

General Instructions for Solicitors

Purpose of this document

This document sets out the general instructions for solicitors when acting on transactions to purchase properties under Kāinga Ora–Homes and Communities’ (**Kāinga Ora**) Shared Ownership Scheme (Scheme, also known as the First Home Partner Scheme).

Instructed solicitors are required to comply with the instructions in this document and any other instructions Kāinga Ora provides to the solicitors from time to time.

Contents of this document

This document comprises three parts:

- **Part 1: General instructions** – which sets out what Kāinga Ora generally requires of solicitors when acting on the Transaction.
- **Part 2: Initial advice on Transaction** – which sets out the advice that Kāinga Ora requires solicitors to provide to both the Home Owner and Kāinga Ora in respect of an agreement for sale and purchase, and the due diligence Kāinga Ora requires solicitors to undertake and report on.
- **Part 3: Settlement instructions** – which sets out the requirements that solicitors must undertake to prepare for and complete settlement for the purchase of the Property.

Interpretation

Capitalised and defined terms used in this General Instructions for Solicitors document are defined in:

- the Reference Schedule provided with these instructions;
- Supplementary Reference Schedule to be provided to solicitors in anticipation of signing an agreement for sale and purchase for a property; and
- the Shared Ownership Agreement.

Part 1: General Instructions

1. We have made some assumptions about you

We have made some assumptions about you and your business. If our assumptions are incorrect, please let us know. We may then elect to appoint our own lawyer to act on the Transaction, and/or require the Home Owner appoint new legal representation if our assumptions are incorrect.

We assume that you:

- are instructed by both the Home Owner and its mortgagee to act on the Transaction;
- are a law firm, an incorporated law firm, a sole practising lawyer or a conveyancing practitioner;
- have the necessary experience to act and advise on the purchase of the Property, and to explain our documents to the Home Owner;
- operate a trust account in accordance with the Lawyers and Conveyancers Act (Trust Account) Regulations 2008; and
- hold, and will continue to hold valid professional indemnity insurance (and will not do anything to invalidate that insurance).

We also understand that you are not the Home Owner or a relative of the Home Owner and have no personal interest in the Transaction.

2. We understand the Home Owner is eligible to be part of this Scheme

We have agreed to work with the Home Owner to purchase the Property on the basis that the Home Owner is an “eligible purchaser” for the purposes of the Scheme (criteria can be found on our website at kaingaora.govt.nz/firsthomepartner).

To confirm this position, we need you to obtain the necessary declaration from the Home Owner under section 51C of the Overseas Investment Act 2005. Please also send us a copy of the Home Owner’s completed Residential Land Statement.

If the Home Owner is unable to declare they do not need Overseas Investment Office consent, then we may require changes to the Transaction.

3. Please do not transfer, assign, or nominate the agreement for sale and purchase to anyone else

We have agreed to enter into this Transaction on the basis that the Home Owner will purchase its share in the Property in its personal capacity.

Please do not act on the Home Owner’s instructions to transfer, nominate, novate, assign or otherwise pass on the benefit of any agreement for sale and purchase of the Property (including the Home Owner’s Share) to any other party including:

- jointly to a relative of the Home Owner; or
- to any trust that the Home Owner, or a relative of the Home Owner, is connected with (for example, as a settlor, trustee or beneficiary).

If you think it is likely there will be other owners of the Property (other than us or the Home Owner), please let us know immediately.

4. Your fees

Unless we specify otherwise, all legal fees for your attendances (including those incurred in complying with our instructions and requirements) are to be met by the Home Owner.

5. Anti-Money Laundering and Countering Financing of Terrorism

We are a Crown Entity, which means you are permitted to conduct “simplified customer due diligence” on us for the purposes of section 18 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

To assist you in completing “Simplified customer due diligence” we:

- confirm that the person signing off on the covering letter provided with these instructions, and any Supplementary Reference Schedule, is authorised to act on our behalf;
- have provided a certified copy of that person’s passport or driver’s licence with these instructions; and
- note that the relationship of the person acting on our behalf to us is as an employee.

6. We need you to use best practice when acting for the Home Owner and us

This is an important transaction, particularly for the Home Owner. To that end we want to make sure that the best practice is being followed when the Home Owner is receiving advice.

We need you to comply with all laws, any guidelines issued by Land Information New Zealand Toitū Te Whenua, and the latest edition of the Property Law Section Property Transactions and E-Dealing Practice Guidelines prepared by the Property Law Section of the New Zealand Law Society (the **PLS Guidelines**).

For guidance on how to complete a tenants in common transfer, please refer to clause 5.3.3.1.2 of the Landonline e-dealing User Guide (V3.20).

7. We do not need you to advise us on the documents

Even though you will be acting for us, we don’t need you to explain the content of any of our documents to us. We confirm we understand the contents of our documents.

Do not amend any of our documents. Please check that our documents accurately reflect the Transaction details as recorded in the Reference Schedule and Supplementary Reference Schedule (as relevant). Please advise us if any of our documents are incorrect or do not accurately reflect what will be registered on the record of title to the Property.

You do not need to advise us on the loan document(s) in respect of the mortgage that will be registered over the Property because we are not a party to the loan document(s) – we are simply granting a mortgage over our share in the Property.

8. Corresponding with us

We have provided our contact details in the Reference Schedule. Email is our preferred method of contact.

You must communicate with us on the matters contemplated by our Instructions.

We do not need to be included in, or otherwise forwarded, other correspondence in relation to the Transaction unless you consider it is material to our interests (in which case, you must specify why you think it is material when providing it to us).

Part 2: Agreement for sale and purchase, and due diligence

1. Advice we require on the agreement for sale and purchase

If the Home Owner wants to submit and offer to purchase a Property, we require you to:

- a. review the form of agreement for sale and purchase provided by the vendor to confirm that it conforms to our requirements as set out in our Kāinga Ora Requirements for Agreements for Sale and Purchase document; and
- b. report to us (and the Home Owner) using the form of letter provided in our Reporting Letter to Co-purchasers document.

We will not sign any agreement for sale and purchase that does not meet the requirements set out in our Kāinga Ora Requirements for Agreements for Sale and Purchase document.

2. Due diligence solicitors are required to undertake

Our specific due diligence requirements

We require you to obtain a current search copy of the record of title for the Property and confirm to us that:

- a. the legal description of the Property is correct and matches the details in the Agreement for Sale and Purchase;
- b. that the Property is not Māori land;
- c. there is nothing that might prevent us or the Home Owner (as purchaser) to obtain clear title on settlement (for example a mortgage, caveat, compensation certificate, statutory land charge, amalgamation condition, encumbrance, or a certificate or notice relating to a Treaty of Waitangi settlement); and
- d. there is nothing contained within any instrument registered on the record of title to the Property that:
 - i. could result in a financial burden (for example liquidated damages in a land covenant) being placed on either the Home Owner or Kāinga Ora as a co-owner of the Property other than in situations where the funds are being applied for the benefit of the Property; or
 - ii. would otherwise materially restrict the use of the Property as a dwelling;
 - iii. If the property contains an existing dwelling which is not a “brand new build”, we require that Home Owner obtain (at their cost) a building inspection report in compliance with NZS4306:2005 by an inspector who is either accredited by The Building Officials Institute of NZ or who is a member of The New Zealand Institute of Building Surveyors. The Home Owner must be satisfied with the condition of the property based on that building inspection report (including any identified issues and necessary repairs and maintenance). We require you to report to the Home Owner and to us the existence of any issues or concerns in the building inspection report which are more than minor and/or which may reasonably cost more than \$5,000 to remedy (in total if more than one issue/defect) – the cost may need

assessment/quantifying for and on behalf of the Home Owner by a registered licenced building practitioner or similar.

- iv. If there are no identified issues (taking into account the above requirements) we require a warranty from the Home Owner to us that they are satisfied with the condition of the property and the building inspection report in all respects and that there are no issues identified which may negatively affect our interest in the property (including but not limited to defects, required maintenance and/or future regular or periodic required maintenance and associated costs).
- e. Where the agreement is for a title to be issued, the agreement does not permit any new covenant, encumbrance, or similar instrument to be registered which contain a provision(s) which prevents:
 - i. us objecting to future development by the covenantee/encumbrance; and/or
 - ii. providing an indemnity and/or power of attorney from or by us.

It is ok if the Home Owner is subject to those things.

If the Property is a cross-lease, unit in a unit title development, or a leasehold title, you must also undertake the actions described in paragraphs 4.18 - 4.20 of the PLS Guidelines (as applicable).

Our general due diligence requirements

You must consult with the Home Owner to confirm what other aspects of due diligence the Home Owner requires you to take. We require you to liaise with the Home Owner to identify an appropriate scope for your due diligence enquiries for the Transaction, with reference to the matters covered in parts 2 and 4 of the PLS Guidelines.

You may also consider it pertinent to advise the Home Owner to undertake other due diligence not reference in the PLS Guidelines Reporting on due diligence

We require you to report to the Home Owner and to us on your due diligence findings using the form of letter provided in our Reporting Letter to Co-purchasers document.

Disclosures made to mortgagees

If at any point you become aware of a need to disclose any information to a mortgagee to enable a certification to the mortgagee to be given, you must also provide that information to the Home Owner and to us.

We expect, for example, to be advised on the following (without limitation):

- a. disclosures made by the vendor relating to or affecting the property ; and
- b. historic compliance concerns or environmental factors and any other matters such as identified in the Land Information Memorandum for example; and
- c. details in relation to existing damage or issues for which the vendor proposes to assign its insurance policy or undertake repairs/remedy (or which is otherwise dealt with).

3. Please review and advise the Home Owner on the Shared Ownership Agreement

We require you to advise the Home Owner on the nature and effect of the Shared Ownership Agreement.

The Home Owner should already know about and understand the Shared Ownership Agreement but if you have any concerns about the Home Owner's capacity to understand the Shared Ownership Agreement then please let us know as soon as this becomes a concern for you.

We require the Home Owner to sign the Shared Ownership Agreement personally and not by an attorney as evidence that it understand and agrees to the arrangements described in the Shared Ownership Agreement.

Part 3: Instructions in preparation for settlement

1. We authorise you to act for us in respect of the conveyancing and registration aspects of the Transaction

We have provided forms of the following conveyancing documents for you to populate for the Transaction and provide to us for execution:

- Authority and Instruction form;
- Land Transfer Tax Statement; and
- Residential Land Statement.

You may be wondering why there is no witnessing block in the Authority and Instruction form, or photographic ID included. That is because Kāinga Ora is a public corporate and therefore does not need to have the signatures witnessed (see Appendix 3 of the PLS Guidelines (July 2020) for the New Zealand Law Society approved Public Corporate A&I form).

We require you to register the Kāinga Ora Land Covenant immediately following registration of the Mortgage. Please ensure this is reflected in the Authority and Instruction form and attend to the registration of the Kāinga Ora Land Covenant on the Settlement Date. We consent to the registration of the Home Owner's Land Covenant immediately following registration of the Kāinga Ora Land Covenant.

At least 10 working days prior to the Settlement Date, please send us the documents that we have requested you provide to us (see the checklist in Schedule 2 of our cover letter). Please ensure that we are named as a recipient/addressee of the Vendor's GST invoice for the transaction.

Please also make sure that on settlement, there will be no outstanding rates, levies or charges against the Property.

On the Settlement Date, please complete registration for us and send us a post-registration search immediately following settlement of the:

- Record of Title showing Kāinga Ora and the Home Owner as the registered owners as to their respective shares;
- registered mortgage instrument; and
- registered Land Covenant(s) (if applicable).

2. We accept that there will be a mortgage registered against the record of title to the Property

We are aware there will be a mortgage registered against the record of title for the Property, including our Share of the Property. This is an important part of the Scheme and we agree to this. Our Authority and Instruction form will include more detailed instructions to you for registration of the mortgage.

Although we are happy with a mortgage being registered, only some banks have agreed to participate in the Scheme. If the mortgagee is not one of the following banks, please let us know:

- Bank of New Zealand
- Westpac
- Kiwibank
- SBS

Please check that the home loan amount stated in the Home Owner's loan agreement is the same as the Home Loan Limit in the Reference Schedule. If these figures are not the same, please contact us.

For the purposes of providing the necessary certifications to the mortgagee for the Transaction in your solicitor's certificate, we confirm that:

- we do not need to see copies of the loan documents provided to the Home Owner by the mortgagee (including any loan summary or loan agreement that needs to be signed by the Home Owner, and any terms and conditions);
- we have received a copy of the relevant memorandum of mortgage;
- we understand how priority amounts work; and
- we understand that the mortgagee can ask the mortgagor to increase the sum insured in the insurance certificate of currency for the property.

3. The Home Owner can organise its own insurance (subject to some requirements)

The Shared Ownership Agreement requires the Home Owner to insure the Property. The Home Owner is responsible selecting its own insurance provider and policy, subject to the key requirements that are in clause 12 of the Shared Ownership Agreement.

We also have some criteria for the insurance providers that are able to be used. This criteria can be found on our website at kaingaora.govt.nz/firsthomepartner.

4. The Home Owner can organise its own insurance (subject to some requirements)

We want the local council (and if relevant the body corporate) to know that we are a co-owner of the Property. However, the Home Owner is responsible for paying the rates and any other costs (see clause 8 of the Shared Ownership Agreement).

Because of this, please use the Home Owner's contact details and the Property Address for the address to send the rates and any body corporate notices to.