



Advice from Alan

KiwiSaver and your first home

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If you are wanting to use your KiwiSaver for a deposit on your first home, it is important

to tell the agent and your lawyer so that special clauses can be included in the Sale and Purchase Agreement (SAP). When KiwiSaver funds are used for payment of the deposit, the seller's lawyer needs to hold these funds undisbursed until settlement, which is not what normally happens with the deposit. The standard practice is for the agent to receive the deposit once the agreement has become unconditional. After a holding period, the agent can deduct their commission from the deposit and transfer the balance to the vendor's lawyer.

If you are paying the deposit on a property using KiwiSaver (and/or superannuation funds), your agreement needs to include a specific clause confirming that the vendor's lawyer will undertake to hold these funds undisbursed until settlement. Your legal advisor can provide you with required wording to add to your SAP.

To withdraw KiwiSaver funds for the deposit, a purchaser's lawyer must give the KiwiSaver provider an undertaking that the funds will be held undisbursed until settlement and that if settlement does not go ahead (due to no fault of the purchaser), then those funds will be repaid to the KiwiSaver provider. Because a purchaser's lawyer needs to give these undertakings, they require an undertaking from the vendor's lawyer, as it is the vendor's lawyer who is in control of the deposit funds once received. Having a clause in the SAP recording this arrangement ensures that the vendor's lawyer will comply with the requirements.

If settlement does not occur through no fault of the purchaser, the deposit is refundable. The repayment undertaking confirms this and is important because KiwiSaver funds can only be used for the purchase of a property; the purchaser is not entitled to receive these funds personally. Therefore, if the purchase does not happen, the KiwiSaver funds must be returned to the KiwiSaver provider.