

Below is additional information entitled **WHAT YOU SHOULD KNOW WHEN YOU ARE SELLING A COMMERCIAL PROPERTY** in relation to Conditions, Vendor's Warranties and Undertakings, Resource Consents, Leases, Value, Chattels, Deposit, Cash Out Clause, Vendor Work, Rates and Other Outgoings, Notifying Change of Ownership, Building and Chattels Insurance, Mortgage, Signing, Possession, Balance of Funds, Keys, Caveat Emptor – Seller Beware, Land Transfer Tax Statement and Conflicts of Interest. We encourage you to read these also.

WHAT YOU SHOULD KNOW WHEN YOU ARE SELLING A COMMERCIAL PROPERTY

Conditions

It is quite common for an Agreement to sell a property to be entered into subject to various conditions which the Purchaser or their lawyer asks the agent to include before it is signed. Occasionally, the Agreement will include a condition for the benefit of the Vendor. If, on reflection, your Agreement does not include terms and conditions which you require, please let us know so that we can consider how best to safeguard your interests.

Vendor's Warranties and Undertakings

If the ADLS Form of Agreement has been used then the warranties are contained within clauses 7.1 to 7.5 of the Agreement. Please carefully read these warranties and ensure compliance. Please let us know if there are any with which you cannot comply. Early notice will help minimise difficulties.

Resource Consent

If the commercial property being sold has resource consents for activities carried on then these should be transferred to the Purchaser on settlement. Please ensure details are supplied to us so this can be arranged.

Leases

If the commercial property being sold is leased then the Purchaser is entitled to the full chain of lease documents on settlement. Please ensure we receive copies. Rent and outgoings are apportioned between Vendor and Purchaser in accordance with the leases and the Agreement for Sale and Purchase.

Some commercial properties are sold with leased land adjacent often leased from a different landowner. An application for an assignment of that lease would normally be required and a Deed of Assignment of Lease entered into between the neighbouring landowner (Landlord) and the Vendor (Assignor) and the Purchaser (Assignee).

Value

Before entering into any Agreement for Sale and Purchase of Commercial Property consider obtaining advice from an experienced Registered Valuer specialising in commercial property. This will help you decide what sale price to accept.

Chattels

Please check the Agreement and note which chattels are included in the sale. Items that are fixtures are automatically included as they are deemed to form part of the land.

In the case of a commercial property there will often be other plant listed in the Agreement (e.g. air conditioning units). If you are uncertain whether an item is a chattel or a fixture it is best that it be noted as excluded from sale if it is not your intention to include it in the sale. Care also needs to be taken to correctly record that the chattels included in the sale are in fact owned by the Vendor not a Tenant. It would be prudent for a Vendor to consider recording in the Agreement that chattels are sold in “as is where is” condition so the Vendor does not have liability for the operational status.

Deposit

In most Agreements the deposit is payable upon unconditional but if this is not marked on the front page of the Agreement then it is payable upon the Agreement being signed. The agent will generally organise this and will then deduct their commission and advertising fees from any deposit they receive. If this is a private transaction then you will need to collect the deposit from the Purchaser yourself.

Cash Out Clause

In some Agreements there may also be an “out” clause, which in certain circumstances enables a Vendor to sell the property to another purchaser on terms and conditions acceptable to the Vendor. The Purchaser must be given the specified period of notice in which to make the Agreement unconditional or the Agreement will be terminated. If such a clause is not already included under the heading FURTHER TERMS OF SALE, we recommend that you consider seeking the inclusion of such a clause should a lengthy extension be requested by the Purchaser in due course.

Vendor Work

We particularly draw your attention to the warranties and undertakings contained in the Agreement. You have warranted in the Agreement that if you have carried out any work at the property requiring a building consent that you have obtained the building consent and complied with all conditions and where appropriate, a Code Compliance Certificate was issued for the works. If there has been any such work for which no consent or Code Compliance Certificate was obtained please let us know urgently.

The Purchaser is entitled to take possession of the property and Landlord fixtures fittings and chattels in the same condition that they were in at the time they signed the Agreement.

Rates and Other Outgoings

We will apportion these as at the date of settlement with you being liable for the period of the rating year up to that date and the Purchaser being liable for the balance of the rating year. We encourage you to pay all rates which fall due before settlement date as soon as possible so when we do our rates check they are up to date. If your property is separately metered for water or other services please let us know so that they can be apportioned on settlement.

Notifying Change of Ownership

At the time of settlement we will send the Local Council and the Regional Council a notice advising details of the sale and change of ownership. In the unlikely event you receive a rates notice which you believe you are not responsible for please forward a copy to us with a brief note and will review the matter.

Building and Chattels Insurance

For your own protection, you should not cancel your insurance cover until we have confirmed that settlement has taken place.

Mortgage

If you have a mortgage on your commercial property it will be repaid by us from the proceeds of sale. We will obtain the repayment figure and make all necessary arrangements for the discharge of your existing mortgage.

Signing

Prior to settlement you will need an appointment to attend our office to sign conveyancing papers. Please make this appointment at least 3 clear working days prior to the settlement date. Please note the identification requirements mentioned above. **We cannot settle without this.**

If an appointment at our office prior to settlement is likely to be impractical please let us know as soon as possible and if there is sufficient time we may be able to make arrangements for the papers to be posted to you for signing and return prior to settlement.

Possession

In the interests of an orderly settlement, we ask that you arrange for the property to be vacated as early as possible on the settlement day, ideally no later than lunchtime (unless it is being sold subject to an existing tenancy). Please note the chattels you are selling with the property listed in the Agreement and please make sure that these are left with the property.

Balance of Funds

Our costs will be paid on settlement by deduction from the sale of proceeds.

When you attend our offices to sign the conveyancing papers, you will need to provide us with **an original deposit slip for the account into which you wish the balance of funds to be paid (for accuracy)**. This will enable us to deposit cleared funds to that account, through our online banking system. If we do not hold your original deposit slip we will be unable to provide this service to you and the funds will be banked manually to your account, thus taking the usual 5 working days to clear.

We will require **unequivocal instructions from you** as to the disbursement of these settlement funds. If we do not have such instructions, then we will not complete the settlement of this transaction until such time as we have received such instructions.

If you are expecting a large balance deposit from the Real Estate Agent, we suggest you let us have your deposit slip as soon as the agreement becomes unconditional enabling us to release this to you electronically also. Where the amount and timing makes it practical to do so we prefer to release balance deposits to our clients rather than place it on deposit.

Please note also that we are not prepared to pay the balance funds to you otherwise than to the party named as Vendor on the Agreement for Sale and Purchase. If you require

otherwise we will require the express written authority of the Vendor, in a form satisfactory to us first.

Keys

You have an obligation to make available to the Purchaser keys to all exterior doors, electronic door openers relating to the property and the keys and/or security codes to any alarms which may be situated on the property. If any of these are not available as required please ensure they are available by the settlement date, engaging locksmiths etc if necessary.

Please arrange to deliver keys, electronic door openers and security codes to the offices of the real estate agents (if no agent is involved then to our office) by no later than the day before the settlement date so that settlement is not delayed on due date while the Purchaser's lawyer satisfies themselves as to their whereabouts. You may need to retain a single key to retain access until you have finally moved out which we suggest you leave inside the building on final vacation.

You do not have to make available keys, electronic door openers and security codes where the property is tenanted and these are held by the tenant.

Caveat Emptor - Seller Beware

There is relatively little consumer protection in New Zealand for sellers of commercial property. It is your responsibility to check any Agreement before you sign it and to carry out your own thorough due diligence in respect of any transaction.

Land Transfer Tax Statement

Before settlement you will be required to complete a Land Transfer Tax Statement.

In the case of individuals, we will require your IRD number(s).

If the purchasing entity is a Trust or a company, we will require the IRD number of that entity.

Conflicts of Interest

On occasion we find that the same practitioner from this firm may be asked to act for both the Vendor and the Purchaser or that one practitioner from the firm may be asked to act for the Vendor and another practitioner may be asked to act for the Purchaser.

This situation is not uncommon in a small provincial city like Palmerston North.

If this is the case on this occasion we are proceeding to act for Vendor and Purchaser on the basis of your informed consent. In the event any conflict of interest emerges during the course of this transaction such as a dispute between Vendor and Purchaser then we will recommend in these circumstances that both Vendor and Purchaser seek independent legal advice as soon as practicable. If we are incorrect and you do not so consent to these arrangements please urgently let us know so that alternative arrangements can be made for you to receive independent legal advice with another practitioner from outside our firm in respect of this transaction immediately.

If there are any matters about which you are uncertain please do not hesitate to contact us.

GreenLaw.