

Requirements for Sale and Purchase Agreement – Checklist



This document sets out our requirements for purchase agreements for any Property bought under the First Home Partner scheme (“agreement”). The person who prepares the agreement (either the real estate agent or a lawyer) will need to use this document to ensure our requirements are met. We must review the agreement before the Home Owner signs it to confirm it meets our requirements. We will not sign an agreement that does not meet our requirements.

Structure of this document

There are two parts to this document:

PART A: Use Part A for all agreements.

PART B: As well as Part A, use Part B if the house is still under construction.

Part A includes:

1. A checklist of requirements for all agreements, regardless of the type of house being purchased; and
2. Kāinga Ora Further Terms – these should be inserted in all agreements at the Further Terms section.

The real estate agent or lawyer must check all requirements in the checklist, and must include the Kāinga Ora Further Terms as further terms in the agreement.

Part B includes:

1. Another checklist of requirements for all agreements where the house is not yet built, or still under construction, at the time the agreement is signed.
 - The real estate agent or lawyer must check all requirements in this checklist.

Definitions

In this document:

- “Purchaser” means the Home Owner and Kāinga Ora-Homes and Communities in their respective shares as named in the agreement;
- “Vendor” means the vendor under the agreement;
- “we”, “us” and “our” means, unless the context provides otherwise, Kāinga Ora-Homes and Communities, and any person it appoints to manage matters in relation to the purchase of the Property; and
- other capitalised terms used in this document are defined in the Shared Ownership Agreement, a copy of which is available at kaingaora.govt.nz/first-home-partner

Appendix: Kāinga Ora Further Terms

These provisions are a continuation of the Further Terms.

The provisions contained in this Appendix take precedence over any other terms to the contrary in this agreement.

MANDATORY CLAUSE ONE: GST

- 1.1. Kāinga Ora-Homes and Communities is registered under the GST Act, is acquiring its interest in the property to make taxable supplies, and does not intend to use its interest as a principal place of residence for itself or any associate. Its GST registration number is 130 215 483.
- 1.2. Notwithstanding anything else in this agreement, where the Vendor is and/or will be registered under the GST Act at settlement in respect of the sale of property under this agreement (Sale), then:
 - a) the parties agree that section 11(1)(mb) does not apply to the Sale; and
 - b) the Vendor shall treat the Sale as a single standard-rated supply under section 8(1) of the GST Act, and shall issue a tax invoice for the Sale addressed to both purchasers at least 10 Working days prior to the settlement date.

Note to Vendor: Inland Revenue has issued a Public Product Ruling ird.govt.nz confirming sales by registered vendors in these circumstances are single standard rated supplies. These further terms reflect the Public Product Ruling.

MANDATORY CLAUSE TWO: USE OF INFORMATION

- 2.1 The Vendor will not:
 - a) use Kāinga Ora-Homes and Communities' name in any marketing or promotional material; and
 - b) seek to induce or entice any third party to enter into any other agreement on the basis of Kāinga Ora-Homes and Communities' entry into this agreement.

MANDATORY CLAUSE THREE: CONFIDENTIALITY

- 3.1 The Vendor acknowledges that Kāinga Ora-Homes and Communities may be

required by law (including under the Official Information Act 1982), by a Minister, by parliamentary convention, or by a select committee or Ministerial or parliamentary inquiry to disclose information relating to this agreement.

MANDATORY CLAUSE FOUR: LIMITATION OF LIABILITY AND REMEDIES

- 4.1 To the extent not already provided for, the ADLS General Terms are amended as follows:
 - a) clause 1.5(1) (relating to joint and several liability) is amended to delete the words "or purchaser" and "or of the purchasers, as the case may be,"; and
 - b) clauses 11.4(1)(a) and 11.7 (relating to specific performance) of the agreement are deleted.
- 4.2 All parties to this agreement agree that:
 - a) the Co-purchaser will be solely liable to the Vendor in respect of all obligations of the Purchaser under this agreement;
 - b) the Vendor will not be entitled to bring any Claim whatsoever against Kāinga Ora-Homes and Communities; and
 - c) the Vendor will not be entitled to:
 - (i) bring a Claim against the Purchaser (including either of Kāinga Ora-Homes and Communities or the Co-purchaser) for specific performance; or
 - (ii) otherwise accept and/or agree to specific performance as a remedy for any default of this agreement by the Purchaser.
- 4.3 For the purposes of clause 4.2:
 - a) "Claim" means a claim against the Purchaser by the Vendor in respect of the subject matter of this agreement, whether in contract, tort, equity or otherwise.
 - b) "Co-purchaser" means the named Purchasers excluding Kāinga Ora-Homes and Communities. If there is more than one Co-purchaser each individual Co-purchaser will be jointly and severally liable with the other individual Co-purchaser(s) for the purposes of this clause 4.



PART A – REQUIREMENTS FOR ALL AGREEMENTS

1. Form of agreement

- The agreement must use the Auckland District Law Society (ADLS) Agreement for Sale and Purchase of Real Estate 11th Edition 2022, or replacement version, or include as a minimum the ADLS General Terms of Sale for bespoke development agreements.
- If the agreement includes any changes to the ADLS General Terms of Sale, or any new terms that are not contemplated by this document, we will need to review those changes or new terms to confirm we are comfortable with them **before the Home Owner signs the agreement**. If we are not comfortable with the changes or the new terms **we will not sign the agreement**.

2. Parties

- The parties' correct legal names must be used.
- The Purchaser must be described as “[Home Owner name] as to a [#] share and Kāinga Ora-Homes and Communities as to a [#] share”. The shares must match the share details that we have provided, or will provide, to the Home Owner.
- There must not be a guarantor of the Purchaser's obligations under the agreement.
- The words “and/or nominee” (next to the name of the Purchaser) must be crossed out.

3. Purchase price and deposit

- A fixed purchase price must be inserted on the front page of the agreement, and there must not be any clauses or mechanisms that allow the purchase price to increase.
- The purchase price must be the same or less than the purchase price we have agreed with the Home Owner is acceptable for the Property.
- Any deposit should only be payable on satisfaction of all purchaser conditions (if any).
- Unless we agree otherwise in writing, the deposit must not be more than the funds the Home Owner has available to pay a deposit – we will not contribute any funds towards payment of the deposit.

4. Settlement date

- The settlement date must be at least 10 working days from the date the agreement is fully signed and unconditional to allow us and other third parties like the Home Owner's bank and KiwiSaver provider time to prepare for settlement.

5. Conditions

- If the Home Owner's solicitor cannot provide certain assurances about the Property to us before the agreement is signed, we will require a due diligence clause to be included in the agreement **before we will sign the agreement**.
- You may also include further conditions in the further terms if you want, but we may need to review the wording to confirm it is consistent with our requirements.

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REQUIREMENTS FOR ALL AGREEMENTS CONTINUED

6. Inspection and tenancies

- The agreement must provide an opportunity for the co-purchaser and Kāinga Ora to inspect the property at any reasonable time within the week before settlement.
- The property is for the Home Owner to live in immediately following settlement so there can be no tenancies listed in the agreement.

7. No power of attorney or indemnities

- We will not sign an agreement that grants the Vendor a “power of attorney” (a clause that means another party could act on our behalf) in respect of Kāinga Ora.
- We are not able to sign an agreement that provides an indemnity by Kāinga Ora in favour of the Vendor or any other party.
- The Crown Entity Act 2004 restricts Kāinga Ora from delegating powers of the board.
- Kāinga Ora intends to support the development for the benefit of the co-purchaser. Any decisions required for the progression of the development can be submitted to Kāinga Ora and we commit to providing a response within 3 business days of receipt of the submission.

8. Our further terms

- We have some additional clauses that must be included as further terms in the agreement. These are included in the Appendix to this document.

PART B – ADDITIONAL REQUIREMENTS FOR AGREEMENTS FOR PROPERTIES THAT ARE STILL BEING BUILT (“OFF THE PLANS”)**B****1. Deposit**

- The deposit must be paid to a solicitor’s trust account to be held as stakeholder for all parties until the settlement date. The agreement must include a statement that in the event of cancellation, interest follows principal (including as a credit against the purchase price).

2. Delivery of building in accordance with laws, plans and specifications

- The agreement must require the Vendor to construct the property in accordance with the Resource Management Act 1991, the Building Act 2004 and any other applicable laws and regulations.
- The agreement must include terms which require the Vendor to deliver the house and amenities in accordance with the plans and specifications. Plans and specifications for the finished house and amenities must be appropriately referenced and included in the agreement. The Vendor must be required to issue a certificate of practical completion to the purchaser once the above requirements have been achieved.
- The agreement can provide for the Vendor to substitute materials used in construction, but only for equivalent materials.
- The agreement can provide for the Vendor to vary the construction plans, but in this case the agreement must permit the Purchaser to cancel the agreement if the value materially changes or the size of the house decreases by more than 10%.

3. Assignment of warranties and guarantees

- The agreement must include an obligation on the Vendor to assign any building warranties or guarantees in respect of the Property (including the chattels) to the Purchaser.

4. Defects liability period

- The agreement must include an obligation on the Vendor (at its cost) to remedy any defects or other faults in the Property within a period that is not less than 12 months after the settlement date.

5. If the Property is part of a subdivision development

- The scheme plan for the subdivision must be attached to the agreement.
- The agreement must include a clause entitling the Purchaser to cancel if an amendment to the scheme plan materially impacts on the Home Owner’s use, or the value, of the Property, or where there is a decrease in the size of the land parcel by more than 10%.
- The agreement must require the Vendor to prepare the final deposited plan or unit plan (as applicable) in accordance with the scheme plan included in the agreement.

6. If the Property is a unit title

- The agreement must not include a clause that grants the Vendor the right to exercise your or our vote at body corporate or association meetings. See Part A, clause 7.
- Carpark units or any other accessory units, must be included in the legal description of the Property in the agreement.

B

ADDITIONAL REQUIREMENTS FOR AGREEMENTS FOR PROPERTIES THAT ARE STILL BEING BUILT (“OFF THE PLANS”) CONTINUED

7. Appropriate triggers for settlement

- Regardless of anything else in the agreement, the Purchaser must not be required to settle unless:
 - a. the Property has been built in accordance with the terms of the agreement, as evidenced by a certificate of practical completion to be issued by the Vendor to the Purchaser;
 - b. a record of title for the Property has issued; and
 - c. a code compliance certificate has issued for the completed Property.
- The Vendor must give the purchaser’s solicitor notice when each of the above are completed. Settlement should be at least 10 working days after all of the above are completed.

8. Cancellation/sunset date

- The agreement must specify a “sunset” date by which settlement must have been triggered. If this date is not met, the purchaser can cancel and receive the deposit funds.
- The agreement must not be conditional on the issue of a record of title or a code compliance certificate. Instead, this needs to be covered by the sunset date clause mentioned above.