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Buying property in New Zealand

2021

Buying property in New Zealand



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Key points about buying property in New Zealand



All titles in New Zealand are registered at Land Information New Zealand ('LINZ'), and their accuracy is guaranteed by the government.



When purchasing property, it is common to use a standard form base contract customised for the particular property.



Agreements for sale and purchase of property are usually conditional on the purchaser carrying out a due diligence investigation and being satisfied with the property after that investigation.



Overseas investors (or New Zealand entities with at least 25% overseas control) will be subject to restrictions on acquiring land in New Zealand.



Investors need to be aware of certain rules when purchasing property in New Zealand, including government consents for certain purchases, the seismic rating system, and tax implications when investing in residential property.



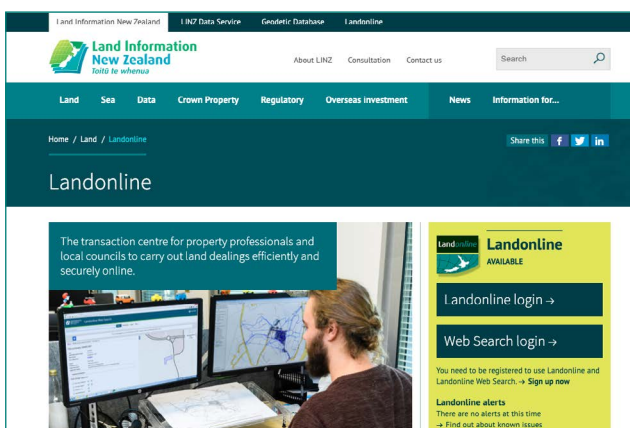
The detail

New Zealand has a well-established and transparent land ownership system. Investing and trading in real estate assets has always played a key role in New Zealand's economy. Equally important for those acquiring or establishing a business in New Zealand is to understand the accommodation requirements for the business regardless of the sector in which it operates.

Registered title system

New Zealand operates under the Torrens land registration system. All legal interests in land under the system are created by registration under the Land Transfer Act 2017 and are recorded against the title to the land.

A copy of the title register to the land is readily accessible and carrying out this search is often the first step in reviewing what affects the land. New Zealand has converted almost all titles, plans, and instruments into an electronic format, through a system run through LINZ called LandOnline. LandOnline allows up to date searching and electronic registration of land transactions.



The three most common forms of title in New Zealand are:

Form of title	Key points
Freehold	Purchase of freehold title gives you outright ownership of the land in question. This may also be referred to as fee simple. These terms are used interchangeably.
Leasehold	Purchase of leasehold gives you the benefit of a long-term lease of the property. Commercial leases are not usually registered.
Unit Titles	<ul style="list-style-type: none"> • A form of strata or sectional title ownership. • Purchase of unit titles gives you title to a defined part of a larger property. • These are a common form of title for apartment buildings. • They are subject to certain rules under the Unit Titles Act 2010.

Particular care should be taken when acquiring leasehold or unit title property, as well as other less common forms of title.

Māori land

In many instances Māori land ownership and use is governed by the Te Ture Whenua Māori Act 1993. This Act contains a range of restrictions on the disposal of various types of Māori owned land which can make dealing with Māori land very complicated.

Contracts for sale and purchase of property

To be enforceable, a contract for sale and purchase of property must:

- be in writing, and
- signed by the parties (or their authorised agents).

There is a high reliance on standard form documents for transacting more straightforward assets. Contracts are often tailored to reflect the commercial terms and nature of the assets involved.

In New Zealand it is common to undertake a relatively limited due diligence process before entering into a contract, which will then include more detailed conditions for the parties to satisfy before the agreement becomes unconditional and settlement occurs. Subject to the satisfaction of conditions, written agreements are binding.

Typical conditions include due diligence, the satisfaction of regulatory consents, building inspection, valuation, obtaining finance, and board or CEO approval.

Overseas Investment Act

Overseas investors (whether individuals or corporate entities with 25% or more overseas control) need government consent under the Overseas Investment Act 2005 which has recently been amended by the Overseas Amendment Act 2018 - and the Overseas Investment Regulations 2011 (together, '**OIA**'), when acquiring "sensitive" land, or any other asset for consideration of more than NZ\$100 million. As of 22 October 2018, residential land in New Zealand is automatically 'sensitive' land requiring consent, which is effectively restricted to people who are actually resident in New Zealand and will live in that property. Certain consent exemptions apply to Australian and Singaporean investors.

The OIA sets out a procedure for overseas investors to seek consent to acquire sensitive land, which (in addition to residential land) includes specified types and sizes of land that have particular natural or historic significance. For example:

- Farm land;
- Lake bed;
- Historic land;
- Conservation land;
- Heritage ordered land;
- Reserve land, public parks, land used for recreational purposes or open spaces;
- Māori reservation land;
- Foreshore or seabed land;
- Land on numerous New Zealand Islands; and
- Land adjoining to any of the above.

Land is also considered sensitive because it is residential. Residential land includes both "residential" land in its normal meaning, but also "lifestyle" land. A review of the relevant district plan will determine what the land is classified as. If the land is sensitive because it is residential, then certain other investment exemptions potentially apply. In order to obtain consent, an investor needs to meet one or more of the following tests:

- the commitment to reside in New Zealand test;
- the increased housing test;
- the non-residential use test;
- the incidental residential use test; or
- the benefit to New Zealand test.

The OIA also provides exemptions for investing in sensitive land, including:

- Periodic leases;
- Residential tenancies of less than five years;
- Off the plans large apartment developments;
- Hotel units; and
- Forestry rights.

The OIA is managed and enforced by the Overseas Investment Office. The OIA sets out numerous powers and penalties for contravening the OIA.

Seismic rating of commercial buildings

Following several major earthquakes in New Zealand over the past decade, purchasers of commercial buildings are advised to include the seismic rating of those buildings in their due diligence investigation.

While all new buildings are required to be constructed to at least 100% of the current building code, older buildings are unlikely to have been constructed to that standard. Recent amendments to the Building Act have brought in changes to manage earthquake prone buildings. One of those initiatives included creating a register of earthquake-prone buildings. Purchasers need to be aware that older buildings with seismic ratings of less than 34% of the current building code are classified as “earthquake prone” and strengthening works will be required by statute. Notices may be issued by the Council requiring work to be completed.

Any strengthening works completed will usually be at a cost to the landowner. There are other alternatives, such as demolition – although it is important to ascertain whether the building is subject to a Historic Places Order, preventing demolition.



Tax considerations for residential properties

Income tax must be paid on the sale of residential properties purchased on or after 27 March 2021 where the property is sold within ten years of purchasing it, unless the property was:

- used as the owner’s main home,
- inherited from a deceased estate, or
- sold as part of a relationship breakdown.

Residential properties purchased between 29 March 2018 and 26 March 2021, are subject to the same tax if sold within 5 years of purchase, and between 1 October 2015 and 28 March 2018 if sold within two years of purchase, unless one of the exceptions set out above apply. The government has indicated that ‘new builds’ (which are yet to be defined, and are the subject of a consultation period, the result of which will apply retrospectively from 27 March 2021) will continue to be subject to a 5 year bright-line period.

Residential land withholding tax (‘**RLWT**’) applies where the seller is an offshore acquisition person or entity and the land is sold within the period stated above. RLWT also applies to sales by New Zealand entities that are more than 25% owned or controlled by offshore persons. The seller’s lawyer is required to deduct the RLWT and pay it to Inland Revenue on the seller’s behalf.

Building and developing property

Building work and the use of buildings is regulated by the Building Act 2004. New buildings, as well as most additions or alterations to existing buildings, will require a building consent.

After completion of building work under a building consent, a code compliance certificate will need to be obtained. It is important to check when purchasing a property that any building work carried out has had the relevant code compliance certificate issued. Landowners should hold records of any work or maintenance completed, and any inspections undertaken.

Most properties, other than stand-alone residential homes, are also required to hold a building warrant of fitness. These are issued annually and confirm that the building complies with certain Building Act criteria, which for the most part relate to health and safety.

Both code compliance certificates and building warrants of fitness can be checked during a due diligence investigation by reviewing a Land Information Memorandum ('**LIM**') report for the property.

Resource Management Act and district plans

The Resource Management Act 1991 ('**RMA**') is the primary source of environmental law in New Zealand. Under the RMA, territorial authorities have responsibility for the control, use, development and protection of land. Territorial authorities are also required to have district plans which contain rules relating to land use and subdivision activities in that authority's area.

The RMA and district plans can have major implications for property developments and other construction projects. A large development may require multiple consents under the RMA before its commencement.

Leasing

The physical day-to-day operations of most businesses in New Zealand are carried out under a lease of the land and buildings that the business occupies. The lease terms are negotiated between the contracting parties, being in this case the landlord and the tenant. However, there are also numerous other rights and obligations implied into leases by statutes, principally under the Property Law Act 2007.

There is a high reliance on standard lease forms, at least as a starting point, with tailored special conditions to reflect the particular premises and the commercial terms. Most leases are for a specified term and may allow the tenant the right to renew for an additional term or terms.

When acquiring an existing business that occupies premises on a leasehold basis, it is very likely that the lease will include terms controlling the transfer of the lease to the buyer. These terms often cover both the acquisition of business assets where shares are being acquired or there is an effective change of management or control.

Residential tenancies

Residential tenancies are governed by the Residential Tenancies Act, which imposes minimum standards for properties, and processes for managing and terminating tenancies. These requirements and processes are strictly enforced.





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How we can help you



Businesses acquiring or disposing of property interests need input from advisers who know the industry as well as the law – advisers who can identify the many risks, and manage them in a way that is commercially appropriate, legally sound, and cost-effective.



Dentons Kensington Swan's real estate team has a wealth of experience in all aspects of property and real estate law. Our team works closely with clients to get a good understanding of their business and their present and future needs.



We are supported by colleagues in other teams, such as environment and planning, construction, infrastructure, health and safety, public law, finance, and dispute resolution.



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