

Initial Letter to Solicitors

Solicitor Firm
Solicitor Firm Address

Attention: Solicitor Name

Kia Ora

Subject: Purchase of Property under First Home Partner Scheme

Introduction

1. We understand you have been asked to act for **Client Names (Home Owner)** on the proposed purchase of a Property under Kāinga Ora–Homes and Communities' (**Kāinga Ora**) Shared Home Ownership Scheme (**Scheme**, also known as the **First Home Partner scheme**). We are instructing you to act on behalf of Kāinga Ora on its anticipated purchase of a Share in the Property to be purchased.
2. We use some important terms in this letter. The key terms and definitions are:
 - (a) the details for the purchase as set out in *Schedule 1: Reference Schedule* (including as may be supplemented or varied by a *Supplementary Reference Schedule*);
 - (b) capitalised terms that we use in this letter that are defined in *Schedule 1: Reference Schedule* (including as may be varied by a *Supplementary Reference Schedule*);
 - (c) “we”, “us” and “our” – meaning, unless the context provides otherwise, Kāinga Ora, and any person it appoints to manage matters in relation to the purchase of the Property; and
 - (d) “you” – meaning the law firm, incorporated law firm, a sole practising lawyer or a conveyancing practitioner named as the recipient of this letter.

Nature of the Transaction

3. We refer you to *Schedule 3: Shared Ownership Scheme FAQs*, which provides a high level summary of the key features of the Scheme.
4. You are receiving these instructions because the Home Owner wishes to participate in the Scheme, and we have confirmed they are eligible to participate.

Anticipated stages for the Transaction

Commitment Agreement and Finding a Property

5. In addition to confirming the Home Owner's eligibility to participate in the Scheme, we have signed a *Commitment Agreement* with the Home Owner, outlining our respective rights and obligations to each other as co-purchasers. You should familiarise yourself with the terms of the *Commitment Agreement* to ensure you understand the relationship between Kāinga Ora and the Home Owner as co-purchasers.
6. The *Commitment Agreement* is intended to give the Home Owner sufficient assurances for it to commence the process of identifying a Property to purchase. We recommend you keep in contact the Home Owner to monitor how that process is progressing. The Home Owner will also be keeping in contact with us to check the Property meets the criteria for the Scheme.

Agreement for sale and purchase

7. Once the Home Owner has identified a Property for purchase, they will seek your advice on the vendor's form of agreement for sale and purchase.
8. We require you to:
 - (a) review the agreement for sale and purchase 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 **"(modified as necessary to include all relevant information)"**. As we will not sign an agreement that does not meet our requirements we expect you will not report to us unless/until you are able to provide this confirmation.
9. Please send your reporting letter to the Kāinga Ora contact email address provided in the *Reference Schedule*. Please quote the Home Owner Reference Number in the subject line.

Property due diligence

10. While we may sign an agreement for sale and purchase that is conditional on the purchaser undertaking general and/or specific due diligence enquiries, (in which case you will need to tailor the reporting letter accordingly) our preference is that you complete legal due diligence enquiries before we sign the agreement for sale and purchase.
11. We require you to:
 - (a) conduct the due diligence outlined in our *General Instructions for Solicitors* document; and
 - (b) report to us (and the Home Owner) using the form of letter provided in our *Reporting letter to Co-Purchaser* document **"(modified as necessary to include all relevant information)"**. We will need to approve the contents of that letter before we sign any agreement for sale and purchase, or confirm satisfaction of any relevant condition, as the case may be.
12. Please send your reporting letter to the Kāinga Ora contact email address provided in the *Reference Schedule*. Please quote the Home Owner Reference Number in the subject line.

Settlement attendances

13. We require you to return certain completed documents and provide some other information to us prior to settlement. A checklist of the documents and information we require is included in *Schedule 2: Document and Information Checklists*.
14. We need you to provide these documents and information to us at least 10 before the Settlement Date. The documents should be returned to the Kāinga Ora contact email address provided in the *Reference Schedule*. Please quote the Home Owner Reference Number in the subject line.
15. Subject to receiving the required information and documentation, we will arrange for:
 - (a) a signed copy of each of the *Authority and Instruction Form*, *Land Transfer Tax Statement*, and *Residential Land Statement* to be sent to you two working days prior to the Settlement Date; and
 - (b) our share of the purchase price to be deposited to your trust account on or before the Settlement Date.

How our instructions work

16. *Schedule 2: Document and Information Checklists* includes a list of documents that should be enclosed with this letter when you receive it.

17. The *General Instructions for Solicitors* document is particularly important for you to review. This document sets out the aspects of this Transaction that we require you to attend to on our behalf. It is comprised in three parts:
- (a) **Part 1: General instructions** – which sets out what Kāinga Ora generally requires of solicitors when acting on the Transaction.
 - (b) **Part 2: Initial advice on Transaction** – which sets out the advice that Kāinga Ora requires you to provide to both the Home Owner and Kāinga Ora in respect of an agreement for sale and purchase, and the due diligence we require you to undertake and report on.
 - (c) **Part 3: Settlement instructions** – which sets out the requirements that you must undertake to prepare for and complete settlement for the purchase of the Property.

If you need further information or cannot comply with our instructions

18. *Schedule 3: Shared Ownership Scheme FAQs* and the enclosed documents should give you a good idea of how the Transaction will work. There is also extensive guidance available on our website kaingaora.govt.nz/first-home-partner/legal, if you have any questions that are not covered by these documents or our website material, please contact the following person:
- Eli Salmons
19. If you are unable to completely comply with our instructions, we require you to immediately inform us of this fact. We may consider appointing another solicitor to act on our behalf in this matter if you are unable to act in accordance with our instructions.

Schedule 1: Reference Schedule

Transaction:	Completing the purchase of the Property so that the registered owners of the Record of Title are the Home Owner and Kāinga Ora as tenants in common in the shares detailed below.
Home Owner:	Client Names
Home Owner Reference Number:	FHP-00XXXX
Property:	The property located at the Property Address comprised in the Record of Title
Property Address:	Property Address
Record of Title:	Title Number
Share owned by Home Owner:	XX.XX%
Share owned by Kāinga Ora:	XX.XX%
Settlement Date:	XX October 2022
Purchase Price:	\$XX
Kāinga Ora contribution to Purchase Price:	\$XX
Mortgagee:	Lending Bank
Home Loan Limit:	\$XX (Client's Deposit at \$XX)
Kāinga Ora specific instructions in relation to Mortgage	Nil
Kāinga Ora Contact Name:	Eli Salmons
Kāinga Ora Contact Details:	0508 935 266 firsthomepartner.applications@kaingaora.govt.nz

Schedule 2: Document and Information Checklists

Documents that we have given to you (and or the client)	
This letter	
General Instructions for Solicitors	
Kāinga Ora requirements for Agreements for Sale and Purchase	
Form of Reporting letter to Co-purchasers	
Forms of conveyancing documents for you to populate for the Transaction, including: <ul style="list-style-type: none"> ▪ Authority and Instruction Form ▪ Land Transfer Tax Statement ▪ Residential Land Statement 	
Shared Ownership Agreement	
Kāinga Ora Land Covenant and Home Owner Land Covenant	
Commitment Agreement	
Property Statutory Declaration	
Documents that need to be provided to us before we sign an agreement for sale and purchase	
Completed Reporting letter to Co-purchasers as to: <ul style="list-style-type: none"> ▪ the vendor's form of Agreement for Sale and Purchase; and ▪ if the Agreement does not include an appropriate due diligence condition, our due diligence requirements 	
Vendor's form of Agreement for Sale and Purchase	
Record of Title and any other due diligence material you are reporting to us on	
If the Property is a unit title, the pre-contract disclosure statement	
Documents that need to be provided to us before settlement	
Fully Signed Agreement for Sale and Purchase for the Property	
Completed Reporting Letter as to our due diligence requirements (Solicitors Certificate)	
Shared Ownership Agreement signed by Home Owner	
Your trust account deposit slip	
Settlement statement	
GST invoice	
Insurance certificate of currency	
Residential Land Statement signed by Home Owner	
Populated conveyancing documents for us to sign including: <ul style="list-style-type: none"> ▪ Authority and Instruction Form ▪ Land Transfer Tax Statement ▪ Residential Land Statement 	
Record of Title (Guaranteed Search copy)	
Practical Completion Certificate and Code of Compliance Certificate for a new property	

If the Property is a unit title, the pre-contract disclosure statement disclosure statement and any additional disclosure statement	
Property Statutory Declaration (for existing homes only)	

EXAMPLE

Schedule 3: Shared Ownership Scheme FAQs

Background to Scheme

Kāinga Ora - Homes and Communities (Kāinga Ora) Shared Ownership Scheme (**Scheme**, also known as the **First Home Partner scheme**) was introduced to assist individuals who are able to meet the repayments of a mortgage but who, through various means, have been unable to find themselves in a financially satisfactory position to acquire an interest in a new or to-be-built property.

The Scheme is set up so that Kāinga Ora will contribute towards the payment of the purchase price under an agreement for sale and purchase for the Property and will own (as tenant in common) a corresponding ownership share in the Property.

In the future, when the Home Owner has the means to purchase the Kāinga Ora share, the parties have agreed that the Home Owner may purchase our share in accordance with the Shared Ownership Agreement.

Ownership structure

Kāinga Ora and the Home Owner will own the Property as tenants in common. This means that one party (for example, the Home Owner) will own one share, for example, a $\frac{4}{5}$ share. Kāinga Ora will own the other share in the property. In this example Kāinga Ora would own a $\frac{1}{5}$ share. This means that both parties are to be registered as owners of the property.

We will instruct you on the exact ownership shares in a *Supplementary Reference Schedule* before we sign an agreement for sale and purchase.

We have entered into a *Commitment Agreement*

To support our relationship as co-purchasers of the Property, Kāinga Ora and the Home Owner have already entered into a *Commitment Agreement*. This *Commitment Agreement* covers important things that may be relevant on settlement, for example, how to complete pre-settlement inspections, and what happens in the event of default under the Agreement for Sale and Purchase. We have provided the signed *Commitment Agreement* to you with this letter.

We will enter into a *Shared Ownership Agreement*

To support our future relationship as co-owners of the Property, Kāinga Ora and the Home Owner have agreed to enter into a *Shared Ownership Agreement*.

The *Shared Ownership Agreement* sets out important obligations such as maintenance, insurance, and what happens if the Home Owner wants to sell the Property. It also provides the various rights that the Home Owner will have to increase its ownership share of the Property.

Full homeownership

The purpose of the programme is to assist individuals into home ownership. We do this by purchasing a property with the individual as tenants in common. This enables an individual to be a Home Owner and have a place to live in now, and over time the Home Owner will progress to full ownership.

While we may work with the Home Owner for 25 years, we expect the homeowner to purchase our share of the property within 15 years to obtain full home ownership. The Home Owner will meet with Kāinga Ora, no more than every 6 months, to discuss their circumstance and ability to progress towards full ownership. The Home Owner must also pay off their loan to the bank at the same time

Share purchase can be:

- In one lump sum; or
- Smaller payments that are more than \$1000

The Home Owner agrees, under the Shared Ownership Agreement, to pay Kāinga Ora an annual service fee from the 15th year. This is currently set out \$2500 per annum. Kāinga Ora may also issue a notice that requires the Home Owner to sell the property. For example, if we are concerned with the Home Owner not progressing to full ownership on or after year 15.

How the registration works

The transfer instrument set up in Landonline to complete the Transaction will need to record the Home Owner's Share and the Kāinga Ora Share as tenants in common. For guidance on how to complete a tenants in common transfer, please refer to guideline 5.3.3.1.2 of the Landonline e-dealing User Guide (v3.20).

What is the purpose of the Kāinga Ora and/or Home Owner Land Covenant?

The *Land Covenants* may be registered on the record of title (after the mortgage). This will help to ensure that both parties comply with the terms of the *Shared Ownership Agreement*. We recommend you check that the instructions you receive from the mortgagee permit the *Land Covenants* to be registered without any further consents and/or approval by the mortgagee (and note this is consistent with our arrangements with participating mortgagees).

When will you receive our funds for settlement?

We will aim to deposit the settlement funds into your trust account the day before the Settlement Date, but in any event no later than 10.00am on the Settlement Date.

The amount that we will deposit into your trust account will reflect our Share of the Property and therefore our Share of the purchase price. For example, if the purchase price is \$800,000, and our Share of the Property is 20%, we will deposit \$160,000 into your trust account.

Our Share of the settlement funds will not include any apportionment of the rates, or any other payments, between Kāinga Ora and the Home Owner. This is because under the *Shared Ownership Agreement*, the Home Owner is responsible for all of these costs. The Home Owner will need to pay the balance of the amount required to settle as shown on the Settlement Statement, less our contribution.

Will Kāinga Ora sign the loan documents?

Kāinga Ora **will not** be a party to the loan documents and therefore will not sign the loan documents. Kāinga Ora will however grant the registration of a mortgage on the record of title the Property in favour of certain mortgagees.

Kāinga Ora has entered into arrangements with SBS Bank, Bank of New Zealand Limited and Westpac New Zealand Limited which address the relationship between Kāinga Ora and either of those banks as mortgagee. Please advise us immediately if the loan documents received are not with these mortgagees.

Under those arrangements, each mortgagee has agreed with Kāinga Ora to limit the liability of Kāinga Ora to that mortgagee to the proceeds/payments received in respect of that Property.

The mortgagee may include some further wording in their instructions to you addressing this limitation of liability. Please ensure this is consistent with our instructions in the *Reference Schedule* (including any *Supplementary Reference Schedule*).

We will sign an *Authority and Instruction form* which will grant you the authority to register the relevant mortgage.

What if the Agreement for Sale and Purchase is conditional?

If the Agreement for Sale and Purchase of the Property from the vendor is conditional, we will advise you who you need to take instructions from in satisfying the conditions before signing the Agreement for Sale and Purchase (if not already set out in the *Commitment Agreement*). There may be some conditions that Kāinga Ora is happy for the Home Owner to confirm satisfaction of on behalf of both purchasers.

If you do not have written confirmation from Kāinga Ora that you may satisfy a condition without our instructions or approval, you must only satisfy the condition with our instructions or approval. Please contact the nominated Kāinga Ora representative for instructions.

If the Agreement for Sale and Purchase of the Property from the vendor is conditional, we will advise you who you need to take instructions from in satisfying the conditions before signing the Agreement for Sale and Purchase (if not already set out in the Commitment Agreement).

There may be some conditions that:

- can only be satisfied with our instructions or approval, and you must obtain the written approval of Kāinga Ora; or
- Kāinga Ora is happy for the Home Owner to confirm satisfaction of on behalf of both purchasers.

If you do not have written confirmation from Kāinga Ora that you may satisfy a condition, without our instructions or approval, then you must not do so. Please contact the nominated Kāinga Ora representative for instructions.

What happens on the Settlement Date?

Unless we instruct you otherwise, we are expecting that you will attend to all standard conveyancing matters on the Settlement Date. This includes:

- exchanging appropriate undertakings with the vendor's solicitor;
- completing the payment of the settlement funds to the vendor's solicitor's trust account;
- attending to all e-dealing matters (including releasing any instruments and submitting the e-dealing); and
- emailing the real estate agent to authorise the release of the keys to the Home Owner.

Following settlement, please send us post-registration searches as outlined in the *General Instructions for Solicitors*.

What happens if the vendor is unable to settle on the Settlement Date?

Unless we instruct you otherwise, you are required to liaise with and to obtain instructions from Kāinga Ora and the Home Owner to discuss possible options in this scenario. The *Commitment Agreement* sets out further expectations as to how we will both instruct you.

What happens if the Home Owner is unable to settle on the Settlement Date?

Unless we instruct you otherwise, you are required to liaise with and to obtain instructions from Kāinga Ora so that Kāinga Ora can understand the reasons why the Home Owner is not in a position to settle. If required, Kāinga Ora may consider exercising its rights to purchase the Property alone.

Any questions?

Further information about our Shared Ownership Scheme can be found on the Kāinga Ora website: kaingaora.govt.nz/firsthomepartner

We have a Kāinga Ora Shared Ownership helpline that you can call if you need further information. This number is provided in the *Reference Schedule*.

Ngā mihi nui

The Team at Kāinga Ora