date on the agreement or a specified date that allows sufficient time.
LIM required:	Clause 9.3	Usually 15 working days	5 days to request it, and 10 more days to be satisfied with it. This could be extended to a total of 25 days if there are issues with the LIM
Building report	Clause 9.4	15 working days	From the date on the agreement and at the purchasers' expense
Toxicology report	Clause 9.5	15 working days	From the date on the agreement and at the purchasers' expense
OIA Consent	Clause 9.6 and Clause 9.8	20 days for residential but up to 65	From the date on the agreement and at the purchasers' expense
Land Act	Clause 9.7 and Clause 9.8	20 days for residential but up to 65	From the date on the agreement and at the purchasers' expense

Remember:

- The dates in the sale and purchase agreement **must allow** sufficient time for the fulfilment of conditions.
- The seller's needs are your first priority, but **both parties must be willing and able to agree** to the dates in the agreement.
- If conditions are **not fulfilled** by the required dates, it may result in one of the parties **cancelling** the contract. It is not definite that the agreement will go ahead until it has become unconditional.
- You **must allow** enough time (usually two weeks) between when the contract becomes unconditional and the settlement date for the solicitors to carry out their work.
- The settlement date **must be a working day, not** a weekend or public holiday. If settlement was due to fall on a non-working day then settlement would happen on the previous working day.

Warranties and Acknowledgements

There are occasions where the parties may wish to include a term in the sale and purchase agreement that binds them but will not act as a condition that can end the whole agreement.

A **warranty** is a legal promise about some specific feature of the property and/or actions required by one party. If the requirements of the warranty are not fulfilled, the other party has rights of compensation, but the sale will still go ahead. This is similar to the seller warranties under clause 7 of the general terms of sale in the sale and purchase agreement.

A warranty should state what work is to be done, who is to do it (or pay for it), when it is to be completed and to what standard. Warranties are usually for the benefit of the purchaser and often cover physical work on the property to be completed by the vendor. For example, if the purchaser requires the vendor to repair a broken window, or remove rubbish prior to settlement, this requirement should be written as a warranty rather than a condition.

An **acknowledgement** is an acceptance by both parties of a particular event or situation, such as acknowledgement that a Code Compliance Certificate (CCC) has not been issued with respect to certain works.

The buyer(s) and seller(s) must be made aware that by signing this agreement it becomes a legally binding contract.

Signatures

At the bottom of the second to last page is where the vendor(s) and purchaser(s) must sign the agreement. Just above the signature's space are two acknowledgement statements:

1. 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. You must make sure that you have given the latest version of the 'New Zealand Residential Property Sale and Purchase Agreements Guide' to both the seller(s) and the buyer(s). It is useful to give the seller a copy of this guide when they sign their agency agreement. You can get a copy of this guide from the REAA website www.REAA.govt.nz
2. The person or persons signing this agreement acknowledge that either:
 - (a) they are signing in a personal capacity as the 'vendor' or 'purchaser' named on the front page, or
 - (b) they have authority to bind the party named as 'vendor' or 'purchaser' on the front page.

Signature Page

WARNING AND DISCLAIMER

- This agreement is a standard form document. It is therefore likely that amendments and additions may need to be made in order to suit the circumstances of each of the vendor and the purchaser, and to suit the particular property involved. It is also important that you are certain that any amendments made correctly reflect your understanding of what has been agreed. **You should always get legal advice before you sign the agreement 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 7, clause 8, and elsewhere in this agreement.
- In the case of a unit title, before the purchaser enters into the agreement, 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 ANY AGREEMENT ENTERED INTO BETWEEN THE PARTIES.

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:

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

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):

Signature of Vendor(s):

Director / Trustee / Authorised Signatory / Agent / Attorney*
Delete the options that do not apply

Director / Trustee / Authorised Signatory / Agent
Delete the options that do not apply

Director / Trustee / Authorised Signatory / Agent / Attorney*
Delete the options that do not apply

Director / Trustee / Authorised Signatory / Agent
Delete the options that do not apply

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

Purchase Price Allocation

Summary of the new NZ PPA rules

- In December 2019, IRD proposed prescriptive new PPA rules to address the above and the tax issues it viewed as detrimental to NZ's tax base. The new PPA rules will require parties to agree to a consistent allocation of the purchase price based on market values, avoiding tax implications arising from opposing values determined by the vendor and purchaser.
- The new PPA rules apply to both businesses and commercial property (non-residential property) over \$1 million, or where the acquirer's total allocation to taxable property is more than \$100,000 and to residential transactions of over \$7.5 million. Generally, the rules do not apply to the sale of shares, but rather meet the definitions of a business or property transaction.
- The new PPA rules apply to contracts entered into from 1 July 2021.

Final page

The final page contains a section for the names and contact details of the:

- Seller and their solicitor.
- Buyer and their solicitor.
- Licensed real estate agent facilitating the sale.

Material particulars

Under the Code of Conduct rule 9.9, licensees must make sure that all **material particulars** are **included** and **attached** to a sale and purchase agreement **before** the signatories are asked to sign the agreement.

Material particulars consist of **all information** relating to the agreement, including all required details and terms, additional pages containing further clauses and any other relevant information.

Rule 9.9 A licensee must not submit an agency agreement or a sale and purchase agreement or other contractual document to any person for a signature unless all material particulars have been inserted into or attached to the document.

Note: Rule 9.9 also applies to agency agreements and lease agreements.

Remember:

- The buyers and sellers **must** read the guidance on the final page of the sale and purchase agreement **before** signing the agreement.
- The **final page** of the agreement **must record** the names and contact details of the buyer and seller, both solicitors, and the licensee.
- All material particulars **must be attached** to the agreement **before** it is signed. These include all material information not in the agreement itself, including any added clauses.
- Before inviting signatures, the licensee needs to
 - warn the buyer(s) and seller(s) that by signing this agreement it becomes a legally binding contract.
 - recommend the buyer(s)/seller(s) seek legal/technical advice if they require it
 - explain that by signing they are acknowledging that they have received the REA-approved guide on the sale of residential property (and the pre-contract disclosure statement if the sale is for a unit title property).

Reviewing, Accepting and Negotiating Offers

Presenting and negotiating written offers

Once a buyer has prepared and signed a **written offer**, it must be submitted to the seller. Licensees may decide whether to pass on information about verbal offers at their discretion, but Rule 10.10 confirms that **all** written offers **must be submitted** to a client. In other words, you must not filter out written offers by failing to present them to the client, even if you think that the client will reject them.

Rule 10.10 A licensee must submit to the client all offers concerning the grant, sale, or other disposal of any land or business, provided that such offers are in writing

Remember, since the agency relationship is with the client vendor (seller) you are **working for the seller** to achieve the best possible price and sale conditions for the property.

It is your job as a professional to **present** an offer and make sure the seller clearly **understands** the options available to them in the negotiating phase.

You should make an appointment for a **face-to-face meeting** with the seller to present the offer. If the seller is overseas or does not live within driving distance, you may have to negotiate by **telephone or email or video conference**. However, wherever possible, you should meet with the seller **in person** to discuss the offer with them and provide any clarification they may require about the terms or conditions. If the seller does not agree to the offer, work towards obtaining a counteroffer.

Helping the seller to review an offer

You must provide the seller with a copy of the **approved guide before** proceeding, and make sure they sign the **acknowledgement** to confirm that they have received it.

Explain that the offer **will not be dated** until it has become an agreement.

It is best to **explain** the terms and conditions as the seller **reviews** the offer. Make sure that you have explained all parts of the contract clearly to them.

It is **crucial** that the seller understands **all** clauses, terms, conditions, and dates in the contract, and their legal and practical implications.

Before asking the seller to sign, you must remember to recommend they seek any legal and/or technical advice if they require it and give them reasonable time to do so. You must also highlight the warnings on the last page of the agreement form and ask them to read the information set out on the back page.

Possible outcomes may be:

- **Acceptance** of the offer (the seller finds the offered price and any associated conditions acceptable).
- **Negotiations** in relation to changes to the offer (the seller does not find the offered price and/or conditions acceptable and produces a counteroffer).
- **Rejection** of the offer (the seller rejects the offer outright without presenting a counter- offer).

Explain the seller's options. If appropriate, you can **recommend** which option you think the seller should choose. For example, if it is a serious buyer, you might recommend a counteroffer if they do not want to accept outright, to avoid losing the buyer.

If the seller agrees to the existing offer

If the seller **agrees** to the offer, you must obtain their **initials** next to the chattels and any Further Terms of Sale in the agreement, as well as their **signature**. It is best to have them initial the agreement as you discuss and agree each section, to make sure that the seller definitely **understands** and **agrees** to every part of the contract.

Wherever the **buyer has initialled**, the **seller** must also **initial**. For more on signatures and initialling, see the sections on 'Getting the Agreement Signed' and 'Obtaining the Correct Signatures.'

The agreement now has **both** sets of full signatures. The initials of the buyer and seller are on any agreed **changes**, on the **chattels** and on any special **conditions/terms**. (If there is more than one buyer or seller, this will include initials and signatures for all signatories.)

Do not forget to **convey** the seller's **acceptance** to the buyer **immediately** after the agreement is signed and make sure both parties realise that the contract is now binding. **The contract is not complete until this is done**

Remember:

- You **must pass on** all written offers, regardless of whether or not you think the seller will accept them.
- If possible, you should make a **face-to-face** meeting to present the offer to the seller.
- You **must** make sure that:
 - You have **supplied** the seller with a copy of the approved guide
 - The seller **fully understands** all terms, conditions, clauses, and dates in the contract and their implications.
 - Recommend the seller seeks any legal and/or technical advice they might require and give them reasonable time to do so.
- **Explain** to the seller that they can accept the offer, make a counteroffer, or reject the offer outright.
- If the seller **agrees** to the existing offer, they must **initial** each part of the agreement (in the same places as the buyer) and **sign** the agreement.
- Once both parties have signed and initialled all parts of the agreement, the agreement is **complete**.
- You **must convey** the seller's **acceptance** to the buyer **immediately** as the agreement is not binding until this has been done.

Helping the seller to make a counteroffer

If the seller has reviewed the offer and agrees to some of the points, but not all of them, you will need to make **changes** to the agreement. This will then become a **counteroffer**.

Before making changes to the agreement, **point out** that changing the buyer's offer will make it **null and void**. (This allows the seller to change the agreement in order to make a counteroffer, without automatically binding the buyers to the modified agreement.)

Since the buyer is no longer bound by an agreement once a change has been made, the seller may want to **reconsider** if the change is only **minor**. However, in most cases you will need to make changes to the agreement.

If the seller wants to go ahead and make a counteroffer, **change** the specific **details** on the sale and purchase agreement to reflect their requirements. For example, if they say they agree to the

possession date, the conditions, and the chattels, but not the price, you will need to alter the price to reflect their wishes. Check if the seller has any **questions** and whether they would like to wait and get **legal advice**.

It may be to the seller's advantage to identify what they can add as a **bargaining tool** when making a counteroffer. For example, if they could add particular chattels into the agreement, this might make the price more attractive to the buyer.

Again, you must make sure that the seller fully **understands** the nature of any changes they have made to the contract, including their **legal implications**.

Obtain the seller's initials in the relevant parts of the agreement. They must **initial** the parts that they **agree** to as well as any **changes** they have made. Again, have them initial the agreement (including changes) as you discuss and agree each section. This will make sure the process is **methodical** and **thorough** and that the seller definitely agrees to every part of the contract including modifications.

You must then obtain the **seller's full signature(s)** on the agreement. Without this, you do not have a signed counteroffer.

Since **one or more** details or conditions have **not been agreed** by both parties, not all of them will be initialled by both parties. This means there is **no contract** yet.

This process is now **repeated** as you take the counteroffer back to the buyer.

If the buyer **agrees** to all the terms as well as any changes, ask them to add their **initials** to the change(s) alongside the seller's initials. If they **do not agree**, **negotiation continues**, and you should work to obtain a counteroffer from the buyer. Ask them to initial any changes and go back to the seller.

Continuing negotiations

This process may need to be **repeated** several times with the seller and buyer, making several counteroffers before reaching final agreement with all signatories. **All signatories must initial each individual change.**

Do not forget that you **must** follow good practice every time you present a counteroffer to either the seller or the buyer. This means you must repeat the following with whichever party is reviewing a counteroffer:

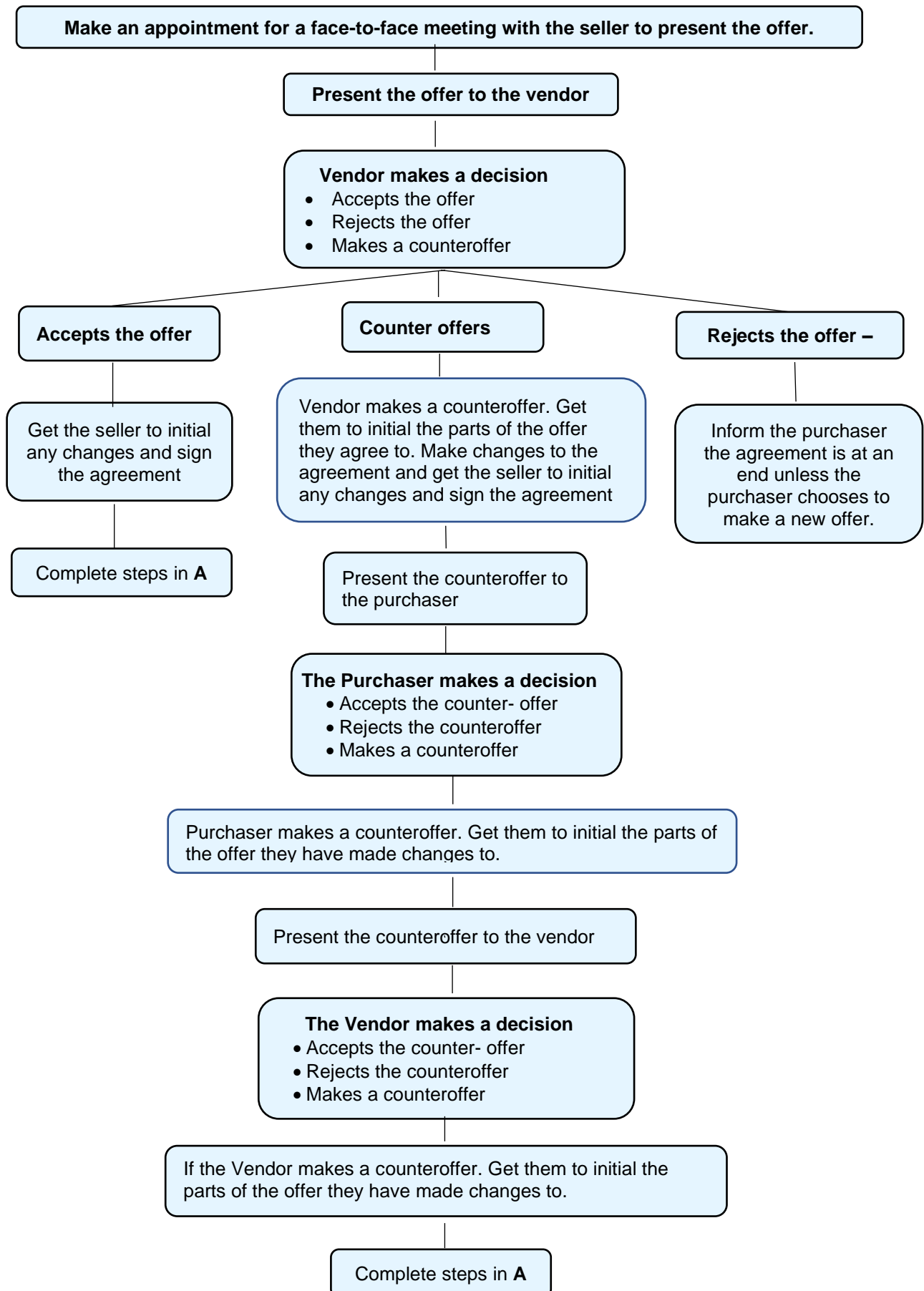
- **Explain** each new or modified clause and make sure they **understand** its legal implications.
- Remind them the agreement is **legally binding** once signed.
- Make sure they **initial** each change to the agreement and **re-sign**.

When final agreement is reached you need to ensure that **all signatories** have signed and initialled **all parts of the agreement**. Be aware that this process may take hours, days or in some cases weeks, to achieve.

Remember that, once the agreement is accepted in its existing form:

- **You must immediately convey this to the other party in order to complete the deal and be clear that the contract is now binding.**
- **It is at this stage that you should date the agreement.**
- **Arrange for the deposit to be paid into the Trust Account**

The process of presenting and negotiating written offers



A - Remember that, once the agreement is accepted in its existing form:

- **You must immediately convey this to the other party in order to complete the deal and be clear that the contract is now binding.**
- **It is at this stage that you should date the agreement.**
- **Arrange for the deposit to be paid into the Trust Account**

Remember:

- If the seller wants to make a counteroffer, you **must**:
 - **Make them aware** that the existing agreement will be null and void as soon as they make changes to it and **check** if they still want to do this.
 - **Change** specific details in the agreement as the seller requires.
 - **Check** whether the seller would like to wait and get legal advice.
 - **Make sure** that the seller fully understands the changes and their implications.
- The seller may **benefit** from using bargaining tools when making a counteroffer (e.g., adding additional chattels).
- In addition to initialling the parts of the contract they have agreed to. The seller
- **must initial** each change they have made and then **sign** the agreement.
- If negotiations continue, the same processes should be repeated each time, ensuring that both parties **understand and agree** to each change that they request.
- As soon as the agreement is accepted by both parties, you must **immediately convey** acceptance in order to make the agreement binding.

Getting the agreement signed

As previously indicated, the **buyer** and **seller** and/or nominated **authorised persons** must all **sign** the agreement. This is done at the bottom of page 12 (below Schedule 2). The signatories must be the **same people** listed on the front page of the agreement.

Remember:

When the buyer is ready to sign a written offer, you must carry out the following steps **before** they sign the agreement.

- Present the approved guide and obtain acknowledgement of receipt.
- Explain the implications of making the offer. This includes explaining all clauses.
- Inform them that, if the seller accepts their written (and signed) offer, they will have entering into a legally binding contract
- Inform them that, once they have signed the agreement, any change or amendment to the agreement makes the original offer 'null and void' (i.e., it will no longer be binding on the party that made the offer). This is the case regardless of whether the change was made by the buyer or the seller.
- Recommend they seek any legal and/or technical advice they might require and give them reasonable time to do so.
- Make sure they read the information on the final page of the agreement.
- Make sure they have initialled the agreement as required.
- (The agency you are engaged by will explain their conventions regarding initialling.)

When you present the offer to the **seller**, you must carry out the following steps **before** they sign the agreement. Once you have advised the buyer of these points, they can go ahead and **sign** the offer if they choose.

Remember:

- Remind them about the approved guide or give them a copy if you have not already done so.
- (If it is a unit title property, also remind them about the pre-contract disclosure statement or given them a copy if you have not already done so.)
- **Explain** the offer to them, including all clauses.
- Inform them that, if they **accept and sign** the offer, they will have entering into a **legally binding** contract.
- Inform them that the agreement is **not binding** until it is signed by **all** of the signatories identified on the agreement as sellers. This is the case whether they are agreeing to the **existing offer** or drafting a **counteroffer**.
- If the seller is wanting to make a counteroffer, inform them that this will only become a legally binding contract if and when the **buyer initials** and **signs** the modified agreement to confirm **acceptance**.
- Recommend they seek any legal and/or technical advice they might require and give them reasonable time to do so.
- Make sure they **read** the information on the **final page** of the agreement.
- Make sure the seller **initials the agreement** as required if they are accepting it **or initials the modified agreement** as required if they are producing a counteroffer. (The agency you are engaged by will explain their conventions regarding initialling.)

Obtaining signatures from the appropriate parties

Signatures are required from **all parties to the contract**. This means that all individuals who are either acquiring or selling ownership of the property **must sign** the contract.

Signatories can choose for a **nominated authorised person** to sign on their behalf. The nominated authorised person might be someone who is not a party to the agreement (for example, a power of attorney) or someone who is a party to the agreement (for example, an owner who is nominated to sign on behalf of their co-owner).

If a nominated authorised person is signing agreements on behalf of a party to the contract, it is essential to get **written confirmation** that the nominated person has **authorisation** to sign on behalf of the absent person(s). Written confirmation of authority varies depending on the types of parties involved.

For example, if the nominated person has **power of attorney**, you must check that this has come into force (has been invoked) and that they have a non-revocation confirmation form (signed by the attorney) to show that the power of attorney is currently in place. You should keep a copy of this along with a copy of the power of attorney document.

Signing authority can be obtained by **fax, letter, or power of attorney**. It is not recommended to obtain an authority by email or phone as it is not possible to verify that the person giving authority is the correct person.

A **written confirmation** of authority should include:

- The name of the person **giving** authority.
- The name of the person to who the authority is **given**.
- Details of what the authority is **about**.
- **Limits** of the authority, if any.
- Details of the **property** concerned.
- The **date**.

When there is more than one owner or buyer

It is quite common for a property or business to have **more than one** owner and buyer: for example, a property or business could be owned by a married couple, partners in a business partnership, or trustees acting on behalf of a trust.

As a general rule, **all of the individuals** who are party to the agreement **must sign**. However, **in some cases**, one owner (or another nominated person) may have **authority** to sign on behalf of one or more of the other owners. In this instance, you **must sign** and **keep a record** of written confirmation of this authorisation.

Signatures

The table below outlines who may be signatories to an agreement and indicates some of the key requirements for getting each to sign.

Signatory	Requirements
Individuals	<p>When working for an individual client offering a property for sale (including sole traders), check that the individual signing agreements is the registered owner on the current Record of Title.</p> <p>If parties to the sale and purchase agreement have nominated an authorised person to sign on their behalf, you must obtain and retain written evidence of this authority</p>
Co-owners (joint tenants or tenants in common)	<p>When working for co-owner clients offering a property for sale, check that the co-owners signing agreements are the registered owners on the Record of Title.</p> <p>If one or more of the parties to the sale and purchase agreement have nominated an authorised person to sign on their behalf, you must obtain and retain written evidence of this authority</p>
Partnerships	<p>All partners must sign unless the partnership agreement specifically states that named parties, or a number of partners, have the authority to sign on behalf of others.</p> <p>If one or more partners are signing on behalf of others, you must obtain and retain written evidence that they have authorisation to do this.</p>
Companies	<p>When working in a transaction involving company ownership, check the number of directors on the companies register on the New Zealand Companies Office website.</p> <p>If there is more than one director, and one director is signing contracts on behalf of the other directors, you must obtain and retain written evidence of this authority. Ask to sight the company constitution, and a resolution approving the transaction. If power of attorney has been approved, a certificate of non-revocation will also be needed.</p>
Trustees (acting on behalf of a trust)	<p>When working for a trust offering a property for sale, check that the trustees signing agreements are the registered owners on the Record of Title.</p> <p>It is important to make sure that all trustees sign the agreement unless there is written evidence that a trustee(s) can sign on behalf of other(s): for example, a trust deed</p>
Executors of an estate	<p>If a property was held in a deceased person's name as sole owner or as tenants in common, the property forms part of the deceased person's estate. An executor is the person who has been appointed in the will to manage the person's estate after death. An administrator is appointed when someone does not have an executor.</p> <p>Before the property can be sold, either probate (if there is a will) or letters of administration (if there is no will) must have been completed. An Application for Transmission (Personal Representative) (in all cases) will need to have been completed.</p> <p>When the transmission is registered, the property will be put into the name of the deceased person's estate.</p>
Incorporated societies	<p>If an incorporated society is buying or selling property, you must check the constitution to make sure that they have correctly identified the signatories.</p>

Obtaining signatures by fax, scan, or email

Please note: There are varying acceptable methods for initialling sale and purchase agreements used across different real estate agencies. **Make sure all initialling is done in line with the practice of the agency you are engaged by.**

For the purposes of the assessment, the **minimum requirement** will be that the initials of the buyer and seller will be required on

- any agreed changes, and
- on the chattels, and
- on any special conditions/terms.

It is now **common practice** to fax, scan, and email agreements to get the signatures of all parties. Now REINZ have released an online negotiation and signing tool called which enables e-signatures to be used on e-forms.

If you are using the electronic methods of scanning or emailing, the following guidelines will help to ensure the process goes smoothly:

- **Mark** all the places where the signatories are to sign and initial the agreement (since you will not be present to guide them through).
- **Send** the full agreement with explanatory notes in your email cover sheet to help guide the signatories where to initial/sign.
- Remind signatories to **initial** as required by your agency and **sign** it just as if it were the original.
- Remind signatories that initials should be placed **near to any changes**.

(Note that there are varying acceptable methods for initialling in this situation. Your agency will give you guidance on their conventions regarding the location of initials.)

Every office should have a standard email **cover letter** to explain the signing and initialling process.

Be aware that scanning **can cause problems** if the document is re-scanned multiple times and becomes **unreadable** as a result. If this happens, start again by rescanning the original (including any variations that have been made).

What happens if a signature is missing or incorrect?

Obtaining **incorrect signatures** or failing to obtain **all** of the required signatures on an agreement can have a number of implications. These include:

- A transaction being **delayed** or **cancelled**.
- **Loss** of commission or expenses.
- A **complaint** being made and upheld against the agent or licensee.
- Damage to the **reputation** of the agent and licensee.

For these reasons, it is extremely important to make sure that you have **accurately identified** all the required signatories and have **confirmed** that anyone is signing on behalf of one or more of the signatories has **written authorisation** to do so.

Note: this is true for all contracts, including agency agreements, sale, and purchase agreements and/or lease agreements.

Remember:

- You **must make sure** that all of the parties to the contract have signed and initialled the contract.
- If one (or more) of the parties has nominated and authorised someone else to sign on their behalf, you **must get written confirmation** of this authorisation by fax, letter, or power of attorney and keep a copy on file.
- If a nominated person has power of attorney, you **must check** that this has been invoked and that they have a non-revocation confirmation form.
- If the buyer or seller are a partnership, company, trust, executors of an estate, or incorporated societies, you should **follow the guidelines** in this section for checking that you have correctly identified the signatories.
- Agreements may be faxed, scanned, or emailed in order to obtain signatures. **Follow the guidelines** in this section to make sure this goes smoothly.
- There can be **serious consequences** if a signature is missing or incorrect.

Completion and Distribution of signed agreements**Completion of the agreement**

The agreement is executed (legally binding) once **all** of the following has occurred:

- All finalised copies of the agreement are **identical**. This means they have the **same changes** (if any) and have been **initialled** by both the seller and buyer in the same places.
- It is fully **signed** and **initialled** by **all** signatories.
- **Acceptance** of the offer has been **conveyed** to the party who made the last offer. Until this is done, the party who made the last offer can change their mind and withdraw their offer.
- The **date** has been added on the front page to indicate the date that **agreement** by both parties was reached.

Once this is done, you now have a **signed contract** of sale.

In the case of a **conditional** offer being made and accepted, completion will now be **subject to** the conditions being met.

If an **unconditional** offer has been made and accepted, the contract is ready to **proceed**.

Distributing copies of signed agreements

Once there is a signed sale and purchase agreement in place, licensees need to **distribute copies** of the agreement to the relevant parties. Make sure that both the buyer and seller know **who** will receive a copy of the agreement.

Under section 132 of the Real Estate Agents Act 2008, you must give parties to a sale and purchase agreement (or lease agreement) a **signed copy as soon as possible**.

Real Estate Agents Act 2008**132 Licensee to give copy of contractual document**

As soon as practicable after a person signs a contractual document and gives that document to a licensee carrying out real estate agency work in connection with the document, the licensee must give the person an accurate copy of the document

It is standard practice to take **four copies**. Together with the originals, these are distributed to the following:

Originals

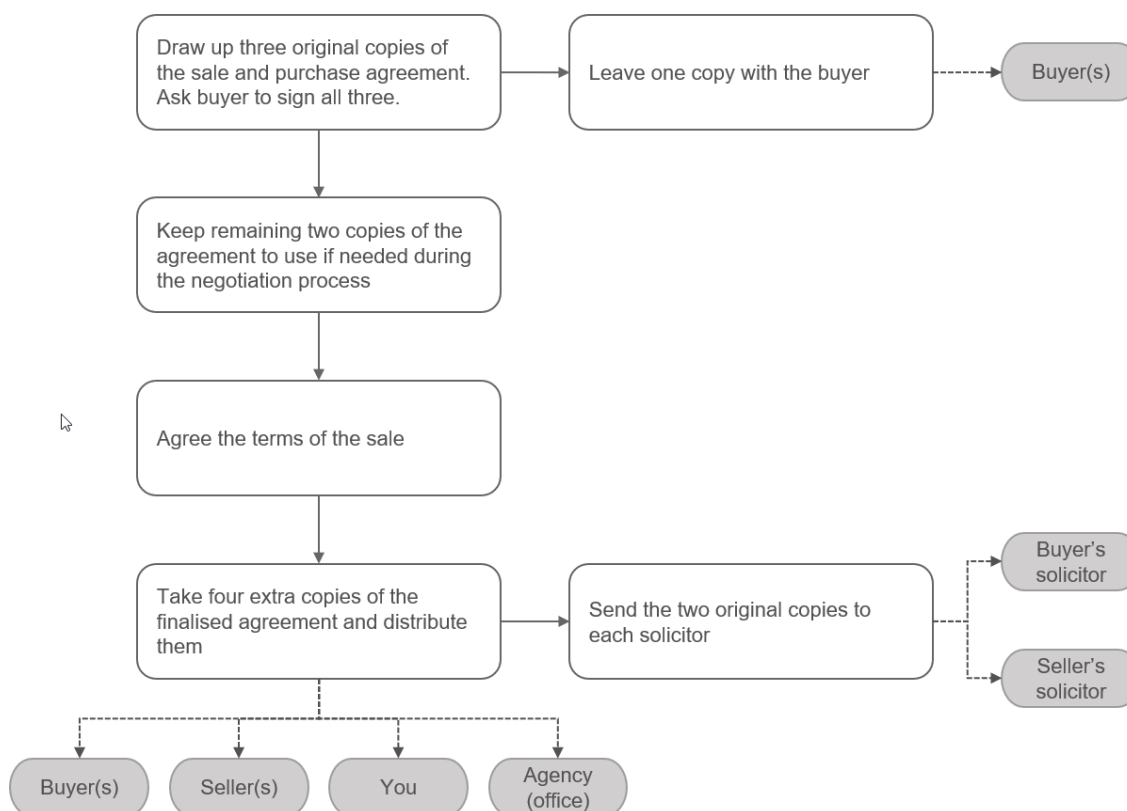
- The seller's solicitor.
- The buyer's solicitor.

Copies

- The seller(s).
- The buyer(s).
- The real estate agent (agency office).
- Your transaction files. This will help you to follow up and ensure that the seller and the buyer are organised and fulfilling any conditions and warranties as required.

The diagram on the next page shows a **process** for distributing copies to the correct parties. However, make sure that you **follow** your real estate agent's **policies** and **procedures**.

Recommended process for distributing copies of the signed paper agreement



Remember:

- The date **must be added** to the agreement after it has been fully signed and initialled by both parties.
- The agreement **is not binding** until acceptance has been **conveyed** to the last party who made an offer.
- If the agreement was conditional, the parties must now **start work** to satisfy the conditions so that the contract can be completed. If the agreement was unconditional, the contract will now **proceed** towards settlement.
- Copies of the signed agreement **must be distributed** as soon as possible.
- As a rule, you will need to **take four copies** of the original agreement. Along with the original(s), you **must distribute** these to the seller, buyer, both solicitors, and the real estate agent (agency office). **Keep a copy** for your own files.
- You **must follow** your agent's policies and procedures when distributing copies of an agreement.

Implications of electronic forms of transmission on number of 'originals' required

The number of 'originals' of the sale and purchase agreement you should ideally draft up might vary due to electronic processes now becoming commonplace.

When working with paper copies of the agreement form, best practice is for the licensee to draw up three originals. **Under the law an accurate 'copy' of every transactional document must be given to the person who signed it as soon as practicable after signing.** As a simple way to comply with this requirement, the licensee needs to leave one copy of the original signed offer with the buyer, then negotiate using the other two originals. Once agreement is reached, one of these two copies must be forwarded to the seller's solicitor and the other must be forwarded to the buyer's solicitor.

Note that because it is now commonplace for negotiations to include some form of electronic transmission, you may end up without a paper 'original'.

If an electronic version of the sale and purchase agreement is used only **one** electronic 'original' will be drawn up and multiple copies printed and distributed. You still need to provide a copy of the first offer to the buyer as soon as possible after signing. This could be done by using a scanning app on your mobile phone and emailing it to them if there is no copying facility available.

Whether the agreement is in paper or electronic form

- The buyer needs a copy of the first signed offer
 - Each parties' solicitor needs a fully signed and completed copy of the entire agreement.
- However, these copies might not be 'originals'.

Note: For the purposes of the assessment for this topic, only one 'original' will be drafted.

Following up after an agreement is signed

Once the agreement is signed, your job is **not yet complete**. There are a number of responsibilities that need to be fulfilled before settlement.

The buyer and seller may both have tasks they need to complete after the contract is signed in order for the agreement to reach settlement. However, you will have **a role to play** as well.

One of the first things you need to do is **ask the buyer** to pay the **deposit**. Indicate the buyer will be given a trust account **receipt** once it is confirmed the money is in the trust account. Make sure that arrangements for the deposit are made **in accordance with** the requirements in **clause 2** of the sale and purchase agreement and **sections 122 and 123** of the Real Estate Agents Act 2008.

Let the buyer and seller know that you will stay in touch and give them **clear information** about when to expect **contact** from you. You will need to take care of the following in the time between the signing of the contract and the settlement date:

- Make sure that the **seller** attends to **any work** which needs to be done on the property.
- Make sure the **buyer** carries out the necessary actions to **satisfy any conditions**.
- Help make arrangements for the buyer to carry out a **final inspection** before settlement (if required).
- Make arrangements for **handover** of keys and other security devices such as garage door openers and alarm codes.

You do not want any last-minute problems to occur. Do not forget that, if **conditions are not satisfied** within specified time constraints, settlement may be **delayed** and/or the contract may be **cancelled**.

If problems arise, your **support or advice** may affect how smoothly the sale is completed or whether conditions are acted upon in time for the transaction to be completed.

Timeframe for steps to complete the transaction

The agreement for sale and purchase has many steps that have **time constraints**.

When an agreement is signed, make sure that you **understand** exactly **what steps** need to be performed and **when** they need to be performed by. These will be different for each sale, depending on the conditions in the sale and purchase agreement.

The diagram on the next page shows a **typical timeframe** for the steps to be completed in order to finalise a sale.

You can use this as a reference point when you are identifying timeframes for sales you are involved in. However, do not forget to make **necessary changes** (including deleting or adding steps) to reflect the **specific conditions** in each individual contract.

Typical timeframes for completing an agreement after it has been signed

Sale and Purchase Agreement is signed and dated.	Sale and Purchase Agreement is signed by all parties and dated (on the front page)
	The seller warrants that there are no notices from local or government authorities, other statutory bodies (such as body corporate), under the RMA Act, or from any other party
Payment of Deposit Clause 2.1 & 2.4	Payment of deposit required immediately on execution of the agreement by both parties (and other time specified in agreement) Deposit to be held by agent or solicitor until any requisition procedure completed (clause 6) AND all conditions satisfied or waived OR the agreement is cancelled. The deposit is to be held for minimum 10 working days or until such time as the agreement is declared unconditional (if later than 10 working days from receipt)
Deposit if the property is a Unit Title Clause 2.4 (3)	The deposit must be held until the seller has provided the buyer with a pre-settlement disclosure statement and an additional disclosure statement (if requested) that has been certified correct by the body corporate The exceptions are if the buyer has given notice to postpone the settlement date until the disclosure statement is provided OR the agreement is cancelled OR the buyer has waived the right to cancel by giving notice to the vendor or by completing settlement of the purchase.
Deposit is not paid Clause 2.2	If the deposit is not paid when it is due, then the seller may serve on the purchaser a notice requiring immediate payment. If the deposit remains unpaid after three working days of the notice being served , the seller may then serve written notice to cancel the agreement.
Request for Title (Title Requisition) Clause 6.2 (2)	The buyer has the right to search the title after they have signed the agreement in order to make sure they obtain 'clear title'. If the buyer wants to make any objections or request a title, they must do so within 10 working days of the date of the agreement OR by settlement date (whichever is the sooner).
Finance date Clause 9.1	If the finance condition is required, the agreement is conditional on the buyer arranging finance on, or before, the finance date specified on the front page
Mortgage Terms Clause 9.2	If a mortgage is required to meet a finance condition stated on the front of the agreement, the mortgage must be subject to the terms and conditions typically required from the specified lender for that kind of loan.
LIM Clause 9.3	If the agreement is conditional on the buyer obtaining and approving a LIM report, the buyer must request the LIM within 5 working days of the date of agreement. If the buyer wants to give notice that they do not approve the LIM, they must do so on or before the 15th working day after the agreement date (the purchaser's notice). Once the seller has received this information, they must reply to the buyer within 5 working days , stating what they will do (if anything) to remedy the identified faults. If the seller cannot or will not do anything to remedy the faults, then the buyer has 10 working days from the date of the purchaser's notice to decide whether to cancel the agreement or not.

Building report Clause 9.4	If the buyer has indicated on the front page that a building report is required, they must obtain that report within 15 working days. If the buyer withholds approval based on issues identified in the report, they are entitled to cancel the agreement but must give the seller a copy of the report immediately on request.
Toxicology Report Clause 9.5	If the buyer has indicated on the front page that a toxicology report is required, they must obtain that report within 15 working days
OIA Consent Clause 9.6 and 9.8	If a buyer indicates that they need to seek consent under the Overseas Investment Act 2005 (OIA), the agreement is conditional upon the buyer receiving that consent on or before the date stated on the front page (Clause 9.6). The buyer is responsible for paying the application fee to seek consent.
Land Act Consent Clause 9.7 and 9.8	
Further terms of sale Clause	Other conditions that may be in the agreement: For the buyer – Specialist reports (e.g., valuation, meth test), Sale of own property. For the seller – purchase of another property, or cancellation of prior agreement. The settlement date must fall after all conditions of the agreement have been satisfied or waived.
Warranties and Acknowledgements Clause	Warranties – a legal promise about some specific feature of the property and/or actions required by one party. (e.g., ‘The vendor warrants that the heat pump will be fixed by settlement date’). Acknowledgements – a written record to acknowledge that both parties accept a particular event or situation (e.g., ‘The seller records that the buyer has been notified that the oven
Settlement and Possession Clause	The possession date is the same as the settlement date unless the agreement states a different date for this. Clause 3 includes information about how to deal with failure to settle by either party, such as: The seller fails to give possession on time – buyer entitled to claim penalty interest or seek compensation for temporary accommodation, storage of goods. The buyer fails to give make final payment by deadline – buyer entitled to claim penalty interest from seller
Risk and Insurance Clause	The seller is liable for the property and chattels up until possession is given and taken, at which point the buyer’s insurance takes over. If the property is damaged before settlement/possession, the buyer has the choice to either cancel the agreement OR settle as planned.
Pre- settlement inspection Clause	If the property is sold with vacant possession, the buyer has the right to inspect the property before the possession date to check that everything in the property is as expected. The buyer may Inspect the property on one occasion before settlement. Re-enter the property to check that any promised work is completed. This must be done with reasonable notice and with due regard for the rights of any tenants of the property

Failure to settle Clause	<p>A settlement notice may be served by either party at any time if the sale is not settled on the agreed settlement date so long as the party serving the notice is able to proceed in accordance with the terms of the agreement. The party on whom the notice is served is then required to settle within 12 working days after the date of the notice being served.</p> <p>If this is not resolved within 12 working days after the notice was issued, either party can cancel the contract.</p> <p>If the seller is at fault, the buyer can sue for recovery of the deposit. If the buyer is at fault, the seller can keep the deposit</p>
Handover of keys and possession Clause	<p>Unless the property is tenanted, the seller must hand over to the buyer all keys to exterior doors, all electronic door openers (e.g., for the garage), and all security codes for any alarms after the seller's solicitor has confirmed final payment has been received.</p>
Last minute settlement Clause	<p>Settlement after the 4pm deadline but before 5pm on the settlement date is termed 'last minute settlement'. This can result in payment of interest for the day (and any subsequent days if they are not working days).</p>
Warranties Clause	<p>At the possession date, the seller warrants that:</p> <ul style="list-style-type: none"> ▪ Chattels are owned outright by the seller and are in reasonable working order (or in the same state of repair as at the date of the agreement) ▪ There are no outstanding charges on the property (e.g., electrical installation, rates, water rates) ▪ Any work done on the property has the correct building consent/permit. <p>Any commercial property has the appropriate and up-to- date Building Act warrant of fitness and compliance schedule</p>

Completing legal documentation at settlement time

Before settlement, the buyer's solicitor will obtain a **search** of the title and any relevant documents recorded against the title to check for any **issues**. The seller's and buyer's solicitors both **prepare** information for the **land transfer** on Land online.

One of the final steps will be for the seller's solicitor to prepare a **settlement statement**. The settlement statement shows the relevant **outgoings** and **incomings** on the property up to settlement/possession date, including rates, rent paid or received, licence costs, and deposit paid.

The **seller's solicitor** then sends the settlement statement to the **buyer's solicitor**.

Remember:

You have continued responsibilities after the agreement is signed.

You must:

- Ask for the buyer to pay the deposit (by the specified date) and let them know they will receive a receipt.
- Communicate clearly with the parties and let them know what to expect from you.
- Help to make sure the parties play their role in satisfying any conditions.
- Help to make arrangements for the buyer's final inspection (if required)
- Arrange for the keys and other security devices to be handed over.
- To play your part properly, you **must be aware** of the deadlines for all steps that have to be completed in order to finalise the sale.
- Once all conditions are satisfied and all legal documentation has been taken care of, the seller's solicitor will **send a settlement statement** to the buyer's solicitor.

Payment of commission

In most cases, the agent can be paid **commission** in accordance with the terms of the agency agreement once the agreement has become unconditional. Under Section 126 of the Real Estate Agents Act 2008, only a licensed agent who has an **agency agreement** with a client vendor is entitled to claim commission.

The agent will then **pay** commission share(s) to the **licensee(s)** for the work that they have performed on the agent's behalf in relation to the transaction. This will be done in accordance with the **contractual arrangements** between the agent and the licensee.

Real Estate Agents Act 2008**126 No entitlement to commission or expenses without agency agreement**

(1) An agent is not entitled to any commission or expenses from a client for or in connection with any real estate agency work carried out by the agent for the client unless—

- (a) the work is performed under a written agency agreement signed by or on behalf of—
 - (i) the client; and
 - (ii) the agent; and
- (b) the agency agreement complies with any applicable requirements of any regulations made under section 156; and
- (c) a copy of the agency agreement signed by or on behalf of the agent was given by or on behalf of the agent to the client within 48 hours after the agreement was signed by or on behalf of the client.

The **deposit** may be used to pay the agent's commission **if this has been agreed** with the seller.

Maintaining relationships after the transaction is completed

When the sale goes smoothly, both the seller and buyer will be satisfied. Once the sale has settled, let them know you **appreciate** their business and wish to work for them in the **future**. **Referrals** and **repeat business** are the keys to success in real estate.

To stay connected with buyers and sellers, maintain an **up-to-date contacts database** (or list) which has the contact details of both. It is good practice to **reconnect** with them every so often, so that they are reminded of you and know that you are still in the real estate industry.

If you have done your best to make sure you have **satisfied clients** and **customers**, they are likely to **want** to contact you with future business needs. They may also **refer** their friends to you when they need to buy or sell.

Successful licensees use a **variety of techniques** to remain on good terms with their clients and customers. These can include the following:

- A small gift on settlement - a plant, bunch of flowers, box of chocolates or bottle of wine to welcome buyers to their new home.
- A regular newsletter - emailed, mailed, or personally delivered.
- Anniversary and/or Christmas cards.
- Gift calendars (with your contact details included).
- Pens, notepads, fridge magnets (again, with your contact details included).

Do what suit your personality - but do something to **make sure you are remembered**. You need to be 'top of mind' for your clients and customers.

Remember:

- The seller **will pay commission** to the real estate agent. The agent will then pay commission to **you** as the licensee.
- The deposit can be used to **pay the agent's commission** if this was agreed with the seller.
- It is important to **maintain an ongoing relationship** with both buyers and sellers after the transaction is completed. This will make it more likely that they will contact you for more work in the future.

There is a sample Sale and Purchase Agreement that you can practice on in the Portal.

Practice Questions

Question 1

Why might the bank be unlikely to allow a mortgage for 100% of the value of the property?

Question 2

What are the potential consequences if a buyer signs a contract when they do not fully understand its conditions or legal implications?

Question 3

- (a) When is the last working day before Christmas?
- (b) When is the first working day after Easter?

Question 4

Read Clause 1.3 (3) and answers the questions below.

- (a) Who can be a notice served to?
- (b) How can a notice be served?

Question 5

Read Clause 1.3 and make notes of when notice is deemed to have been served for each method of delivery.

Method of delivery	When notice is deemed to have been served
Personal delivery	
Posting by ordinary mail	
Fax	
Email	

Question 6

Why is the possession date usually the same as the settlement date?

Question 7

Read Clause 5.2 and determine what rights the buyer has if there is a fire in the house before the settlement dates that:

- (a) Results in fire damage to the kitchen hob and smoke damage to the tiles behind the hob and the over-head bob extractor fan
- (b) Results in significant fire damage to the kitchen and smoke damage to the rest of the house.

Question 8

- (a) How long (after the date of the agreement) does the buyer have to apply for the LIM report? (See clause 10.2(1)(b))
- (b) How long (after the data of the agreement) does the buyer have to send a notice to the seller explaining what is wrong and what the seller should do to correct it? (See clause 10.2(2))
- (c) How long does the seller have after receiving this notice to reply to the buyer stating what they are prepared to do if anything) to remedy the faults noted on the LIM report? (See clause 9.3)
- (d) After sending notice to the seller, how long does the buyer have to make a final decision? (See clause 9.3)

Question 9

Answer the questions below, with a reference to the stated clauses.

- a) Assuming all is going to plan, by what day after the service of the settlement notice must the settlement be made? (Refer to Clause 11.2(1))
- b) If the purchaser does not comply with the settlement notice, what options does the vendor have? (Refer to Clause 11.4)

Question 10

Paul is a Dairy Farmer who owns his own property. He sells the land and the buildings, to another GST registered farmer, but keeps the herd of cows and most of the machinery.

Does this count as a sale of a going concern?

Question 11

List 4 conditions that would likely affect the timeframe for when the sale and purchase agreement become unconditional?

Resources

- New Zealand Legislation. (1986). *Fair Trading Act*.
<http://www.legislation.govt.nz/act/public/1986/0121/61.0/DLM96439.html>
- New Zealand Legislation. (1986). *Residential Tenancies Act*.
<http://www.legislation.govt.nz/act/public/1986/0120/52.0/DLM94278.html>
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- New Zealand Legislation. (2005). *Overseas Investment Act*.
<http://www.legislation.govt.nz/act/public/2005/0082/27.0/DLM356881.html>
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- New Zealand Legislation. (2008). *Real Estate Agents Act 2008*.
<http://www.legislation.govt.nz/act/public/2008/0066/latest/DLM1151921.html>
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<http://www.legislation.govt.nz/regulation/public/2009/0281/latest/whole.html>
- New Zealand Legislation. (2017). *Contract and Commercial Law Act*.
<http://www.legislation.govt.nz/act/public/2017/0005/21.0/DLM6844033.html>
- Real Estate Authority. (2012). *Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012*.
<https://www.rea.govt.nz/assets/Uploads/Resources/Guides/Code-of-conduct.pdf>