

# Real Estate

## Continuing Professional Development

---



# The buyer experience

**Name:**

**Estimated time needed: 2 hours**

**V2.0**

April 2020



## Contents

Real Estate CPD – The Buyer Experience, covers the following information:

Learning outcomes.....	4
Introduction.....	4
Research results: an overview .....	5
Empowered consumers.....	10
Challenges for different buyer groups .....	14
Role of the listing licensee in dealing with potential buyers.....	21
Tools and information available to help buyers .....	25
The buyer stages .....	32
Before a buyer is ready to start looking for a property.....	32
When a potential customer is actively searching for a property .....	37
When a potential customer is researching a property .....	41
When a potential buyer is ready to make an offer.....	49
When an offer has been accepted.....	59
From agreement becoming unconditional until settlement.....	60
Settlement day.....	62
Post settlement queries .....	62

## Acknowledgements

This material has been developed in collaboration by Skills International and the Real Estate Authority. We would like to acknowledge the following individuals for their contribution to the development of this material:

John Abbott, Kirstin Brown, Yvonne Box, Treena Drinnan, Graham Fraser, Tania Greig, Denese Konowe, Trish Love, Jane Meyer, Deane Pettit, Jacqui Rooney, Andrew Simich, Amanda Tutty.

### Sources:

Real Estate Agents Consumer Brand Research. Qualitative Research. Undertaken for the Real Estate Agents Authority by Premium Research. May 2017

Real Estate Authority: Annual Perceptions Research. The Nielsen Company. August 2019

**DISCLAIMER:** The information contained in this document has been prepared for the purpose of continuing professional development under the Real Estate Agents (Continuing Professional Development Rules) Notice 2018. It is not intended as a comprehensive statement of the law and does not constitute legal advice, and cannot be relied on as such. While all reasonable measures have been taken to ensure the quality and accuracy of the information, the REA makes no warranty, express or implied, nor assumes any legal liability or responsibility for the accuracy, completeness or use of any such information.

## Learning outcomes

At the end of this topic, you will be able to:

- explain the different buyer groups and their key challenges
- explain the role of the licensee in dealing with buyers and sellers
- explain tools available to help consumers through the home buying process
- explain the key stages of the home buying process from the perspective of the buyer and the associated role of the licensee.

## Introduction

When selling property is what you do daily, it can be easy to forget what the process is like for a buyer. This topic is all about putting yourself in the 'shoes' of the buyer. This topic has been written for the more usual New Zealand model where the licensee works for the seller rather than the buyer (as a 'seller's agent'). However, the key messages from this topic can be easily applied to licensees acting formally as a 'buyer's agent'.

You are likely to be the main professional involved in the transaction. This means buyers rely on you, even though you work for the seller. Because they rely on you, they have certain expectations.

The relationship you form with the buyer or potential buyer and the information and guidance you provide to them is vital to the successful completion of the purchase process.

Explaining key information, processes and potential issues to buyers early in the process can prevent problems at a later stage. The more knowledgeable a buyer is, the less likely it is that something goes wrong in the buying process.

Understanding the buyer and their journey can help you to deliver a better buying experience. In 2019 the Real Estate Authority (REA) commissioned Nielsen to conduct research about consumer perceptions of the real estate industry. Throughout the guide

we have included comments from potential buyers, buyers and licensees that reflect common themes in responses to relevant survey questions.

A satisfied buyer may mean that you and the agency secure ongoing business from recommendations and from the buyer themselves if they come to sell their property later.

In this topic we'll start by looking at recent research outcomes regarding the real estate process and consumer perceptions of the real estate licensee they worked with when buying, selling or trying to buy or sell. We'll look at the different buyer groups and the challenges they face, and the tools available to you and the consumer to assist them to understand the different stages of the buying process. Then we'll examine the different stages of the process and how the research findings should be considered as the buyer moves through the stages.

Note that in the research the licensee is referred to as the 'agent' and the term 'buyer' is used to refer to the purchaser (therefore 'buyer' is used in the topic title). We acknowledge that the industry generally uses 'client/customer' rather than 'vendor/purchaser'. However, for the purposes of this topic, we will use the terms 'seller' and 'buyer'.

## Research results: an overview

Each year the Real Estate Authority (REA) commissions Nielsen to conduct research about consumer perceptions of the real estate industry. In 2019, the research included a survey of 603 people who had bought or sold, or tried to buy or sell, residential real estate in the previous 12 months.

The survey asked questions about the real estate process and associated perceptions of the real estate agent (licensee) involved. Respondents were asked to rate the real estate agent (licensee) they worked with when they bought, sold, or made or received an offer.

Note: The survey results refer to the 'real estate agent'. However, in terms of this survey, the term 'agent' refers to the licensee the buyer or seller dealt with.

Results from this research, and quotes obtained from buyers and sellers, will be used throughout this guide to highlight aspects of the 'buyer experience'.



According to the research, just over half (57%) of New Zealanders have purchased a home at some point in their lives. At the time of the 2019 research, 4% of New Zealanders were actively looking for their first home, 7% were interested in buying a home but were not actively looking and 21% indicated that they would like to buy in the future. Only 4% were not interested in ever purchasing their own home, while 4% didn't know.



51% of respondents who had **bought, sold or tried to buy or sell** residential real estate in the previous 12 months said the agent (licensee) was excellent or very good at providing the information they needed.

Although the process of the sale of property and the details around this may seem straight forward to some licensees, only 55% of those who **bought a property** said their licensee was very good or excellent at providing them with the information they needed. This indicates that the industry can improve the service provided to consumers in this regard.

### The biggest issues for consumers

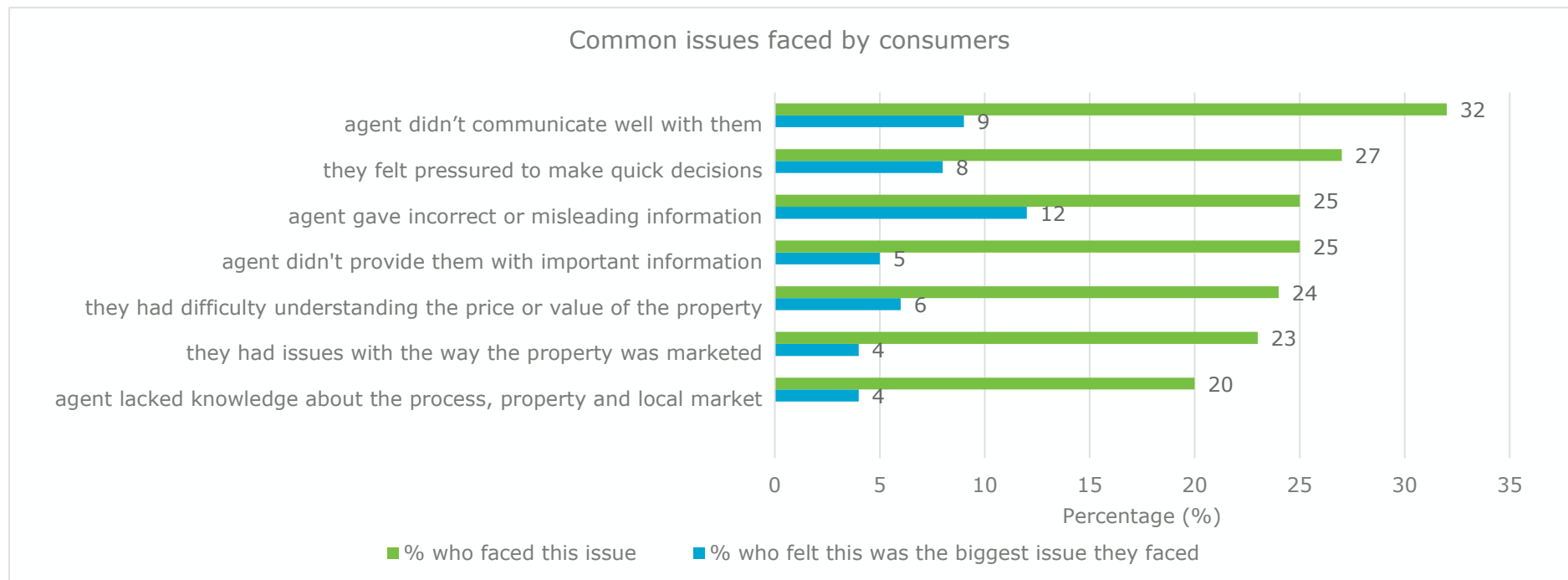
From the research results it is clear that licensees' knowledge about the market and legal requirements, and effectiveness in providing information needed, is an issue for consumers. However, what are other issues consumers have?



The research found that 16% of those who bought or sold or tried to buy or sell residential real estate in the previous 12 months had problems or issues.

58% of those that had problems or issues felt these problems or issues were caused by the real estate agent (licensee).

Here are the most common types of issues faced by consumers. This data included feedback collected from successful buyers and those looking to buy and shows the percentage of consumers who faced each issue, and the percentage of consumers who felt this particular issue was the biggest issue they faced.



## What makes a good licensee from a buyer's perspective?



**58%**  
Of buyers rated  
the agent's  
professionalism  
4/5 or 5/5

Consumers who rated the agent as excellent for their professionalism rated the agent highly in terms of:

- keeping them informed
- answering questions
- being knowledgeable.

Here are some comments from buyers who thought that the professionalism of the agent was very good or excellent.

*When I asked questions, they were able to answer them thoroughly and clearly.*

**Rated very good**

*She answered all of my questions, provided all of the information I needed, did everything she said she would.*

**Rated very good**

*He gave me a lot of ideas about how to do the auction process.*

**Rated excellent**

*Was always polite and answered all my questions in a good manner. Kept me informed every step of the way.*

**Rated very good**

## Why consumers would highly recommend the agent

Of the consumers who would highly recommend the agent, the top reasons they gave were the agent's:

- manner - friendly, reassuring and understanding (33%)
- commitment and work ethic (23%)
- professionalism (19%)
- knowledge and experience (18%)
- openness, honesty, integrity (16%)
- willingness to help (13%)
- ability to explain well / be informative (12%)

Here are some comments from consumers regarding why they would highly recommend the agent.

*Personal, professional and patient. The experience, class, positivity, knowledge in the local market and industry as a whole; prepared to make time in the weekend or evening if needed.*

*Their professionalism, approachability and honesty. They were clearly willing to make things work for both parties, so worked hard to get a good outcome for everyone. He took time to explain things to me. He was interested in what we wanted, and he listened. He was very knowledgeable.*

*Kept the process simple and she was very knowledgeable and shared that with me.*

### Why do consumers think that the professionalism of the agent was poor?



**18%**  
rated  
professionalism  
1/5 or 2/5

Consumers who rated the agent as poor in terms of professionalism gave the main reasons as:

- lack of transparency
- the agent not being knowledgeable
- the agent’s attitude

Here are some comments from consumers who thought that the professionalism of the agent was poor.

*Good agent but not transparent on the issue in the property.*  
**Rated fair**

*It doesn't matter how professional you are if you are rude and impatient with your potential clients. You could be the best agent in the country but your poor attitude will still lose you sales.*  
**Rated poor**

*Did things at his own pace. We could only get hold of the agent when it suited him.*  
**Rated fair**

*Rather than wanting to close a sale, be more open about the property details, etc.*  
**Rated fair**



## What aspects could the agent improve on?

Of the consumers who would not recommend the agent, the top aspects they felt their agent could improve on were:

- be more open, transparent (21%)
- better interpersonal skills – more friendly, approachable (10%)
- reduce their fees (7%)
- be more informative (6%)
- better service / be more helpful / supportive (6%)
- better communication (5%)
- be more patient / less pushy (5%)
- listen to us and understand our needs (5%)
- have more knowledge of the properties (4%)
- be more supportive of buyers (3%)

Here are some comments from consumers regarding what their agent could have improved on.

*She would need to take her work more seriously. I researched and got information myself because the agent didn't seem to be very serious about focusing on my custom.*

*Be more pro-active, interested, and obliging.*

Licenses should always remember that today's buyer is a future seller, and it is beneficial to the licensee if the buyer has a good experience with them.



## Key points

From a recent survey of New Zealanders who bought, sold, or tried to buy or sell residential property in the previous 12 months:

- Although 51% of buyers and 61% of sellers said that licensees were very good or excellent at providing the information they needed, there are ways the industry can improve in this regard.
- The most common issues consumers felt they faced were that the licensee didn't communicate well with them, they felt pressured to make quick decisions, the licensee gave incorrect or misleading information, the licensee didn't provide them with important information, and they had difficulty understanding the price or value of the property.
- Those licensees the consumer would highly recommend had a friendly, reassuring and understanding manner; commitment and work ethic; professionalism; knowledge and experience; openness, honesty and integrity, a willingness to help and they were informative and explained things well.
- The key aspects consumers felt licensees they wouldn't recommend could improve on were: being more open and transparent, having better interpersonal skills (being more friendly and approachable), reducing their fees, being more informative, providing better service, being more helpful and more supportive, and communicating better.

## Empowered consumers

One of the themes to come out of the research was that consumers who felt empowered tended to be those who were positive about the purchase process.

### Why do real estate consumers feel empowered?



**43%**  
 rated 4/5 or  
 5/5 for  
 empowerment

Consumers who rated very good (4/5) or excellent (5/5) for feeling empowered gave their main reasons as:

- being given lots of information
- feeling listened to
- having the process explained, and
- not feeling pushed into decisions.

Here are some comments from buyers who felt empowered in the sales process.

*Had each step explained in full, were able to answer any question we had, and we weren't pushed into anything at all.*

**Buyer**

*I felt able to say no. I felt able to negotiate. I felt that I wasn't rushed or bullied into putting in an offer.*

**Buyer**

*I feel like we knew what questions to ask and who to ask. We didn't feel pressured and were able to make our own decisions.*

**Made offer but didn't buy**

*The agent liaised with me, the sale and purchase agreement was explained to me in detail both by my lawyer and the agent. I was able to make changes to the agreement prior to signing.*

**Made offer but didn't buy**

*We were filled in and able to make decisions.*

**Buyer**

### Why do real estate consumers not feel empowered?



**15%**  
rated 1/5 or  
2/5 for  
empowerment

Consumers who rated 1/5 or 2/5 for feeling empowered gave their main reasons as:

- not being in control
- not having the full attention of the agent
- not enough information for first time buyers

Here are some comments from buyers who did not feel empowered in the sales process.

*Agent was not forthcoming with the questions we had. Had to continuously chase her for information about the property. This was the case for other properties we put offers on, felt like there was far too much scheming going on behind the scenes in order to 'sell' the property.*

**Buyer**

*I'm still not sure how it all worked. It's all very confusing.*

**Buyer**

*I wanted to have more say in the transaction.*

**Made offer but did not buy**

*I feel like I had to chase the real estate agent for information and they were too busy selling properties in higher price ranges than attend a meeting to talk to me. They also would rather email than talk.*

**Made offer but didn't buy**

Consumers who felt empowered tended to be those who were positive about the purchase process.



## Key points

43% of consumers from the 2019 Nielsen survey rated very good or excellent for their feeling of empowerment in the sales process. Their reasons for feeling empowered were that they were given lots of information, felt listened to, had the process explained and didn't feel pushed into decisions.

(Note that this was a survey of New Zealanders who had bought, sold, or tried to buy or sell residential property in the previous 12 months.)

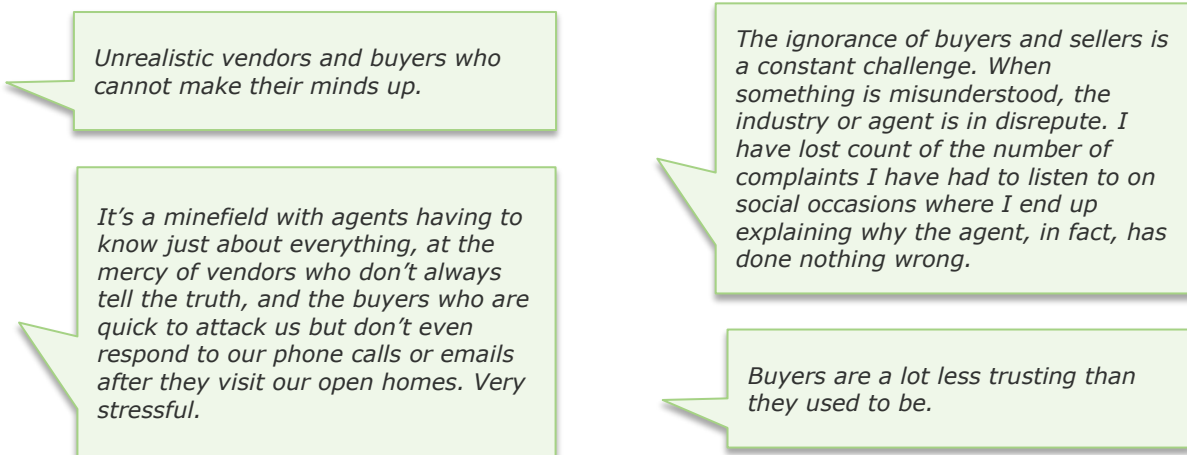
## What are licensee’s perceptions on issues with buyers?

Sometimes buyers are difficult to work with. It is not always easy for the licensee when there are challenges in working with buyers. There may also be multiple buyers for one property, who all need to be given the same information. This adds complexity.

Some of the issues highlighted were that

- buyers had unrealistic expectations
- sellers weren’t always honest with the licensee
- buyers didn’t respond to communication from the licensee
- the licensee was expected to have a broad extent of knowledge.

Here are some general comments from licensees regarding challenges with buyers.



*Unrealistic vendors and buyers who cannot make their minds up.*

*The ignorance of buyers and sellers is a constant challenge. When something is misunderstood, the industry or agent is in disrepute. I have lost count of the number of complaints I have had to listen to on social occasions where I end up explaining why the agent, in fact, has done nothing wrong.*

*It’s a minefield with agents having to know just about everything, at the mercy of vendors who don’t always tell the truth, and the buyers who are quick to attack us but don’t even respond to our phone calls or emails after they visit our open homes. Very stressful.*

*Buyers are a lot less trusting than they used to be.*

## What are licensee’s perceptions on information available to consumers?

When licensees were surveyed on independent information available to consumers, knowledge of REA’s roles, and due diligence done on properties by consumers, licensees noted that

- consumers tend not to read the REA guide
- consumers are often not doing due diligence on the property
- consumers often ask agents for their advice (which can put agents in an awkward position).

Here are some comments from licensees regarding the challenges when providing information to consumers.

*I can just about guarantee that first home buyer hasn't read sale and purchase agreement. Hasn't read their mortgage loan document. Basically, hasn't read hardly anything. They put the trust in the agent...*

*We get a lot of purchasers who will just say: send us the documents and we'll fill them out and send them back to you. We say: well, we can do that but really, it's an important thing you're doing, we need to sit down together. And they say: no, no, its alright, we've done it before, we know what to do.*

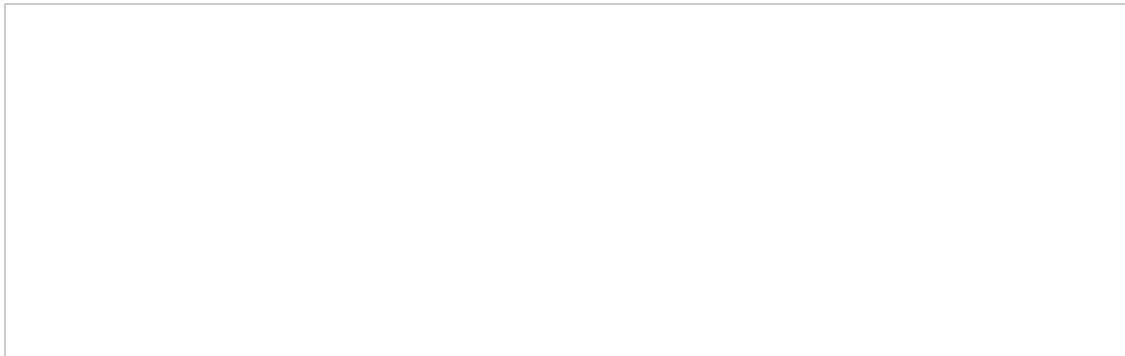
## Challenges for different buyer groups

From the research we can see how important it is to know about the buyer and the challenges they face.



### Activity

1. From your experience, list at least five challenges buyers experience.



Different buyer groups have different challenges. We'll now identify the key buyer groups and then explore the distinct challenges they face.

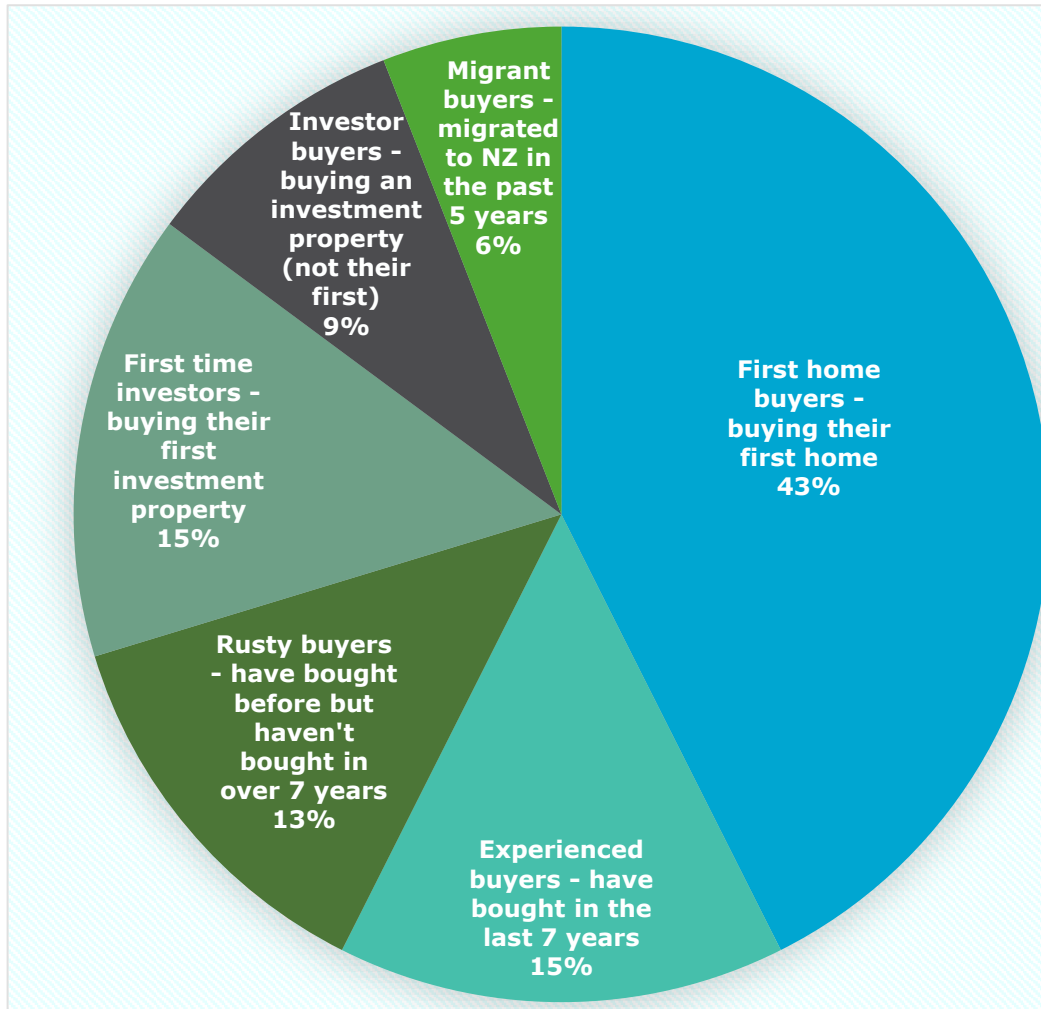
### **Description of buyer groups**

REA has divided residential property buyers and sellers into 12 groups; six buyer groups and six seller groups.

The graph on the next page shows the six buyer groups and the percentage of buyers in each group, from the Nielsen research referred to at the beginning of this guide. The research was released in 2019 and resulted from a survey of 603 people who had bought or sold or tried to buy or sell residential real estate in the previous 12 months.

This data includes consumers who bought and those that made an offer (those who were successful **and** those who offered).

## Percentage of market in different buyer groups



(Note that these percentages total greater than 100% as a few respondents fell into more than one group.)

Now we'll have a look at the particular challenges buyer groups face.

Consider each group:

What are their emotions, knowledge, and the process they've been through to get to this point?

What are their expectations and experience?

- What do they want to know?
- What are their concerns?
- What challenges do they have that other groups don't?

In this section we'll focus on migrant buyers and first home buyers.



First home buyers and migrant buyers are the most vulnerable groups and the most likely to suffer harm.

### First home buyers

Challenges experienced by first home buyers include that they

- find the process stressful
- have a lack of knowledge
- feel pressured by the process and agents
- don't know who to trust for advice
- experience different challenges for every offer
- don't have anyone representing them in the transaction.

Here are some comments from first time buyers regarding the challenges they faced.

*So, when we started, like three years ago when we were trying to buy our first property, the difficult part was to get information. It was where to get it because it was the first time. We did not know anything about how this market buying and selling works... so that's why it's very difficult this process because no one is there to hold your hand and guide you through.*

*The process as well seems quite complicated. Just the first time you do it, it seems very complicated and very scary, and not necessarily that clear.*

*Not sure what's going on, didn't know what the process was. Gave an offer, accepted, then 3 seconds later they want 10% deposit or \$10,000 deposit. Didn't realise I had to give it straight away.*

*The challenge was also that I had no idea what we were doing.....We were having to ask the agent that was selling, which isn't ideal, what should I do here because I actually don't know. "Make an offer? How do you make an offer?"*

Here are some comments from licensees regarding the challenges faced by first home buyers.

*Very daunting process for first home buyers. They've been saving their deposit for a long time – it can be nerve wracking spending it. They've often been in discussions with their KiwiSaver provider as they are relying on accessing their savings to top up their deposit. The value of the property is important as they are likely to already be pre-approved by their bank. They often don't know much about properties- they might have rented or lived with family up to this point, so they don't know about maintenance. There is also a lot of competition for properties that sit in the first home buyer value range. House hunting can consume all of their spare time.*

*I feel too much information at once for a first home buyer can be very overwhelming.*

*Some of them do a lot of research but are low on experience, however a lot wing it!*

### Migrant buyers

Here is some data about migrant buyers:

#### Consumers who experienced problems or issues in a property transaction



**28%**  
Of **migrants** experience problems in a property transaction



**16%**  
Of **other consumers** experience problems in a property transaction

#### Consumers who consider they have enough knowledge of the end-to-end real estate transaction process



**39%**  
Of **migrants** consider they have enough knowledge of the transaction process



**46%**  
Of **other consumers** consider they have enough knowledge of the transaction process

## Consumers who considered themselves empowered in the real estate transaction



**39%**  
 Of **migrants**  
 considered  
 themselves  
 empowered in  
 the real estate  
 transactions



**42%**  
 Of **other  
 consumers**  
 considered  
 themselves  
 empowered in the  
 real estate  
 transactions

Results from REA’s migrant research with Premium Research showed that the following challenges were experienced by migrant buyers:

### Migrant buyers are not sure who to trust for advice

- Migrant consumers rely on friends and family as experts, when the friends and family may not have the information or experience to be able to give the appropriate advice.
- Migrant buyers place considerable trust in the seller’s agents, and many don’t understand that the agent is working for the seller.

### Migrant buyers struggle with the process because of language and cultural differences

- Where English is a second language, it can be difficult for the buyer to understand what it is they are signing.
- Language and cultural differences between licensees, sellers and buyers can lead to misunderstandings.
- Agents may refer buyers to professionals they know who speak the same language as the migrant and migrants are reliant on their translation of the information.
- Most migrants buying and selling property speak English, the next largest group speak Mandarin.
- Migrants transacting in a Chinese language are vulnerable because they don’t understand the English paperwork and they are overly reliant on the agent involved.
- Because the process and property types differ from those in the country they’re from, many migrants make assumptions about the process or the property that can lead to harm.
- Many migrants may not be aware when they experience harm in a real estate transaction.
- Migrant groups may have a different approach to commercial transactions.

### Migrants don't know how the purchase process works in New Zealand

- Many migrant consumers have poor knowledge of the end to end transaction. Migrant consumers don't understand how the transaction works, e.g. paying deposit at auction, when they need to have their finances arranged.
- Migrants bring with them their experience of the property transaction and expectations about property from their home country, which may be very different to New Zealand.

### Migrants don't know where to go for information

- Most migrants have difficulty getting the information they need on the real estate transaction process and issues they might face.
- Migrants want information in the media they already interact with. Most Chinese asked for the information to be provided in their language.
- Some migrants start the property purchase process while on holiday here or from overseas.

### Migrant buyers can be stressed

- Some new migrant buyers were the most stressed consumers interviewed in the survey.

Here are some comments from migrant buyers regarding the challenges they faced:

*I was extremely stressed out and really emotional. I found myself crying a lot.*

*Stresses me out just thinking about it.*

*Language is a barrier. Last year I arrived in Auckland and I wanted to buy a house, and it was difficult for me. It was hard to get information. I can't do nothing but signature. My heart beating. But what can I do? I cannot use my dictionary.*

*I had a look at the LIM report and purchase agreement but didn't see any details because its all in English. Okay I think I do trust the agent...He asked me did I do a building report? I said no, I just came here and had a look. The listing agent told me they had two Kiwi families as customers who did already so I think maybe there's no problems. I think the price is okay for me.*

*I think quite a few, even of my friends, they totally rely on those agents they already know. They rely on them to translate everything. Sometimes the agent doesn't really give accurate information...especially those written documents I would say. Too many chapters, too many pages. Even if your English is really, really good you won't be able to read every single word and understand all the information and rules.*

*I found it challenging just knowing who to trust, can't show your emotions....*



## Key points

Different buyer groups have different knowledge and experience, and different expectations of licensees.

From a recent survey of New Zealanders who bought, sold, or tried to buy or sell residential property in the previous 12 months:

- The key buyer groups are First home buyers (36%), Experienced buyers (16%), Rusty buyers (14%), First time investors (14%), Investor buyers (12%) and Migrant buyers (8%).
- The key challenges for first home buyers include a lack of knowledge, feeling pressured by the process and by agents and not knowing who to trust for advice.
- First home buyers feel overwhelmed by the amount of information out there.
- The key challenges for migrant buyers are the stress of the situation; not being sure who to trust for advice; not knowing where to go for information; their inexperience and vulnerability; struggles with the process due to language or cultural differences (for example, difficulty understanding what they are signing; misunderstandings between licensees, sellers and buyers; migrant assumptions about the process or property).

## Role of the listing licensee in dealing with potential buyers

Over the time a buyer works with a licensee through the buying process, they may develop a relationship and begin to trust the licensee. However, at the beginning of the relationship it must be made clear to the buyer that the licensee is acting for the seller. There is a contractual agreement between the seller and the agency (and the licensee acts on behalf of the agency in their interactions with the buyer).

Under Rule 9.1 of the Professional Conduct and Client Care Rules, a licensee acting as a seller's agent must act in the best interests of the seller (client) and act in accordance with the seller's instructions, if they are lawful. However, the licensee also has a 'duty of care' to the buyer.

'Duty of care' means the responsibility or the legal obligation of a person or organisation to avoid actions, or fail to take actions, that could reasonably be foreseen as causing harm to others and/or their property. For example:

- An 'action' that could cause harm could be a licensee including a clause in the sale and purchase that is unclear and could be misinterpreted, causing problems with the unconditional/settlement process.
- 'Failure to take action' could be a licensee failing to mention the commonly known fact that there is an apartment building due to be built at the back of a property the licensee is selling, and this could cause harm if the buyers lose the privacy of the back yard that attracted them to the property.

The 'duty of care' is enacted in Rule 6.2, which states that the licensee has an obligation to act in good faith towards the buyer and to treat the buyer fairly. These are the **minimum** standards when dealing with a buyer.

There can be a tension between Rule 6.2 (acting in good faith and dealing fairly with all parties) and Rule 9.1 (acting in the best interest of the client and in accordance with their instructions).

### Passing on information to potential buyers / buyers

Dealing fairly with buyers (customers) involves:

- full disclosure of all material facts related to the property sale.  
This excludes the client's confidential personal information (which can only be disclosed if consent is given in writing).
- not misleading a potential customer, by doing (or not doing) something, or saying (or not saying) something, even if doing so would benefit their client.

Note that a licensee's disclosure obligation to a buyer continues until settlement.

Dealing fairly includes passing on information that is not required by law, but it would be unfair not to tell the customer or client. This information must be passed on in a timely manner. Note that you have to speak to the client first to obtain approval to pass on the information. You can approach the seller by asking "Do you realise.....?" If you are unsure on how to approach a particular situation of this nature, talk to your supervising agent or branch manager.

Rule 6.4 also relates to fairness, specifically in terms of **not** providing false information to buyers or withholding information from them that should be provided to them in law or in fairness.

## Best practice around confidential information

Buyers should be cautioned that information they provide to a licensee on a confidential basis may need to be passed on to the seller, as per the licensee's fiduciary obligations to the seller.

While rule 6.2 requires a licensee to act in good faith and deal fairly with all parties to a transaction (including buyers), rule 6.1 requires a licensee to comply with their fiduciary obligations to their seller. Licensees should keep in mind that they are an agent for the seller. In other words, if a buyer provides a licensee with information on a confidential basis, the licensee may need to provide that information to the seller if it has the potential to adversely affect the client's interests.

Equally, there may be situations where a licensee will need to withhold confidential information from the seller. A Complaints Assessment Committee has explained that "rule 6.2 requires licensees to act in good faith and fairly towards customers [buyers]. There may be situations where good faith and fairness demands that licensees hold customer information confidential from the vendor. This is most likely to be where the withheld information does not impact adversely on the client's interests in any way."

Ultimately, the specific context (the nature of the information, its significance to the client or the sale) will determine whether the appropriate action is to provide information provided by a buyer on a confidential basis to a seller or withhold it. You should communicate this with all potential buyers when they express an interest in the property to ensure buyers are clear of your fiduciary obligations when communicating and working with you.

Best practice is to ensure the buyer knows that you are an agent for the seller, and anything they tell you is likely to be communicated to the seller.

## Communicating with potential buyers

The licensee has certain obligations in terms of communicating with a potential buyer. If a potential buyer asks a question, when can they expect an answer and how should that answer be provided?

Communication of the answer should be in writing. Even if the answer is communicated verbally, it should be followed up in writing for clarity and as evidence that an appropriate answer has been supplied.

If an answer cannot be communicated straight away, acknowledgement of the question should be provided.



## Key points

- The licensee has a fiduciary relationship with the client (seller). This is a contractual relationship based on trust, confidence and reliance.
- The licensee also has a 'duty of care' to the buyer. This means the licensee has a responsibility / legal obligation to avoid actions or failure to take action that could reasonably be foreseen as causing harm to the buyer.
- The 'duty of care' is enacted in Rule 6.2, which states that the licensee has an obligation to act in good faith towards the buyer and to treat the buyer fairly as the consumer. These are the **minimum** standards when dealing with a buyer.
- Dealing fairly with buyers includes
  - full disclosure of all material facts related to the property sale (excluding the seller's confidential personal information), and
  - not misleading a potential customer, by doing (or not doing) something or saying (or not saying) something, even if doing so would benefit their client.
- Dealing fairly includes passing on information that is not required by law, but it would be unfair not to tell the buyer or seller. This information must be passed on in a timely manner.
- When a potential buyer asks a question, the answer should be in writing (even if the answer has been initially given verbally) for clarity and as evidence that an appropriate answer has been supplied. The answer should be given in a timely manner, and if the answer cannot be given promptly, written acknowledgement of the question should be provided.
- It must be made clear to the buyer that the licensee is acting for the seller, and that any information they provide to the licensee will likely be provided to the seller, even if the information is confidential.

### The licensee's duty to the buyer where the licensee is acting for the buyer

Under the Real Estate Agents Act 2008 a licensee may act as a 'buyer's agent'. Rule 11 of the Code of Conduct specifically relates to the obligations of the licensee if they are working as a buyer's agent. This rule is titled 'Client and customer care for buyer's agents'.

Engaging a buyer's agent is not common in New Zealand however, to be fair to buyers, they should be made aware that this is an option for them.



The key aspects of the 'buyer's agent' arrangement that a buyer needs to be aware of are:

- The agent and licensees work for the buyer.
- The agent and licensee's primary obligation is to the buyer.
- The agency agreement is between the agent and the buyer.
- Commission is paid to the buyer's agent by the buyer.
- The licensee finds properties for a buyer, based on the buyer's requirements.
- The licensee may help arrange due diligence such as obtaining a LIM.

(Note: The LIM should be in the buyer's name.)

- The licensee negotiates with the seller on behalf of the buyer.
- The licensee may bid at auction on behalf of the buyer.

Note that a licensee cannot act on behalf of a buyer as a buyer's agent unless they are authorised to do so by a **written agency agreement**. It's important that licensees talk to a potential client in a 'buyer's agency' about the agency's fees and any expenses before they sign an agency agreement.

Your agency cannot enter into a written agency agreement with both the buyer and seller in the same transaction.

As a licensee, you must always act in the best interests of your client, regardless of whether your client is a buyer or a seller.

## Tools and information available to help buyers

REA research highlighted that consumers wanted an independent, comprehensive source of information to help them with buying and selling a property. They wanted this information in one place, and they wanted to be able to trust the source. As a result of these findings, REA created the [settled.govt.nz](https://settled.govt.nz) website.

Research showed demand for information and guidance from buyers is particularly from first home buyers and migrant buyers. Those that were more confident in their ability to access information and guidance tended to have an agent, broker or solicitor they put a lot of faith in, be guided by family and friends who were experienced buyers and sellers, or have considerable personal experience themselves in buying and selling.

Many buyers don't have a good understanding of the home buying process. Through the [settled.govt.nz](https://settled.govt.nz) website and [settled.govt.nz](https://settled.govt.nz) videos, REA aims to help to inform and guide buyers and sellers through the home buying and selling process. The website is predominantly residential focused. Information and videos are updated and released over time to meet the needs of consumers.

It can be hard for home buyers to see the entire home-buying process in one snapshot. Consequently, REA have produced a brochure which is a guide for buyers and outlines the main stages of the buying process. This brochure is named 'Buying and not sure what to do when?' and is shown over three pages later in this section. It is available on the REA website, [rea.govt.nz](http://rea.govt.nz) and on the REA consumer website [settled.govt.nz](http://settled.govt.nz) under the resources sections. Licensees can also order copies of the brochure through the REA website, [rea.govt.nz](http://rea.govt.nz). Many licensees order these and have them available for buyers at open homes.

REA has a 'Settled' YouTube channel to help educate and inform consumers. (<https://www.youtube.com/channel/UCWZPeN7g6xzojRuICXkSpXA> )

The short link to REA's YouTube channels is [youtube.com/c/settledgovtnz](https://youtube.com/c/settledgovtnz)

All of the videos are also in relevant places on [settled.govt.nz](http://settled.govt.nz) and listed on the 'resources' page.



## Activity –video

Watch the following video from [settled.govt.nz](http://settled.govt.nz), which is designed to introduce buyers to the resources available through this website.



Link: <https://www.youtube.com/watch?v=o2ZDa5PDEUY>

A video introducing [settled.govt.nz](http://settled.govt.nz) for licensees is available on the REA website, [rea.govt.nz](http://rea.govt.nz).

Through the remainder of this study guide we'll refer you to videos or other resources provided on the REA consumer website, [settled.govt.nz](http://settled.govt.nz) .

We recommend you take the time to watch these videos as they are likely to help you

- become aware the content of the various videos
- recommend specific videos to potential buyers to further explain the answer to a query
- explain concepts to potential buyers by providing ideas (examples of explanations).

**Buyer's journey brochure ('Buying and not sure what to do when?')**

# Your real estate buying journey

**settled**.govt.nz

Before you can make an offer, you'll need to know the method of sale being used for that home.

Remember, the real estate agent, or your lawyer or conveyancer are there to support you through the process.

Don't make an offer on a property before seeking legal advice.

**Thinking of buying?**  
Decide what you're looking for in a home and what your goals are. Talk to friends and family.

**Agree on your goals**  
Decide what you're looking for in a home and what your goals are. Talk to friends and family.

**Sort your finance**  
How much can you borrow or afford? Investigate and understand your loan options before you take out a home loan.

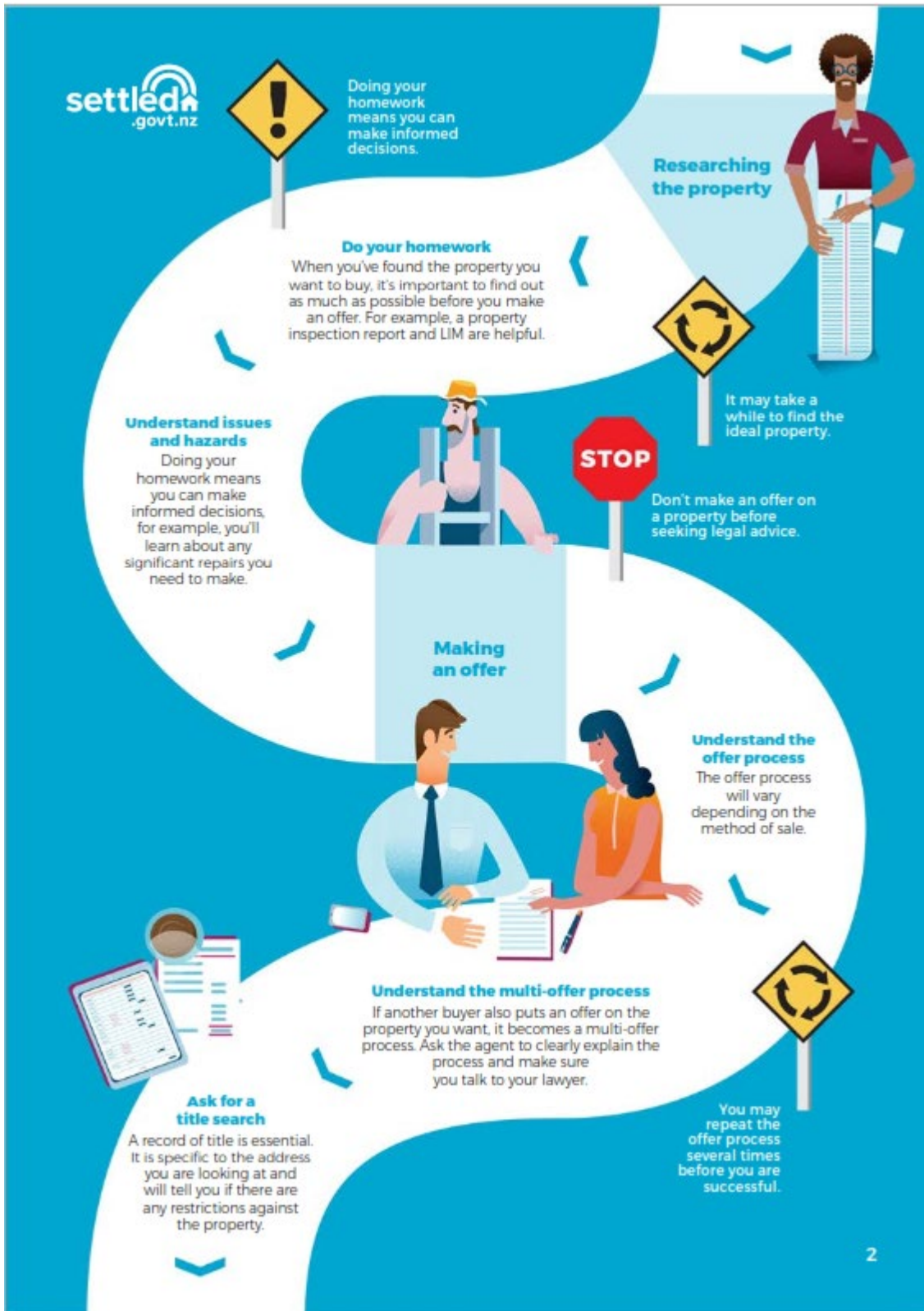
**Build your support crew**  
You'll need a lawyer, an insurer and a bank or mortgage broker. You may need a property inspector later too.

**Finding a property**

**Learn the lingo**  
The more prepared you are, the less confusing the process will be. Learn about methods of sale, types of property ownership and how to identify risks and potential issues.

**Attend open homes**  
By now, you'll know what you're looking for in a home and what red flags to watch out for. If you like a home and it meets your needs, you can start researching it in more detail.

1







### What are the advantages for licensees in using these tools and resources?

Many licensees are already directing buyers to information provided in the settled.govt.nz resources.

REA research found that those buyers who were aware of settled.govt.nz were more likely to view the real estate agent as being professional.



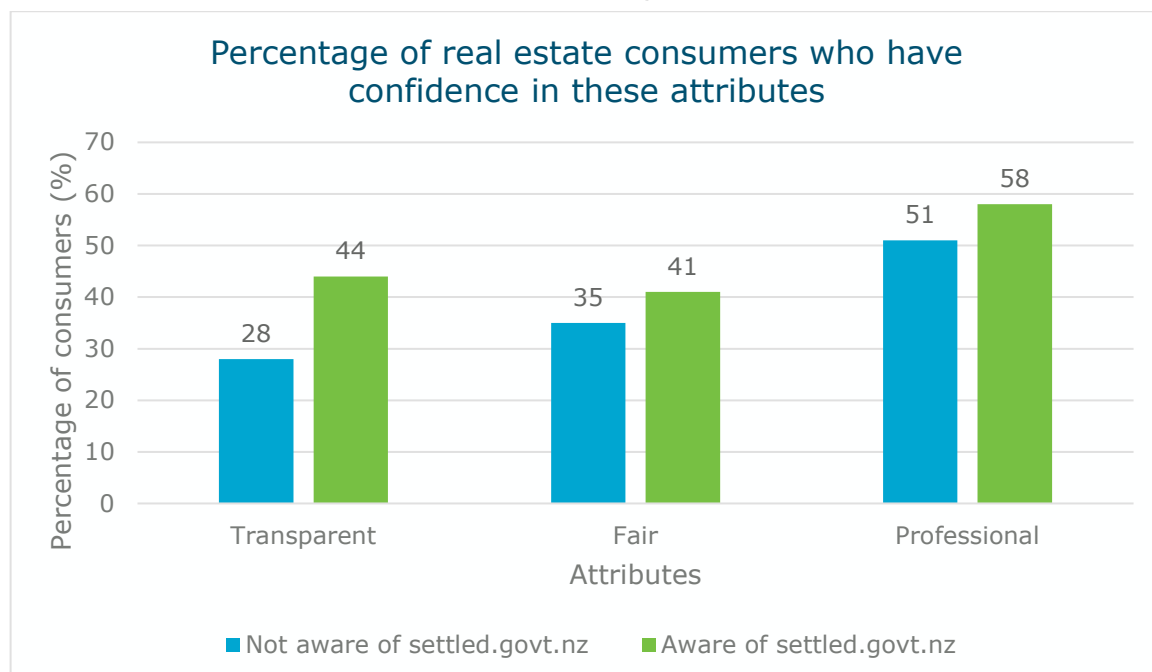
**58%**  
Of buyers rated their agent's professionalism 4/5 or 5/5



**64%**  
Of those that **rated the real estate agent 4/5 or 5/5** for professionalism **were aware of settled.govt.nz**

The research also found that consumers who knew about settled.govt.nz had more confidence in the real estate industry. The graph below shows the research for three attributes of licensees.

The graph shows that 44% of respondents who were aware of settled.govt.nz had confidence that their agent was transparent, but only 28% of those who were **not** aware of settled.govt.nz had confidence that their agent was transparent. 41% of respondents who were aware of settled.govt.nz had confidence their agent was fair, but only 35% who were **not** aware of settled.co.nz had confidence their agent was fair.



Here are some advantages of using the settled.govt.nz resources.

- They offer an independent source of information for buyers.
- The licensee will be viewed more professionally by buyers.
- The more knowledgeable a buyer is, the less likely something will go wrong.

Here are some comments from licensees referring to the settled.govt.nz website and the buyer journey brochures.

<div data-bbox="193 560 805 705" style="border: 1px solid #c8e6c9; padding: 10px; margin-bottom: 10px;"> <p><i>It is a website I refer to many buyers and also those who need financial advice when buying a home.</i></p> <p style="text-align: right;"><b>About website</b></p> </div> <div data-bbox="193 716 805 840" style="border: 1px solid #c8e6c9; padding: 10px; margin-bottom: 10px;"> <p><i>...buyers are using them and have a good grasp of buying and selling from this tool.</i></p> <p style="text-align: right;"><b>About brochure</b></p> </div> <div data-bbox="193 851 805 1019" style="border: 1px solid #c8e6c9; padding: 10px;"> <p><i>Such a fantastic resource. I have recently recommended a couple of first home buyers to it as it demystifies the process for them.</i></p> <p style="text-align: right;"><b>About brochure</b></p> </div>	<div data-bbox="837 560 1402 728" style="border: 1px solid #c8e6c9; padding: 10px; margin-bottom: 20px;"> <p><i>It's just great. I always send link to people buying, also the multi-offer process link to buyers and sellers if they're in a multi-offer situation.</i></p> <p style="text-align: right;"><b>About website</b></p> </div> <div data-bbox="837 761 1402 985" style="border: 1px solid #c8e6c9; padding: 10px;"> <p><i>I can't see any reason why we wouldn't recommend at the beginning of the process almost. You haven't bought a house before? Why don't you look at this? But it's gotta be good quality information.</i></p> <p style="text-align: right;"><b>About website</b></p> </div>
--	---



## Key points

- The settled.govt.nz website was created to provide independent information and guidance for buyers and sellers around the home buying process.
- Research results showed the percentage of consumers who had confidence that their agent was transparent, fair and professional was higher for those consumers who were aware of the settled.govt.nz website than for those who weren't aware of the website.
- Videos on various topics related to the buying process are available on settled.govt.nz and on YouTube. There is a video on settled.govt.nz on the REA website, rea.govt.nz.
- A buyer journey brochure has been published by REA. This brochure outlines the main stages of the buyer process. This brochure is available on the REA website ([www.rea.govt.nz](http://www.rea.govt.nz)) and on REA consumer website (settled.govt.nz). Licensees can also order copies of the brochure through the REA website.
- Licensees are recommended to provide independent resources available on settled.govt.nz to buyers at open homes.
- A better-informed buyer is less likely to have issues later.

## The buyer stages

We'll now look at the role of the licensee in the buyer process from the buyer's viewpoint. We'll do this by looking at the stages the buyer goes through when purchasing a property, considering the related requirements of the licensee, and good licensee practice at each stage.

### Your initial interaction with a potential buyer

You may meet a potential buyer for the first time in a variety of situations. This could include when they make an initial enquiry over the phone or via electronic means (such as an enquiry through email, a website or social media) or at an open home.

No matter what stage of the buyer process you meet the potential buyer, your role is to understand the buyer's situation and prioritise their needs, through effective buyer qualification.

You need to

- ask questions on their level of knowledge of the buying process
- establish their motivation to buy
- establish their budget (if possible)
- use effective questioning to ascertain their motivations, needs, wants and interests.

## Before a buyer is ready to start looking for a property

At this stage you need to 'qualify' your buyer. From the buyer's perspective, there are several matters they should start looking into before they start viewing properties or making an offer on a property. These include:

- finding out how much they can afford to borrow, considering the additional costs involved in purchasing a property (such as lawyer's fees, inspection costs or the cost of a LIM report)
- confirming the source of finance (such as whether they are borrowing through a bank or a mortgage broker or whether they are accessing the Kiwisaver first-home withdrawal, the First Home Grant or another government scheme), and what steps to take to gain pre-approval for the loan
- confirming they have money available for a deposit and when they need to pay it (for example, if the sale is by auction, the deposit needs to be accessible on the day of the auction.)

Some buyers will have put considerable energy into the above. However, many others don't do this until the offer stage.



## KiwiSaver

KiwiSaver is a savings initiative to help New Zealanders save for their retirement. Most members will build up their savings through regular contributions from their pay. Some people may also be eligible to withdraw some of their KiwiSaver savings to put towards purchasing their first home.

### KiwiSaver First Home Withdrawal

Members may be able to withdraw some of their KiwiSaver savings to put towards purchasing their first home, provided they leave a minimum balance of \$1,000 in their account. The member must live in the house they buy. It cannot be an investment property.

If they have previously owned a home, in some circumstances they may still be eligible to withdraw their savings. They would have to contact their scheme provider to check on this.

The government webpage that outlines how KiwiSaver can be used towards a first home purchase are outlined on this page:

<https://kaingaora.govt.nz/home-ownership/kiwisaver-first-home-withdrawal/>

### First Home Grant

To be eligible for a First Home Grant the person must:

- be over 18
- have earned less than the income caps in the last 12 months
- not currently own any property
- have been contributing at least the minimum amount to KiwiSaver (or complying fund or exempt employer scheme) for 3 years or more
- purchase a property that is within the regional house price caps
- agree to live in your new house for at least 6 months.

They must also make sure the house or land they want to buy meets the property requirements.

If they are eligible and buy an existing home, they can get \$1,000 for each of the 3 (or more) years they've paid into the scheme. The most they can get is \$5,000 for 5 or more years.

If they buy a new home or land to build on, they can get \$2,000 for each of the 3 (or more) years they've paid into the scheme. The most they can get is \$10,000 for 5 or more years.

Income and house price caps apply. The purchaser income caps are \$85,000 for a single person and \$130,000 for a couple.

The house price caps depend on which region the property being purchased is in.

The government webpage that outlines the First Home Grant is:

<https://kaingaora.govt.nz/home-ownership/first-home-grant/>

### **Supporting the buyer through this stage of the process**

It's important to understand that often a buyer's thought processes may be rather confused because they have these considerations to think about. This may particularly be the case if they haven't been through the process before or did so a long time ago.

Even though you believe you are being clear when you are communicating information about a property, the buyer may not register what you are saying at the time or recall what you said later. This is another reason for following up information provided verbally with a written explanation.

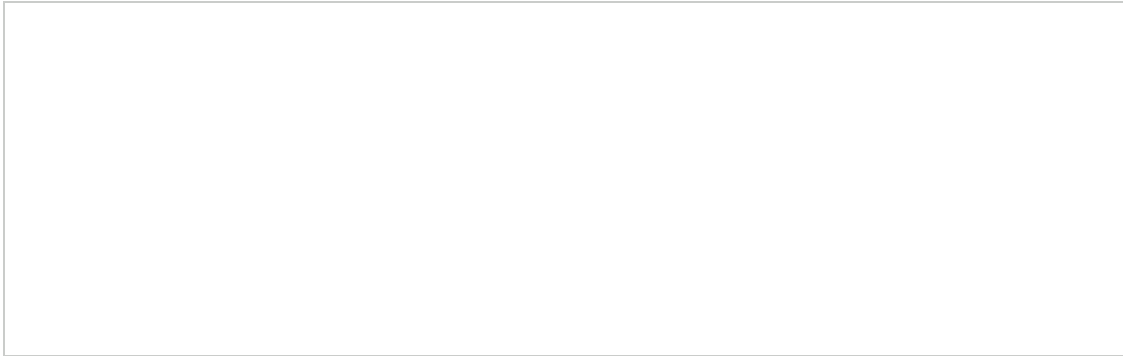
You can support the buyer at this time, by

- encouraging them to find out about their finance options at this early stage
- encouraging them to ask questions if they have queries about the buyer process
- providing explanations to answer any questions they have, or referring them to a reliable source of information
- having some of the REA guides/brochures ready to hand out
- refer the buyer to the [settled.govt.nz](https://settled.govt.nz) website.

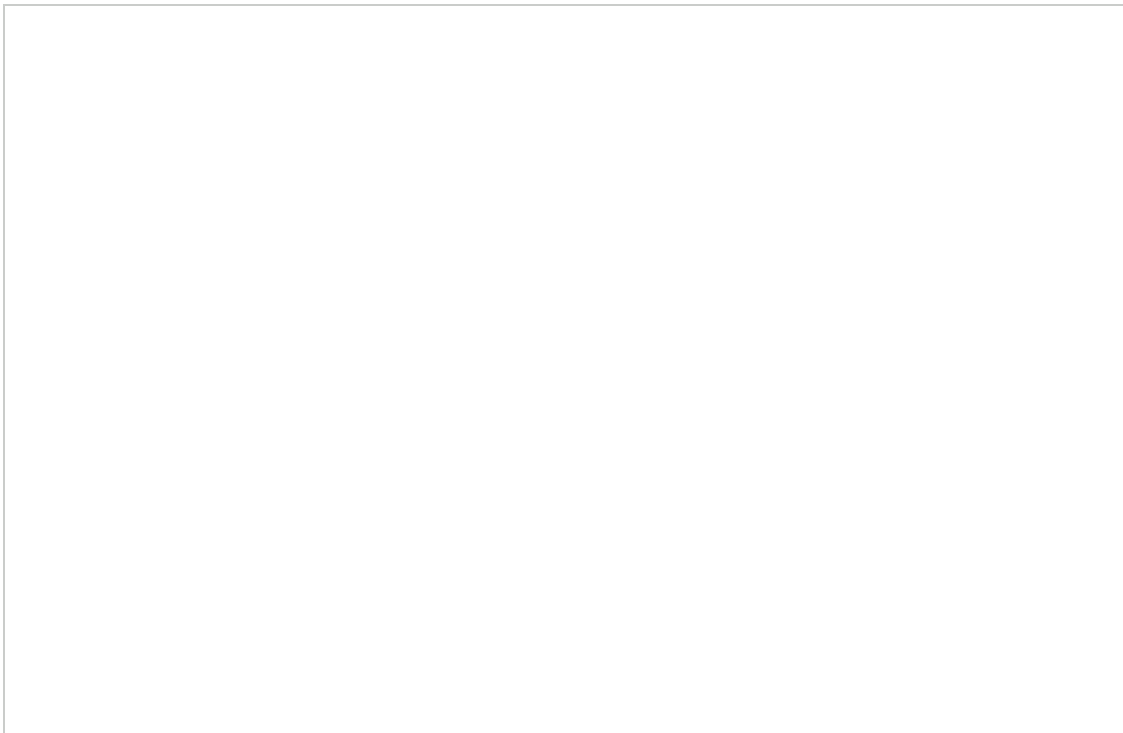


## Questions

2. List **five** questions you tend to ask potential buyers to obtain information on
  - a. their level of knowledge of the buying process
  - b. their motivation to buy
  - c. their needs, wants and interests
  - d. their budget / financial situation



3. How would *you* establish a buyer's key motivation?



## When a potential customer is actively searching for a property

This is an exciting and confusing time for buyers. For many, realising what they can buy in their price range may come as a shock. They have a steep learning curve in terms of gaining an understanding of 'real estate' language, concepts and processes.

The buyer needs to understand

- the vocabulary around the sale of real estate so they can communicate with the licensee, lawyers, council staff and others they may need for technical or legal advice.  
Examples of questions they may need answered could include 'What does it mean when a sale becomes 'unconditional'?' or 'What is meant by an 'easement'?'
- the vocabulary for different methods of sale (for example, 'private treaty sale' and 'deadline sale')
- the different types of property ownership, how to identify any potential issues associated with them, and the implications of these issues.

Examples:

For a unit title property – What are 'body corporate fees'? Is the buyer aware that owners are required to pay this ongoing fee to body corporate management?

For a cross lease property – What does the 'lease' in 'cross lease' mean? Is the buyer aware that 'common property' is an area shared between the properties?

For a rural property – What is an 'Overseer report'? What is meant by an 'effluent return period'?

For a commercial property – 'What does 'amortisation' mean'? What is the difference between usable area and rentable area?

At this stage the buyer will still be refining the 'must haves' (or goals) they are looking for in a property as compared to their 'nice to haves'. The buyer needs to attend as many open homes as they need to in order to establish their needs and wants and learn more about the relative value of different homes and what they are able to afford.

If they are interested in a particular property it is a good idea to arrange a private viewing and visit at a different time of day to when open homes are being held.

Here are some comments from buyers about their licensee in relation to this stage of the process:

*Honest person. He was very caring, and I told him what I was looking for in a property. He never pushed me into buying the house. He pointed out things that may need to be changed to suit my family needs - I don't think everyone would do that - he wasn't just focused on a sale. He truly wanted the perfect owners for the house.*

*Lacked a little legal knowledge about cross lease properties.*

*They need to be more open to asking questions of the vendor. Also, they need to be more flexible with viewing times and respond to emails faster (not take 2-3 days)*

Settled.govt.nz has an open home checklist, 'Researching the property' checklist, and property checker that can help potential buyers from this stage of the buying process.

Here are some videos that you could refer buyers to (by including a link in an email, for example).



## Activity –video

Watch the following videos from settled.govt.nz, which are designed to help buyers understand what they need to do at this stage of the buying process.



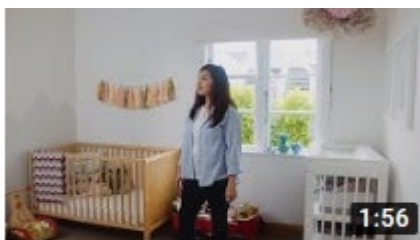
**Understanding the types of land ownership in New ...** ⋮

(Link: <https://www.youtube.com/watch?v=DoTRwOMy8j4> )



**Thinking about your goals when buying a home** ⋮

(Link: <https://www.youtube.com/watch?v=9ouQwGzG3tw> )



**What to look out for at an Open Home** ⋮

(Link: [https://www.youtube.com/watch?v=uec\\_b2UjOmA](https://www.youtube.com/watch?v=uec_b2UjOmA) )



## Questions

4. Explain what 'going unconditional' means and the process that is triggered when this happens, as you would to a first-time buyer.  
(Assume the buyer has no prior knowledge of the real estate purchase process.)

5. Explain what a 'LIM report' is and what it contains.  
(Assume the buyer has no prior knowledge of the real estate purchase process.)



## Tip

Look at the glossary provided to buyers by [settled.govt.nz](https://www.rea.govt.nz) and compare your explanation of terms 'unconditional' and 'LIM' with that provided by [settled.govt.nz](https://www.rea.govt.nz). Check your explanation accuracy and clarity.

(Link: <https://www.rea.govt.nz/glossary/#C> )

## What is the licensee's role at this stage?

As a licensee you need to have a comprehensive knowledge of the property and the sale process, so you can answer the buyer's questions effectively.

Your knowledge of the property needs to include information such as:

- the method of sale, and any issues arising from this (for example, where, when and how buyers submit their tenders)
- the contents of the Record of Title, including the type of property ownership and any issues the title highlights (for example, easements, covenants, caveats and lease agreements)
- if the property is a unit title property, details such as the location of any accessory units attached to the property (such as car parks or sheds), body corporate fees and how additional information can be accessed (such as a long-term maintenance plan).
- the property's boundaries
- the common areas that can also be used by others (for example, in cross lease or unit title properties)
- details of any known developments beyond the boundary, and how they might impact the property (for example, a reduction in on-street parking to accommodate a cycle way or the development of a supermarket complex close by)
- where information on zoning and council restrictions can be found (the territorial authority to be contacted)
- any known restrictions on the way the property can be used (for example, a covenant relating to landscaping requirements or restrictions related to cross leases, body corporate rules and zoning)

Note: many councils have restrictions on the number of pets allowed in certain zones (usually residential)

- rural considerations such as whether an activity is permitted or consented or when a water permit is due for renewal
- commercial considerations such as the terms of the tenant's lease or planned changes to the transport network.



It is good practice to physically point out any common areas or any accessory units when the potential buyer is visiting the property. If the boundaries are unclear, a condition of sale clause or seller warranty clause would need to be inserted into the contract.

If you are not the listing licensee, and are running an open home for another licensee, or taking someone through another licensee's listing, you need to make sure you are fully informed about the property and sale method so you can effectively and accurately answer questions put to you by potential buyers. You need to have a comprehensive knowledge of the property you are selling and the sale process.

## When a potential customer is researching a property

When a potential buyer has found a property they want to buy, they need to find out sufficient information, so they make an informed decision regarding the amount they are prepared to pay for the property with regard to its condition. The potential buyer needs to know any issues, hazards or any significant repairs needed (such as a deck that needs replacing) and when they would need to make them.

### What is needed for the potential buyer to 'do their homework'?

There is a lot of useful information for buyers on settled.govt.nz. Here are some videos that you could refer buyers to.



### Activity –video

Watch the following videos from settled.govt.nz, which are designed to help buyers understand what they need to do at this stage of the buying process.



Doing your homework ⋮

(Link: <https://www.youtube.com/watch?v=13x37X3Wphc> )



### Learning about the property ⋮

(Link: <https://www.youtube.com/watch?v=Gvg1faavh88> )

### What is the licensee's role at this stage?

At this stage, you are likely to be contacted by the potential buyer for specific information about a property or the sale process. For example, the potential buyer may

- ask you how they access a copy of the LIM report
- ask you for a reputable company who can carry out a property inspection on the property and provide a report. (If you are requested to do this, it is good practice to supply the names of more than two property inspection companies for the buyer to choose from.)
- ask you for further details about the method of sale, for example whether they can submit a pre-auction offer or how a deadline sale differs from a tender
- request another visit to the property to inspect it further
- ask you for a pre-contract disclosure statement and a copy of body corporate operational rules if the property is a unit title property.

Note: Potential buyers of a unit title property may request or be provided with other information such as the long-term maintenance plan or minutes of the last body corporate meeting.

You need to ensure you disclose information that the potential buyer has a right to know and support a potential buyer with their enquiries and requests for information.

If you have information that you have not verified, you must disclose to the buyer that it has not been verified. For example, if the seller has said that their land can be subdivided, but you have not seen written confirmation of this or have not confirmed this with the council, you should explain this to potential buyers.

### Rules relevant to the licensee's obligations to potential buyers

The obligations of licensees in terms of defects are outlined in Rule 10.7, which says that although licensees are not required to discover hidden or underlying defects, they must disclose known defects to the customer, with the client's informed consent. If it would seem to a 'reasonably competent licensee' that the property may be subject to hidden or underlying defects, the licensee must obtain confirmation from the client that the property is not subject to defect and must support this confirmation with evidence or expert advice. Alternatively, if this confirmation cannot be obtained, the licensee must ensure that the

customer is informed of any significant potential risk so that the customer can seek expert advice if they choose.

If a seller (client) directs the licensee **not** to provide information on defects to the buyer, they must be told that the licensee can no longer act for them. In other words, the agency agreement must be cancelled. This is outlined in Rule 10.8.

Rule 9.7 requires licensees to inform a potential customer (buyer) of their rights in relation to independent legal and technical advice. It also requires licensees to give them sufficient time to seek independent advice if they choose to.

Rule 9.8 acknowledges that many people are not familiar with legal documents. Under Rule 9.8, the licensee must not take advantage of a potential buyer not being able to understand relevant documents, where such inability is 'reasonably apparent'. Documents must be explained carefully and a party's inability to understand the legal implications must not be taken advantage of. Even competent buyers should have their attention drawn to issues in documents, such as in the LIM report.

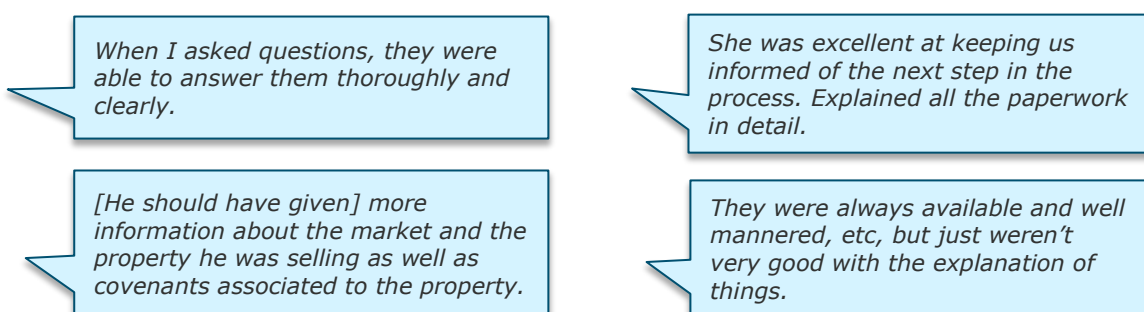
Particular care must be taken with vulnerable parties, such as those with limited knowledge and understanding of English, first home buyers, those under stress (for example, buying a property after the death of a spouse), the elderly, or those with some impairment that may limit understanding. The licensee should make sure the potential buyer obtains independent advice and support if necessary, to increase their level of understanding.

Rule 6.4 confirms the fundamental obligation not to mislead or act dishonestly (by providing false information or withholding information) when dealing with buyers.

### Communicating information to the buyer and confirming their understanding

At this stage you are often communicating a large amount of complex information to the buyer, and in a short space of time.

Here are some comments from buyers about the way the licensee provided them with information:



*When I asked questions, they were able to answer them thoroughly and clearly.*

*She was excellent at keeping us informed of the next step in the process. Explained all the paperwork in detail.*

*[He should have given] more information about the market and the property he was selling as well as covenants associated to the property.*

*They were always available and well mannered, etc, but just weren't very good with the explanation of things.*

### Verbal communication

It is important for you to communicate clearly and check that the buyer has understood what you have told them.

Here are some examples of how you could check the buyer has not only heard what you have said but has understood it.

### Providing summaries

One way of communicating clearly is to provide a summary of the key points on the topic so far. For example, "So, just to re-cap – this property is a cross lease property. That means ...".

### Asking directly

Another way of confirming whether you're getting your key points over clearly and that the buyer has understood is by simply asking "Does this make sense?" or "Have I explained this clearly?" or "Is there anything I can add for you?"

### Asking for summaries

One way of checking that the buyer has understood you is to ask them to summarise the information. For example, when explaining how a body corporate works to a first-time buyer– "I know that's quite a lot to take in. Can you tell me your understanding of what a common area is, so I can check I explained it well enough?" You can gently correct any misunderstandings at the end of the explanation. You need to take care with this method that you don't come across as patronising or implying the other person is stupid. It is best to just use this method for confirmation of significant points, or for the end of a chunk of conversation.

### Looking for non-verbal clues

Look for non-verbal clues in the other person's reaction to what you are saying to indicate whether they are understanding or not. Watch their body language – from facial expressions to hand movements and posture. If they are not listening or not understanding they might display behaviour such as wandering eyes, shuffling feet or making a secretive glance at a watch.

## Written communication

It is essential to follow a verbal explanation with an email explaining what you have said. Often questions will be emailed to you and your response will be by email. Write clearly, explicitly and ensure you've answered in sufficient detail.

You can help the potential buyer to understand the information by the way you structure your email. Use of paragraphs, line spaces, headings, bullet points and numbering can all help you convey information clearly.

Remember that SMS/text messaging should not be used to communicate important information to potential buyers. Email is a more appropriate method of communication in this situation.

On the following page there is an example of an email answering questions from a young couple, who are first time buyers.

Hi Jasmine and Aaron

I hope the second viewing of the property on Wednesday was useful. I look forward to meeting with you tonight.

Here are the answers to the two questions in your email:

**1. The process if you make an offer and the sellers counteroffer:**

If you make an offer, the seller can make a counteroffer (for example, this may be a change in the price, a change in conditions or both). You can accept or reject the seller's counteroffer or make a further counteroffer yourselves.

If you accept the seller's counteroffer, agreement will have been reached. The document will be fully signed by the sellers and yourselves and then I will convey acceptance to both of you. I will then date the agreement and it will become legally binding. The agreement will then be processed by my office.

Your solicitors will receive a copy of the agreement on the same day if the transaction happens before 5pm.

**2. How the conditional period is worked out**

In our discussions you said you're planning to put in 10 working days to confirm your finance. You also said you needed 10 working days to get a builder's report, get your lawyer to review the report, discuss the contents with them and to confirm the builder's report condition is satisfied. You said you also need to obtain a LIM report and get your lawyer to review it. In the agreement there is an allowance of 15 working days to obtain the LIM and a further 10 days if required. This is a total 25 working days from the agreement date unless you and the seller agree to shorten it. You have 10 working days to approve the title. If you have not objected to the title within that timeframe you are deemed to have accepted it.

Therefore, the LIM, finance and builder's report conditions are the only conditions you intend placing in the agreement.

The timeframes for the three conditions outlined in the agreement need to be met. You can agree on meeting all three conditions at the same time, so the conditional period is likely to be 25 working days, unless there are issues raised by the LIM report or the parties agreed to shorten this time.

Note that a working day is any day on which it is usual for most people to be working. Under clause 1.1(37) of the sale and purchase agreement a 'working day' is any day **other than** Saturday and Sunday **or** any of certain specified public holidays such as Anzac Day, Good Friday and Easter Monday **or** the period starting on the 24 December and ending on the 5 January (However for the purposes of the purchaser approving the LIM condition (clause 9.3(2)) this period of working day exclusion is extended to 15 January.)

If you'd like any further information, please contact me.

Kind regards



## Key points

- The licensee needs to be able to explain key information around the method of sale, types of property ownership and conveyancing to a range of buyers (including those with no prior knowledge of the buying process).
- The licensee needs to have a comprehensive knowledge of the property and the sale process, even if they are not the listing licensee (for example, if they are running an open home for the listing licensee or taking a potential buyer through the property for a private viewing.) This knowledge must be sufficient to clearly and accurately answer questions on the property and sale process from potential buyers.
- The licensee must disclose information that the potential buyer needs to know to make an informed decision on whether to purchase the property.
- The licensee needs to confirm the buyer's understanding of the information provided by using effective communication skills such as questioning techniques and observing body language in a face to face situation, and using targeted questions in email correspondence.

Read the following case study and answer the questions about the rules. (Refer to the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012).

## Case Study

---

A case against the defendant, a salesperson licensee, was taken to a Complaints Assessment Committee. The case related to the purchase of an apartment in a unit title development. The licensee was the listing and selling salesperson of a unit title property in a complex ("the property").

On 18 September, when Ms A was considering whether to submit a tender for the property, she told the licensee she had a dog. She was aware she would need to have approval from the body corporate to keep the dog at the property. She asked the licensee to contact the body corporate to clear her having a dog at the unit.

On the same day the licensee communicated with the body corporate chairman, asking if a new owner could have a "very small toy dog".

On 19 September the chairman replied the it would depend on how noisy the dog was, not its size. He explained that if it was a small dog that 'yaps/barks regularly' then it probably would be a problem and [the owner] would be asked to take it away. The licensee forwarded the text of the chairman's reply to Ms A.

Ms A sent an email to the licensee describing her dog as "an old dog which sleeps inside mostly" and again asked him to "please clear that with the body corporate". She also asked for the body corporate details. The licensee contacted the chairman to ask if he could give his details to Ms A.

The chairman replied to the licensee saying he'd prefer not to have direct contact with potential purchasers, so he didn't have potential purchasers trying to negotiate body corporate rules. He said once they sign a conditional offer then he could be approached and could formalise pet approval then. In the chairman's email response, he also said at this stage it was up to Ms A to honestly assess if the dog barks or yaps without reasonable provocation. If she believed it would be acceptable then the body corporate could formalise approval as a condition of the offer. The licensee conveyed this to Ms A by email. He also conveyed a comment from the chairman in an earlier email that 'If the dog proves to not be what was portrayed with the approval process then it will become a problem and the dog will probably be asked to be moved'. The licensee forwarded what he believed to be the relevant text from the chairman's emails. Two other paragraphs from the chairman's email were left out in the email to Ms A; one relating to the process for communication between the agency and the body corporate and another where the content was similar to that already forwarded to Ms A.

On 23 September the licensee emailed the tender documents and other required documents to Ms A. In his email he offered to help her fill the documents out. On 25 September Ms A replied that she would like help filling out the tender document.

Ms A and the licensee met on 3 October. The licensee gave Ms A hard copies of the documents and Ms A said that her solicitor "had sighted the documents". She subsequently made an unconditional offer to buy the property, which was accepted.

After she moved in, Ms A was required to apply for approval to have the dog at the property. Approval was not given. She subsequently re-housed her dog until she sold the property and bought another one.

On 7 December Ms A complained to REA regarding the licensee's conduct in relation to her purchase of the property. In particular, she complained that he misled her in that, as a result of information given to her by him, she believed that she had approval to have her dog live with her at the property.

A Complaints Assessment Committee censured the licensee and ordered him to pay Ms A \$3,000 as relief for the consequences of his error or omission. The Committee noted that the licensee accepted that he did not insert a clause making the tender conditional on the acceptance of the Ms A's dog. Ms A had asked him for help with the document, but after she sought legal advice and no appropriate clause came from that, the licensee thought the complainant no longer required his help. The Committee felt it would have been appropriate for the licensee to ask the complainant if she still required the clause. They felt this would have been a normal response after Ms A had already asked for assistance, even though she had accessed a lawyer. They felt the licensee had made assumptions about the clause no longer being needed without bothering to check with the complainant.

This decision was overturned on appeal to the Disciplinary Tribunal, after consideration of the content of the emails between the licensee and Ms A, and the licensee and the chairman. The Disciplinary Tribunal found that the licensee did not have an obligation to assist, guide or ensure that a clause was inserted into the tender document to make it conditional on approval being given for her dog. The licensee recommended that Ms A take legal advice and checked that she had done so. The Tribunal found from the communication evidence that Ms A knew the body corporate's approval was required for her to have her dog live with her. She was also aware that an important factor for gaining approval was whether the dog was noisy. She knew from the content of the chairman's email passed on to her, that approval could be given based on an owner's honest assessment of her dog's acceptability, but it could then be revoked. They felt that, consequently, inclusion of a clause would not have provided Ms A with any protection.

**Complaint number: C18097 / [2018] NZREADT 20**

Date: 14 May 2018

You can read about this complaint and decision in the REA decisions database, which you can find at the top of the homepage at [rea.govt.nz](http://rea.govt.nz)





## Questions

6. What could the licensee have done to try to avoid the situation where the buyer made a complaint to REA?

7. What did the licensee do that helped the Disciplinary Tribunal in their decision?

## When a potential buyer is ready to make an offer

Before the buyer gets into a situation where they are making an offer, they need to understand

- the process for submitting an offer, and
- the process for dealing with multi-offers (should this situation occur).

It's a good idea for buyers to check access to finance with their bank or mortgage broker and look at the title before making an offer, but they may not do this.

Here are some comments from buyers about this stage of the process:

*I felt that when I put in my offer into the real estate agent I didn't feel very confident and the agent did not give me any indication whether or not I was wasting my time. It turned out that I was. I felt quite small and a little embarrassed and I would have liked the agent to give me the chance to come back with a counter offer but she wasn't interested.*

*Because once you start looking, then they put the pressure on. All of a sudden, you're in it. You've got to get the offer in! Come on! You put your offer in and you're like, "Oh my god."*

### What is the licensee's role at this stage?

At this stage, you will need to explain the method of sale and the offer process for this property. The offer process will differ depending on the method.

Whichever offer process is used, the buyer needs to be made aware that

- a sale and purchase agreement is a legally binding contract and because of this
- the buyer is advised to get legal advice before they make their offer, so they understand what they are signing.

You will need to be able to clearly explain the method of sale being used for the property. Different sale options raise different issues for buyers. It is important that the buyer is very clear on the process for submitting an offer.

Here is a summary of three common methods of sale:

Method of sale	Key points to convey to potential buyers
Sale by advertised price	<p>The key points to convey to buyers are:</p> <ul style="list-style-type: none"> <li>• The seller sets a price. This method provides certainty to buyers on the price expectations of the sellers. However, the property may still sell for more, especially if there is more than one interested buyer.</li> <li>• The buyer can choose to offer more or less than this advertised price and should expect to negotiate the sale. However, there is no guarantee that the seller will negotiate with them.</li> <li>• There is no specific deadline by which the offer needs to be received.</li> </ul>
Deadline sale (including auction and tender)	<p>The key points to convey to buyers are:</p> <ul style="list-style-type: none"> <li>• The seller sets a date by which all offers must be submitted.</li> <li>• The buyer can make an offer at any time before the deadline sale date.</li> <li>• If the deadline sale is advertised as 'will not be sold prior', no offers will be considered by the seller until the deadline.</li> <li>• If it is advertised as 'may be sold prior' the seller may accept an offer before the deadline.</li> </ul> <p>It is important that if the property you are selling is advertised as 'may be sold prior' that you ensure that all buyers are made aware of this.</p>

	<ul style="list-style-type: none"> <li>The seller may choose to accept an offer, or they may choose to negotiate further. However, there is no guarantee that the seller will negotiate with all buyers (if there is more than one offer) and may choose to negotiate with only one buyer.</li> </ul>
<b>Negotiation</b>	<p>The key points to convey to buyers are:</p> <ul style="list-style-type: none"> <li>The buyer makes an offer based on what they think the property is worth in the current market.</li> <li>There's no end date for offers.</li> <li>The seller may choose to accept an offer, or they may choose to negotiate further. However, there is no guarantee that the seller will negotiate with all buyers (if there is more than one offer) and may choose to negotiate with only one buyer.</li> </ul>

For the three methods outlined so far, the following points need to be conveyed to buyers.

- The buyer can attach conditions to their offer, such as making the offer subject to a building inspection.
- The buyer can change their offer at any time before the seller accepts it, and the buyer can include an expiry date on the offer.  
(Note: This isn't the case once a tender offer has been submitted. The tenderer can make a further offer, with different terms and conditions, but not change the original offer.)
- Sellers can also attach terms and conditions to the sale, for example
  - A condition that, by a specific date, the seller enters into an unconditional agreement to purchase another property.  
(Note: This would not usually apply to an auction agreement.)
  - A statement that the seller will take the bathroom mirror and replace it with a plain mirror of the same size.
- If the buyer can't meet the conditions or needs an extension of time, they need to talk to their lawyer or conveyancer and real estate licensee as soon as possible.
- If there is more than one offer at the same time, the sale must become a multi-offer process.**

Here is a summary for other methods of sale:

Method of sale	Key points to convey to potential buyers
<b>Auction</b>	<p>The key points to convey to buyers are:</p> <ul style="list-style-type: none"> <li>A property auction is a fast-paced, public sale. If the buyer hasn't been to a property auction before, suggest that they attend as many auctions as they can as a spectator so they can see how property auctions work and observe bidding behaviour.</li> <li>The property is sold to the buyer with the highest bid after the seller's reserve price has been reached.</li> <li>Buyers should register their interest with the licensee and ask to be informed if another buyer makes an offer before the auction date.</li> <li>If the buyer wins the auction, they are committed to buying the property.</li> </ul>

	<ul style="list-style-type: none"> <li>• If the buyer buys the property at auction, they must pay the purchase deposit on the auction day. This means that <b>before they consider bidding at auction</b>, the buyer must have their finances in order and have completed their due diligence (such as getting their lawyer to review the LIM report, or obtaining and reviewing a building inspection report).</li> <li>• Explain what a vendor bid is and why it is used.</li> </ul> <p>You can refer the buyer to the Settled.govt.nz video shown in the next activity.</p>
<p style="text-align: center;"><b>Tender</b></p>	<p>The key points to convey to buyers are:</p> <ul style="list-style-type: none"> <li>• Buyers submit confidential written offers to the agency before a specified closing date.</li> <li>• Whilst the standard tender document will encourage an unconditional offer, the buyer may attach conditions to their offer, unless the seller has specified otherwise.</li> <li>• Sellers can also attach terms and conditions to the sale before they accept offers or as part of negotiations.</li> <li>• The buyer can make an offer at any time, if the property has been advertised as 'may be sold prior'. The seller may decide to consider offers earlier than the tender closing date and the property may be sold before this date.</li> <li>• Potential buyers should register their interest with the licensee and ask to be informed if someone else makes an offer before the end date to see if the potential buyer can also make an offer.</li> <li>• If the seller has decided they will accept offers before the end date and there is more than one offer, the sale may become a multi-offer process.</li> <li>• The seller doesn't have to accept the highest offer, or any offer. The seller may choose to negotiate, through the licensee, with anyone who submitted an offer. Alternatively, they may choose to reject all offers.</li> </ul>

For the Tender method, the following points need to be conveyed to buyers:

- The buyer should register their interest with the licensee and ask to be informed if another buyer makes an offer before the end date, to see if they can also make an offer.
- The buyer can add terms and conditions to the tender offer, for example an offer expiry date or making the offer subject to a property inspection report.
- The seller has the right to accept or reject tenders or choose to negotiate with any tenders.
- The deposit is usually paid when the sale and purchase agreement is signed. The remainder of the purchase price is due on settlement day.

For the Auction method, the following points need to be conveyed to buyers

- The buyer should register their interest with the licensee and ask to be informed if another buyer makes an offer before the auction date.
- If the buyer hasn't been to an auction before, it's a good idea for them to attend one as a spectator so they can see how they work.
- If the buyer wins an auction, they are committed to buying the property and must pay the purchase deposit on the auction day.
- The auctioneer will not reveal the reserve price.



## Activity –video

Watch the following video from settled.govt.nz, which is designed to help buyers understand the auction method of sale.



Understanding how Auctions work

(Link: <https://www.youtube.com/watch?v=A-dmU53Y02Y> )

## Multi-offer process

A multi-offer process happens when more than one buyer makes a written offer on a property.

The multi-offer process can arise when the property is being sold by private treaty. A private treaty is where it is listed with or without a price, the buyer makes an offer to the licensee, the licensee presents the offer to the seller and the seller then decides whether to accept the offer or not.

A multi-offer process can also occur under a deadline private treaty or when prior offers can be considered in a tender or auction programme.

This is a fast-paced and complex situation. Licensees must clearly explain the process and any relevant paperwork to all potential buyers. If an offer has been presented to a seller (which has not yet been accepted or declined) and another written and signed offer is received, the multi-offer process may be triggered. The seller must be informed of the implications of engaging in a multi-offer, and then it is the seller's decision whether the multi-offer process is triggered.

For this process to be actioned, there **must be more than one offer in writing**. A licensee can't say to a potential buyer that they are 'in a multi-offer process' if there are no other written, signed offers.

The original potential buyer, who has already submitted an offer, must have this returned so that they can decide whether to amend their offer, or possibly to withdraw from the process.

In this situation, it is important to carefully communicate the next steps to the parties, as this stage often causes issues for licensees and buyers. It is very important to have a conversation with buyers at this initial stage, to explain in detail how the multi-offer process will work. If a buyer has not had the process explained well to them at the start, and they are later unsuccessful, they are more likely to feel dissatisfied and make a complaint. They are also less likely to recommend you or your agency.

At this stage industry practice is to call for offers. It's important for buyers to make their 'best and highest' offer at this stage, as they might not get the chance to increase their offer or to negotiate. The licensee and the seller may however decide to go back to those who have submitted an offer and give them the option to change their offer.

The licensee, in consultation with the seller, must impose a timeframe when all multi-offers are to be presented to the seller. This gives certainty on a final close-off time for potential purchasers to submit their offer. Rule 10.10 provides that all written offers must be presented. A licensee shouldn't present offers from their buyer and offers from buyers that have come through other licensees, because there could be bias or perceived bias towards their own buyer. In this case a senior independent person within the agency should handle the situation and supervise the presentation of the multiple offers. Agency policy should cover these situations.

When you present the offers to the seller you explain the content of the offers, explain that the seller can choose to accept or reject them, and ask the seller what they would like the licensee to do.

It is vital that you take care to record and file all aspects of the process (for example, a register of all parties wishing to participate in the multi-offers for the property and a file for signed copies of the Acknowledgment forms). The REINZ document '*Information: Multiple Offers*' provides guidance on recommended administration steps to keep a secure paper trail for all multi-offer situations.

Here are some comments from licensees regarding challenges in the multi-offer process.

*...perception by the public, which is quite often misguided, i.e. multi-offers and buyers missing out on properties.*

*Public ignorance or misunderstanding of our obligations and the correct processes we must follow, especially around multi-offers.*

Here are some comments from buyers regarding challenges in the multi-offer process.

*I felt that the agent was in complete control of the process. There was limited transparency when it came time to present offers, and I got the impression that I was not getting the full picture.*

*Could've kept me more up to date if another [buyer] was making an offer on a property I was interested in.*

*Explain the offer process better.*

*Maybe give more of a guide around price. I know it's hard with a multi offer situation but the house was listed for offers over [\$365,000] and we put in an offer over that but then got a call saying it was turned down and they were looking for over [\$380,000]. This is misleading and should have been advertised as this price as it's wasting our time. In the end they came back to us because they didn't get the offer they wanted but still annoying and unnecessary.*

The key points to convey to buyers are:

- A multi-offer process happens when more than one buyer makes an offer on a property.
- It's important for the buyer to make their 'best and highest' offer in a multi-offer situation, as they might not get the chance to increase their offer or to negotiate.
- All offers must be presented to the seller at the same time. Agency policy may require they be submitted in a sealed envelope.
- In a multi-offer situation, the seller can choose the offer that works best for them or may reject all offers. An offer with the lowest price but fewer or more favourable conditions may be chosen over a higher price with more or different conditions.
- The seller may choose to negotiate with one potential buyer to the exclusion of others or may choose to negotiate with all interested parties. However, they cannot negotiate with multiple buyers at the same time or they risk having their counteroffer accepted by more than one party.

If your agency's protocols, or the seller's instructions, are to call for other interest once an offer has been received, this needs to be clearly explained to the buyer before they submit an offer.

When in discussion with parties involved in the multi-offer process it is important that you:

- Ensure that all parties understand they are taking part in a multi-offer.
- Note: Best practice is for agencies to have a multi-offer recognition form to confirm that parties understand they are in a multi-offer situation.
- Clearly explain your agency's process around multi-offers.
- Explain the multi-offer acknowledgement form and ask the potential buyer to sign it.
- Assure the potential buyer that the details of their offer will not be disclosed to other competing offerors.
- Advise all parties if the process is changing from what was previously explained to them, for example if the other potential buyer has withdrawn their interest and it is no longer a multi-offer situation.

- Ensure that all parties are aware that at any time prior to acceptance, the potential buyer can withdraw their offer. If this happens, the seller must be immediately notified of this. Ensure the parties are aware that once the offer is withdrawn, the seller can't negotiate with this potential buyer.

**Note:** Take care over your explanation if the potential buyer is new to the buying process or has a language barrier.

### **Communication to all buyers is critical throughout the multi-offer process.**

When a buyer misses out:

- Communication to unsuccessful buyers is vital at the end.
- Unsuccessful buyers are often emotional, and it's important that you are sensitive and empathetic in your communication with them.

People are often interested in multiple properties and are waiting to find out if they are successful in this property before making an offer on another property. Don't leave buyers waiting for information – ensure you communicate the result with them as soon as possible to allow them to move on.

If a buyer has not had the process explained well to them up front, and they are later unsuccessful, they are more likely to feel disgruntled and raise a complaint later on. They are also less likely to rate you highly or recommend you to others.



### **Activity –video**

Watch the following video from settled.govt.nz, which is designed to help buyers understand the multi-offer process.



**Understanding a multi-offer process** ⋮

(Link: <https://www.youtube.com/watch?v=pKLAP79Z8Zo> )





## Key points

- The licensee needs to have a thorough knowledge of the sale process for this particular property and be able to explain it clearly and accurately to buyers.
- Buyers need to know that they may not be given the opportunity to negotiate with the seller in a multi-offer situation.
- In a multi-offer situation, clear and timely communication to all parties is critical, especially to the buyer who makes the first offer, and unsuccessful buyers.

Read the scenario and answer the question that follows.

### Scenario

Sanjay tells the listing licensee, Eric, that he wants to make an offer on a property. Eric drafts a sale and purchase agreement, entering Sanjay's offer amount of \$1.8 million in the document.

While Eric is with Sanjay, before he has presented the offer to the vendor, another licensee contacts him. This licensee says he has a potential buyer, Andrea, who has completed a sale and purchase agreement for the property. Eric rings the vendor to advise him that there are two offers for the property. The vendor agrees to a multi-offer process and this process is then triggered.

Eric explains to Sanjay that they are now in a multi-offer situation. He explains how a multi-offer situation works and advises Sanjay to make his 'best and highest' offer. Sanjay gets Eric to cross out \$1.8 million on the sale and purchase agreement and change the amount to \$2 million.

Soon after Sanjay has amended his offer, the licensee dealing with Andrea's offer contacts Eric to say that Andrea has decided she doesn't wish to compete for the property in a multi-offer situation, and that she has withdrawn from negotiations and her offer will not be submitted to the vendor.

The licensee then advises Sanjay that he is no longer in a multi-offer situation and asks if he would like to amend his offer before it is presented to the vendor. Sanjay says he would like to change his offer back to 1.8 million.

When Eric discussed the situation with his manager, the manager directed him to create a 'clean skin' agreement (a completely new agreement form) showing the amount offered as \$1.8 million



## Questions

8. With reference to rules 6.2 and 6.4, explain why Eric was required to inform Sanjay that there was no longer a multi offer situation, and give him an opportunity to revise his offer before it was presented to the vendor.

## Other considerations when a potential buyer is ready to make an offer

At this stage:

- It is good practice to check if the buyer is funding the purchase using a government fund, such as KiwiSaver, as this may affect timelines.
- You must be familiar with the effects of covenants and restrictions on a Record of Title that might affect the rights of the buyer and be able to explain these clearly and simply. You must recommend buyers seek legal advice to confirm these effects.
- You must be familiar with the standard conditions of sale on the agreement, and common clauses added to an agreement. If more complex conditions are required, you should seek advice from your supervising branch manager or agent.

## When an offer has been accepted

### Roles regarding satisfying conditions for a conditional agreement

From the buyer's perspective, they need to

- Carry out any necessary actions to satisfy any conditions in the agreement that are their responsibility, such as
  - gain confirmation from their lender that the required money will be available on settlement date
  - obtain a LIM report and forward it to their lawyer to check it over and confirm there are no issues
  - arrange for a building inspector to carry out an inspection on the property and then approve the resulting building report.

As a licensee you need to

- be aware of all the steps that have to be completed in order to finalise the sale and when they need to be completed by (for example the date for the LIM to be approved by, or the date by which the buyer must have confirmed finance)  
You need to have a system to remember key deadlines and be alerted prior to this time.
- give the seller clear information about what to expect from you and when to expect contact from you
- ensure the buyer knows the actions they need to take and when each action needs to be completed by
- make sure the seller completes any work which the parties have agreed needs to be done to the property
- communicate with the buyer in a timely way, to make sure they are working towards the deadlines they have for satisfying conditions in the agreement and are carrying out the required actions to do so.



## Key points

- You need to clearly explain to the seller and the buyer what steps they need to take after the agreement is signed.
- You need to be proactive in checking the progress sellers and buyers have made towards meeting the conditions in the agreement ahead of the deadlines.

## From agreement becoming unconditional until settlement

The agreement becomes unconditional once the conditions set when the buyer and seller signed the sale and purchase agreement have been 'satisfied'. The lawyers for both the seller and the buyer prepare documents for the property to transfer from the seller's ownership into the buyer's ownership.

In the time between the sale becoming unconditional and settlement day:

- the buyer's solicitor will check for any issues by obtaining
  - a guaranteed search of the title, and
  - any relevant documents recorded against the title.
- The seller's and buyer's solicitors both prepare information for the land transfer on Landonline.
- The seller's solicitor prepares a settlement statement.  
 The settlement statement shows the relevant outgoings and incomings on the property up to settlement/possession date, including rates, rent paid or received, and deposit paid.
- The seller's solicitor then sends the settlement statement to the buyer's solicitor.

From the buyer's perspective, they need to

- ensure that they have visited their lawyer or conveyancer in the days before settlement to complete and sign paperwork such as the transfer of title and their lender's home loan (if they are borrowing money).

In accordance with the AML/CFT Act 2009 their lawyer or conveyancer will need to verify their identity before they can act for them.

- convey to the licensee when they would like to carry out the pre-settlement inspection visit prior to settlement date.

As a licensee you need to

- check in with the buyer and seller to ensure they are prepared for settlement day and that no issues have arisen

- advise the buyer that they are entitled to a pre-settlement inspection, explain the purpose, and help arrange for the buyer to carry out the pre-settlement inspection (if required)
- ensure that the buyer has insurance in place for settlement day and can provide their financial lender the appropriate insurance documents prior to settlement day.

Here are some comments from buyers.

*No contact after unconditional. Was very obvious.*

*Friendly, approachable, always followed up and got back with answers, always checking we were happy.*

### **Pre-settlement inspection**

The pre-settlement inspection is for

- **the buyer** to check the property and chattels are in the same condition they were in when the buyer signed the sale and purchase agreement, with the exception of fair wear and tear, and
- that the seller has met any conditions listed in the agreement (in terms of work on the property).

You need to clearly explain the purpose of this pre-settlement inspection to the buyer; that it is **not** for uncovering problems that existed prior to them signing the agreement.

The purpose of the pre-settlement inspection is to check the property and chattels are in the same condition they were in when the buyer signed the sale and purchase agreement, except for fair wear and tear, and check the seller has completed any work required on the property specified in the sale and purchase agreement. The licensee needs to make the purpose of the inspection clear to the buyer.

### **Prior to settlement day**

You need to make arrangements for the buyer to be given keys and other security devices such as garage door openers and alarm codes. These can only be made available to buyers once the seller's lawyer or conveyancer has confirmed that settlement has taken place.

## Settlement day

From the buyer's perspective they need to:

- await confirmation from their lawyer or conveyancer (on settlement day) that the monies have been transferred as required, and confirmation of when they can take possession of the property
- Note that possession of the property cannot happen until after the seller's solicitor acknowledges receipt of the balance of the purchase price.
- arrange to pick up the keys and other security devices such as garage door openers and alarm codes from the real estate agency.

The agency cannot hand over the keys and other security devices until the seller's solicitor confirms receipt of the money.

Here are some comments from buyers about this stage of the process:

*Be involved with me and not shut out and giving me a thank you gift – bottle wine etc – as I find non giving really scussy.*

*Be personable! We are first home buyers. Most people I talk to who have bought a house get a gift for buying it. We got nothing.*

## Post settlement queries

As a licensee you may need to deal with post-settlement queries from the buyer. Common queries that may arise include

- issues to do with keys or security devices (for example, a key to a shed that is missing)
- a vendor warranty issue (such as an appliance that worked at the pre-settlement inspection visit but doesn't work when the buyer takes possession of the property)
- property of the seller that has been found and needs to be returned to them.

Remember

- Don't let a problem escalate.
- Maintain communication with the buyer and the seller, as required.

Today's buyer is tomorrow's seller. If handled poorly this will be the last thing the buyer remembers about you.



## Key points

- **Don't let a problem escalate.** Any issues around settlement time, or post settlement need to be addressed promptly.



## Putting my learning into practice

What are **three** key learnings you will take away from this topic?

Describe **at least one** change you will make to the way you work as a result of this topic.