

Gaining Ground In New Zealand

A legal introduction to property investment.

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Uniquely New Zealand

It is not difficult to see why visitors to New Zealand wish to invest in property here. New Zealand provides some of the most spectacular and diverse landscapes in the world.

Even if you are a sophisticated property investor and have acquired property in other countries throughout the world, it is important to be aware of the issues unique to acquiring land in New Zealand.

The purpose of this information is to provide you with some background to acquiring property in New Zealand and to point out some of the matters you need to consider and obtain professional advice in relation to before moving forward with your purchase.



How do I go about acquiring land in New Zealand?

In New Zealand a contract for sale and purchase of land must be in writing and signed by the parties involved or their authorised agents to be enforceable.

It is common in New Zealand to enter into a conditional contract. A conditional contract will generally contain a number of conditions which are designed to protect either the seller or the buyer. Typically, from a purchaser's perspective a contract may be conditional on the purchaser being satisfied with:

- the title to the land
- finance;
- land information memorandum;
- any local authority or planning information;
- building or engineers reports in respect of any buildings on the land;
- insurance; and
- any other due diligence requirements such as an ability to use the property for the purpose in which it is being acquired.

Where land is being acquired by an overseas person and the land being acquired falls within one of the categories under the Overseas Investment Act 2005, any Agreement for Sale and Purchase of Land must be made subject to the purchaser obtaining specific consent from the Overseas Investment Office (OIO). (See Overseas Investment Consent).



Lake Brunner, Westland

Title

In New Zealand most parcels of land have their own titles which show the dimensions, location and ownership of the property. The title will also show any registered interests such as easements, covenants, securities or other notices affecting the land.

New Zealand has converted almost all titles, plans and instruments into an electronic format, allowing real-time searching and electronic registration of all land title and surveying transactions. The Government guarantees the accuracy of titles, which can be searched for a nominal fee. It is important in any acquisition of land to ensure that the title is properly searched and considered by an experienced property solicitor.

The Resource Management Act and District Plans

Depending on the reason for which you are acquiring the property, it may be necessary to consider whether the activity or proposed use you have for the property complies with the District Plan within which the property is located as well as the Resource Management Act 1991 (RMA).

The RMA is New Zealand's principal statute relating to the use of land, water, minerals, the coast, the air and physical resources. The aim of the RMA is to promote "sustainable management of physical and natural resources" in New Zealand as well as maintaining and enhancing New Zealand's clean green image.



Building and Engineer Reports

Partly as a consequence of the Canterbury earthquakes, it is becoming increasingly common for purchasers to obtain geo-technical reports in respect of the land as well as building and/or structural engineering reports with respect to any buildings situated on the land. In some cases it may be a requirement of the lending institution providing funding for the purchase as well as the insurance provider that a structural engineering report and geotechnical report be obtained.

Insurance

It is always advisable to obtain insurance when acquiring property. Insurance will typically relate to any buildings or structures on the land. However depending on the intended use of the property, you may also need to consider obtaining public liability cover and additional cover for business interruption or other types of insurance appropriate for the activities being carried out on the property.

Overseas Investment Consent

Generally for an overseas investor there are few restrictions on buying land in New Zealand unless the land falls within one of the categories under the Overseas Investment Act 2005, in which case specific consent from the Overseas Investment Office (OIO) is required before the acquisition can be approved.

Sensitive Land

Overseas Investment Consent is required for overseas persons or their associates to acquire an interest in land if the land is “sensitive” and if the interest is for a term of three (3) or more years (including rights of renewal). Briefly, land will be “sensitive” if it is, or includes;

- non-urban land over five (5) hectares in area;
- the foreshore or seabed;
- land on certain named islands if the land is over 0.4 hectares;
- land on any other islands excluding the North and South Island (regardless of the land area involved);



Mt Cook, Canterbury

- any land which is over 0.4 hectares and:
 - is the bed of a lake;
 - is held for conservation purposes under the Conservation Act 1987;
 - is ear-marked in a District or proposed District Plan to be used as a reserve, public park for recreational purposes or as an open space;
 - is subject to a Heritage Order or a requirement under the Resource Management Act 1991, or the Historic Places Act 1993 and is a historic place or area that is sacred to Maori which is registered or is the subject of an Application to Register under the Historic Places Act 1993; and
 - any land which is over 0.2 hectares and adjoins the foreshore.

There are also specific rules relating to the requirement to obtain Consent if land over 0.4 hectares adjoins the bed of a lake or land held for conservation purposes and various other types of land which have special significance.

Overseas Person

If you are considering purchasing land in your personal capacity you, as an individual, will be treated as an “overseas person” if you are neither a New Zealand citizen nor ordinarily resident in New Zealand.

Where you are proposing to purchase New Zealand land in another entity, such as a partnership, body corporate, trust or company, there are various rules governing when these entities are considered to be “overseas persons”.

An Application for Overseas Investment Consent requires specialist advice. As the processing of consents can take several months it is important that Overseas Investment advice and consent issues are addressed early.



Tax

As with any property investment it is important to understand the tax consequences associated with purchasing land in New Zealand.

New Zealand does not impose capital gains tax or stamp duty in respect of the acquisition of property. New Zealand also does not impose gift duty or death duties.

Notwithstanding that New Zealand does not impose a formal capital gains tax it does have an informal tax on land transactions which are triggered in certain circumstances. These typically relate to persons or entities that are in the business of dealing, developing or subdividing property at the time they acquire land but equally can apply if the purchaser is associated with a person or entity in one of those businesses.

As a foreign investor it is important to consider whether your country of residence will impose a capital gains tax on your worldwide assets.

For non-residents purchasing property in New Zealand which have an income-generating activity, income tax is imposed in New Zealand on any income derived from New Zealand. Therefore any property held in New Zealand which generates income (such as rental) would be required to be returned in New Zealand. Depending on your country of tax residency, New Zealand may have a reciprocal agreement with that country which should allow the taxpayer to claim a tax credit in their home country for tax paid in New Zealand.

When acquiring property in New Zealand it is important to understand whether or not the property will be subject to goods and services tax. Goods and services tax is New Zealand's value-added tax and is imposed at the rate of 15%. It is important to obtain advice with respect to the GST status of the transaction you are proposing to enter into as GST can add an additional cost to the purchase which is not necessarily recoverable.



Lake Wakatipu, Otago

We recommend obtaining tax advice in New Zealand as well as your home jurisdiction prior to purchasing a property in New Zealand. Depending on your intentions for the property and how the property purchase is to be funded tax advice will be particularly relevant if the property is generating income which you intend to repatriate back to your country of residence.

There are also various structuring issues that a competent New Zealand tax advisor can advise you on. This will be important if you do not wish to hold that property in your own name or for tax or other reasons, it is important that the property is held in an alternative structure. Some structures will be more tax effective than others so it is important to understand the options.



Lyttelton Harbour, Canterbury

About MDS Law

MDS Law is based in the South Island's largest city, Christchurch. The firm has a strong commercial and property background with the added advantage of a number of specialists who combine their skills to provide our clients with personalised, strategic, practical and commercial outcomes they desire.

MDS Law combines the experience of senior practitioners who have become well respected in their areas of practice with specialist advisers in the areas of property acquisition, tax and overseas investment.

MDS Law supports a local, national as well as international client base and we have assisted many overseas clients to acquire property or investments in New Zealand.

Our team are able to advise you on any acquisition of New Zealand property you may be considering.

We look forward to being of assistance to you.

For further information please contact us:

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