



BEGINNER'S GUIDE BUYING A HOME



Franklin Law

Protecting what is important to you

Introduction

Whether you are a first home buyer or buying your second or subsequent home the Home Buyers Guide will assist you with the home buying process. The guide is not intended to provide legal advice however a member of our property team at Franklin Law would be more than happy to assist you with any query you have.

Getting Started

If you are a first home buyer and the whole area of obtaining home loan finance looks too complicated, you might consider using the services of a mortgage broker. The broker will obtain all your financial information and submit a loan application to a lender that will provide the "best" deal for your situation, also good brokers will take their clients right through the home buying process. This shouldn't cost you anything as generally mortgage brokers are paid for providing this service, by the lender.

Even buyers of second or subsequent homes should consider consulting their lender or a mortgage broker before they start looking at properties. If you have built up a good deposit with your bank [or have good equity in your current home] and have stable income then you should stand a good chance of gaining loan approval. If you prefer to do your own research into what lenders can provide, that is easy today with internet access. There are many websites that have mortgage calculators which will indicate to what level you can borrow and what loan repayments will be – but they do not take account of all factors concerning the borrowers' financial position.

The Loan Application

Basically lenders want to know three main things:

- A.** Will the applicant be able to repay the loan?
- B.** What is the property being purchased?
- C.** What is the security - will it pay off the loan if things go wrong?

To assess **A** the lender will require details of income, job stability and whether other commitments have been honoured (i.e. is the credit record OK). First tier lenders (banks and other lenders who charge the lowest interest rates) put a lot of emphasis on how much deposit, first home buyers have managed to save.

Applicants should provide recent payslips or employer letters detailing salary for the lender/mortgage broker and the last 3 months bank statements showing salary being direct credited and savings being built up.

To assess **B** the lender will require a copy of the Sale & Purchase Agreement. It must be dated and signed by all parties. If the agreement is by way of a Private Treaty – i.e. no real estate agent is involved, the lender will most likely require a registered valuer's report on the property being purchased (more on Sale & Purchase Agreements later).

To assess **C** and whether the security is satisfactory to the lender, they may require a registered valuer's report but some lenders will advance up to 80% of the purchase price provided the Sale & Purchase Agreement is not by Private Treaty. Buyers should check with their lender/broker on this aspect before getting valuations, building inspections and other reports prepared thus avoiding unnecessary costs.

In addition to the above, lenders require applicants to complete a statement of assets and liabilities and a budget of income and expenditure. Applicants should have to hand, details of repayments on hire purchase, credit cards, student loans, insurances etc – and remember these need to line up with what goes out of the bank account and will show on bank statements.

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Buying via a Real Estate Agent

This is the most common method of purchasing residential property. The agent is commissioned by the vendor and is therefore acting in the best interests of the vendor, nevertheless good agents can smooth the way for you by arranging viewings and after a few of these they will get to know your likes and dislikes and hopefully narrow the process down of finding the ideal home for you.

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Buying Privately

Where a vendor is handling the sale of their house themselves, mainly to avoid paying real estate agents' commission. You should treat 'private sale' situations with great care and ensure you consult your lawyer in every move you make. Note that, generally, lenders will require a full registered valuer's report if the contract is a private treaty, particularly if you are borrowing at over 80% of purchase price. Check this out with your lender.

Buying at Auction

An offer to buy at auction is an unconditional offer, therefore before you attend an auction:

- Register your interest with the listing real estate agent. Reference to a sale by auction does not prevent the vendors from selling prior to the auction date. The agent may be able to help you submit your own offer.
- Ask your lawyer to read and approve the auction contract. This contract contains terms and conditions of the sale; legal description of the property and list of chattels (Note that many auction agreements do not allow objections to the title after the auction).
- Have your finance pre-approved, specifically for the property, so that you are ready if your bid is successful.
- Thoroughly inspect the property and/or commission a building inspection/structural survey and if appropriate, a valuation.
- Obtaining a Land Information Memorandum (LIM) and having your lawyer check it is essential.

Agreement for Sale & Purchase

The Auckland District Law Society & Real Estate Institute have approved a standard agreement form (agreement) which is used by real estate companies and is prepared by the real estate agent for you as the buyer to sign with your offer to purchase. The vendor may be happy to sign at your starting price, and if they do not change any of the terms of the agreement a contract is formed. Or the vendor may “counter offer” by increasing the price and the real estate agent will then come back to you to gain your agreement (or otherwise). Sometimes the agent may go backwards and forwards between the vendor and purchaser until a price and conditions are agreed upon.

The process of offers and counter-offers can result in a messy and unclear contract. Make sure that the terms agreed upon are clear and appropriately initialled by all parties. Furthermore, ensure the contract bears the date on which the agreement was reached as this will determine the due date of all standard conditions. At this point, the lawyer for each party will be forwarded a copy of the agreement and will work to satisfy the conditions (if any) of the contract.

Pre approved purchasers should always make their offer “subject to finance satisfactory to the purchaser”. The subject to finance clause commonly has a time frame of 10 working days, and the purchaser needs to obtain unconditional approval of their loan by that day which is called the “finance date”.

Purchasers have a duty to use their best endeavours to obtain finance. If at finance date buyers have made no attempt to obtain a home loan or they have had approval to a loan but for some reason want to walk away from the contract they run the risk of being pursued by the vendor for breach of contract.

Agreements also have a standard clause giving the purchaser the option to obtain a:

- LIM within 15 working days; and
- builders report within 10 working days.

We talk more about these options further in the guide.

We recommend you consult with a lawyer before making an offer to purchase, or at least insert a condition that the contract is subject to vetting by your lawyer. We call this the “lawyer’s approval clause”. This clause is restricted by the courts to approval on legal matters e.g. title, form of contract. If you are concerned on other aspects of the transaction then the inclusion of a “due diligence” clause should be considered. You should get an indication of what the legal fees might be so there are no surprises on settlement day. Generally, lawyers deduct their fees and disbursement costs from the loan funds received by the lender so you as borrower need to have funds available for these on the day of settlement.

“ We
needed
a lot more
space as
our family
is growing
fast. ”



What does your Lawyer do?

The general term used to describe lawyers' services concerning home purchases and sales is called "conveyancing" and involves:

- Most importantly, perusing the sale and purchase agreement to ensure it meets the criteria to constitute a contract and that it has been correctly signed.
- Obtaining a Land Titles Office search of the property certificate of title and a local authority search.
- Obtaining a LIM if required by the buyer and provided for in the contract and explaining the contents and informing you of any legal issues arising.
- Making sure that the conditions of the contract are reasonable and can be met by the agreed dates and that extensions of time can be negotiated if necessary.
- Preparing and arranging for you to sign the lenders' mortgage documentation.
- Ensuring local body rates, water rates etc are paid by the vendor up until settlement date.
- Making sure all necessary documentation and funds are ready for settlement date.
- Your lawyer, at your request can also liaise with 3rd parties to the transaction, such as, real estate agents, lenders, insurers, valuers, building inspectors and local councils etc.
- Your lawyer will advise you on the different options for ownership e.g. joint tenants; tenants in common; or trusts, and may also advise you whether or not to consider entering into a property relationship agreement.

Paying the deposit

The purchaser must pay the deposit on the date stipulated in the agreement. It is practical to set the deposit at an amount that is around the listing agent's commission. The deposit is paid to the listing real estate agency and is banked to their trust account where it remains until settlement date. At that date it is credited to the purchase price after deduction of the agent's commission. Remember as a buyer you have to fund this deposit so it should be no more than the amount you have saved if you are a first home buyer or if you currently own a home with a mortgage, what you are able to borrow from the bank for the short period involved.

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Certificate of Title (Computer Freehold Register)

The Certificate of Title is evidence of ownership to the property. The process of registration of the buyers' name onto the Certificate of Title is now performed on-line. What you will receive is a printed copy of the Computer Freehold Register (CFR) showing your name on the title and any encumbrances (i.e. mortgage) registered on it. The CFR shows anything that legally affects your land (such as a right of way for someone to drive across your land, easements etc). Sometimes such rights may exist legally but are not obvious from a physical inspection. Your lawyer will take care to fully explain the nature of the title to the property (e.g. freehold, leasehold, cross-lease or unit title).

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Land Information Memorandum

The LIM (available from the local council), amongst other things, will show what permits have been obtained for the property. During your inspection you should note the following: log burner, swimming/spa pool, stucco exterior/other recladding, sleepout, separate garage or shed, deck that is more than one metre from the ground, interior alterations including the removal of load bearing walls, exterior alterations. All of these require a building permit. While you may not see the lack of a permit as a problem now, if you sell the property down the track the next purchaser may not see it the same way. Whilst in many cases a LIM results in no more than reassurance, there have been a number of cases where purchasers have been extremely relieved that they took care to make the contract subject to LIM approval.

“ Adding some
personality...
making this
house truly
our home. ”



Builders Report

If you indicate on the front page of the agreement that a building report is required, the agreement is conditional upon you obtaining at your cost on or before the 10th working day after the date of the agreement a report on the condition of the house and any other improvements on the property that is satisfactory to you. The report must be prepared in good faith by a suitably qualified building inspector in accordance with accepted principles and methods. The building inspector may not carry out any invasive testing in the course of inspection without the owner's prior written consent. Please note that if you are not satisfied with the building report and want to cancel the agreement, you must provide to the owner immediately upon request with a copy of the building report. Hence, the reason to use a suitably qualified building inspector instead of an acquaintance who may be a handyman to undertake an inspection. Further, the building inspector should have professional indemnity insurance so that if there is a defect with the property which was missed by the building inspector then you may have recourse to that person for compensation.

Conditions

Each condition (e.g. the finance condition, LIM condition, a building report or a general due diligence condition etc) must specify a date by which it must be satisfied. If not satisfied by the stated condition date, the agreement allows either party to end the agreement. However, note that in the case of a LIM condition, the purchaser is deemed to be satisfied with the LIM if he/she raises no concerns in regards to it by the condition date. The purchaser's lawyer will confirm to the vendor's lawyer that all conditions have been satisfied and the contract is unconditional and therefore binding upon you and you must therefore proceed to settlement.

Satisfying or fulfilling sale conditions, and settlement

Your "Authority and Instruction" - (to take title to, and mortgage the property) - before settlement can take place you, must authorize your lawyer to attend, on your behalf,

to the transfer of title to you and to mortgage the property in favour of your bank/ lender as security for the home loan. This requires you to sign a form called an “Authority and Instruction” (A & I), which your lawyer will prepare. Lawyers must be licensed under the Land Transfer Act 1952 to effect registration of the transfer.

Utilities - You will be expected to make your own arrangements with the electricity, gas and telecommunications providers of your choice. It is a statutory requirement and usual practice for the vendor’s lawyer to send a notice of change of ownership to the relevant authorities so that from the date of settlement rates and water invoices will be sent to you.

Keys and moving in - The keys are usually collected from the vendor’s real estate agent as soon as the vendor’s lawyer has notified the agent that settlement has taken place. If the purchase is by private treaty then arrangements will be made directly with the vendor.

FIRST HOME BUYERS’ SECTION



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Pre Approval Finance

These are a very good idea for first home buyers. A pre-approval letter from a lender indicates they have assessed the loan application and would be willing to lend up to a maximum amount and it could be conditional on the applicant locating a suitable property and/or other clauses such as a satisfactory registered valuer’s report. The pre-approval means potential buyers know how much they can borrow and by adding the deposit to that figure, what price range of properties they can view. Beware that some lenders exclude certain properties such as apartments, rural lifestyle, adjoining terraced houses etc from their pre-approvals – so buyers must clarify that aspect before making offers to purchase.

Most lenders put a time limit (3 or 4 months) on their pre-approval and if a full application is not made by the time the approval expires they may require applicants to update their financial situation by providing new bank statements and payslips.

Looking for your Home

Now armed with a pre-approval letter buyers can now begin studying the newspapers, property press, internet, real estate office windows to find a suitable first home.

Let's assume you find some likely looking properties and you have contacted a real estate agent to view them. Remember, a real estate agent is paid by the vendor out of the sale proceeds and is therefore (or should be) working in the best interests of the vendor to gain the best price on the best terms. If the agent has been made aware of any deficiencies in the property they are obliged under the law to advise you. Similarly if you ask the owner a direct question about a possible deficiency (e.g. does the dishwasher work?) they are obliged to give you an honest answer. Don't be pushed into anything where you feel uncomfortable – after all this is probably by far the biggest financial transaction you have ever considered entering into – make sure it is the right one.

It is not the intention of this guide to advise you of aspects of the property you should be considering such as location, proximity to transport, schools, shops etc. However the attached Home Buyers Inspection List has some very useful pointers about issues that may not appear obvious on a brief first viewing.

Kiwisaver

The housing market for first home buyers is changing partly due to Kiwisaver scheme providers allowing contributors to withdraw funds from their scheme after 3 years to put towards their purchase. We strongly suggest you contact your Kiwisaver provider well in advance to ascertain that they will allow you to withdraw your contributions, the amount of those funds and to acquaint you with their procedures for withdrawal of the funds.

There are a few points we need to make as we are finding first time buyers are confused about the guidelines and process.

Firstly, buyers can only withdraw their own and employer's contributions to the scheme. The kick-start provided by the government and the tax credits cannot be withdrawn.

Secondly, you may qualify for a First Home Deposit Subsidy of \$1000 for each year you have been contributing to Kiwisaver up to a maximum of \$5000 for five years. This scheme is administered by Housing New Zealand (refer to www.hnzc.co.nz).

Thirdly, your (and your employer's) contributions cannot be used to fund the (up-front) deposit you are required to pay to the real estate firm. Kiwisaver providers will only remit funds to your lawyer's trust account after the agreement becomes unconditional and such funds are held until settlement date.

Lastly, it is up to you to make an application to the Kiwisaver provider for withdrawal of funds, or to Housing New Zealand for the subsidy. This is not the responsibility of your lawyer, although they may be happy to assist you through the process.

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Other Professional Service Providers you may require: Valuers

Often referred to as registered valuers as most lenders will only accept valuations prepared by a valuer who is registered with the Institute of Valuers. Some banks only use a panel of selected valuers so do not assume that you can engage the local valuer - check with your lender first.

The valuer will undertake a physical inspection of the property; will note the obvious defects; give a description of the dwelling and other improvements and of the land; will comment on legal definitions, the zoning, the rating valuation and the location. The valuer will also provide a market commentary, include some recent sales of comparable properties and provide a dollar valuation. Lenders require a single figure (not a range of figures). The valuer will not undertake a structural inspection and will not search council records.

A comment on Ratings Valuations (often referred to as Government Valuations [GVs].)

The sole purpose of Ratings Valuations (RV) is to assess the rating burden of the local council. RVs are done by mass appraisal and are often based on percentage changes in the market. Few properties are physically inspected so that any renovations completed that do not require a building consent can be missed and conversely any internal damage will be missed thus the RV will not accurately reflect the true value of the Property. We suggest you treat observations about the sale price of the property relative to RV with caution.

Mortgage Brokers

We have mentioned these professionals above. If you can, locate a broker with AFA qualifications and also membership of the Mortgage Brokers' Association. Such affiliations give you further protection.

Reputable Mortgage Brokers will advise on more than what interest rate or loan structure will suit you. They can act as an intermediary between you and the lender and negotiate on your behalf. They can work alongside you from setting a budget through to settlement as well as liaise with other advisors on your behalf (lawyers, valuers etc). After the loan is drawn brokers can provide on-going advice for loan reduction strategies and financial health checks. Importantly in the first home buyer arena, a good mortgage broker may be able offer an alternative way to finance the purchase where saving the 20% deposit is looking increasingly unobtainable, such as inter-generational transfer of wealth. This refers to the practice, which has been around for a long time, where parents or other family can borrow against their own property to assist funding. Such arrangements may not always be suggested by the lender but the broker will be experienced and very motivated to find a way to assist first home buyers in such situations.

Insurance Brokers

If you are obtaining a mortgage loan to assist with the purchase of your home your lender will require the property to be fully insured and will not release loan funds on the day of settlement until it has the insurance company's certificate with the mortgagee's interest noted on the policy. An insurance broker will be able to find the best deal for you and remove one thing from your extensive "To Do List".

A comment on House Insurance following major changes in the industry

All Insurance Companies in New Zealand obtain reinsurance from overseas sources. These reinsurers have insisted on changes to the way that dwelling replacement cost is calculated following worldwide natural disasters, of which the Christchurch earthquakes in 2010/11 were significant. The insurers for any new (or on renewal of) cover will calculate a cost to replace your dwelling. The sum insured will be indicative only and should be checked to ensure that it is sufficient to replace the dwelling. This can be checked by obtaining a registered valuer's report or a self calculation. The IAG calculator is also an excellent means to achieve this: www.need2know.org.nz/ni

The costs

Buying a home can be an expensive exercise and the following list gives a rough idea of the main items which you should price and add into your funding calculations:

- Your initial deposit (as required by the lender).
- Lawyer's fees can vary widely depending on how much extra work the lawyer has to undertake for you and you should ask your lawyer to provide an estimate of their fee and clarify exactly what this covers.
- Additional to the lawyer's fee are 'disbursements' which are payments made on your behalf by the lawyer e.g. title search fees, registration costs, photocopying, LIM report etc. Your lawyer may ask you to fund these in advance.
- Lender's loan application fee plus Lender's Mortgage Insurance Premium (some lenders call this a Low Equity Fee) - for a 95% loan the LMI premium may be something over 1% of the loan amount and some lenders will add this on to the loan - discuss with your mortgage broker.
- Valuer's Fees can vary. Ask for a quote before engaging a valuer.
- Your share of the Council rates from settlement date up until when the next rates payment is due.
- Home insurance premium - can be paid in instalments in which case a loading will be added. Currently house insurance premiums are experiencing large increases due to increase EQC levies (earthquake).
- Mortgage Protection Insurance premium - check with your lender.
- Power, water, gas and phone costs from settlement date onwards.
- Moving costs.
- Building Inspection Fee.
- Cleaning. The house should be cleaned by the vendor prior to your moving in. However, the standard of cleaning will be different for different people.

Home Buyers Inspection List

The following list covers many of the things you should look for when buying a home.

- Sufficient storage space in kitchen, bedrooms and outside.
 - Level floors and sound piling (look for squeaky floors as these can be annoying and expensive to fix).
 - Good water pressure (turn on taps and shower; flush the toilet).
 - Chattels that are to remain (e.g. heaters, carpet, curtains, dishwasher, TV aerial) and make sure they are included in the agreement and are working.
 - Insulation (check batts or other insulation above the ceiling and under the floor).
 - Check the boundaries and compare to the title. It is generally up to the buyer to locate the true boundaries of the property and to ensure any buildings are erected entirely within the section and do not encroach over the boundary into an adjoining property (common in older subdivisions and cross-lease properties).
 - Leaking roof (look for stains on wallpaper or ceilings, check access space above ceiling and look for rust or light coming through holes in the roofing).
 - House movement (look for cracked window sills or walls).
 - Structural defects (check alterations to things like basements and verandahs, which may not comply with building codes). If there is any doubt, arrange a building inspection.
 - Traffic, aeroplane or industrial noise.
 - Alterations to properties that do not appear on cross-lease flats' plans (e.g. decks, garages and carports) – these problems are not uncommon.
 - Future development that may block your view and/or the sun.
 - Check for dry rot and borer (test the floorboards). Does the house smell damp or is there mildew?
 - Old or worn electrical wiring (check the meter box – a tangle of worn wires is a bad sign).
 - For older houses check that the plumbing has been upgraded.
 - Is the hot water cylinder getting on in age and if it is an older style, is it lagged to reduce heat loss?
 - Zoning restrictions or major development plans (check with local council). School zones.
 - Road widening plans.
 - Protected trees.
 - Pool/spa fencing and requirements for gate latches and door latches if pool is directly accessible from the house.
- Repairs can be a major expense. If appropriate, ask the real estate agent to negotiate with the vendor to undertake any repairs which may be required or to deduct these costs from the asking price.

Conclusion

We recommend you consult your lawyer at a very early stage in the home buying process. There are several legal issues (not covered in this guide) that you should be made aware of before you embark on such a major purchase.

Please do not hesitate to contact Franklin Law at 09 237 0226 to arrange a meeting with a member of the Property Team.

Dos and Don'ts when buying or selling a property

Don't sign anything without first seeking advice from your lawyer.

Do see your lawyer before you start the process.

Don't over-stretch yourself by borrowing more than you can afford to service in interest charges, not just now but in the longer term. If you are buying do ask your lawyer about the different types of home loans and the implications for you if you should sell before the end of the loan term. If you are selling do shop around for a real estate agent who has a good track record in selling property in your price range and knows the area.

Do be patient, and prepared to wait for that dream property.

Do seek advice from your lawyer on the various options available to you for selling your property e.g. multiple listings, sole agency, tender, auction – remember your lawyer gives independent advice. If you are buying don't be persuaded into buying something that doesn't meet all your needs.

Do ask questions about the state of the property generally, its age, its wiring, plumbing, whether it is on gas or near to a gas line.

Do be prepared to negotiate to get the best deal for you – your lawyer can help with this.

Don't be fooled by a recent renovation or redecoration designed to mask the flaws of a property. A property that is in its original state means you're not paying for someone else's "improvements" – which might add to the price but not the longer term value.

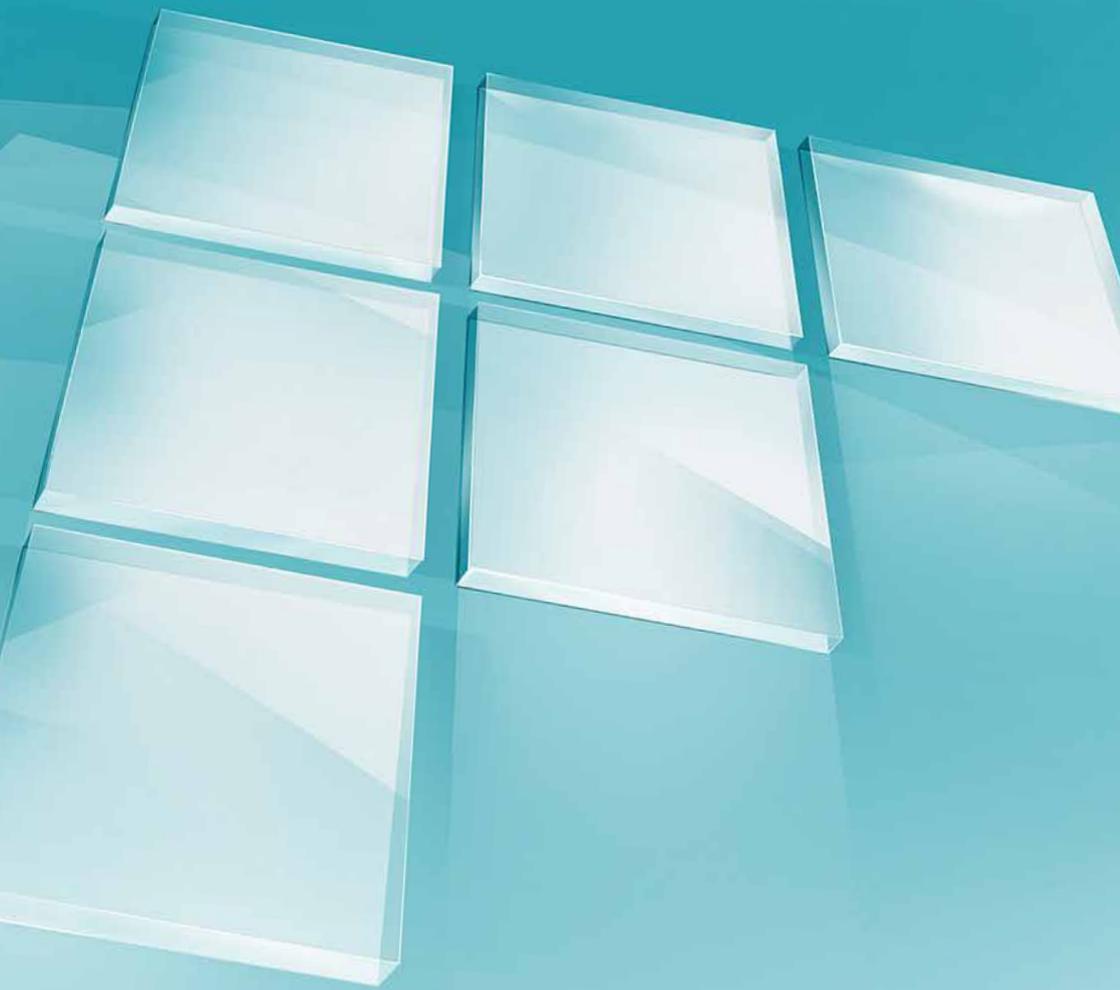
Do check the property out at different times of the day, to ensure that the property gets the amount of sun you want. In winter you will often see the property at its worst.

Do ask your lawyer about the other checks you should do – such as getting a builder's report, obtaining a Land Information Memorandum from the Council.

Do trust your instincts – is there something that is not quite right about the property?

Don't sign an unconditional contract unless you are certain you want the property at the price contained in the agreement and you have all the required finance secured – and you've taken advice from your lawyer.

Do fax the agreement to your lawyer, if you need some urgent advice.



Franklin Law

Protecting what is important to you

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