

# Buying a Property

---

The television programmes "Location, Location, Location" and "Hot Property" highlight the traps waiting to snag unwary buyers and sellers. In this paper we will take you through the buying process so that you know exactly what to expect, what to ask and what you should do.

For further information we strongly recommend you to read Neil Jenman's book "Real estate mistakes". In February 1984 Jenman opened his own real estate office. Jenman did not like the typical real estate methods and so he introduced a system which promotes ethics in real estate.

Jenman's strategy worked. Other real estate persons were soon keen to learn the secrets of his success and so he became a full time teacher of his sales methods. Now Jenman is spreading his word thorough his book which offers sound advice for buyers and sellers.

We have several copies of the book. If you would like to borrow a copy please telephone our receptionist.

## See us first

Before you start looking at properties we strongly advise you to talk to us so that we can pass onto you the experience we have gained over many years negotiating on behalf of clients.

The following is an unsolicited letter from a client who made use of our experience:

"Your service is outstanding and extraordinary. We appreciate the benefits that your experience gives us. Your knowledge and help provides us with vital support to enable us to proceed with the plans we have for our future."

When you are ready to make an offer we advise you to instruct the agent to:

- (a) Prepare the offer and fax or email the offer to our offices; and
- (b) Notify you when the offer is sent to our offices.

Immediately the agent contacts you we invite you to contact us to discuss the offer.

If you require our services outside normal office hours our contact numbers are as follows:

		
Tony Ivanson	09 520 5043	0274 950 320
Pearl Butler	09 447 1977	0274 730 206
Daniel Smith	09 478 9050	0272 115 458

Please note that you can email Pearl, outside office hours, any document you are asked to sign.

At all times we are only a telephone call away. Your call could save you hundreds of dollars in fees and a lot of unnecessary stress.

The back page of the latest form of agreement for sale and purchase contains a list of information for you to consider before signing the agreement. This feature was included in recognition of the fact that the sale and purchase of a home is often the most significant transaction people will make in their lifetime. The list emphasises that legal advice should be sought regarding the effect and consequences of the agreement before it is signed.

## Purchase Quick Check List

When the agent prepares the offer you wish to present to the vendor check the:

Legal description

If the agent includes in the legal description any information other than the area of the land, the lot and deposited plan (DP) numbers and certificate of title (CT) number contact us immediately. Some properties are subject to easements/restrictions, for example a drainage easement or height restriction, and if details are included in the legal description you cannot object to the easement/restriction if you later find that it will adversely affect your plans for the property.

Purchase price

If your first offer is not accepted clearly indicate the final price. If you become aware of another prospective purchaser we suggest that you impose a time limit on the vendor for the acceptance of your offer to prevent the vendor from playing you off against the other purchaser.

Deposit

The deposit can be for any amount although by convention it is usually 10% of the purchase price. If you have insufficient funds to pay the deposit suggested by the agent and your offer is conditional we suggest that you pay an initial deposit for an amount you can afford with the balance to be paid when your offer becomes unconditional.

Possession date

If you have sold a property which you are still living in take care to check that the possession dates in both your sale agreement and your purchase agreement are the same.

Chattels

Are all the chattels you require the vendor to leave in the property itemised in the schedule of chattels. For further information we refer you to page 13.

Special conditions

Take particular care to read any special conditions you require to ensure the conditions meet your requirements. Common special conditions include finance, Land Information Memorandum (LIM), building report and a maintenance condition if you are purchasing a new dwelling which has not been lived in.

A building report

In our opinion you should always get a building report from a building surveyor who uses a water meter and who has a weather tightness training course certificate. An additional safeguard is to ask the neighbours if they are aware of any problems.

General terms of sale

There are 14 general terms ("the fine print") contained in the standard agreement. Some are for the benefit of the vendor and some for the purchaser. For further information we refer you to page 17.

Alterations

Initial all alterations.

### A solicitor's approval condition

If you reach the stage in your negotiations when you are ready to sign the agreement, but there is something you require us to explain, do not allow the agent to persuade you to sign the agreement by including what is known as a "solicitor's approval condition" which provides as follows:

"This agreement is conditional on the approval of the purchaser's solicitor by 4.00pm on the        day of        2000".

This form of condition has been interpreted by the Courts on a number of occasions and the Court of Appeal has ruled that a solicitor can only withhold approval for a very limited number of reasons. If you do not want to be bound by the agreement the only safe course of action is not to sign the agreement.

### Guaranteed free service

Our agreement checking service ensures you have all the information you require to make an informed decision and it's free. Just normal conveyancing costs apply. That's guaranteed.

"Good judgement comes from experience"

"And experience?"

"That comes from bad judgement"

### Warning

We remind you that the agent acts for the vendor and as such has a duty to negotiate the best deal for the vendor. Do not give the agent any information you do not want passed onto the

vendor. Do not allow yourself to be pressured into offering a price for more than you can afford.

An agreement for sale and purchase is a binding legal contract. If you have any reservations about anything included in the agreement ring us first. Your phone call could save you thousands of dollars and avoid a lot of unnecessary stress.

## Introduction to home buying process

For most people, the purchase of a house is the largest investment they will make in their lifetime. It is a big step irrespective of whether you are buying your first home or you are someone older who is finally in a position to buy your "dream home".

When such a big event is happening in our lives we experience conflicting emotions. Some of these will be positive and some will be negative. There is almost certain to be some doubt as to whether we are doing "the right thing" and there may be fear at the thought of the huge loan we may have to borrow.

Much of the trauma can be taken out of buying a property by knowing what is likely to happen and getting prepared for it. If you have to arrange a mortgage the first step is to give us all the information required by a lender so that we can check out your borrowing capacity before you start to look at any properties. Knowing how much you can borrow does two things:-

- (a) It makes you a powerful buyer because you can advise the agent or vendor that you have checked out your borrowing capacity and that you only require two working days to arrange finance. You have become almost the equivalent of a cash buyer and most sellers will accept a lower price if they know the agreement will not fall through because you cannot obtain finance.
- (b) It removes the worry and uncertainty about how much you can borrow after the agreement is signed.

When the amount of your finance is certain you know the price you can pay and you can

concentrate on finding the best property within your price range. This will take some time, and some leg work, but it will pay dividends because:-

- (a) You will not be talked into signing an agreement which is beyond your price just because you like the look of it.
- (b) You should know a true bargain when you see it and, since your finance is approved in principle you will be in a position to make a low but realistic offer. You certainly will not be distracted by one of those advertisements that are designed purely to attract inexperienced buyers.

Having established the price you can afford to pay, you and whoever else will be involved in the purchase, should prepare a list of all the features you are looking for in a property (refer to our home buyer's check list). This will require you to determine your prime needs such as location, type of property, number of bedrooms, general layout, garaging and neighbouring amenities. It is important to keep your prime needs to the absolute minimum and, when you start looking, to be prepared to compromise. If you find a property with more than half of the features you require ask yourself if, with the expenditure of not too much money, you can obtain some of the remaining features you require, for example, plant trees to create privacy or erect a fence to safeguard your children.

Although it will take time to identify your prime needs, depending on the number of people involved, it should help you to reduce the number of properties you inspect. A survey by researchers from the property department at Lincoln University indicated that the 1914 people included in the survey inspected an average of 19.6 properties. By identifying your prime needs you may be able to reduce the time and energy expended in inspecting so many properties before you make a choice. For example, if you decide to look for:

A single-storey brick and tile home. Not more than 10 years old On a gentle sloping north-facing site at

You can instruct the land agent accordingly and insist on inspecting only that type of property. However, according to Barfoot & Thompson managing director Mark Thompson, "Professional experience shows that the average person doesn't know what they want when they set out to buy a house. Time and again the person who says they want a three bedroom villa in Mt Eden ends up buying a four bedroom brick and tile with a swimming pool in Mt Albert." The reason for this, says Mr Thompson, is that the professional skills of a real estate agent are the key factor in bringing buyers to a property that actually meets their needs.

Climate can be an extra consideration within Auckland. Because of its size, weather patterns vary - some places are wetter or cooler than others. Auckland's coastline and hills govern its weather patterns. The Waitakere Ranges and west Auckland are wetter, and the extreme east (including the Whangaparaoa Peninsula and the Hauraki Gulf islands) are drier and sunnier. Wetness however does not always mean less sunshine. The extreme west, for example has almost the same sunshine as central Auckland, because when it rains out west it rains more heavily. Conversely, the southern suburbs tend to be cloudier, but still drier than those in the north.

Seasonal factors must also be taken into account. If a house is warm and dry in winter, it will probably be hot, especially in the middle of a summer day. If it faces east it will be cooler in the afternoon than if it faces west. It might not be obvious in summer whether northerly neighbours will cast shadows onto a property in winter. In mid-winter in Auckland, the sun rises no higher than 30 degrees above the horizon. That tree might not shade the property when you buy in summer, but might substantially shade it in mid-winter, making it damp and cool.

The topography of a property also influences its climate. A house in a hollow will be colder at night than one on a slope nearby because cold air sinks. The property on the slope, on the other hand, is more likely to be windier. A house in a hollow is also more likely to flood during heavy prolonged rain.

If the property is at the bottom of a hill near flat ground or the sea, the cold air will not accumulate, or "pond", as much as in a hollow and night temperatures will be more moderate. A property on the north-facing slope will receive more radiation per square metre, and therefore will be warmer, than one on the southern side of a hill. Regardless of their aspect properties at a similar altitude will have similar night temperatures. The temperature is generally two degrees centigrade lower every 300 metres above sea level so properties up in the Waitakere Ranges will be cooler than those below. The prevailing winds in Auckland (as taken at Auckland Airport) are west and south-west, coming from those directions 43% of the time and from the north and north-east 23% of the time.

When you have established your prime needs look at the properties advertised in the windows of the local land agents and check any pamphlets/newspapers distributed by the agent so as to have an idea of the general price range in the area. You are now ready to ask an agent to show you properties.

Choose agents who have highly visible offices in your area, who have a high presence by the number of their "For Sale" signs and who advertise extensively in your local paper. These are the proven active agents, they are more likely to have the largest selection of properties. A good salesperson will know all the properties for sale in the area whether or not the property is listed with that agent. If a property is not listed with your agent it is a common practice for the listing agent and your agent to agree to share the commission and so it is not necessary to call on every firm in the area. Choose an experienced salesperson who listens to your requirements, shows you what properties are available that meet your criteria and is a person you can relate to. This is most important because you may have to spend some time with the agent before you find a property that meets your requirements.

## **General comments**

Some properties are always hard to sell. It may be their location, appearance, construction or a combination of all three but they are just plain difficult to sell. You can probably buy such a

property cheaply but remember it will be just as difficult to find a buyer when you sell.

Many existing home owners want to sell their home at the top of the market and buy the next day at the bottom of the market. This is obviously not possible. If you want to move do it now - why wait and deny yourself the pleasure of the new home?

## Check prices

If you intend to sell and buy, check the prices for both your own property and the style of property you wish to purchase before you sell. It may cost you more than you are prepared to pay for the property of your dreams.

## Know your market

Most people do not take the time to acquire the knowledge about an area or the market. If you are prepared to put the time into acquiring the knowledge you will end up well in front.

We suggest that you start by looking at any "open homes" which have the prime features you have identified. Look in the windows of the local real estate firms and visit the web site for the Real Estate Institute. When you find a property in which you are interested ring the Council and find out the District Roll Value for the property. The Council is now responsible for maintaining the District Valuation Roll, which was formerly the responsibility of the Government Valuation Department. Take particular care to find out the date of the valuation. By comparing a number of valuations with the asking price you may be able to build up a picture of what is a realistic offer.

When you find a property on which you wish to make an offer and you are not certain what price to offer you may wish to obtain an independent valuation. If the price you wish to offer is within the band recommended in the valuation report you will have the comfort of knowing that your offer is realistic. Remember however that there is no such thing as an exact market valuation. A property is worth what a willing buyer will pay and a willing seller will accept on a particular day. An urgent seller will be prepared to accept a lower price than

will someone who is in no hurry to sell. When you are ready to make an offer we invite you to consult us before you present your offer.

## Sell before you buy

If you own a property you must sell to finance your purchase we strongly advise you to sell before you purchase. There are a number of reasons for our advice including:

- (a) You will seriously weaken your power to negotiate

If you purchase first you will have to make your offer conditional on selling your property and because of the uncertainty about your sale the vendor will be less inclined to reduce the sale price than if you were a cash buyer.

- (b) You will avoid the pressure of time

In making your offer to purchase conditional on selling your existing property the vendor will insist on a time limit within which you must sell your property. This will subject you to a time pressure to sell by the agreed date.

- (c) You will avoid the disappointment of losing a property you have set your heart on

If the vendor agrees to accept your offer, conditional on selling your existing property, the vendor is almost certain to insist on the agreement including what is commonly called an escape clause. This is a clause which enables the vendor to give you written notice if the vendor receives an offer from another purchaser in the period you are allowed to sell your property. On receiving the notice you will have three to five days within which to decide whether or not to proceed with your purchase. If you cannot sell your property, or arrange bridging finance, within the period allowed in the notice your agreement with the vendor will terminate. In the period allowed in the notice you are certain to experience a great deal of stress while you decide what to do. This will be particularly so if you have fallen in love with the

property you have purchased and you do not want to lose it.

(d) You will minimise your costs

If you arrange bridging finance until you sell your property you will not only be faced with the cost of arranging the finance and paying the interest but you will subject yourself to a time pressure particularly if you have high mortgage repayments. At some point you will reach the stage where you will find it increasingly difficult to meet the commitments on two properties and you will be faced with either having to re-sell the property you have purchased, because it is easier to sell, or to make a significant reduction in the sale price of your existing property.

The cost of checking a property and the title is also an important consideration. A prudent purchaser will obtain a building report and a Land Information Memorandum on the property being purchased (refer to pages 11 and 13) and the cost of these two reports is approximately \$400-500. You will also incur our costs on examining the title and perusing any restrictions recorded on the title. If your purchase subsequently collapses, because you cannot sell your existing property, you will have incurred these expenses for nothing.

(e) You can sell your property in your own time

By buying before you sell you also run the risk of a prospective purchaser for your property finding out that you have purchased. Even if you continue to live in your existing property until it is sold you will be surprised how little time it takes for other people to learn that you have purchased. If this information comes to the knowledge of a prospective purchaser the purchaser will inevitably submit a lower offer on the assumption that you are under pressure to sell. This will certainly be the case if the prospective purchaser checks the title to your property and finds out that you have recently arranged a mortgage.

If you move into your new property before you have sold your existing property the fact that

your existing property is vacant will also indicate to an astute purchaser that you are likely to be under pressure to sell.

If you arrange for an agent to show you properties so that you can check on prices do not allow the agent to pressure you into purchasing before you have sold. Remember that a land agent is in the business of selling properties and will naturally encourage you to sign an agreement to purchase a property which meets your prime needs. Be wary of an agent who encourages you to purchase by saying "I will have no difficulty in selling your property". The property market is constantly changing and unless the market survey on your existing property (see paper "Selling Your Property") confirms that you should be able to sell your property at a price acceptable to you, and you are satisfied that the market will be buoyant, do not purchase before you sell.

### **Take care if the agent is a friend**

An agent who tells you what you want to hear rather than the truth does you no favour. It is comfortable to use a friend but unfortunately, in our experience, agents who are friends do not always offer the best advice.

(g) When you have an unconditional sale there is still a risk that the purchase will not proceed.

Ideally you should not purchase until after you receive the money from your sale. In practice many people sign an agreement to purchase after any special conditions in the sale agreement, for example finance, are satisfied. Unfortunately such people overlook the general terms - the fine print - in a sale agreement.

General term 4, headed Risk and Insurance, provides that if your property is destroyed or damaged to the extent that the property is untenable on the possession date the purchaser may cancel the agreement.

General term 5, headed Title, boundaries and requisitions, provides that the purchaser has 15 working days from the date of the agreement

within which to check the title to your property. For example, if your property is subject to a height restriction and the restriction is not disclosed in the legal description on the front page of the agreement then the purchaser is entitled to object to the restriction. If you cannot satisfy the purchaser's objections, and this is unlikely in the case of a height restriction, the purchaser may cancel the agreement. If you have in the meantime signed an agreement to purchase another property, and you have not made your purchase conditional on the settlement of the sale of your existing property, you will be faced with the problem of trying to finance your purchase without the benefit of the money you were expecting from your sale.

(h) Purchaser has a change of mind

Finally, and fortunately very rarely, even if you have an unconditional sale, occasionally a purchaser will not pay the balance of the purchase price. For example, at the time of stock market crash we were involved in a transaction where the purchaser could not complete because of the loss suffered by the purchaser in the crash.

For all the above reasons the only safe course of action is to sell before you purchase.

## The deposit

The deposit fulfils two functions: it is a part payment of the purchase price and it is a sum given to establish your intention to complete the purchase. As a part payment, it will be credited to you on settlement. As evidence of your good intention to complete the purchase, it is liable to forfeiture by the vendor, if the purchase is unconditional, in the event that you do not complete the purchase. The amount to be paid is entirely a matter for agreement with the vendor, though the normal sum is 10% of the purchase price.

If you negotiate direct with the vendor, and no land agent is involved, we advise you to arrange for the deposit to be paid into the trust account of the solicitor acting for the vendor. If, on the other hand, you negotiate through a land agent, then it is

customary to pay the deposit to the agent who will give you a trust receipt for the deposit. In terms of the Real Estate Act, the agent must retain the deposit for 10 days from the date of payment of the deposit, or until the agreement becomes unconditional, whichever is the later.

## Negotiating techniques

The land agent is the vendor's representative. Only give the agent what information the agent needs to know. If, for example, you wish to try and negotiate a purchase price below what you can afford to pay, do not tell the agent your maximum purchase price. Conversely, get as much information as you can from the agent about why the vendor is selling. If the vendor has purchased another property, or is moving overseas, this will indicate that the vendor is likely to be under some pressure to sell and you may wish to try and negotiate a lower purchase price. Large sums of money can be made or saved, by skilful negotiation. Read our paper on "negotiating techniques".

## Real Estate Agents Act 2008

The Real Estate Agents Act 2008 provides for the creation of Professional Conduct and Client Care Rules for real estate agents.

These rules govern the conduct of real estate agents in selling property. Some of these rules are that agents:

- Should not mislead customers;
- Should not withhold information that should "by law or fairness be provided to a customer or client".;
- Must disclose to a buyer any known defects or hidden or underlying defects that the agent considers in their experience are likely to affect the property;
- Must cease acting for clients who attempt to stop the real estate agent from disclosing defects; and
- Must not place undue or unfair pressure on a client, prospective client, or customer.

Because an agent acts for the vendor, it is a real possibility that the above rules may cause an agent

to be conflicted due to the agent being obligated to look after a purchaser's interests as well as the vendor's interests.

## Buyer beware

The agent is the vendor's agent and as such the agent has a duty to obtain the highest price for any property you are interested in purchasing.

In the course of your inspection keep in mind the following:

### (a) Representations about property

The basic rule is "let the buyer beware". The vendor is under no duty to disclose any defects in the property. Nevertheless, either the vendor or the agent may give information voluntarily or in response to your questions about the property. Your questions must be answered honestly and the vendor must not do or say anything misleading. If in the course of your inspection you notice anything which causes you concern ask the vendor for an explanation. Unfortunately, unless you know what to look for, you may overlook a defect which could cost you a large amount of money to repair.

### (b) A building report

When you find a property you wish to purchase we strongly advise you to make your offer conditional on obtaining a building report on the condition of the dwelling.

Newspaper headlines such as "The rot sets in – for thousands of New Zealanders, the dream of a new home is turning into a sodden nightmare" emphasise the importance of a building report.

The report can be used:

- To reduce the risk of visually detectable (costly) problems occurring after you have completed the purchase;
- To confirm your initial impressions of the condition of the property – "it looked good but we wanted to be sure" or "it looked bad but we wanted to know how bad";

- As a negotiating tool where defects are identified but you still wish to buy the property provided some reduction is made in the purchase price; and
- To enable you to withdraw from the purchase where the condition of the building is worse than you thought or where the building is found to have defects which you are not willing to accept.

Factors that may be identified include (as seen on the date of inspection):

- Visual defects or symptoms of problems that will effect its performance. Typical examples are leaks, rot, corrosion, dampness and borer;
- Defects which affect the appearance of the building but not its performance, such as poor quality workmanship;
- Areas of concern which suggest a more comprehensive investigation is required.

Properties are seldom perfect and most, even new or nearly new ones, will have items which will need repair or maintenance at some point. These items will vary according to the type of building, and how well it has been designed, built and/or maintained.

The building report includes a preliminary inspection of the electricity meter and fittings (but not the wiring in the walls), the plumbing and any gas fittings which must be regularly checked at least every two years. If the inspection discloses anything of concern you will be advised to arrange an inspection by an electrician, plumber or gas contractor. Some power supply authorities will inspect the electrical fittings. Alternatively, check the Yellow Pages or ring the Electrical Contractors Association of New Zealand (E.C.A.N.Z.) 0800 506 688 for the name of an electrician in your area. The electrician should be safe power certified. We advise you to ring around for quotes.

### (c) Buying from a vendor-builder

Where the vendor is the builder include in the agreement a warranty that the vendor has constructed the dwelling in accordance with the building consent and has not altered the building nor substituted materials without

obtaining an amended building consent. The chief executive of the Registered Master Builders Federation has commented "building consultants have reported a lot of leaking houses due to inadequate roofing because of poor workmanship or inadequate waterproofing of walls built against or close to banks. Leaks illustrate short cuts by builders or ignorance of the extent of detail required to prevent water getting in. They try to cut costs or simply do not think or know how gale driven rain can penetrate roof flashings."

If you wish to make an offer before you receive a building report add the following condition to the agreement:

"This agreement is conditional upon the purchaser obtaining a report acceptable to the purchaser from a building inspection consultant within 10 working days of the date of this agreement. This condition is inserted for the sole benefit of the purchaser."

(d) A land information memorandum

In addition to obtaining a building report we recommend you to obtain a Land Information Memorandum [L.I.M.] which is a report based on a search of the Council records. The Council does not inspect the property.

The report covers the following matters:

- Information on private and public stormwater and sewage drains as shown on the Council records.
- Any rates owing.
- Special site features including, but not limited to potential erosion, flooding, subsidence, slippage, likely presence of hazardous contaminants.
- Issued consents and permits affecting the land or any building on the land.
- Outstanding requisitions.
- Town planning information.
- Such other information concerning the property as the Council considers, at its discretion, to be relevant.

The latest edition of the standard agreement for sale and purchase provides in general term 8.2 for the agreement to be conditional on your approving a LIM report provided you indicate on the front page of the agreement that a LIM is required.

Because your purchase represents a very substantial investment we strongly recommend you to obtain a L.I.M. report. If you do not obtain a LIM report you may subsequently find that the property is prone to flooding during periods of prolonged heavy rain or that a final inspection was not carried out by the Council when the house was erected.

The importance of a LIM report is highlighted in the following two cases

In the first case, along with other alterations, a vendor installed an in-built solid fuel heater into a modified existing chimney. The main alterations all had a building consent and a code compliance certificate was issued. However, the fireplace was an afterthought and was not included in the original consent. The sale and purchase agreement was signed with no special conditions (like a pre-purchase inspection) attached. Upon checking the LIM prior to settlement the purchaser discovered there was no consent for the fireplace and demanded per the sale and purchase agreement clause that the matter be rectified.

The vendor argued that the purchaser had no specific condition in the contract, but the purchaser maintained that the vendor had signed the agreement warranting that the building complied with the building code when clearly it did not. The work was rectified amicably but if the sale had gone through with no reference to the LIM and the new fireplace had caused a fire, then the purchaser's insurers would have regarded the policy as void. The lender's equity would also have been eroded as the purchaser could not have afforded to replace the house without insurance.

In the second case the sale and purchase agreement had been finalised and the new owner had been living in a new house for six months. A building related problem occurred and on checking the plans held on the territorial authority's files, the owner discovered that no code compliance

certificate had been issued. The territorial authority said this was because balustrades had not been fitted to the stairs and asked that the work be completed promptly because of the serious safety issue (potential for people, especially small children, to fall).

Arguably the house should never have been occupied in this condition and it is possible that under the Building Act the territorial authority could have condemned the house as unsafe and prevented people entering it.

A L.I.M. will not disclose all matters which may cause problems for you in the future. It will not, for example, disclose:

- If a building or other structure has been inadvertently built across the boundary;
- If any private drains cross the property;
- Whether or not building permits were obtained for any work on the property;
- If any development is contemplated on an adjoining property;
- If any trees growing on the property are causing or are likely to cause damage to a neighbouring property or are likely to obstruct a neighbour's views;
- If the property is on a higher level than neighbouring land and there is any artificially accumulated material on the property you may be liable for slips that damage a lower property;
- Again if the property is sited above neighbouring land and anything has been done on the property you are purchasing which alters the natural flow of surface water onto the lower property and as a result causes damage to the lower land.

If these or any other matters are of concern to you we strongly recommend that you make enquiries of the vendor, adjoining neighbours or, if necessary, obtain a specialist report from a suitably qualified person, for example a soil engineer if the ground shows any signs of movement. It is your responsibility to ensure that the property is suitable for your particular purposes. For this reason you must take care to ask the right questions of the right people at the right time.

## (e) A maintenance agreement

All agreements relating to the purchase of a new house/townhouse should include a maintenance condition requiring the vendor to rectify any defects which arise within 30 days of the possession date (try and negotiate a longer period).

## Signing the agreement

All parties must sign

This is one of the most critical times in the buying process. Take particular care to check the legal description inserted in the agreement by the agent. If the legal description includes anything in addition to the area, the lot, plan and certificate of title numbers consult us immediately and do not sign the agreement. Some properties are subject to various restrictions and easements, for example a height restriction or a drainage easement, and if any such restrictions are included in the legal description you are deemed to have accepted the restriction and you cannot subsequently object to the restriction if you consider the restriction will affect your use of the property.

Do not allow the agent to pressure you into signing the agreement because "this bargain will never come along again". Take your time and only sign when you know, from your research, that you have a good buy.

The agreement must be signed by all persons who are named as either vendor or purchaser. If a party is not available to sign, for example lives outside Auckland or is overseas, but can be contacted by facsimile, then the agreement should include what is known as a "facsimile condition". This records that the parties agree that the transmission by facsimile of the agreement signed by one party shall, when signed by the other party and transmitted by facsimile to the first party, be conclusive that the agreement is binding on the parties. In all other cases a party who is not available to sign the agreement must either authorise someone in writing to sign on his/her behalf or the agreement must be signed by an attorney pursuant to a power of attorney. A copy of the written authority should be attached to the

agreement. Where an attorney signs a certificate/declaration of non-revocation should be attached to the agreement stating that the attorney has been appointed pursuant to a power of attorney which has not been cancelled.

## **Take care that the correct names are used**

If one or other party to the agreement is a family trust the trustees of the trust must be named in the agreement and not the name by which the trust is known. If it is necessary to enforce the agreement it is the trustees who must be named in the proceedings because a trust is not a separate legal entity. Because there is no public register of family trusts it can be difficult to find out the names of the trustees. Unfortunately, land agents often refer to a trust by its name and if you are the other party to the agreement it is important to instruct the agent to change the agreement to record the names of the trustees before you sign the agreement.

## **Initial all alterations**

In the course of negotiating a sale and purchase it is common for an agreement to be altered. Take particular care to ensure that the alterations are initialled by all parties. The price is the term which is most frequently altered. To ensure that all alterations are agreed to we recommend that you use a different coloured pen each time you initial an alteration to the agreement. It is not uncommon for an agreement to collapse because in the heat of the negotiations the agent overlooks getting a party to initial an alteration and the party then has a change of mind and decides s/he does not want to proceed with the agreement.

## **Date the agreement**

When all terms are agreed the agreement should be dated by the last party to sign the agreement. This is most important because some of the general terms in the agreement have time limits which run from the date of the agreement.

## **What price to offer**

All sellers think that their property is worth more than it is. Do not hesitate to make a low offer if your

research justifies a lower price and your offer is not unreasonable. If you are unsure about what price to offer for a few hundred dollars you can get a valuation report. An independent valuation will give you the confidence to deal with the agent.

## **Possession date**

When buying and selling, if you wish to move directly from one property to the other, check that the purchaser of your house will be able to settle on the possession date and that the possession dates in both agreements coincide. The vendor of the house you are buying will expect you to pay the purchase price on the possession date irrespective of whether or not you receive the money from the sale of your house.

The chattels

The chattels included in a sale are listed on the front page of the agreement. Particular care must be taken to add to the schedule of chattels any of the following:-

Air conditioning and central heating systems, gas/electrical heating unit, dehumidifier, swimming pool equipment, greenie rubbish bin, garden or tool shed, expelair, heated towel rail, expandable clothesline, movable partitions, furniture (including garden furniture), wastemaster, taps for automatic washing machine, super tub, rangehood, burglar alarm systems, ceiling fans, automatic garage door system including operating units and central vacuum system.

In our experience, in the excitement of a purchase, most people do not take the time to check the chattels they would like the vendor to leave in the property.

After you have made the decision to buy make a further inspection of the house and prepare a list of all the chattels you require. Take particular care to see that the agent includes in the schedule of chattels any chattels not referred to in the printed form. Do not rely on verbal assurances by the agent that any chattel not referred to in the schedule of chattels is included in the purchase.

## **Check all electrical appliances, door locks etc**

In the course of your inspection we also recommend that you test all electrical equipment and appliances to ensure that they are in working order eg, stove elements, washing machine, light switches etc. Are any power points or windows broken? Are there keys for all locks and do the locks work? If necessary amend the agreement to provide for the vendor to carry out any needed repairs prior to settlement. To clinch a sale most vendors will agree to carry out any necessary repairs provided they are agreed to before the agreement is signed. If however there are any defects which the vendor will not repair, for example a broken window, we suggest that you note the defect in the agreement so as to avoid any dispute on the possession date as to whether or not the defect occurred before or after your inspection.

## **Swimming pools**

If the property includes a swimming/spa pool ask the owner if the pool is registered with the local council and is fenced in accordance with the requirements of the Fencing of Swimming Pools Act 1987. If necessary add a condition requiring the vendor to fence the pool to the requirements of the Act by a date at least one week before the possession date so as to avoid any last minute difficulties which could delay the settlement.

## **Alterations to property**

If any alterations have been made to the property check that a permit was obtained from the Council. In the case of a town house where the external dimensions have been altered it is particularly important to check that the dimensions of the town house correspond with the information shown on the flat plan which is usually attached to the title. If it appears that the external dimensions may have been altered ask the land agent for a copy of the title and consult us before you sign the agreement.

## **General terms of sale**

There are 14 general terms, "the fine print", in a standard agreement. We recommend you to read the section on the back page of the agreement

headed "before signing the agreement" and the general terms. In practice, in the excitement of buying or due to pressure from the sales person, very few people take the time to read the general terms but at the very least you should read the headings to each term. Having read the general terms if there is anything you are concerned about please telephone and obtain our advice.

Two general terms of particular concern are:

### **(a) Check the boundaries**

General term 5.1 provides that the vendor is not bound to point out the boundaries of the property except on the sale of a vacant residential lot which is not limited as to parcels [ie the area of land is not Government guaranteed] the vendor shall ensure that the property is pegged at the possession date. The fact that this condition is included in the agreement does not prevent you from asking the vendor or the agent to point out the boundaries. If you intend to develop the site, for example you plan to put a driveway down the side of the property, you should make it clear to both the vendor and the agent that the position of the boundaries is an essential and material representation upon which you are relying. By doing so you are entitled to cancel the contract rather than obtain an award of damages. If you are not satisfied with the vendor or the agent's reply consult us immediately.

### **(b) Vendor warranties and undertakings**

General term 6 is extremely important because it contains a number of warranties and undertakings on the part of the vendor. If the term does not contain a warranty to meet your particular requirements instruct the agent to add a suitable warranty to the agreement. For example, if in the course of the negotiations you are informed that the house has been reblocked include a warranty to this effect in the agreement.

Alternatively, if there is anything in the advertising material about the property or if the agent shows you the listing agreement and there is anything in either the material or the agreement which has a major influence on your decision to purchase, for example, a statement that the house was re-roofed one year ago, or the property is a home and income

then include a suitable warranty in the agreement. Any representation by either the vendor or the agent on a matter of importance to you should be covered by an appropriate warranty by the vendor.

## Notices and demands

Subclause 6.1 provides that at the date of the agreement the vendor has not:

- (i) received any notice or demand and has no knowledge of any requisition or outstanding requirement imposed by any local or government authority or given by any person under the Resource Management Act or given by any tenant;
- (ii) given any consent or waiver in relation to any application under the Resource Management Act which directly or indirectly affects the property and which has not been disclosed in writing to the purchaser

## Building work

Subclause 6.2 provides that where the vendor has done or caused or permitted to be done any works for which a permit or building consent was required by law:

- (a) The required permit, resource consent or building consent was obtained; and
- (b) The works were completed in compliance with the permit or consent; and
- (c) Where appropriate, a code compliance certificate was issued for the works.

It should be noted however that a vendor cannot be held liable, in terms of this warranty, for requisitions or other matters arising from any building carried out by prior owners to the vendor. The warranty does not place any onus on the vendor to check the Council's records, and therefore, if the vendor is unaware of outstanding requisitions sent to a former owner of the property or non-compliance with building permit matters, you cannot force the vendor to carry out any remedial work. By checking with

the Council before signing an agreement suitable warranties can be added to the agreement.

## Some types of property have specific concerns

### Buying an inner city apartment

In recent years there has been a large increase in the number of apartments in the central business district of Auckland ranging from apartments in new purpose-built apartment buildings to apartments in buildings which have been converted. If you are interested in purchasing an apartment it is important to identify the features that determine the value of a quality apartment. For example:

1. If an adjoining property is developed, the new development could be built right up to the boundary blocking the existing views, windows and daylight into the apartment. (for more information read section on "Zoning")
2. In some of the converted old office buildings sound transmission through internal walls ranks as a serious problem.
3. One purpose- built building is one lift short. Between 7.30 and 8.30am people at the top of the building have a long wait for a lift.
4. Lakes are another concern. All wet areas should have floor wastes to prevent flooding, but many in the early conversions don't.
5. On the exterior decking in some apartment buildings the tiles have been laid straight on the concrete without a membrane to stop water going through to the apartment below – or the membrane stops at the wall instead of going up as you would have with a shower floor.
6. Parking can be a problem. The main issues are difficulty in getting in and out, spaces which are too tight and auxiliary titles giving an apartment two parks which are separated. Logic would suggest that carparks should be side by side but they can be on different floors.

## Other important considerations are:

## Buying off the plans

If you are buying off the plans a unit in a multi level development always get our advice before you sign the agreement.

In our experience agreements relating to developments which have not started are weighted heavily in favour of the developer. The agreements are usually conditional upon the developer;

- (a) Obtaining a minimum level of sales;
- (b) The relevant Authority granting all necessary building, subdivisional and other consents; and
- (c) Obtaining sufficient finance.

Other common conditions allow the developer to;

- (a) Alter or vary the plans and specifications and final unit plan without objection. If the variation decreases the area of the unit by 5% or less there is no right to claim compensation; and
- (b) Grant any easements, rights or obligations which at the sole discretion of the developer are deemed to be desirable in respect of the development.

There is usually no time limit for the development to be completed and for this reason it is important to include a clause in the agreement which enables you to cancel the agreement if title is not available by an agreed date.

Finally, it is important to inspect any other developments the developer has built to make sure they were built to a high standard.

## External noise

Unlike a residential area which should be quiet at night in the inner city people can expect noise 24 hours a day caused by laughter and loud music from pubs and nightclubs, traffic noise including cars revving and noise from construction work and rubbish collectors.

Most people inspect apartments during the day. When you find an apartment you like revisit the

apartment at night and investigate the neighbourhood for potential sources of noise. Find out what sound proofing measures have been installed, for example double glazed windows.

## Zoning

While suburban home owners have some protection from the problem which can arise from the redevelopment of an adjoining property, for example rules on the height of a building in relation to the boundaries, commercial zones in the city have no such safeguards. Building is often allowed to the boundary.

Much of Auckland's Central Business District is zoned for high-rise. If you find an apartment which has a panoramic view take time to investigate how the view could be affected by the redevelopment of properties between the apartment and the view. For example, the age of neighbouring buildings can indicate whether demolition or redevelopment is likely. A low-rise old building is a potential candidate for replacement by something higher.

Find out who owns the adjacent, adjoining or neighbouring vacant cleared sites and what their intentions are. A computer based map can be scanned at the Land Information Office. With the address of a property, for a small fee, you can obtain the certificate of title to a property. The title records the name of the owner and if you contact the owner you may be able to find out the owner's intentions for the property. If the owner sells however you will have wasted your time.

For a fee you can also search the Council records. For example, if the Council has issued a resource consent for the development of a nearby property, details of the consent should be recorded. It takes time however to update records and always allow for human error. If there is nothing on the Council records but you have heard rumours about the development of a nearby property you must keep on making enquiries.

While you are at the Council find out what is permitted on the adjoining sites. For example, if a tavern is located nearby it may feature live bands/a disc jockey playing loud music. For central city

enquiries visit the Auckland City's Planning Department, level 11 of the Civic Building at 1 Greys Avenue. For elsewhere in Auckland visit the council offices at 35 Graham Street.

If the apartment enjoys a panoramic view this will be reflected in the purchase price. However, unless the apartment adjoins the foreshore, that view may be replaced by the rear view of another building causing a significant reduction in the value of the apartment. Remember the advice contained in the old adage "buyer beware".

### **A cross lease or a unit title has significant differences from the standard title**

If you are buying a town house the most common form of title is "a cross lease title". Another widely used form of title (usually in a large multi-storey building) is the unit or strata title. Both forms of title may contain restrictions on, for example, the keeping of animals and the letting of the property. If these restrictions will effect your use of the property consult us first.

It is desirable to purchase a town house which gives you exclusive use of part of the grounds. Ask the salesperson if the townhouse has what is commonly called an "exclusive use area". Take particular care to check that the external dimensions of all buildings ["footprint"] correspond exactly with the dimensions shown on the plan attached to the title before you sign the agreement. If it appears that the external dimensions may have been altered ask the agent for a copy of the title and consult us before you sign the agreement. For further information about both forms of title read the guides to "Buying a Cross Lease" or "Buying a Unit Under the Unit Titles Act".

### **An in-fill site**

Certain types of property require specialised forms of agreement to protect your interests, for example an in-fill housing site. It is an unfortunate fact that most in-fill agreements are poorly prepared and do not provide the necessary safeguards required by a purchaser. If you intend to buy such a property consult us before you sign the agreement and obtain a copy of our guide to in-fill housing sites.

### **Leasehold land**

For those persons who are considering purchasing a leasehold property there are additional factors which must be taken into account. Foremost among these factors is that under a St Johns College/Melanesian Mission Trust lease all improvements on the land belong to the Trust Board. If you read a Trust Board lease you will find a condition which requires you as lessee to erect on the land a new dwelling or such other building or buildings as are permitted under the town planning by-laws of the Auckland City Council. Having paid for the improvements you never gain anything more than the right to use or occupy the land and improvements for the term of the lease and for renewed terms as and when renewals are granted. For this right you must pay the rent fixed in terms of the lease. If for any reason you decide not to renew the lease all buildings and improvements on the land belong to the Trust Board.

In our view the main reason for lessee dissatisfaction with leasehold land is due to lessee's not understanding this fundamental condition in the lease. To quote from the "Lusk Report" on leasehold land "Many lessees expressed great surprise that they do not in fact own the improvements they have paid for. They insist that the valuation [when the ground rent is reviewed] must take into account, so as to reduce the rental payable, the fact that the lessees have purchased the improvements, and that their leases have a value that is marketable." As we have just noted however the improvements in fact belong to the Trust Board and not the lessee.

Whenever leases in an area fall due for renewal, there is generally a large amount of adverse publicity about leasehold land. Most of the publicity is due to the belief that lessee's "own the improvements".

Land agents also have very little appreciation of a lessee's rights of ownership in respect of leases. In this regard we remind you that the land agent is the vendor's representative and therefore any purchaser contemplating buying a leasehold

property should heed the advice contained in the adage "let the buyer beware".

In drawing your attention to this feature about leasehold land it is equally important to remember the positive benefits of leasehold land. Foremost of these is the fact that by not having to pay for the land your savings, together with any mortgage you arrange, will enable you to enjoy a better standard of accommodation than would otherwise be the case.

In effect you are borrowing from the Trust Board the amount represented by the value of the land and for this benefit you pay the Trust Board ground rent [interest]. Unlike a mortgage however, where the amount you borrow remains fixed, under a lease, because of the increase in the value of land between the rent review dates, the ground rent always increases. If the time between rent reviews is 21 years [some leases have seven yearly reviews] the increase in the ground rent can be enormous, particularly if interest rates have also increased. For this reason leasehold land is generally not suitable for persons on fixed incomes or for those whose resources to meet the rental obligation will not grow at a rate commensurate with the probable growth in the value of the land in the period to the next rent review date. Unfortunately, in our experience, many people do not plan ahead with the result that by the time they start to think about the new ground rent it is often too late to sell the property at an acceptable price.

As we noted at the outset our comments relate to St Johns College/Melanesian Mission Trust Board leases. Under some leases the lessee is given the right to remove any building erected on the land but the value of a building when it is removed is not usually very high.

The most common form of lease, ("a Glasgow lease"), is for a term of 21 years, renewable every 21 years. Most leases provide for the ground rent to be reviewed every 21 years but, as we have already noted in some areas eg. St Johns Park, the leases provide for the rent to be reviewed every seven years. It is important to check when the ground rent will fall due for review and, if possible, to obtain an estimate of the likely increase in the

rent. If the review date is in the near future ask yourself if you will be able to afford both your mortgage commitments and the new ground rent?.

There are also long-term leases which, while based on the more common Glasgow lease, do have significant differences. In our opinion anyone considering buying a leasehold property should read the lease and obtain professional advice before signing an agreement. Alternatively make your offer conditional on your approving the terms of the lease within say two working days of receiving a copy of the lease.

## **How the ground rent is assessed**

When the term of a lease expires, or whenever the ground rent is reviewed, a Glasgow lease requires the owner of the land to determine the unimproved value of the land and the rent for the renewed term, or the term to the next review date, is assessed by multiplying the value of the land by a rental factor (interest rate) which, in most leases, is not fixed and which is determined by the owner of the land at the time the lease is renewed. In our experience it is virtually impossible to make a realistic assessment of what the rental will increase to if the lease has more than a few months to run before the renewal/review date. If, for example, the term of the lease will expire in 10 years how do you decide what the land will be valued at in 10 years and, even if you were to make a guess at the value, what rental factor the Trust Board will apply?

If interest rates are high when the rent is reviewed then a high rental factor will be applied. Low interest rates on the other hand will result in a low rental factor.

At the commencement of each new term of a lease, there is generally a strong reaction against the new ground rent but this progressively diminishes during the term. As a lease approaches either a rent review date or the renewal date a leasehold property is likely to become difficult to sell because of the uncertainty about the new rent. If you do not intend to remain in the property until the expiry date of the lease we advise you to keep in regular contact with a real estate agent so that you are constantly aware of the market value of your

property. As a rough guide a lease with less than seven years to the renewal date will become increasingly difficult to sell as the review date approaches.

Every five years the Auckland City Council reviews the zoning of all land. If during the term of your lease the Council changes the zoning of your land by increasing its density, which will enable further buildings to be erected, remember that any such change may, depending on the terms of your lease, increase the value of the land. In turn when your lease is renewed the Trust Board's valuer will take into account the increased potential for development and this may mean that your ground rent will increase even more than it would otherwise. As the leaseholder you may object to any change in the zoning of the land.

One final consideration is that there is no right to freehold leasehold land unless there is a specific provision to this effect in the lease.

## **A unit on leasehold land**

For persons considering buying a unit on leasehold land the position is even more complicated. If the Trust Board offers to sell the land all the co-owners must agree to the purchase. In our experience this is usually not an option because many persons who own units on leasehold land either have limited financial resources or, because of their age, are not interested in using their capital to purchase the land.

## **Special concerns apply to stucco houses and houses using polystyrene cladding**

If you are considering buying a plaster stucco house particular care is required. Mr Greg O'Sullivan, an accredited adviser to the Building Research Association of New Zealand, claims that although these houses may have received a code compliance certificate, poor practices by plasterers during their construction are highly likely to lead to fungal decay [commonly known as dry rot]. This can cause localised but expensive failures in the structure.

In order to avoid any problems in this regard we recommend that you include a condition in the agreement whereby the owner undertakes, within

say 10 days of the date of the agreement, to provide you with written undertakings from the builder, plasterer and local authority that the exterior cladding was built to the requirements of the New Zealand Building Code. If the agent raises any objections to the inclusion of such a condition in the agreement we advise you not to sign the agreement until after you have satisfied yourself that the exterior cladding was correctly built.

If you have already signed an agreement to purchase a house with a plaster stucco exterior then it may be a matter of requiring a core sample to be taken of the plaster structure to check that it has been built to conform.

Alternatively, if you are buying a house in the course of construction and the exterior systems have not been built then a condition similar to the one mentioned above must be included in the agreement. If necessary we recommend that you employ an independent adviser to check the stucco cladding.

Another cladding alternative which is receiving extensive publicity is polystyrene which is sprayed with a texture finish. A number of manufacturers market this cladding. With this material the problem is caused by water entering the material but not being able to get out. Serious damage can result including, but not limited to, unsightly stains and rotting wood beneath the cladding.

Two or more persons buying together must consider what form of ownership they require

### **(a) Co-ownership**

If two or more persons are involved in the purchase it will be necessary to decide whether you wish to purchase the property as joint tenants or as tenants in common.

Joint tenancy is co-ownership in which the property is vested simultaneously in all the co-owners. In the eyes of the law, joint tenants comprise one single owner. The distinctive feature of a joint tenancy is that on the death of each joint owner the interest in the property of the deceased joint owner does not pass under

the deceased's will but passes to the surviving joint owners until the property is in the name of the longest surviving joint owner.

A joint tenancy can be severed before death in which case the person who severs the tenancy will own a proportional share in the property: eg. if one of two severs, s/he will hold a one-half share as tenants in common; one of three a one-third share etc.

Under the second form of co-ownership, a tenancy in common, each co-owner is entitled to a distinct share in the property. The essential characteristics of a tenancy in common are that there is no right of survivorship and the shares in the property may be equal or unequal. On the death of a co-owner the share of the co-owner will pass to the beneficiary/ies named in the will of the deceased co-owner. A tenancy in common is useful where a second marriage is involved and the parties wish to ensure that the children of each spouse inherits his/her share in the property.

## (b) The Property (Relationships) Act 1976

If you are single, earning a good income which enables you to save and, at some future date, are likely to enter into a relationship it is important to take steps to protect your assets before you enter into a relationship.

The Property (Relationships) Act 1976 provides that after three years spouses or defacto or civil union partners are entitled to share equally in:

- (a) The family home; and
- (b) The family chattels; and
- (c) Any other relationship property.

In our experience most people who accumulate assets prior to entering into a relationship wish to preserve those assets for their own benefit.

## (c) Asset protection

For a more comprehensive discussion on the issues involved in deciding in whose name to

purchase the property we advise you to read the paper on "asset protection".

## Specific matters

### (a) Underground services

If there are any underground services to the property find out where they are located in case repairs become necessary. Obtain a plan if one is available. If the building is erected on a concrete floor slab ask if there are any services under the slab and if so find out their location and obtain a plan.

### (b) A chimney

If the property has a chimney enquire when it was last cleaned. You may also wish to enquire how efficiently the chimney removes smoke.

### (c) Tenancies

If the property is tenanted and you require vacant possession of the property, in terms of the Residential Tenancies Act, the vendor must give the tenant 42 days to vacate. In the case of a conditional agreement sufficient time must be allowed between the date the agreement is due to become unconditional and the settlement date to give the appropriate notice.

### (d) Homebuyer's checklist

For a more comprehensive list of specific matters refer to the paper "Home Buyer's Checklist".

### (e) Separation of stormwater and sanitary pipelines

If you are buying a property in the area administered by the Auckland City Council, find a property which meets your present requirements which you intend to alter and the stormwater and sanitary pipelines have not been separated be warned that when granting a building permit the Council will impose a condition requiring the pipelines to be separated. The cost of separating the pipelines can be very expensive depending on the distance to the most suitable connection point and the lie of the land.

In the area administered by North Shore City Council the council is stepping up its programme of checking private drains as part of its attempt to crack down on the causes of sewage overflows on North Shore beaches. Tests are done visually or with smoke or dye. If a fault is detected the owner is notified. The owner can then choose whether the repair work is done by the council or a private drain layer.

Failure to repair can lead to prosecution.

According to the Council intensive tests carried out in one area showed that 15% of private drains were faulty due usually to invasive tree roots or cracks in the pipeline. Anyone purchasing on the North Shore must therefore decide whether or not to make their offer conditional on a drain layer inspecting the sanitary/stormwater pipes and confirming that the pipes are in good order.

#### (f) Drainage

If the property is on a sloping site check how the surface/stormwater is disposed of from any higher property. In older properties it is common for water to be piped to a soak hole which, during heavy prolonged rain, overflows and the water then flows onto the lower property. Occasionally a neighbour may concentrate water in a pipeline and allow the water to discharge from the pipe on a boundary (this is unlawful). The resulting water may cause a subsidence on a lower property. Proper drainage is a very important consideration for any property on a slope. Ask the vendor to identify all drainage pipelines. Be aware that it is common for people to lay drains without permission. In many areas there are drains no one knows about. If necessary lay a drain along the upper boundary to take the surface/stormwater from the property above. Visit the neighbours and enquire whether or not they are aware of any drainage or other problems with the higher property. In every case check with the Council.

Similar care is required for a property near a cliff face. If the stormwater is allowed to flow down the cliff face in an uncontrolled manner or the stormwater pipeline is not taken to the base of the

cliff and the water properly disposed of, with the passage of time, the uncontrolled flow of water will speed up the natural erosion process of the cliff face. Check the cliff face and if necessary arrange for a soil engineer to check the property.

Where the building site is cut into a hill side, a wall of the building is below ground level and soil has been placed against the exterior wall check that the exterior face of the wall has been coated with a suitable material to prevent water penetrating the wall, a stormwater drain has been laid at the foot of the wall and when the soil was back-filled scoria was placed against the wall to enable water to flow down to the drain and then away from the wall. If insufficient care was taken and, for example, instead of scoria being placed against the wall there is a layer of clay which prevents water from flowing down to the drain, with the passage of time water is almost certain to penetrate the exterior wall and cause damage inside the dwelling.

All drainage systems require a secondary overland flowpath to cope with the more extreme storms. Identify the flowpath on every property you inspect and satisfy yourself that water using the flowpath will not be dammed by such obstacles as fences, buildings or built-up gardens. In the course of your inspection also take care to check that the exterior ground level and paved levels have not been built too high with the result that during periods of prolonged rain water is able to enter the dwelling.

#### (g) Speculators

Check that the vendor is recorded on the title as owner. When the property market is buoyant speculators are often attracted to the market and it is not unusual for a speculator to on-sell a property with settlement to take place on the day the speculator is required to pay the balance of the purchase price to the vendor. This practice is particularly common if the building, for example an inner city apartment block, is in the course of construction and the construction period will extend over many months. In this situation there can be a chain of agreements all providing for settlement to take place when the building is completed and title is available. If, before title is available, there is a change in the property market and the last

purchaser in the chain cannot settle the effect will be disastrous for any prior vendor who is dependent on receiving the money from the on-sale.

## (h) Auctions and pre-auction agreements

House auctions have become a popular method of selling a property. There are a number of reasons why a vendor may choose an auction. Of these, the most important, is that all offers must be unconditional.

If you wish to make an offer at an auction you must do all your homework before the auction day. You must check the title, make all necessary enquiries at the Council (obtain a LIM report) arrange any finance you require and obtain whatever specialist reports you require on the property such as a building report and a valuation report.

The real estate agency conducting the auction will prepare the auction conditions. It is essential to check the auction conditions because auction conditions favour the vendor and do not provide the same protection to a purchaser as the standard agreement for sale and purchase.

Prior to the auction date you may make an offer for the property. It is usual to make your best offer, because prior to the auction date, the vendor will usually not counter sign an offer or negotiate as this will indicate the reserve price. The vendor will usually either accept or decline your offer. As with a bid at the auction itself your offer must be unconditional and so you must do all your homework before you make your offer. The agent will ask you to sign a standard agreement for sale and purchase but amended by deleting various general terms and warranties which are included in the standard agreement to protect your interests.

If you are a potential purchaser it is important to register your interest in the property with the salesperson in case the vendor receives any pre-auction offers. By registering your interest you will be notified and given the opportunity to submit an offer for consideration by the vendor. In the case of a number offers by competing salespersons the offers will be presented to the vendor by the auctioneer.

If the property is not sold prior to the auction date it will be auctioned on the date specified in the advertising. Some auction firms do not allow "vendor bidding". If a bid is made it is from a genuine bidder. If a salesperson has a phone bidder or is acting as an agent for a bidder some, but not all auction firms, will declare that there is a phone bidder or the salesperson is acting as agent for a bidder. Ask the salesperson if the real estate agency allows vendor and telephone bidding.

If the property does not sell at the auction because it does not reach the vendor's reserve price, the auctioneer will declare that the property is "passed in". If the property is passed in you may negotiate or make conditional offers. According to Barfoot & Thompson approximately 15% of properties which are passed in sell in the 24 hours after the auction. Accordingly, if you still interested in purchasing the property it is important to make your interest known.

## **Bidding at an auction**

At the auction you will face two major problems. First, if the auction conditions allow vendor bidding, you will not know if a bid is from a genuine bidder, and secondly, you will not know the vendor's reserve price. For these reasons we advise you not to make a bid until after the auctioneer announces that the property is 'on the market.' By adopting this suggestion you will not disclose to other potential buyers that you are interested in the property prior to the property being on the market.

## **For More Information**

Visit our website at [www.gellertivanson.co.nz](http://www.gellertivanson.co.nz) or call us on (09) 575 2330.