

THINKING OF BUYING A HOUSE OR APARTMENT?

Ellis Law has a property team that can assist you and provide advice if you are considering buying a house or apartment.

If you are considering buying a house, apartment or a unit we invite you to consider the information set out in this report.

Land ownership in New Zealand

New Zealand has 4 main forms of land ownership being:

- Freehold;
- Leasehold;
- Unit Title; and
- Cross Lease

Freehold

Freehold land is where you own the land on which your house or apartment is built. No one has a greater right to the land than you, the land owner.

Most New Zealand houses and apartments are built on freehold land.

Leasehold

Leasehold land is where someone else owns the land. You have to right to live in the house or apartment that is built on the leasehold land.

If you buy a house or apartment that is built on leasehold land you will be required to pay the owner of the land ("Lessor") a rental known as ground rental.

Typically, ground rental will be payable in advance twice each year.

It is also common practice for the ground rent to be reviewed every 7 years. However, the review of the ground rent may take place at intervals other than 7 yearly.

The terms and conditions of the lease will be set out in a formal lease that will be registered against the Certificate of Title (title deeds) to your property. It governs your rights on what you can do with the land and any buildings on it.

Many Auckland waterfront apartments, in particular, are built on leasehold land. Furthermore, the ground rent on many blocks of apartments is increasing substantially as each rent review occurs. This factor can adversely affect your ability to re-sell a property.

Unit Title

The Unit Title Act governs building developments where multiple owners hold a type of property ownership known as a Unit Title.

The typical Unit Title property is an apartment. However, where 2 or more houses or units are built on a relatively small area of land they can be Unit Titled as well.

Unit Owners in a unit development own a defined part of the building, such as an apartment and may have shared ownership in common areas such as lifts, lobbies or driveways.

Any hallways, staircases, lifts, driveways, lawns and gardens in a Unit Titled property are known as Common Property and can be used by all apartment owners and their guests.

Sometimes an apartment owner will also have rights to use a carpark or storage locker in a block of apartments. These areas, known as Accessory Units, give the apartment owner the exclusive (sole) rights to use the carpark and storage locker.

Collectively, all unit owners in a building development make up a body corporate. The body corporate has responsibility for a range of management, financial and administrative matters relating to the common property and the building as a whole.

The Body Corporate is responsible for maintaining the outside (exterior) of the building and ensuring all services such as the lifts and common area lighting are kept in good working order. The Body Corporate is also responsible to ensure the building is repainted regularly, the lawns and gardens are kept neat and tidy and the building is insured each year. It looks after the building generally.

The Body Corporate is generally run by a professional property management company assisted by a committee of apartment owners.

The costs of maintaining the Property, paying the annual insurance premium, paying the property management company and all associated costs are shared between all apartment owners on which the complex is built. Individual owners are required to pay a levy to cover all the costs. The levy is generally payable twice yearly.

Each Body Corporate has its own set of rules. All apartment owners must comply with the rules. The rules can range from not allowing you to hang your laundry on your deck, ensuring all curtains and blinds in the building are the same colour and design, not allowing you to install your own Sky TV dish or TV aerial, a ban on keeping animals in your apartment through to ensuring all apartment owners do not annoy their neighbours by making too much noise.

Cross-Lease

A cross-lease property is commonly seen where 2,3 or more units are joined together or built on a relatively small area of land.

The overall property on which the units are built is owned by all the unit owners. However, the rights and obligation of each unit owner are set out in a document that is registered against the Certificate of Title (title deeds) called a Memorandum of Lease or Cross-Lease.

You need to be aware that if you own a property that is Cross-Leased you will need to get your neighbouring unit owners consent to alter your unit, put up a fence and certain other things associated with owning a Cross-Leased property. You may even need to get your neighbours consent to the colours you would like to paint the outside walls or roof!

Alterations to a neighbours unit can affect future plans for your unit.

BUYING THAT PROPERTY – THE AGREEMENT

In New Zealand most properties are sold by real estate agents.

A good real estate agent will talk to you about your needs, expectations and how much you can afford to pay for your property.

A good real estate agent will also show you a number of properties that may fit your criteria. Do not allow a real estate agent talk you into signing an agreement to buy the first house or apartment you see. Look at a number of properties before committing yourself to a purchase.

Do not be afraid of using a real estate. As a buyer you do not pay the agents fees. The Vendor or seller pays the real estate agents fee in New Zealand.

New Zealand real estate agents and lawyers almost always use a standard form of Agreement for Sale and Purchase of Real Estate.

It is standard practise for any Agreement to have a number of conditions inserted which are generally designed to protect you, the Purchaser. It is only when all conditions are met (satisfied) that you are then absolutely committed to completing the purchase of your house, apartment or unit.

Some of the points that may require specific conditions to be inserted into your agreement include:

Finance

If you are borrowing money to purchase your property, the agreement should be conditional on you obtaining finance within an agreed period of time, such as 15 days.

Building Inspection

In New Zealand there has been a major problem in recent years with houses and apartments leaking, known as the Leaky home syndrome. Houses and apartments can have other building problems as well.

It is very important, therefore, that your agreement for the purchase of your house or apartment is conditional on you obtaining a satisfactory Building Inspection report. The building inspector will check to see if the building is likely to leak and if there are other problems.

Do not let your agent talk you out of obtaining a Building Inspection report even if the house or apartment is new. We recently saw a new house built by a supposedly reputable builder with gaps in the roof tiles!

Talk to Ellis Law before you arrange a Building Inspection. We have seen clients pay a lot of money for very poor reports from time to time. We can refer you to reliable and competent Building Inspectors.

Body Corporate Minutes

If you are buying an apartment or unit titled property generally, you should insist on the agreement being conditional on you perusing and approving the meeting minutes of the Body Corporate for the past 3 years.

If there are problems with the building, such as it leaks or if expensive maintenance is required, details of the problems or planned expenditure, should be set out in the minutes of the meetings of the Body Corporate.

Land Information Memorandum

A Land Information Memorandum ("LIM") is available from the local Council. A LIM will cover many of the relevant points in relation to zoning, requisitions, improvements or alterations to the property and the like. It should also include other information that is relevant to the property you are purchasing such as building plans, the location of drains, what utilities (power, gas and phone) are in the vicinity and if there are any known outstanding issues with the buildings such as the building not being approved by council.

Engineering/ Geo-technical reports

If you are buying a house, apartment or unit that is on a steep section or that is near the coast or cliffs, the agreement should be conditional on having a satisfactory engineering or geo-technical report carried out for you.

We have acted for a number of clients who have had major problems with cliffs and banks slipping away over a number of years.

Due Diligence

A Due Diligence condition is inserted where there are a number of issues to be considered in relation to the suitability of the property for a particular purpose. For example if you want to have boarders you will need to check any council requirements.

WHAT CAN ELLIS LAW DO FOR YOU?

Once you find a property that you are thinking about buying talk to Ellis Law first. We can discuss with you what conditions should be included in the agreement.

Do not sign an agreement for the purchase of any house, apartment or unit until Ellis Law has looked at the agreement first. Remember the agent is getting paid by the vendor (seller). It is in the agents interests to get you to sign an agreement for as high price as possible, with as few conditions as possible and as quickly as possible. It is important to consider the way clauses are worded. We often find clauses included in Agreements with wording that do not help you the Purchaser.

Once an agreement is signed, a copy will then be sent to Ellis Law. We can then:

- (1) **Finance**
Refer you to a bank or mortgage broker to help you arrange any necessary finance (mortgage).
- (2) **Certificate of Title (Title Deeds)**
Investigate the Certificate of Title and advise you about any encumbrances or restrictions that are registered on the Certificate of Title.

- (3) **Cross-Lease and Body Corporate rules**
Peruse the cross-lease and/or Body Corporate rules and advise you of what they contain.
- (4) **Building Inspection**
Arrange a Building Inspector to carry out a Building Inspection of the house, apartment or unit you are buying. A report will be sent to you on receipt of the Building Inspection report. We can also negotiate with the Vendor (seller) if the Building Inspection report shows up any problems.
- (5) **Engineering and Geo-Technical reports**
Arrange for an engineer or geotechnical engineer to investigate your property.
- (6) **Body Corporate Minutes**
Obtain a copy of the Body Corporation Minutes and report to you on any matters of concern.
- (7) **Land Information Memorandum ("LIM")**
Obtain a LIM from a local council and provide a report to you about the LIM and any relevant matters in it.
- (8) **Due Diligence**
Carry out your Due Diligence investigations for you.

Remember that if the agreement does not contain appropriate and correctly worded conditions you may be required to complete the purchase of an undesirable property. Every property is different. It may be appropriate to consider other issues as well.

We can then carry out the various tasks that are required to complete the purchase of the property for you.

You should feel free to contact Ellis Law on 0800 800932, Brian Ellis on 0274-757 728 or by email bellis@ellislaw.co.nz if you have any questions about anything in this report or in relation to the purchase of your property.