



GUIDE TO HOUSE BUYING AND SELLING

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Govett Quilliam
THE LAWYERS



NEW PLYMOUTH

1 Dawson Street | Private Bag 2013 | New Plymouth 4342
Phone (06) 768-3700 | Fax (06) 768-3701



INGLEWOOD

92 Rata Street | PO Box 28 | Inglewood 4330
Phone (06) 756-8118 | Fax (06) 768-3701



www.thelawyers.co.nz

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INTRODUCTION

Whether you are buying a new home, possibly for the first time, or selling your home and buying another one, sound legal advice will smooth otherwise potentially rough waters. Your home is likely to be your biggest asset and investment, and we strongly suggest that you discuss the matter with us before you sign any Agreement for Sale and Purchase, or agency agreement.

THINGS TO WATCH FOR WHEN PURCHASING

When deciding on a house to buy there are a number of practical things to watch for, some more obvious than others.

Buildings/electric wiring/plumbing

If in doubt about the structural wiring or plumbing condition of the property have it checked by an electrician, plumber or builder. A comprehensive check on all aspects of the home can cost up to \$500.00 plus GST depending upon the size of the home. A contract can be conditional upon you being satisfied with a builders report or such other report you may require.

Shared driveway

If there is a shared driveway make sure you examine the terms of the use of the drive and perhaps find out a little about the other people who use it. You should talk to your solicitor about the legal obligations involved in any Easements creating rights of way, especially the number of people who are obliged to contribute towards maintenance.

Swimming pool/spa pool

If there is a swimming pool/spa pool is it registered with the council and properly fenced? The Council can provide this information, or we can find out for you. Councils have a responsibility to issue Compliance Certificates for pools and some types of spas.

Fireplaces - log, pellet or gas fires

All fireplaces are required to have a permit (or a Code of Compliance Certificate). If not correctly permitted you may have difficulty with insurance if you need to lodge a claim some time in the future.

Electrical appliances

If you are purchasing electrical appliances (including an electric stove), do they work properly? You should ask the vendor to demonstrate all appliances are in working order.

Chattels

Make sure you obtain a list of the items the vendor is leaving with the home. It is much better to do this than to have any misunderstandings on the day of settlement. Items which are commonly the source of misunderstandings are dishwashers, some types of spa and swimming pools together with the filter cleaning equipment, small garden sheds, panel heaters, specialist light fittings, washing machine taps, telephones, rangehoods, loose carpet pieces and rugs and plants.

Boundary fences

Are the boundary fences in the right place? Can you locate the boundary pegs? If there is no boundary fence you may need to negotiate with a neighbour, the type and cost of construction of a boundary fence. Standard forms of Agreement for Sale and Purchase do not obligate the vendor to point out the boundaries of the land agreed to being sold unless the land is a vacant residential section. Ask the vendor or the vendor's agent where the boundaries are.

Certificate of Title

The Certificate of Title needs to be checked to see if there are any problems under the Title. Is the title 'limited as to parcels' or maybe it is a leasehold Title.

eDealing

The Land Titles Office is now converted to an electronic format. This means there are no longer outstanding duplicate Certificates of Title and the records are updated electronically. When signing any Land Information New Zealand ("LINZ") document it is now required that photo identification of the person signing is provided and for this reason you will be asked to bring in photo identification and possibly further proof (such as a rates or power bill) if you are selling or mortgaging your home.

Repairs

If the vendor has undertaken to carry out repairs, or to finish decoration of a property, it is important that the documentation makes it clear that the work is to be done to a proper standard. The Agreement for Sale and Purchase enables the purchaser to make an extra inspection prior to settlement to ensure that the work has been carried out.

Telephones

Check whether the telephone is a rented one (which will probably remain in the property) or whether it belongs to the vendor and will be removed. With the increasing number of telephones being owned by vendors you should note Telecom may be charging you for rental of phones which you are not using.

Alarm systems

Check if the alarm system is monitored. You are not expected to assume responsibility for the Agreement with the security firm if there is a current agreement.

Legal charges and disbursements

We will advise you at the initial interview (if you seek a quote) followed by a letter of engagement, the all inclusive cost to complete your particular transaction. You should know the cost to be able to calculate the total commitment when possible loan application fees and valuation fees are taken into account.

Rates

The Local Government (Rating) Act 2002 enables District and Regional authorities to levy rates against properties for the purposes of the authority as defined in the Local Government Act 2002. Your contract to purchase or sell provides for all outgoing and incoming excluding insurance premiums, to be apportioned between the parties on the date of possession. It is for this reason that you find on the settlement statement either a debit or credit of a proportion of the rates payable in respect of the property.

The Solicitors acting for purchaser and vendor respectively in any transaction have responsibilities to ensure that Sales Notices are issued to two bodies concerned with updating the ownership records of the property. The first body is Valuation New Zealand, which is responsible for fixing Government Valuations on all real estate in New Zealand. The second body is the District Council which fixes rates used for local purposes.

When the Sales Notices are received by these organisations, their computer records are changed and future demands for rates and notices of any changes in valuation are automatically sent out to the new owners at the new address. It is the responsibility of the Solicitor for the vendor to accurately apportion rates to ensure that there is a fair division of outgoings at the time of settlement.

Insurance outgoings

Insurance outgoings are not apportioned on settlement. Purchasers should take out their own insurance with the company of their choice from the settlement date.

This firm actively encourages people to shop around and to survey the insurance product offered by various companies. As with other things in life, often price is not the only criteria which should be considered.

We suggest you make a diary note to check your insurance cover annually to ensure your cover and the extent of it remains relevant to the marketplace.

Mortgages and refinancing

It is usual for a purchaser to have to undertake a mortgage to complete the purchase of a home. The Residential Mortgage Market is a highly attractive area for lenders. Many banks are trying to increase their market share in this area. It is for this reason you should keep in touch with our office to ensure that you are using a mortgage product which fairly reflects the market place.

The lending of money by a bank represents nothing more than a service to you and you should not feel that the bank "owns" you. Banks provide a service of lending money to you. You pay for the service in both the application fee you pay at the time of the uplifting of the funds and also through the interest and miscellaneous bank charges which you are obliged to pay as part of your loan.

Therefore, check carefully the competitiveness of your mortgage product at least annually. Many home owners have changed financiers in a marketplace which has experienced fluctuating rates. Please talk to us if you are considering changing banks. We can give you up to date trends and application fee reductions available from time to time.

We would be pleased to assist you in your analysis of your mortgage package at any time, including advising you on the pros and cons of fixed interest rate borrowings.

Checking the house

Snap decisions to buy houses can cause regret. We recommend clients obtain Land Information Memorandums ("LIM") or alternatively check for problems with the property. It is possible to make any contract conditional upon your obtaining suitable wiring and structural reports or to cover any other conditions which you may need investigating prior to being contractually bound. Essentially, the

responsibility of sifting the good houses from the bad houses rests with you. Vendors or their agents are not allowed to misrepresent anything about a property for sale, but they do not have to tell you everything they know either. Getting redress for post-purchase problems is invariably messy, protracted, hard to prove and expensive.

The contracts are prepared on the basis of letting the buyer beware and this legal concept protects vendors to the prejudice of purchasers. You do not have to be an expert to check a house out, although you can and should get expert help. We can refer you to the persons most suitable to assist you with any doubts.

During your first visit to the house check off the items below to make sure there are no obvious pitfalls.

Special features

It is important at this stage to consider those aspects of the house which money cannot easily fix- for example, the amount of sun it will get in key areas. In some houses, the warmest room is the lavatory! Seeing a place on a mid-winter's afternoon can provide the best indication of what it will be like when you come home from work. A house which catches the last rays of sun in the main bedroom and living area should mean lower power bills. After your initial visit, take a day or two to research other issues. We like to think we can assist you with more than just the serious legal impediments to you buying.

You should check with local authority building inspectors whether building permits were issued for major alterations and additions. Your local authority planning department can tell you whether the area will remain as you like it and is zoned correctly. You will also ascertain whether there are any special restrictions which would prevent you from doing the things you want such as extending or altering the house, running a home based business or keeping animals.

A call to the Council may allow you to find out these details without having to pay the \$235.00 charge for obtaining a Land Information Memorandum which can take ten working days, fast track LIMs currently cost \$335.00 (5-7 working days). Quite often these documents are sought at the time of signing but delays within the Council can see them returned after you are contractually bound to buy. The Council has an obligation to turn them around within 10 working days.

Check whether there are any permanent nuisances like railway, airport or traffic noise. There may be a factory, farm or rubbish dump nearby creating unpleasant odours which affect the house when the wind blows from that direction. You should certainly look at a detailed town map and walk around the neighbourhood. If you can glean some information about your prospective neighbours, so much the better. You might certainly think twice if you discover they are noisy and keep unruly dogs.

The structure

Assuming you like the house, the neighbourhood and there are no legal or town planning problems, we advise a more detailed check of the structure. Even an "inexpensive house" may cost well over \$200,000.00 so you should not feel guilty about being picky. It is your money. If the owners or the agent will not allow reasonable access at this stage, walk away from the deal. Thorough inspection can be dirty work, but if you want to do it yourself, old clothes or a pair of overalls, a good torch, a spirit level or marble, and a screwdriver are all you need to glean a lot of useful information.

Soil

Start by looking at the soil the house is built on, especially how well it drains away water. Check the ground slopes away from the house and there are no pools of water lying about near foundations or seeping into the basement. In summer the soil under the house should be dry. Water may stem from either natural ground water or leaking gutters or water supply pipes, but if it is allowed to collect under the house it will cause problems with subsiding foundations, rotting timbers and excessive condensation and mould.

On a slope, look for signs of instability, such as cracks in the ground surface, fences out of line, garden walls or trees leaning downhill. Check the condition of any retaining walls - they can be expensive to repair.

Houses built on "fill" or on deep, soft soil may require especially deep piling to prevent subsidence. Check that this has been done. If in any doubt about the stability of the soil, get a report from a civil engineer.

Foundations

Tell-tale signs of moving foundations include sagging weatherboards, sticking windows and doors, cracks around window and door frames, and sloping floors.

An older house may still be on its original timber piles which may have rotted out about 150 mm below the ground where you cannot see. Push the point of a screwdriver into any suspect wood if it penetrates more than 6 mm the wood should be replaced.

If new piles have been put in make sure replacement included more than just the easily seen ones around the edge. The foundations should be braced to meet modern standards of earthquake resistance. A building consultant should be able to advise whether extra bracing is needed and how much it will cost.

Cracks in a concrete foundation may be a sign of movement, although this may not be recent. Fast growing trees, like silver dollar gums, planted near the house may cause foundation movement. As a general rule they should be twice as far from the house as the radius of their spread.

You can check whether the house frame is level and plumb by using a spirit level or by simply rolling a marble across the floors to gauge the slope. However, even a repiled house may not have been entirely levelled, especially if it was very uneven to start with.

While inspecting the foundations check there is adequate under floor ventilation, and that none of the built in grilles have been block up. Ideally, there should be at least 450mm between the ground and the wall cladding or floor joists.

Floors

Carpets can cover a multitude of sins. Springy floors may be due to rotted or borer infested joists, but you will have to look under the house to see the cause. In brick houses, floor joists may have rotted out where they join the walls. Inspect tongue and groove floorboards for borer and rot, or particle board flooring for signs of water damage such as swelling and disintegration around the joints. Vinyl floor coverings in bathrooms can conceal rot. Another problem spot is behind shower units. It will pay to check these areas from underneath if you can.

Walls

On timber cladding look for signs of rot or borer infestation, and if near the sea, for signs of "nail sickness" weeping rust stains from non-galvanised nails.

Check walls for straightness. Wet and/or knotty framing timber used during construction can cause buckling, while subsidence usually causes the line to wander up and down.

Metal cladding may be corroded. Look also for cracks, blisters or white salt deposits on masonry. If the house has been re-clad be extra cautious. Find out what there was originally and try to find out if the new cladding is hiding problems, or allowing water to get in behind it.

Doors and windows should all work properly, and have proper metal flashings above. Windows which are painted shut may well have rotted and jammed, while doors which have large amounts shaved off the bottom indicate foundations have subsided. Check the interior walls for blisters, cracks, condensation or damp patches. Older houses may still have scrim and paper linings which can be a fire danger. If the house has been relined with gib board, check how neatly it has been mated into the original trim such as skirting boards and door surrounds.

Fresh paint or wallpaper may hide defects, but you can still run your hand across the wall surface and feel irregularities. If you are in doubt about the age of the wall coverings look behind the pictures to see how much they have faded. If you cannot tell whether the walls are insulated or not, ask to see last winter's power bills.

Roof

Check the condition of the roof, firstly by standing across the street to see how straight it looks. Heavy roofs, such as those supporting concrete or clay tiles, may have sagging ridge beam or rafters, while a light-weight iron roof may be out of line.

Stone chip coated tiles may be losing their coating and showing bald spots. Previously painted still may have faded in colour and may be rusting, clay tiles may have lost their glaze, while tiles or slates may have cracked, or slipped. Binoculars will help to "get in close" without having to risk a climb. If you are at all concerned about the roof, get a builder or a consultant to climb up there for you.

Leaking or overflowing spoutings and downpipes often cause problems. Downpipes should connect into a storm water drain or approved soak pit. Some older houses have storm water systems feeding into the sewer drain which is illegal and not all of those problems have yet been discovered by the Council. Should the local authority become aware of it they will probably require construction of a separate storm water drain, which can be expensive.

Looking from inside the attic on a bright day will be able to see light wherever there is a hole. Inspect rafters or roof trusses for water running and decay. Check sections of the roof trusses have not been removed either to improve access or to install a wood burner flue. Improperly installed wood burner flues are major fire dangers, so ask to see the installation permit. Check a masonry chimney for cracks or loose water, and a stainless steel flue for signs of corrosion. Make sure the flashing, where the chimney or flue go through the roof, is intact and not leaking.

The ceiling should be insulated.

Services

Turn all the taps on at once to see if the water pressure remains constant. If not it may be due to clogged or corroded water supply pipes, or alternatively low water pressure may be common to the area.

Check the drains by turning on all the taps in one section of the house. If the water drains slowly or backs up a sink, then the drains may be partially blocked or broken.

To prevent foul gases flowing back out the drains, each plumbing fixture should be connected to a trap and each group of fixtures should be protected by a vent.

Inspect the main power distribution board to see whether all the circuits have a fuse or circuit breaker in them, or whether there is room for future expansion. Look for any fuses rated at higher than 15 amps, bare wires, signs of water seepage, or signs of a fire. Check whether there are enough conveniently located power points - there should be at least one for every four metres of wall, and at least two over the kitchen bench.

If built-in electric appliances such as a dishwasher or drier are not included in the chattels, check whether your replacements will fit the gaps. Rangehoods and clothes driers should have vents to the outside.

If the house is piped for gas you should not be able to smell gas both inside and around the meter. Test the pressure is adequate by lighting several gas jets at once to see if they all burn well when turned full on.

Septic tank

If the property has a septic tank the Council places certain obligations on the owner to have this professionally emptied every few years. The state and condition of the tank may need to be checked by a professional at the time you make your offer. If you are purchasing a property in Oakura you will need to check to see if the vendor has had the property connected to the scheme and if not what costs could be involved for you.

Garden

It is easy to overlook the costs of revamping a garden. A badly overgrown garden may cost thousands to rebuild never mind the effort!

You should find the survey pegs to check fences are correctly aligned. It can be a shock to discover later that the fence is off line and that the neighbour owns a chunk of your land.

If the fences themselves are dilapidated, you may be faced with a heavy expense of rebuilding them - especially if your neighbour takes out a fencing order. This means you will have to go halves on the cost. These matters very often crop up when houses change hands and next door neighbours see an opportunity to get a long-standing problem resolved with more amenable owners.

Repairs and maintenance

Your mortgage obligates you to keep your property in good order and condition. It would be fairly short-sighted not to keep your property in good order and condition to maintain its current market value. Many people tend to trade up in houses during their lifetime and it is obvious that you should ensure that the property is adequately maintained whilst you retain your home.

Renovations to your home including kitchen renovations should be carefully examined as to cost. Sometimes major capital items are not reflected in a proportionate increase in value in your home on re-sale. Advice from professionals should be obtained as to the likely increase in value of your home.

Ownership of your Home

Prior to purchasing a new property, you must decide how the property will be owned if you are a couple. There are two ways in which to register co-ownership, either as joint tenants or tenants in common. The latter involves a 50/50 split in equity while the former is silent as to shares and ownership will vest with the other party by way of survivorship and such part share may not form part of any gift or will.

New property relationship legislation is an important consideration for married couples or de facto couples who own a property and have been living together for more than three years. In such cases, a 50/50 split in the equity in the property is presumed upon the breakdown of that relationship. To avoid this presumption, the parties are required to sign a separate Contracting Out Agreement.

THINGS TO WATCH FOR WHEN SELLING

Attracting a purchaser

When you wish to sell your property you will find many Real Estate Agents will be advising you on techniques which will assist you to sell your property. These techniques include a range of ideas from presentation, tidiness, attractiveness and even nice baking smells in the home at the time a prospective purchaser inspects the home.

Using a limited real estate agent to sell your home

Contact several real estate agents and ask them to give you an idea of what your property is worth. This will help you arrive at a realistic asking price. Find out what fees they will charge and how they intend to market your property.

Real estate agents fees

Real estate agent's charges are not based on any scale but in Taranaki are generally calculated as follows:

The purchase price is multiplied by either 4% and to that total a further sum of either \$400.00 or \$500.00 is added, according to the agency. That sub-total then has GST at 15% calculated on the balance and the total fee is then reached.

Some real estate agents will negotiate the amount of their commission and you may be required to meet the cost of advertising.

Many agencies require or recommend you to sign a Sole Agency Agreement which has the effect of making commission payable by the vendor even if the purchaser is not introduced by the agent to the property, eg a private purchaser.

Land agents will offer you a greater effort in selling properties listed as sole agencies because they have an exclusive right to market the property.

A general agency enables you to sell the property to a stranger without commission but if the agent introduces a purchaser pursuant to the general authority the agent's commission is payable calculated at the rate advised above.

Auctions, private sales and tenders

There has been an increasing tendency for vendors to sell by auction. The process sets a true market value for the property. The costs include the fees stated above and substantial advertising expenses. Sometimes properties are sold privately prior to auction. The vendor usually reserves the right to bid at auction and always sets a reserve being the minimum asking price at auction.

The auction process is popular among agents when the property is of interest to prospective purchasers. Competing bidders can drive the price well beyond the vendor's reserve. The contract is concluded on the fall of the hammer. The purchaser is bound to settle, usually one month after the date of the auction. A deposit is payable on the day of the auction.

Over the years, Govett Quilliam has acquired an expertise in the auction method and sale technique used by auctioneers. If you would like to draw on our experience, please give us a call.

Tenders are increasing in popularity because the vendor has the opportunity to have competing genuine purchasers go to paper with their price by a fixed time and date. Negotiations often continue after the date of closing of tenders. Tenders do not necessarily have to be accepted.

Private sales are increasing in number because of the obvious savings to vendors. Often vendors are prepared to split their savings on the agent's commission to reach an agreed price with the purchaser. We predict Private Treaty Realty will be a growth industry in the future.

If a private sale is arranged start by asking the vendor to ring their Solicitor who will prepare a contract. To save costs, ensure you have available the full names of all parties, the address, price, settlement date, list of agreed chattels and the name of the purchaser's solicitor.

Tenancy of the property

If the property is occupied by a tenant, or if you are selling a property in which there is a tenant, make sure this situation is properly covered in the Agreement for Sale. If vacant possession is to be given upon settlement then the tenant will have to be given at least 42 days notice after the sale becomes unconditional.

As a vendor, be wary of the tenant who says a shorter notice is acceptable. If you are promising a definite settlement date to a purchaser it is essential that you are able to meet that deadline. You will also need to be aware of any fixed tenancies.

Finance

Unless you are in the fortunate position of not needing a mortgage you will need to obtain loan approval for your purchase. Even if you already have a mortgage with a bank or other institution it will still be necessary for the mortgage on the previous house to be discharged and for a new mortgage to be taken out.

We suggest you discuss these matters carefully. Mortgage lending is very competitive at the moment. We are able to point you in the right direction, often facilitating the saving of substantial application fees. Different banks and institutions offer different rates and terms of repayment, and have different fees and requirements.

We have brochures and advice about the various sources of finance to assist your decision.

We would like to be able to go through all the relevant documents with you to ensure that your interests are protected. We would also like to have the chance to explain a lot of the ups and downs of buying properties in a rush situation. We are able to talk to you by phone or fax or email in or out of office hours and we would far prefer to be able to talk to you prior to you signing documentation which could be prejudicial to you.

The considerate vendor

Govett Quilliam has had the pleasure of dealing with many considerate people who have bought and sold houses. One of our nicer clients recently sold a house and she wrote a letter along the following lines to her intending purchasers. It would be useful if you could encourage your vendor to give you similar information. The letter read:

Dear Bill and Susan,
On the key ring you will find four house keys (for the back door and ranch slider), two garage side-door keys and four garage roller-door keys (two for each door).

Rubbish collection is Friday, have your rubbish out by 8.30am. I would not recommend putting it out the night before, there are lots of roaming dogs in the neighbourhood!

The neighbours on the side where there is no fence are Alan and Emily Smith. They have three young children. They have always been very good neighbours and will happily clear your mailbox and keep an eye on the house if you are ever away.

In the garage you will find a large strong box and a table. I used to keep these under the house for things paint tins (instead of on the dirt floor under the house) and odds and ends. If you do not want these please throw them away as I no longer have use for them. I did find them useful as it stopped the garage from getting cluttered up.

Attached is a notice concerning rates for the property for the next financial year, although addressed to me it is of more use to you now as the new owners.

In the wardrobe of the master bedroom there is a box of wallpapers which may be useful to you if there are any accidents and you need to replace a strip.

The mail redirection order on the address has expired (apparently they only last three months). I still get the odd letter coming through and would be most grateful if you could redirect it to my new address which is 136 John Street, New Plymouth.

Feel free to contact me, our new phone is 757-8120.

The plumber we used on the house is Evan Smith (757-8550) and electrician is Fred Sparky (757-5019). The water toby is on the edge of the concrete path under a metal cover 2 ft to the right of the letterbox. The nearest bus stop is at the intersection and is reliable for you and your children, especially for getting to school.

Good luck with your moving and hope you will be very happy in the house.

Yours sincerely,
Wendy Brown

RECENT CHANGES - AGREEMENTS FOR SALE AND PURCHASE

Recent changes to the Agreement for Sale and Purchase are summarised as follows:

Other obligations on the vendor

- When giving possession the vendor is now obligated to hand over keys to **all** exterior doors and door openers as part of the giving of possession. In the past you may have experienced real difficulty in obtaining keys to roller doors or certain locks where keys have been lost by past owners of the home. The vendor should now plan to have **all** keys available on settlement.
- An additional clause permits inspection of the property by the purchaser or a representative of the purchaser prior to settlement. Reasonable notice in writing needs to be given to the vendor. The purchaser is permitted a further inspection on giving similar notice. This visit is to confirm compliance by the vendor with any agreement made to carry out any work on the property, or the chattels and fixtures in the property, made as a consequence of the first inspection. Other requirements agreed to be completed at the time of the formation of the contract can also be checked by the purchaser.
- The usual vendors warranties are included to ensure that the fixtures sold with the property are in fact the vendors to sell. This clause goes further to state that having regard to the age and condition of the chattels and fixtures at the date of the agreement, they should be in reasonable operational order when possession is given and taken. It is therefore very important for vendors to ensure that chattels such as swimming pool pumps and accessories, elements on range tops and the like are in operational order. The new clause goes on to provide that any breach of that provision shall not entitle the purchaser to cancel or delay settlement but shall be the subject of compensation if demanded or offered in writing before settlement. Disputes about these obligations are to be resolved by arbitration. This represents a major change to the previous obligations of vendors selling homes. The old concept of "let the buyer beware" is now inaccurate in assessing these responsibilities.

SHOULD WE BUILD OR BUY AN EXISTING HOME?

There are many matters to be considered before deciding to build a new home. The overall cost of either process needs to be discussed and all the costs completed *before* the contract to buy your section is signed. Lifestyle issues need to be given real weight in the decision.

You will find a wide range of advisors promoting your decision. Advice can be obtained from architects, subdividers, builders, the Master Builders Association, land agents, Design & Build Promoters, franchise holder and other new house owners, suppliers of building materials and Bank Managers.

If you need an unbiased view of the best choice for you call us. The range of building contracts available require consideration.

HOW WE CAN HELP YOU

Govett Quilliam is Taranaki's largest law firm. We have the people, the experience and the resources to assist you, whatever your case may be.

We have prepared this guide as a guideline to house buying and selling. If you require further information, or have any questions about this guide please contact us.

Our Partners with experience in house buying and selling are:



Ross Fanthorpe
Partner

DDI: (06) 768-3729
Ross.Fanthorpe@gqlaw.co.nz



John Eagles
Partner

DDI: (06) 768-3733
John.Eagles@gqlaw.co.nz



Paul Franklin
Partner

DDI: (06) 768-3731
Paul.Franklin@gqlaw.co.nz



Paul Anderson
Partner

DDI: (06) 768-3732
Paul.Anderson@gqlaw.co.nz



Geoff Shearer
Partner

DDI: (06) 756-8118
Geoff.Shearer@gqlaw.co.nz

Please call our office if you would like further information on any guides prepared by our firm. Copies are also available on our website.

- *Asset Protection and Residential Care Subsidies*
- *Business Grants & Assistance*
- *Buying or Setting Up a Small Business*
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- *Companies Act 1993*
- *Consumer Guarantees Act*
- *Copyright*
- *Credit (Repossession) Act 1997*
- *De Facto Property Rights*
- *Employment Law*
- *Enduring Powers of Attorney*
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