

Selling property to overseas buyers

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LEGAL MATTERS



If you are selling a property you will want to know if your purchaser is legally allowed to buy the property. If not, you will not be able to enforce the sale, and may miss out on your next purchase as a result. Chasing an overseas purchaser for damages is not going to be easy and most likely expensive.

The law relating to overseas buyers purchasing 'residential' or 'lifestyle' properties in New Zealand has changed. The new law puts in place restrictions on who can purchase these types of properties.

STRAIGHTFORWARD ELIGIBILITY CRITERIA

Purchasers are eligible to buy residential property in New Zealand if they are:
 ■ a New Zealand, Australian or Singaporean citizen;
 ■ a holder of a "permanent resident" visa; or
 ■ a holder of a New Zealand "resident class" visa (noting that this is different from holding a "permanent resident" visa), AND are "ordinarily resident" in New Zealand.
 "Ordinarily resident" in New Zealand means that a purchaser must:
 ■ have been residing in New

Zealand for at least the immediate preceding 12 months;
 ■ have been present in New Zealand for at least 183 days of the preceding 12 months; and
 ■ be a tax resident in New Zealand.

It is important to note that any Agreements for Sale and Purchase will require purchasers to sign a declaration confirming that they fall within the criteria above, and legal advisors are likely to require evidence of such citizenship and residency before settlement can occur.

SPOUSE OR PARTNER EXEMPTION

When purchasing as a couple, if one of the two meets the straightforward eligibility criteria above, they will not need to obtain consent if purchasing the property together as relationship property.

CONSENT PROCESS

If a purchaser holds a temporary visa, such as a visitor, student, working holiday or work visa (but not a permanent resident or resident visa), there is the

possibility of obtaining consent to purchase residential property, provided they meet relevant criteria. The consent application process can take as little as ten working days for a simple application and application fees start at \$2040 including GST. An application requires a statutory declaration that the purchaser intends to reside in New Zealand until they become a permanent resident or citizen and that they intend to occupy the residential property as their "main home". If consent is granted,

this will be conditional on the purchaser continuing to live in New Zealand. If they cease living in New Zealand, the Overseas Investment Office ("OIO") can apply to the courts to have the property sold at that time.

PRE-APPROVAL

It is possible to obtain a "pre-approval" under the above consent process. This allows purchasers to safely purchase a property without the requirement of making any offer conditional upon such consent being obtained. If a purchaser does not have formal "pre-approval" they will need to make any offer conditional upon OIA consent being obtained, including a realistic timeframe for obtaining such approval.

BUYING IN THE NAME OF A TRUST OR COMPANY

This is less straightforward and care should be taken when a purchaser is purchasing in the name of a trust or company. Any trust or company will generally be considered to be an "overseas person" if 25 percent or more is owned or controlled by an

overseas person(s). It is likely that any consent application in the name of a trust or company will incur additional costs and will take longer than the standard consent timeframe.

PENALTIES

If purchasers require consent, but sign an unconditional agreement without it, they may face significant penalties. If a purchaser discovers that they have broken the Overseas Investment Act rules, they must advise the Overseas Investment Office straight away.

They may be able to obtain consent retrospectively, however they could still face a penalty of up to \$10,000. If purchasers make a false statement (whether or not they meet the eligibility criteria), they could be fined up to \$300,000.

It is important to get this right, so make sure you fully discuss OIA matters with any proposed purchasers and/or encourage them to obtain legal advice prior to signing an agreement.

■ Column courtesy of **RAINEY COLLINS LAWYERS** phone 0800 733 484, or see www.rainey-collins.co.nz. If you have a legal inquiry you would like discussed in this column please email Alan on aknowsley@raineycollins.co.nz



BAYLEYS



Waterloo 177 Waiwhetu Road

Potential Plus Location

Nestled in the heart of Lower Hutt, only a brief drive from Queensgate shopping centre and all central Hutt amenities, not to mention public transport, SH2 and all levels of schooling. The home on offer sits on a brilliant, fully fenced 591m² section. The current configuration boasts 2 double bedrooms and 2 bathrooms, including an ensuite for the master bedroom. There are also 2 generous living spaces including an open plan kitchen, dining and family room that leads out to private and sun-drenched decking. This property offers absolutely truckloads of potential. For the discerning buyer there is the opportunity to create a magnificent 3 or even 4 bedroom family home, to enjoy for years to come - all you need is the vision! Our owners have already secured themselves a home so this one must sell. Give Team Ledger a call today to arrange your private viewing.

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Tender (will not be sold prior)
 Closing 4pm, Thu 28 Mar 2019
 62 Queen Street, Upper Hutt
View Sun 12-12.30pm
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