

[www.lawfirm.co.nz](http://www.lawfirm.co.nz)

## paul gallagher legal

Barristers, Solicitors, Notary Public  
Business Consultants

Main Road, Albany Village (above Shell Shop)

P O Box 3, Albany Village

Auckland

**New Zealand**

Telephone (09) 415 9321

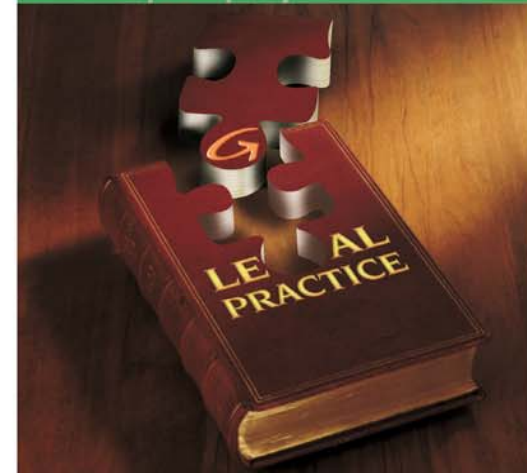
Facsimile (09) 415 6407

Email [info@lawfirm.co.nz](mailto:info@lawfirm.co.nz)



## CONVEYANCING PRACTICE

*Paul Gallagher*



paul gallagher legal

## **WHAT WE AS LAWYERS DO FOR YOU**

### **ACTING FOR YOU AS A PURCHASER**

#### **Pre-Contract Considerations/Discussions:**

Discussion of purchase matters generally.

How you are to appear on the title—joint tenancy or tenancy in common.

How the deposit is to be structured and paid.

Methods of financing and financing options.

Special terms and conditions of contract.

Tax implications of the purchase—GST liability.

The need to obtain specialist reports or assistance, e.g. valuations, pre-purchase inspections, building reports, Land Information Memoranda and Project Information Memoranda (where there is a section or development proposal).

#### **The Contract:**

Purchasers generally should not sign any Agreement for Sale and Purchase without first obtaining legal advice and having the Agreement checked over.

Are there any problems with possible conflicts of interest or problems relating to matrimonial property?

In the event that a contract has not been prepared by a Real Estate Agent, prepare it (if appropriate) and arrange for it to be signed.

In the event that a contract has been prepared by a Real Estate Agent it still needs to be checked to ensure that it reflects what you want and any mistakes are caught and rectified early. The Agreement is checked and perused carefully.

The terms and conditions are explained to you as appropriate.

Negotiations may be necessary with the Vendor and his/her/their Solicitor.

3. **The Title:**

Searching the title to the property you are buying and the relevant plan and leases (if necessary). The details of any encumbrances on the title are checked and copies of any documents are obtained such as easement certificates or transfers containing restrictive covenants.

Searches of the Companies Office documentation can be obtained as appropriate.

You need to confirm and understand the identity and boundaries of the property from the title and plan obtained, together with all encumbrances.

**Local Body Requisitions.**

Obtain and interpret Land Information Memoranda to ensure that there are no problems with the property being purchased insofar as zoning, public works, building requisitions, illegal structures and so on are concerned.

To ensure where possible that you are able to develop/use

an unsatisfactory transaction.

**Subject to Solicitors Approval Clauses.**

We also find that often clients feel that the addition of a standard "subject to Solicitor's approval" clause will enable them to get out of Agreements that prove onerous or risky.

Our experience is that such clauses are widely misunderstood and usually do not come close to giving the protection that the clients think they have. Once again, the time to get advice is before signing on the dotted line—our input can alleviate much heartache later on. Getting us to check your Agreement is probably the simplest insurance there is.

\*\*\*\*\*  
\*\*\*\*\*

tions. We frequently have conveyancing transactions fail after many months where a great many hours of work have been done. They fail for a number of reasons—not because of any failure on our part!

Therefore, unless our involvement has been absolutely minimal and the transaction failed very early in the piece, then our policy is to charge for our attendances on the basis of the time expended on your file.

### Pre-contractual Attendances

Normal conveyancing fees do not include attendances which fall into the category of “pre-contractual negotiations”. Often these can be extensive and are charged for on a time and attendance basis.

Preparation of Agreements for Sale and Purchase are also a chargeable extra—the cost usually being very modest.

### “Getting out” of transactions

Sometimes we encounter people who think that they can sign Agreements with impunity and that we as Solicitors can “get them out” of it if they subsequently find something wrong or simply change their minds.

This is a dangerous approach and this belief is usually wrong. Most of the time we cannot save people from disaster—the time to seek advice is **BEFORE** you sign an Agreement. The current version of the standard Agreement for Sale and Purchase contains clear warnings about obtaining legal advice before you sign it. This is a most important precaution—possibly the most important precaution. The cost is usually a mere fraction of having to go ahead with

your property in the way that you intend.

### Costs and Disbursements

Provide you with an estimate of the likely costs of acting in the transaction (Including GST and disbursements) and explain the arrangements for payment of those costs.

### Advice Required:

The implications of any lease of the property which may affect the purchase. Does it have any options or rights of refusal to purchase and/or rights of renewal? Does the Residential Tenancies Act 1986 have any impact? Are there any issues relating to the Landlord’s consent to any assignment of the property?

Consideration of the requirements and implications of various pieces of legislation—e.g. The Building Act 1991, The Resource Management Act 1991, etc.

Note any special conditions in the contract and, if necessary, negotiate with the Vendor and his/her/their Solicitor or Real Estate Agent.

The implications of payment of any deposit. Has the deposit been paid?

What financing arrangements are necessary? Ensure that finance application/s are lodged in reasonable time.

Is a registered valuation required? An expert report? What are the implications of these reports?

The need to ensure that the property will be insured from

the settlement date or earlier if the contract provides, and that the interest of any mortgagee is noted on the insurance policy.

**Before the Agreement becomes unconditional:**

Contact the Vendor's Solicitor and advise him or her that we are acting. Seek clarification of the time limits in the contract and written confirmation of conditions in the contract as required.

Diarise conditional dates and monitor progress from time to time. This may include written confirmation of conditions in the contract, from time to time. Negotiating and confirming in writing any necessary extensions of time for conditions or for the settlement date or to satisfy special conditions or to confirm financial conditions.

8. **After the Agreement becomes unconditional:**

Ensure that the deposit or any balance of deposit has been paid.

Prepare the Memorandum of Transfer and Notices of Sale and forward them to the Vendor or his/her Solicitor.

Obtain any mortgage instructions from your bank or other lender. Check the terms and conditions of the loan with you. Prepare the mortgage documentation.

Receive appropriate undertakings from the Vendor's solicitor prior to settlement.

Attend to settlement on settlement day.

**After Settlement:**

name on it. If you subsequently change Solicitors part way through a transaction then you are responsible for the time and charges incurred up until the time you notify us of your changed intentions.

**Payment of Disbursements.**

Disbursements are simply out of pocket expenses or moneys which we have to pay to third parties on your behalf. Examples are title searches, registration fees, courier charges and the like.

These disbursements can add up to quite substantial sums of money on occasion and the sheer volume of such disbursements means many thousands of dollars are outstanding at any given point in time.

Many of these disbursements require to be paid well before settlement is effected and we therefore have a strict policy that disbursements are paid for in advance. We therefore ask that you pay a sum of money into our trust account to cover these costs at the outset of your conveying transaction.

**Failed Transactions.**

When we commence work on a transaction for you, you are using our time, expertise and experience. Therefore, when a transaction does not proceed for any reason or any reason or a condition is not satisfied you will be responsible for our charges and costs for the work done on your behalf up to that point.

You need to understand that we charge basically for time and expertise—not for the success of particular transac-

times we endeavour to keep you up to date with progress and to do our very best to contain costs. Many of the aspects which result in extra time and therefore extra cost are totally unpredictable and frequently occur at, or immediately prior to, settlement. Some examples will illustrate the point:

When charges or Court orders prevent settlement at the last minute necessitating postponement of settlement or protracted negotiations.

Where settlement is postponed due to the Purchaser's failure to settle.

Where at settlement the Vendor has not completed certain work or obtained clearances from the local authority and further negotiations are required, moneys withheld, etc.

## **OTHER ASPECTS.**

### **Implied Authority.**

You need to understand the concept of implied authority when it comes to conveyancing transactions. This means that when we receive an Agreement for Sale and Purchase (usually from a Real Estate Agent) we have your implied authority to open a file and commence the usual conveyancing work associated with it. Depending upon the nature of the particular transaction, this may mean obtaining a search of the title, corresponding with the Solicitor on the other side, writing to your Bank as mortgagee and so on.

This concept of implied authority is well understood and has been upheld by both the Courts and the Law Society. We do not need your specific or written authority to act—it is sufficient to have received the Agreement with your

Complete statements and accounts.

Attend to registration of transfer and mortgage.

Send title and mortgage to your Bank or mortgagee and receive acknowledgement of receipt.

Final report to you with a copy of your new title.

## **ACTING FOR YOU AS VENDOR.**

### **Pre-Contract considerations/discussions:**

Accurately identify the property being sold.

Discuss arrangements for selling your property and it is to be sold (e.g. auction, tender, general listing, sole agency, etc).

The terms of any agency agreement with your real estate company.

The marketing of the property.

Your position in relation to income tax and GST.

### **The Contract:**

Checking the Agreement before you sign it.

Enquiries about possible conflicts of interest, problems relating to matrimonial property and the extent of your mortgage debt.

Preparing the Agreement for you if it hasn't been prepared by a real estate agent.

Negotiate as necessary with the Purchaser or his/her Solicitor.

**The Title:**

Search the title to your property. Assess any difficulties in giving clear title and arrange discharges of mortgages or releases of any other encumbrances. Obtain any consents required.

**Advice required:**

The implications of any lease of the property. The impact (if any) of the Residential Tenancies Act 1986.

The implications of the Overseas Investment Act 1994 (if applicable).

The implications of payment of any deposit. Checking to see if it has been paid or not.

**Before Agreement becomes unconditional:**

Advise the Purchaser and his/her Solicitor that we are acting on your behalf. Clarify the time limits in the Agreement and seek written confirmation of conditions in the contract as required.

Diarise confirmation dates and check progress from time to time, including written confirmation of the conditions in the Agreement.

Advising you and your real estate agent (if any) of any confirmation or waiver of conditions.

Negotiate any necessary extensions of time to the settlement date or to satisfy special conditions or confirm

lieve that besides being important to us as a firm this should also be important to you—mistakes and inexperience in this vital area usually spell disaster.

Your property is usually your single biggest investment. It is vital therefore that you choose your Lawyers carefully so that you get the level of skill, professionalism, experience and integrity that conveyancing services deserve. Paul Gallagher Legal has been providing conveyancing services to Albany, the North Shore and further afield since 1958 and is therefore well qualified and experienced in the conveyancing area.

Our philosophy is to employ only well qualified and appropriately experienced staff and we pay them well. We also do not cut corners or do the job by halves. We will not compromise our service or our ability to stand behind what we do. We believe that is what providing a professional service is all about—the right people, the right experience and, standing behind what you do.

We pride ourselves in building strong relationships with our clients and our many long-standing clients and third generation clients bear ample testament to that.

**ESTIMATES AND QUOTES.**

Because of the unpredictable nature of much conveyancing work, we do not give quotes. This may sound harsh but the simple fact of the matter is that everyone thinks their particular transaction is simple and straightforward and we have been caught too many times in the past.

We are more than happy however, to provide you with estimates, updates and full explanations at all stages. At all

must take account of all relevant factors and in particular:

The skill, specialised knowledge and responsibility required.

The time and labour expended.

The value or amount of any property or money involved.

The importance of the matter to the client and the results achieved.

The complexity of the matter and the difficulty or novelty of the questions involved.

The number and importance of the documents prepared or perused.

The urgency and circumstances in which the business is transacted.

The reasonable costs of running a practice.

The relative importance of the factors set out above will vary according to the particular circumstances of each transaction.

\*\*\*\*\*  
\*\*\*\*\*

**PAUL GALLAGHER LEGAL  
CONVEYANCING SERVICES**

**OUR CONVEYANCING POLICY/PHILOSOPHY.**

We at Paul Gallagher Legal take a great deal of pride in what we do and, more importantly, how we do it. We be-

final conditions.

**After Agreement becomes unconditional:**

Obtain the deposit or balance of deposit and account for it as required.

Advise your mortgagee and/or chargeholder of the sale of your property and arrange for discharges and/or releases to be made available by settlement date. Arrange for statements and discharge documents to be forwarded in time for settlement. Ensure that all documents of title will be available at settlement.

Obtain details of rates, water rates and other outgoings to be apportioned on settlement. Order special water meter reading if appropriate.

Prepare settlement statement and GST invoice (if necessary) and forward to Purchaser's Solicitor.

Receive and peruse transfer and Notices of Sale from Purchaser's Solicitor. Arrange for you to sign transfer.

Receive and peruse mortgagee's repayment statement/s. Check them with you and make arrangements for settlement and repayment.

**7. Settlement:**

Attend to settlement and repay mortgages and chargeholders.

Ensure keys are available and that possession is available and given in accordance with the Agreement available in accordance with the Agreement.

**After settlement:**



Pay outstanding rates, water rates and other outgoings as required.

Send Notices of Sale to Quotable Value New Zealand and the appropriate local authority.

Disburse funds as per your instructions and provide final report.

### **HOW CONVEYANCING FEES ARE CALCULATED.**

Naturally, like all businesses, Lawyers must charge sufficient fees to cover their overheads and operating expenses and then a margin over and above that for profit.

Different legal practices have different overhead structures, differing amounts of rent, different staff with vastly different experience levels and levels of pay and so on. So, just as there are significant differences between Builders, Plumbers, Dentists, Flooring Contractors, Computer Consultants and so on, so too are there significant differences between legal practices.

So when you are assessing legal fees and charges you need to remember just what it is you are paying for and bear in mind some of the following aspects:

You can't judge the levels of skill, expertise and service offered by a Law Firm simply by a comparison of fees.

In a service industry often the cheapest fees indicates a reduction in the levels of service offered, junior or less experienced staff doing the work or, in extreme cases, a failure to understand the true cost of doing

the work.

The more experienced and skilled the staff the higher the fees are likely to be. However, such staff may also do the work quicker and with better results and their charges may be better value overall.

In the legal profession you usually get what you pay for. Reputations are hard won and are generally zealously guarded—and for good reason. "If you pay peanuts then you get monkeys" is often a true adage.

The more experienced and skilled the Lawyer you choose, generally the more you will pay.

The firms with the lowest overhead structures are generally those in the suburbs.

The legal profession is now a very specialised place. Few firms can do all kinds of legal work. You should ensure that the firm you use has the skills and experience in the areas you want—don't assume that all Lawyers are the same—they most definitely are not!

If anything should ever go wrong it is important that the firm you choose to deal with has a proven track record and will be around to stand behind its work and to fix up any problems which may occur.

Never discount the benefits of using a local Lawyer—particularly in areas like conveyancing as local knowledge can be invaluable.

So, how do Lawyers calculate their fees? The New Zealand Law Society prescribes that the charges for all professional work shall be calculated to give a fair and reasonable return for the services rendered having regard to the interests of both the client and the practitioner. Such charges