

# Unlock the Joy of a Successful Property Purchase with Ross Holmes Virtual Lawyers Limited

*"Nothing succeeds like success" - Alexandre Dumas*



Are you ready to turn your property purchase into a joyful experience? Navigating the complexities of property transactions can be overwhelming, but worry not! Ross Holmes Virtual Lawyers is here to make it a breeze. As a client of Ross Holmes Virtual Lawyers Limited, your successful property purchase is our top priority. Below, we provide you with essential guidance that will help to pave the way for a seamless property buying journey. Remember, we are always here to discuss any of these matters or any other concerns you may have.

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## Understanding Different Types of Property Ownership

There are four main types of property ownership you should be aware of: freehold, leasehold, unit title, and cross lease. Each type carries its own set of rights, responsibilities, and restrictions that you should consider before making a decision.

It is crucial to have your lawyer or conveyancer review the record of title, also known as the certificate of title, for any property you are interested in. This legal document contains important information such as the property's legal description, ownership details, and any registered rights or restrictions.

**Freehold, or fee simple:** This is the most common type of ownership in New Zealand. As a freehold owner, you have complete ownership rights over both the land and the buildings on it unless there are any registered interests.

**Cross lease ownership:** This is where multiple owners each own the freehold estate as tenants in common, and have leases which give exclusive occupation rights to individual flats, ancillary buildings, and in more recent cross leases portions of the land.

**Leasehold ownership:** This is where someone else (the Lessor) owns the land, and you purchase the exclusive right to lease the land and its buildings for a specific period according to the terms of the lease.

**Unit title ownership:** This is prevalent in building developments with multiple owners. In this type of ownership, you own a specific unit or apartment and ancillary units (such as car parks) within the building and the Body Corporate owns the common areas and facilities. All owners automatically become members of the body corporate.

## Essential Considerations for Purchasing a Freehold or Fee Simple Property

### Potential Restrictions:

While freehold ownership provides you with significant freedom, there are instances where certain interests can restrict your use of the property. Some common examples include:

#### Easements:

Easements grant neighbouring property owners or utility providers the right to use a portion of your land for specific purposes, such as accessing services or passing over the land.

#### Covenants:

Covenants are restrictions that dictate restrictions on the use of the property such as the type of property you can build on the land. These limitations are usually put in place to maintain the character or quality of the surrounding area.

#### Resource Management Act:

The Resource Management Act 1991 covenants sets out various restrictions concerning land use and environmental matters. It's important to be aware of any restrictions that may affect the property.

## **Essential Considerations for Purchasing a Cross Lease Property**

### **The need to examine the Flats Plan and Building:**

When purchasing a cross lease property, it is crucial to examine the flats plan and compare it to the current state of the building. The flats plan represents the property as it was at the time of depositing of the plan in the Land Titles Office. Ensure that there have been no alterations to the flat that have changed its exterior dimensions. Clauses in the standard Agreement for Sale and Purchase of properties allow the purchaser to request the vendor to fix the title in such cases. This process is very expensive and involves a surveyor preparing a new plan, a surrender of the lease and a new lease, obtaining consent from the council, and securing approval from all other flat owners and their lenders, if applicable.

### **Alterations to the unit:**

For those reasons a cross-lease property should not normally be purchased if you need to make alterations to it that impact the exterior dimensions of the leased structure, such as enclosed additions.

### **Usage Restrictions:**

Thoroughly review the cross lease to ensure there are no clauses restricting the intended use of the flat. Most cross-leases permit the unit to be used for residential purposes only. Make sure that the property can be utilised for the purposes and manner required by you.

### **Key Matters to Check:**

When purchasing a cross lease property, pay attention to the following:

#### **Deposited Plan Numbers:**

Compare the deposited plan numbers in the lease with those on the certificate of title to identify any typographical errors. If errors are found, your lawyer will make a title requisition requiring the vendor to correct the lease.

#### **Exclusive Use of the Flat:**

The cross lease should grant the registered proprietor exclusive use of the flat being purchased, along with any ancillary buildings (e.g. the garage or carport).

#### **Exclusive Use Area:**

In modern cross leases, the exclusive use area should be defined on the flats plan, specifying the portion of land for the exclusive use of the owner. Common areas, such as driveways, are designated for ingress and egress purposes only. In older cross leases, exclusive use areas and common areas may not be defined. This can lead to potential issues between flat owners. Ensure that you understand the rights and responsibilities associated with common areas.

### **Conclusion:**

When buying a cross lease property, it's essential to navigate the unique considerations associated with this type of ownership structure. By carefully examining the flats plan, understanding usage restrictions, verifying plan numbers, and assessing exclusive use areas, you can make an informed decision and protect your interests.

## **Essential Considerations for Purchasing a Unit Title Property**

### **The Body Corporate**

In a unit title property, the Body Corporate (established under the Unit Titles Act which the ) owns and manages the common areas (e.g. lifts, laundries, lobby areas, driveways and gardens), insures the buildings, and maintains the exterior of the property.

### **The benefits of an apartment**

Purchasing an apartment within a well-managed complex can offer an excellent lifestyle with various amenities such as enhanced security, central location, scenic views, recreational facilities, and on-site maintenance services provided by a building manager or Body Corporate Secretary.

### **Potential Problems with Apartments:**

**Engineering Features:** High-rise apartment complexes often have engineering features like lifts, sprinklers, and air-conditioning systems that must be properly installed and maintained. The water and sewerage systems also need to meet high standards.

**Water Ingress and View Obstruction:** Some apartment buildings have experienced water ingress issues, while others have had their views obstructed by nearby construction. Internal system failures have also been reported. So it's important to conduct thorough inquiries.

### **Inquiries to Make:**

To protect your interests when buying a unit title property, consider the following inquiries:

### **Compare the Unit Title Plan with the Building:**

Carefully compare the unit plan, which represents the property as it was at the time of depositing in the Land Titles Office, with the current state of the unit. Ensure there have been no alterations resulting in encroachments beyond the designated unit or accessory unit spaces. Significant alterations may require redevelopment plans or a new unit plan, with consent from other unit owners and their lenders.

### **Read the Body Corporate Rules:**

Thoroughly review the Body Corporate Rules, paying attention to any restrictions on altering the building's aesthetics. Look for rules concerning changes to exterior colors, blinds, shutters, and guidelines on hanging out washing. Seek prior written approval from the Body Corporate for any changes to the apartment's construction, both internally and externally.

### **Details of Unit Entitlement:**

Obtain details of the unit entitlement, including car parks and storage lockers, from the vendor or their agent. Request a copy of the Body Corporate rules. While the rules are generally similar, the rules outlined in the Unit Titles Act may have been varied.

### **Budgets and Accounts:**

You should obtain copies of the previous 3 years' financial reports, general meeting

minutes and committee meeting minutes, specific details regarding any weather-tightness claims, specific details regarding current and/or pending legal action being taken against the body corporate. You should review the body corporate budgets and accounts to identify any unusual increases in expenditure.

### **Maintenance Plan:**

You should also obtain details of the Body Corporate's long-term maintenance fund and its maintenance plan and ensure that the annual Body Corporate levies include adequate contributions to the maintenance fund. Ensure the Body Corporate has considered long-term maintenance needs to avoid potential liabilities for deferred maintenance.

### **Inquiries with the Building Manager:**

Identify the building manager and inquire about any problems related to water ingress, surface cracking, ground movement, plumbing and drainage, equipment breakdowns, noise or odors from neighbours, ventilation, security systems, ongoing litigation, and lift-related issues. Request master builder construction certificates, appliance warranties, owner manuals, and information about the contractors involved in the construction and maintenance of the building. Also, inquire about visitor parking availability and painting and other maintenance schedules as per the maintenance plan.

### **Insurance Details:**

Obtain information about the Body Corporate's insurance coverage for the property. Under the Unit Titles Act, the Body Corporate is responsible for insurance. An independent valuation should support the total replacement insurance value for the entire complex. Multiplying this value by the unit entitlement percentage of the unit you are considering purchasing can give you an estimate of the unit's current replacement insurance value.

### **Familiarise Yourself with the Unit Titles Act:**

Familiarise yourself with the provisions of the Unit Titles Act by visiting the following link: <http://www.dbh.govt.nz/unit-titles>.

### **Essential Considerations for Purchasing a Leasehold Property**

Leasehold properties have both pros and cons that you should consider before deciding to purchase one. Some of the key points to consider are:

#### **Pros of Leasehold Properties:**

##### **Affordability:**

Leasehold properties are often more affordable than freehold properties since you are not purchasing the land. This can make them an attractive option, especially for first-time buyers.

#### **Cons of Leasehold Properties:**

##### **Ground Rent Reviews:**

Ground rent for leasehold properties is regularly reviewed, typically every 1 to 21 years. As land values increase over time, the ground rent is likely to increase after each review, leading to higher ground rent costs for you as the lessee.

**Difficulty in Obtaining Mortgages:**

Lenders generally regard leasehold properties as riskier due to the property sitting on land owned by someone else. This can make it more challenging to secure a mortgage for a leasehold property.

**Limited Appreciation:**

Unlike freehold properties, the value of leasehold properties does not typically increase over time. Instead, any increase in land value will result in higher ground rent payments for the lessee.

**Conclusion:**

It is crucial to carefully evaluate the terms of the lease before purchasing a leasehold property. The length of the lease, the frequency of ground rent reviews, how the land value is determined and how that affects ground rent, whether it is possible to buy the freehold, and if so, when, and the reputation of the lessor regarding ground rental and legal action are important factors to consider. Additionally, understanding any restrictions on property use as a lessee, and assessing the price history of the property or similar properties in the development can help you make an informed decision.

While leasehold properties may be more affordable and located in prime areas, it's important to weigh the risks associated with leasehold ownership. Financial risks due to ground rent increases and limitations on property use should be carefully considered before committing to a leasehold property purchase.

Next, we'll dive deeper into the different types of property ownership. Understanding those ownership types is crucial when making informed decisions about your property purchase. At Ross Holmes Virtual Lawyers, we have a team of experienced professionals who specialise in property law and can guide you through the complexities of each ownership type.

## **Discover the Ownership Options for Your Property**

When it comes to property ownership, it's crucial to choose a structure that aligns with your goals. The different ownership options include a trust, personal ownership, a company or look through company (LTC), a partnership and a limited partnership,

### **Trusts:**

For homeowners or those investing in profit-making properties, a trust is often the wisest choice. It offers asset protection. Learn more about this option in the trust-based estate and asset protection plan section on our website: <https://rossholmeslawyers.com/trustbased-estate-plan>.

### **Personal Ownership:**

There are different forms of personal ownership to explore:

#### **Joint Ownership:**

If you're purchasing a property with someone else, registering it in both your names ensures a seamless transfer of ownership in case of one party's demise.

#### **Joint Family Home:**

Any 2 people (of any sex) who are married can register your home as a joint family home, to gain additional protection against creditors. This option can be advantageous for married couples.

#### **Tenancy in Common:**

Another ownership option is registering the property as tenants in common, with equal or unequal shares. This option allows you to specify in your will how your share will be distributed upon your passing and can be beneficial for asset protection planning.

### **Company or Look Through Company (LTC):**

Consider the following features of an LTC:

#### **Income and Expenses:**

In an LTC, income, expenses, tax credits, gains, and losses are passed on to its owners in proportion to their shareholding.

#### **Eligibility and Requirements:**

An LTC must be a resident in New Zealand and have five or fewer look-through counted owners. Only natural persons, trustees, or other LTCs can hold shares in an LTC.

#### **Taxation and Losses:**

Profits are taxed at the owner's marginal tax rate, and losses can be used against other income if the loss limitation rule applies.



## Mastering the Art of Agreement for Sale and Purchase

Navigating through a property purchase agreement can be intimidating, but at Ross Holmes Virtual Lawyers Limited, we ensure it's smooth sailing for you. Please consult us concerning the agreement before signing it, as we may need to prepare additional special conditions appropriate for the type of property which you are purchasing.

### Choosing the Right Purchaser:

Your name followed by "or nominee" should always be in the 'Purchaser' section in the agreement. This way, you can choose the most suitable entity for the purchase.

### Essential Conditions for Successful Due Diligence:

Key inquiries include:

**Activities:** Verify that your intended activities align with Council regulations.

**Coastal properties:** How is the property going to be affected by rising sea levels?

**Earthquakes:** Is the property in an earthquake prone area, and has it been affected by past earthquakes? Are there any pending earthquake claims? The Vendor has no obligation to advise you of previous earthquake damage.

**Flooding:** Is the property in a flood plane, near a culvert or stream, and has it been affected by flood damage in the past. The Vendor has no obligation to advise you of previous flood damage. Is the drainage adequate?

**Insurance:** Can you insure the property? It may not be able to be insured if it is in a flood plane, has previously been flood damaged, is in an earthquake prone area, or is on or near a coast line. You should always include a clause that the agreement is conditional upon you being able to insure the property on terms acceptable to you.

**Leaky Buildings:** Get an expert to examine the property to ensure it's free from leakages. The Vendor has no obligation to advise you of previous leakages.

**Methamphetamine tests:** The chance of buying a property where methamphetamine has been produced or smoked in large quantities is very low. However, if you have a strong suspicion (or have been told by police) that a property you're interested in has been used for methamphetamine production or smoked in large quantities, you should make methamphetamine testing and a satisfactory result a condition of your offer. A property that tests below 15 micrograms per 100cm<sup>2</sup> is considered safe to live in with no adverse health effects. Be aware that the testing industry isn't currently regulated in New Zealand. For more information see: <https://www.settled.govt.nz/buying-a-home/researching-the-property/understanding-methamphetamine/>

**Land stability:** Is the home on stable land?

**Subdivision:** If planning future subdivisions for freehold properties, confirm its feasibility.

**Matters Affecting Enjoyment and Value:** Check with the council for any factors that might interfere with your enjoyment or affect the property's value, like potential developments, zoning, public drains crossing the property, Resource Management Act conditions, outstanding Council requisitions (building, drainage, or health), storm water and drainage issues. Are there any restrictions on the erection of a new or additional buildings on this land or any restrictions on the replacement of the existing building with a building of a similar size type and function if the building is badly damaged or destroyed.

### **Special Conditions to Consider:**

Depending on your unique circumstances, you may need to add further conditions to your agreement. These might include:

- A due diligence clause: We highly recommend including the following special condition in the agreement, enabling you to perform thorough due diligence. This ensures that the property meets your expectations in all aspects:  
This agreement is conditional for 12 working days on the Purchaser being satisfied in its sole discretion with their due diligence inquiries concerning the property which include but are not limited to all commercial and conveyancing aspects of the purchase and the merits of purchasing the property. In the event that the Purchaser is not in all respects satisfied with their due diligence inquiries they shall not be obliged to give any reasons to the Vendor for the failure to satisfy this condition. This clause is inserted for the benefit of the Purchaser.
- A Land Information Memorandum (LIM) for properties with a building.
- A valuer's report that meets your satisfaction.
- A condition for obtaining finance, if necessary.
- A methamphetamine testing clause.
- A condition that you can obtain insurance on terms acceptable to you.
- Other conditions tailored to the property type.

Never underestimate the power of knowledge. The more you understand your purchase agreement, the better you can navigate through the property purchase process. It's a small step in your journey but a significant one to ensure a joyful experience.

## **Buying an Existing Apartment or Building**

### **Building Inspections: Ensuring Peace of Mind**

When you come across a property that captures your interest, it's essential to address any doubts about its construction or safety. We highly recommend hiring a professional building inspector to conduct a thorough assessment. Though you'll have to bear the inspection cost, it can potentially save you tens of thousands of dollars. Some issues can only be identified by experts. Look for independent, BRANZ-accredited inspectors who are properly trained and insured.

### **Helpful Hints for Checking Buildings: Preliminary Assessment**

While it's best to rely on experts, here are some hints to help you make a preliminary assessment yourself. Grab a torch, screwdriver or knife, a damp-meter, a power-point tester, and a ladder. Remember, maintenance problems are not the same as poor construction quality. A house may need a facelift while still being structurally sound. Evaluating the physical and environmental conditions before purchase can save you time, money, and heartache. Differentiate between "skin and bones" – the bones being unchangeable factors like location, size, and floor plan, while the skin refers to easily alterable surface finishes. Focus on sound construction and underlying merits rather than sellers' decor.

### **Leaky Buildings: A Major Concern**

In New Zealand, buildings constructed in the 1990s often have defects. Problems are widespread with monolithic construction, including cladding materials like polystyrene foam, fibre cement, and plaster. Water can enter quickly and take weeks to dry out, leading to hidden rot issues. Vulnerable, untreated timber used since 11 September 1995 worsens the problem. Never purchase a building with monolithic construction without having it thoroughly checked by an expert.

### **Structural Defects: Ensuring Stability**

Inspecting the foundation and structure of a property is crucial. Check for cracks or water marks in the foundation and assess the condition of floor joists and structural beams. Inside the house, ensure the floors are level, doors shut tightly, and the overall floor structure is solid without squeaking.

### **Lack of Water Pressure: Ensuring Adequate Supply**

To determine water pressure, flush toilets and turn on hot and cold water faucets simultaneously. This test will help you assess if the water pressure meets your requirements.

### **Inadequate Wiring: Ensuring Safety**

Electrical safety is paramount. Use a power-point tester to check every electrical point in the house, ensuring they function properly. Look for signs of electrical malfunctions, such as flickering lights or burn marks on power points. If you're unfamiliar with wiring, consult a professional inspector for guidance. Adequate electrical outlets and circuits are essential for each room, with specific requirements for the kitchen.

### **Energy Efficiency: Controlling Costs**

Consider the energy efficiency of the property. An inefficient building can lead to high air conditioning and heating bills. Request last year's air conditioning and

heating bills and inquire about supplemental heat sources used.

**Air Conditioning and Furnaces:** Ensuring Adequacy

If the property has air conditioning and furnaces, verify their condition and suitability for the size of the house. Reach out to the seller's fuel dealer or furnace service company for verification.

**Environmental Inspections:** Prioritising Health and Safety

Indoor air quality and potential environmental hazards should not be overlooked. Certain materials and pollutants can have adverse effects on health, especially for vulnerable individuals. Conduct an environmental inspection to identify potential risks such as formaldehyde, asbestos, radon, lead contamination, or hidden hazards from previous land use. Always consult professionals for the removal of hazardous substances like asbestos.

**The Floor Plan:** Optimising Functionality

The layout and design of a property significantly impact how you utilise and enjoy the space. Consider the three essential zones in a home: work, social, and private areas. Visualise traffic flow and picture how your family will live in the house. Assess storage options, bathroom space, and the functionality of the kitchen, which is often the heart of a home.

**Plan Ahead:** Accessibility and Future Needs

It's crucial to plan for the future and ensure that the property accommodates potential changes. Assess whether the house meets accessibility standards for individuals with disabilities and consider how it can adapt to your family's evolving needs. Such considerations can benefit both current and future occupants.

**Alterations:** Seeking Approvals

If you intend to make alterations to the property, it's essential to obtain a building consent from the local authority. Ensure you consult with a Planning Officer to verify the feasibility of your planned alterations. Read the information above for specific restrictions that apply to cross lease and unit title properties, requiring consent from other owners and potential very expensive changes to cross lease and unit title plans.

**Conclusion:**

By following these helpful insights you can make informed decisions and ensure a smooth property purchase.

## **Buying a Property Without a Building**

Are you planning to purchase a property without a building or as part of a subdivision? Before finalising the Agreement for Sale and Purchase, it's crucial to gather essential information and address specific factors to ensure a smooth transaction.

### **Geotechnical Engineer's Reports: Ensuring Soil Stability**

When purchasing bare land, it's advisable to engage a geotechnical engineer to assess soil stability. This step is crucial to determine if the land is suitable for building and to anticipate any additional costs that may arise due to soil stability issues. Ensuring the stability of the land is vital for the successful construction of your future property.

### **Essential Information to Obtain: Confirming Building Feasibility**

Before signing the Agreement for Sale and Purchase or making it subject to specific conditions, there are crucial factors you need to address. Obtain confirmation from the Council on the following:

**Building Suitability:** Verify if you can construct a building suitable for your intended purposes on the property. Understanding any restrictions or requirements in place will help you make informed decisions.

**Council's Requirements:** Familiarise yourself with the Council's requirements for erecting a new building on the property. Compliance with these regulations ensures a smooth construction process.

**Public Drains:** Determine if any public drains cross the property and their locations. Consult with the Council to understand if building over the drains is possible and if there are any special requirements or construction cost implications associated with it.

**Requisitions and Requirements:** Identify if there are any building, plumbing, or health requisitions or requirements specific to the property. This information is crucial for assessing the overall feasibility and potential additional costs.

### **Conditions in Subdivisions: Meeting Legal Obligations**

If you're purchasing a property as part of a subdivision, it's important to understand the conditions specified in s 223 and 225 of the Resource Management Act. If the subdivision plan has not yet been approved by the Council, the Agreement for Sale and Purchase is subject to specific conditions outlined in the Act. These conditions include, in summary:

**Right to Cancel:** As a purchaser, you have the right to cancel the agreement by providing written notice to the vendor within 14 days from the date of making the agreement.

**Rescission Option:** After two years from the date of granting the resource consent or one year from the agreement date (whichever is later), you can rescind the contract by providing written notice to the vendor. This option applies if the vendor has not made reasonable progress towards submitting a survey plan for approval

or has not deposited the survey plan within a reasonable time after approval.

**Conclusion:**

By keeping these essential considerations in mind you can proceed with confidence and ensure a successful purchase.

## Buying a Building or Apartment to be Built

### Ensuring Quality: Evaluating Developers and Construction Companies

When purchasing a property to be built, it's important to conduct due diligence on the developers and construction companies involved. Ask yourself the following questions:

**Developer and Construction Company:** Who are the developers and construction company? Are they reputable? Have you viewed their previous work? Are they financially stable?

**Guarantees and Warranties:** Do they offer any guarantees or warranties for their workmanship?

**Professional Associations:** Are they members of the Master Builders Association or other relevant professional bodies? Is a guarantee available from their association, and do its terms adequately protect you? Make sure that the builder pays the association their fee for the guarantee.

**Professional Inspection:** Consider engaging a professional property inspector to assess the quality of their previous work and provide valuable insights.

### Verification of Vendor Ownership: Obtaining Confirmation

Ensure that the vendor actually owns the property by requesting a copy of the vendor's Agreement for Sale and Purchase. This step verifies that they have an unconditional agreement to purchase the land and possess the ability to complete the purchase.

### The Agreement for Purchase and Building Contract: Ensuring Clarity

When purchasing a property yet to be built, it is essential to have a separate building contract or detailed clauses included in the Agreement for Sale and Purchase. These clauses should cover important aspects, including:

**Scope of Construction:** Clearly define what will be built, ensuring clarity on the type and specifications of the property.

**Quality of Building Work:** Specify the expected quality standards for the construction to meet your expectations.

**Variations and Changes:** Determine how variations or changes to the original plans will be agreed upon, ensuring they are documented in writing.

**Pricing and Adjustments:** Specify whether it is a fixed-price contract. If not, outline the adjustments that may be made to the contract price for cost increases and unforeseen work.

**Progress Payments:** If your lender will be making progress payments based on completed work, ensure the building contract aligns with these requirements, stating that progress payments to the builder will be made upon receipt of funds from the lender.

**Timelines:** Set clear expectations regarding the time within which the construction will be completed.

**Maintenance Period:** Determine the period within which the builder will be responsible for repairing any defects.

**Warranties:** Address warranties provided by the builder, including the terms and conditions.

**Remedies for Breach:** Specify the remedies available in case of a breach of the contract by either party.

**Dispute Resolution:** Outline the process for resolving disputes, such as mediation or arbitration.

### **Clauses in the Agreement: Exercising Caution**

Carefully review and, if necessary, modify certain clauses that are commonly inserted by vendors in agreements. Pay attention to:

**Vendor Escape Clauses:** Assess any clauses that may provide the vendor with an opportunity to back out of the agreement.

**Alteration of Designs:** Determine if the agreement permits the vendor to make changes to the designs and consider modifying this clause as required.

**Contract Price Adjustment Clause:** Scrutinize any clauses relating to adjustments in the contract price and assess their implications.

**Long-term Management Fees or Other Amounts:** Evaluate any provisions that stipulate ongoing fees or payments to the vendor or other parties and consider their fairness and reasonableness.

### **Special Conditions in the Agreement: Ensuring Protection**

To protect your interests, include the following additional special conditions in the Agreement for Sale and Purchase:

**Code Compliance Certificate:** Delay settlement until 5 working days after the local authority issues the final Code Compliance Certificate for the property. Consider renting the property during the deferral period, provided you provide an unconditional undertaking to settle in full and provide evidence of an unconditional loan offer.

**Assignment of Warranties:** Require the vendor to assign all warranties and guarantees related to services, materials, and equipment installed in the property within three months of the possession date.

**Minimum Sales of Apartments (for Apartment Blocks):** If purchasing an apartment within a block, include a condition that specifies a minimum number of sales the vendor must achieve within a set timeframe to ensure a vibrant community.

### **The Plans and Specifications: Scrutinising the Details**

The plans and specifications play a crucial role in ensuring that everything promised is delivered. It's essential to carefully read and review the plans and specifications attached to the agreement for sale and purchase or building contract. Pay close attention to the following:

**Power and Telephone Points:** Assess whether there are an adequate number of power and telephone points in each area of the property.

**Appliances and Floor Coverings:** Verify the brand and quality of appliances, as well as the type of floor coverings to be supplied. If you believe there is insufficient detail, request additional information to avoid potential disputes in the future.

### **What to Do if Buying Off the Plans: Understanding Changes and Rights**

When buying off the plans, developers may retain the right to make alterations to designs to comply with local regulations. It's crucial to be aware of your rights and liabilities resulting from such changes. Modify the relevant clause as needed to protect your interests. A recent case highlighted the importance of this, where a developer made changes to an apartment layout that deviated significantly from the original plans, causing inconvenience to the buyers.

### **Conditions in Subdivisions: Understanding Legal Obligations**

If the subdivision plan has not been approved by the Council, the Agreement for Sale and Purchase is subject to conditions specified in the Resource Management



Act. These conditions, outlined in Section 225 of the act, include the purchaser's right to cancel the agreement within a specific timeframe or rescind the contract if the vendor fails to make reasonable progress in submitting a survey plan for approval.

**Resource Consents: Assessing Council Requirements**

Obtain a copy of the original Resource Consent for the development and thoroughly review all conditions imposed by the Council. Ensure that these conditions are acceptable to you and align with your expectations.

**Building Consent: Verifying Approved Plans**

Obtain a copy of the Building Consent for the property to confirm that the plans and specifications have been approved. This step ensures that the construction can proceed according to the agreed-upon plans.

**Advertising Material: Valuable Information for Future Reference**

Gather and retain all advertising material related to the development. In case of any disputes that may arise later, the information contained in the advertising material can be invaluable in supporting your claims.

**Conclusion:**

Purchasing a building or apartment to be built requires careful consideration and attention to detail. By following the guidance provided and seeking professional legal advice, you can navigate the complexities of such transactions confidently.

## **Navigating the Purchase of an Almost Finished or New Building**

### **Introduction:**

Are you considering buying an almost finished or new building? This process comes with its own set of considerations and legal requirements. In this section, we will outline the important factors and clauses to consider when purchasing an almost finished or new building. Let's explore these essential points.

### **Ensuring Quality: Evaluating Developers and Construction Companies**

When purchasing a property to be built, it's important to conduct due diligence on the developers and construction companies involved. Ask yourself the following questions:

**Developer and Construction Company:** Who are the developers and construction company? Are they reputable? Have you viewed their previous work? Are they financially stable?

**Guarantees and Warranties:** Do they offer any guarantees or warranties for their workmanship?

**Professional Associations:** Are they members of the Master Builders Association or other relevant professional bodies? Is a guarantee available from their association, and do its terms adequately protect you? Make sure that the builder pays the association their fee for the guarantee.

**Professional Inspection:** Consider engaging a professional property inspector to assess the quality of their previous work and provide valuable insights.

### **Verification of Vendor Ownership: Obtaining Confirmation**

Ensure that the vendor actually owns the property by requesting a copy of the vendor's Agreement for Sale and Purchase. This step verifies that they have an unconditional agreement to purchase the land and possess the ability to complete the purchase.

### **The Agreement for Sale and Purchase: Ensuring Clarity**

When purchasing an almost finished or new building, it's crucial to have a comprehensive agreement for sale and purchase. Consider the following aspects:

**Plans and Specifications:** Ensure that the plans and specifications are attached to the agreement, clearly detailing the remaining work to be completed by the vendor.

**Carefully Review Vendor Clauses:** Pay close attention to and, if necessary, modify the following clauses commonly inserted by vendors in agreements:

**i) Vendor Escape Clauses:** Assess any clauses that provide the vendor with the opportunity to cancel the agreement.

**ii) Alteration of Designs:** Review any clauses that allow the vendor to make changes to the designs and consider modifying them as needed.

**iii) Contract Price Adjustment Clause:** Scrutinise any clauses relating to adjustments in the contract price and assess their implications.

**iv) Long-Term Management Fees or Other Amounts:** Evaluate provisions that stipulate ongoing fees or payments to the vendor or other parties and consider their fairness and reasonableness.

### **Special Conditions in the Agreement: Protecting Your Interests**

To safeguard your interests when purchasing an almost finished or new building, include the following additional special conditions in the Agreement for Sale and Purchase:

**Code Compliance Certificate:** Delay settlement until 5 working days after the local authority issues the final Code Compliance Certificate for the property. Consider renting the property during the deferral period, provided certain conditions are met.

**Assignment of Warranties:** Specify that the vendor must assign all warranties and guarantees related to services, materials, and equipment to the purchaser or body corporate (if applicable). If any warranties or guarantees cannot be assigned, they should be held on trust for the benefit of the purchaser or body corporate.

**Minimum Sales of Apartments (for Apartment Blocks):** If purchasing an apartment within a block, include a condition that specifies a minimum number of sales the vendor must achieve within a set timeframe to ensure a vibrant community.

### **Resource Consents: Understanding Council Requirements**

Obtain a copy of the original Resource Consent for the development and thoroughly review all conditions imposed by the Council. Ensure that these conditions are acceptable to you and align with your expectations.

### **Advertising Material: Valuable Reference Information**

Gather and retain all advertising material related to the development.

If any disputes arise in the future, the information contained in the advertising material can be invaluable in supporting your claims or understanding the initial representations made.

### **Conclusion:**

Purchasing an almost finished or new building requires careful consideration and attention to detail. By following the guidance provided and seeking professional legal advice, you can navigate the complexities of such transactions confidently.

## **Key Considerations When Buying the Perfect Farm**

Attention aspiring farmers! Are you ready to embark on the journey of purchasing your dream farm? It's essential to gather all the necessary information before signing an agreement. Here's a step-by-step breakdown of the key considerations:

### **Checking who owns the land and the farming operation:**

Basic, but often over looked. Land, stock, equipment, chattels, water rights, resource consents and other related assets can have different owners. It is crucial the ownership structure is clear and the agreements reflect that structure.

**Property Details:** Gather information about the property itself, including the number of paddocks, pasture management, fertiliser history, and farm buildings.

### **Staff:**

Are there staff to be employed as a condition of sale? What do their employment contracts say?

**Staff Housing and Compliance:** Determine if there is staff housing and whether it complies with Healthy Homes standards. If not, consider the cost of making it compliant.

**Effluent Disposal Systems:** Understand the effluent disposal systems in place on the farm.

**Chattels and Inventory:** Obtain a detailed list of chattels to avoid disputes, including items such as electric fence units, water pumps, and outbuildings.

**Stock and Feed:** Assess the stock-carrying capacity of the farm and inquire about inputs such as purchased feed.

**Environmental Considerations:** Consider aspects like trees included in the Emissions Trading Scheme (ETS), nutrient management plans, and rainfall records for the area.

**Resource Consents and Amenities:** Review resource consents, water consents, and water supply information. Explore local amenities available in the surrounding area.

**A LIM report for the property:** Obtain a LIM report and the Council's property file so you can review the property information held by the Regional and District Councils on the farm, such as rates, consents, permits, code of compliance for work done on the property and hazard information such as earthquake claims, land improvement agreements, wells, natural hazards, pests, air quality and if the property is prone to flooding.

These types of documents are usually made available to prospective purchasers by the real estate agent in the form of a property information memorandum (PIM).

## **Pre-Purchase Farm Inspection**

Before finalising any purchase commitments, it is crucial to conduct a thorough

pre-purchase farm inspection. Here are some factors to consider:

**Soil Testing:** Test the soil for any toxic or hazardous waste that may require cleanup.

**Access Roads and Compliance:** Ensure that access roads are well-maintained and suitable for heavy equipment. Check for compliance with effluent, discharge, waste, and environmental impact regulations.

**Safety:** Review health and safety regulations to ensure a safe working environment.

**Water and environmental due diligence:**

Water is critical to the operation of any farm and is a key issue. As purchaser you need to be satisfied on all matters relating to water or irrigation rights affecting the property including, but not limited to, the potential development of the property and the adequacy and utilisation of water and irrigation entitlements. The water permits, units and/or irrigation scheme need to be checked to see if they run with the land, who owns them and how they will be transferred to you as the new owner of the property.

**Supply contracts and third party leases:**

Consider whether there are any supply contracts which need to be assigned on settlement including grazing or dairy supplier contracts. If purchasing a dairy farm is there a share milking contract which runs on after settlement? Is any part of the farm leased to a third party?

**Secure Your Financing and Seek Accounting Advice**

Organise your finance approval and involve your accountant from the start to assess the financial feasibility of the purchase. Ensure that the numbers are correctly allocated to land, buildings, equipment, and stock. Resolve any GST-related matters before signing the agreement.

**Professional Assistance and Valuation**

Engage professionals to assist with valuation requirements imposed by your bank. Obtain valuations for land, livestock, and chattels/equipment included in the agreement. Consider involving consultants for water and environmental due diligence to assess the adequacy and utilization of water and irrigation entitlements.

**Other considerations:**

Depending upon the time between the date of the agreement and settlement, you will need to consider good husbandry, pasture cover requirements on settlement, and if hay or bailage is to be left and in what numbers. You may also need to sell your existing farm in order to purchase the new property.

**Preparing the purchase agreement:**

Ensure that the Agreement for sale and purchase includes all necessary conditions and allows adequate time frames to fulfill them.

**Due diligence condition:** Consider including a due diligence condition to allow

thorough investigations of the property.

**Stock and equipment:**

Ensure that the agreement fully records all stock and equipment being sold. Just because you saw certain items during your inspection of the property with the agent does not mean that they have been included in the agreement. Will you require the vendor to undertake any maintenance of the equipment prior to settlement? What guarantee have you been offered in relation to the condition of the stock and equipment? What are the mechanisms to confirm and adjust stock numbers on settlement, and to value farm equipment?

**Conclusion:**

In summary, comprehensive due diligence on a farm property is crucial to your decision whether or not to purchase. Getting professional advice will help you to accurately assess whether the farm is the right property for you.

## Key Considerations for Purchasing a Commercial Building

### Introduction:

Purchasing a commercial building requires careful evaluation of various factors to ensure a successful investment.. In this section, we will outline the important matters to consider when purchasing a commercial building. Let's delve into these crucial points.

### Matters to Consider: Beyond the Basics

When purchasing a commercial building, it's important to consider additional factors specific to commercial properties. Here are some key considerations:

**Who Should Purchase the Property:** Determine the most suitable entity or individual to purchase the commercial building. Consider factors such as ownership structure, liability protection, and tax implications. Seek advice from legal and financial professionals to make an informed decision.

**Commercial Lease of the Premises:** Assess whether there is a commercial lease in place for the premises. The value of a commercial building is often linked to the rental income generated. Purchasing a commercial building with a reputable tenant in place is less risky than acquiring a property without a tenant.

**Quality of the Tenant:** Ensure you thoroughly evaluate the quality of the tenant. Take the following steps:

**i) Obtain Personal Guarantees:** Request personal guarantees from the directors and shareholders of the tenant company, as well as from the trustees if the tenant is a trust.

**ii) Gather Tenant Information:**

**Financial Position Statement:** Obtain a financial position statement from the tenant to assess their financial stability.

**Credit Check:** Conduct a credit check on the tenant to evaluate their creditworthiness.

**Inquire with Previous Landlords:** Reach out to previous landlords to inquire about the tenant's adherence to lease terms.

**GST Registration:** Evaluate whether the purchaser needs to register for Goods and Services Tax (GST) purposes. If registration is necessary, consult with your accountant or tax advisor to ensure compliance.

### Conclusion:

Purchasing a commercial building requires careful consideration of additional factors specific to commercial properties. By addressing the matters outlined above and seeking professional legal and financial advice, you can navigate the complexities of buying a commercial building successfully.

## **Your Post-Agreement Checklist for a Worry-free Property Purchase**

Kudos on signing the Agreement for Sale and Purchase! This is a critical step towards your property ownership journey. But there are more actions to take to ensure a smooth and secure process. Here they are:

**Get a Land Information Memorandum (LIM):** The LIM report is a treasure trove of valuable property information. It includes details like building consents, land features, potential hazards, and land use restrictions. Request this report from your local authority, or gather equivalent data. Thoroughly review the report to understand any potential risks and make sure the property complies with regulations.

**Buy the Council's Property File:** This is an essential step that lets you cross-verify all the buildings on the property. This file will allow you to check if all constructions have the needed permissions and have been inspected and approved. Also, ensure each building consent has a Code Compliance Certificate issued after 1991.

Compare this file with the actual buildings to spot any unauthorized or illegal construction. The local authority does not provide this in the LIM, so it's your responsibility to identify such issues. Ignoring this could lead to substantial rectification costs in the future and might even impact future sales.

Remember, permits related to building, plumbing, and drainage under the Local Government Act 1974 have expired. All such work done before January 1993, now falls under "an existing situation" if it is not considered dangerous or insanitary according to the Building Act 2004.

Be aware of issues related to pre-1991 building permits. Councils have tried to maintain comprehensive records, but they were not legally obligated to. Some information may be missing or incomplete. This means that if damage results from unauthorised building work, your insurer might not cover your losses.

In case your LIM report doesn't record that all pre-1991 building permits have been inspected and finally approved, you should access the Council's building records. If the records lack these details, it's recommended to ask the Vendor for a safe and sanitary report accepted by the Council. This implies that the Council will not act against such works. Ignoring this could again lead to substantial rectification costs in the future and might even impact future sales.

### **Consider Town Planning:**

Access district plans to understand any restrictions or regulations applicable to the property. Check zoning for adjacent properties and any potential pending "change of use" or zone changes in the area. Inquire about outstanding requisitions on the property to ensure compliance with town planning requirements.

### **Evaluate Security in the Area:**

Consult with the local community constable to gather information about the security situation in the area. Inquire about the effectiveness of the neighborhood watch network scheme and assess mail security, pedestrian and vehicle access, and visitor



communication and admittance systems. Ensuring adequate security measures can enhance the future sale worthiness of the property.

**Arrange a Property Valuation:**

Consider arranging a valuation of the property to determine its current market value. A valuation can provide you with valuable insights for financial planning and decision-making.

**Verify Building and Property Boundaries:**

Occasionally, buildings may encroach over boundaries, or fences and hedges may not align precisely with legal boundaries, especially in older subdivisions. If there are any doubts about the location of buildings or property boundaries, compare the title and deposited plan with the property and consult with the Building Inspector at the local council. In case of uncertainty, it is advisable to engage a surveyor to peg the legal boundaries accurately.

By following these steps, you can mitigate potential risks and ensure a smooth transition towards property ownership.

### **Choosing the Best Loan for You:**

Selecting the most suitable loan for your needs requires consideration of your personal situation and financial goals. By asking yourself a few key questions, you can narrow down the options and find the loan that best aligns with your requirements:

#### **Are there legal ways to change debt from your home to a rental property?**

Consult with legal professionals to explore potential strategies for changing debt from your non-tax-deductible home to a rental property as part of an asset protection plan. Seek detailed legal advice to understand the available options.

**Do you expect your finances to change in the next few years?** Consider any anticipated changes in your financial situation, such as an increase or decrease in income, job changes, or additional expenses. These factors can influence the type of loan that is most suitable for your circumstances.

**Are you planning to own the property for a long period of time?** Determine your long-term plans for the property. If you intend to hold the property for an extended period, you may prioritise different loan features than if you plan to sell in the near future.

**Are you comfortable with a changing mortgage payment amount?** Assess your comfort level with fluctuating mortgage payments. Certain loan types, such as adjustable-rate mortgages, have payments that can change over time. Consider whether you prefer the stability of a fixed-rate mortgage or are willing to accept potential payment fluctuations.

**Do you aim to be mortgage-free as your children approach college age or retirement?** Consider your financial goals and the timing of major life events. If you aim to become mortgage-free by a specific milestone, such as when your children enter college or as you prepare for retirement, it can influence your loan preference.

### **Consulting with a Mortgage Broker or Lender:**

Your mortgage broker or lender can be a valuable resource in helping you choose the right loan and structure it appropriately. They can utilize your answers to the questions above to guide you towards the loan that best suits your needs. Their expertise and experience in the lending industry can provide valuable insights and advice tailored to your specific situation.

### **Comparing Lenders:**

To effectively compare between lenders, you have a couple of options. You can either engage a mortgage broker to assist you with this complex task, leveraging their industry knowledge and access to multiple lenders. Alternatively, you can devise a checklist to gather information from each lending institution. Your checklist should include the following details for each lender:

- Company's name and basic information
- Type of mortgage offered
- Minimum down payment required
- Interest rate

- Loan processing time
- Prepayment options and restrictions

By gathering this information, you can evaluate and compare lenders based on their offerings and select the one that aligns with your preferences and requirements.

Choosing the right loan and lender is a crucial step in your home financing journey.

**Ross Holmes Virtual Lawyers Limited will handle the following matters on your behalf:**

**Agreement Review:** We will carefully review the agreement for sale and purchase before you sign it. If necessary, we can make alterations to ensure that the agreement protects your interests. Additionally, we can prepare the agreement for sale and purchase if required. Additional fees apply.

**Land Titles Office Search:** We will conduct a detailed search at the Land Titles Office to obtain information about the property's title and any encumbrances registered on it. This search is crucial to identify any potential issues that could adversely affect you.

**Document Preparation:** We will prepare various documents on your behalf. This includes preparing mortgage documents for your signature based on instructions received from the lending institution. We will also prepare the transfer of title document to be signed by the vendor and forward notices of sale to the vendor's solicitors for submission to the local authority and/or Auckland Regional Council to notify them of your ownership of the property.

**Statement Review:** We will receive a settlement statement from the vendor's solicitors, which will outline details such as rates payments made by the vendor and the apportionment of rates. We will ensure that the deposit you paid is properly credited on the statement.

**General and Water Rates:** We will handle the apportionment of general rates (and possibly regional rates in certain areas of New Zealand) between the vendor and purchaser at the settlement date. You should anticipate paying your share of rates from the settlement date to June 30th, as the vendor may have already paid rates up to that date. The exact amount you need to pay for rates will be determined based on the statement received from the vendor's solicitor. Water rates, if applicable, will be paid by the vendor up to the settlement date, and a special reading of the water meter will be organized for this purpose.

**Completion of Purchase:** On the possession date, we will make all necessary arrangements to complete the purchase. This includes obtaining funds from you and the lenders, ensuring the signed transfer and any necessary discharges of existing mortgages, caveats, or charges are obtained from the vendor's solicitors.

**Post-Possession Activities:** On the possession date, we will register the transfer of the title into your name and provide you with an electronic copy of the registered title. Additionally, any registered mortgage, if applicable, will be forwarded to the lender.

By handling these matters on your behalf, Ross Holmes Virtual Lawyers Limited ensures a smooth and efficient property purchase process.

## **Before and on the possession date of the property, there are several important tasks you should attend to**

### **Co-ordinate your Kiwisaver, first home loans, and family loans**

If you're a New Zealand citizen, it's time to coordinate and conquer! If you're eligible for a Kiwi-saver or First Home Loan, take advantage of these awesome opportunities because they can give you a serious purchasing power boost! You also need to arrange and document any family loans. So let's coordinate those loans, unleash your financial superhero powers, and get ready to make your dream of home ownership a reality! See here <https://rossholmeslawyers.com/purchasing-a-property>

**Insurance of the Building:** It is essential to arrange insurance for the property before the possession date. The insurance policy should cover the full insurable value of the property. Notify the insurance company to include the lender's interest as the first mortgagee on the policy. Determine whether you require replacement insurance or indemnity insurance, and ensure that the sum insured is sufficient to cover the cost of rebuilding or repairing the property in case of damage.

**Insurance of Contents:** Arrange insurance for your chattels such as carpets, drapes, and furniture. Inform your insurance company about your change of address and ensure that your chattels are insured during the move. Consider bundling your home and contents insurance for potential discounts.

**Mortgage Repayment Insurance:** Mortgage Repayment Insurance provides assistance in case of the death of one of the borrowers, covering the mortgage debt. This type of insurance is recommended, particularly for younger couples.

**Movement of Household Contents:** Make arrangements for the movement of your household contents, including transit insurance. Coordinate the timing of the move with the vendor and, if applicable, the purchaser of your current property.

**Mail Re-direction:** Obtain mail re-direction cards from New Zealand Post and inform them of your new address.

**Vendor Information:** Request important information from the vendor, such as the names of tradespeople who usually service the house, old house plans, government valuation certificate, spare wallpaper, list of paints used in the property, the vendor's forwarding address, bus routes, milk delivery and rubbish collection times (if applicable), and the location of mains for water, gas, and electricity.

**Telephone, Power, and Gas Connections:** Discuss transferring the telephone connection with the vendor and your telephone supplier to avoid disconnection and reconnection fees. Transfer the electricity account and any gas or oil accounts into your name, ensuring meters are read on the possession date.

**Pre-Possession Date Property Inspection:** Take advantage of the opportunity to inspect the property's condition not less than one working day before the possession date. Check for any damage since the purchase agreement and ensure that any warranties and agreed-upon work by the vendor have been fulfilled. If you

identify any issues, notify us immediately. We have to make any claim on your behalf no later than 4 p.m. on the working date before the possession date,

**Arrangements for Keys:** Coordinate with the vendor or real estate agent to obtain the keys on the settlement day. Keep in mind that you can only receive the keys once the purchase price has been paid to the vendor's lawyers, which is facilitated by us upon receiving the necessary funds.

By addressing these tasks before and on the possession date, you can ensure a smooth transition into your new property.