

## Guidelines

### KiwiSaver First Home Withdrawals

Version 1.0, approved 1 September 2020

The aim of these guidelines is to help bring consistency across New Zealand's KiwiSaver industry and drive good customer outcomes. These non-binding guidelines were created by members of the Financial Services Council of New Zealand (**FSC**). They are designed for use by providers, supervisors, administration providers and solicitors in relation to KiwiSaver first home withdrawals, under clause 8 of the KiwiSaver Scheme Rules.

The FSC is a non-profit member organisation and the voice of the financial services sector in New Zealand. Our 75<sup>1</sup> members comprise 95% of the life insurance market in New Zealand and manage funds of more than \$83bn. Members include the major insurers in life, disability and income insurance, fund managers, KiwiSaver and workplace savings schemes (including restricted schemes), professional service providers, and technology providers to the financial services sector.

The FSC's guiding vision is to be the voice of New Zealand's financial services industry and we strongly support initiatives that are designed to deliver:

- strong and sustainable customer outcomes
- sustainability of the financial services sector
- increasing professionalism and trust of the industry

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<sup>1</sup> As at 31 August 2020

## Introduction

The KiwiSaver Scheme Rules outline the eligibility criteria for a first home withdrawal. However, in practice there are various scenarios that test the application of these criteria, including past property ownership, types of property, structure of property ownership, living arrangements etc. This guide is intended to address frequently asked questions and for general guidance. It does not limit the ability for providers to require further information or supporting documentation, or to accept or decline applications on a case by case basis, which they may still do in accordance with the KiwiSaver Scheme Rules.

This FSC guide replaces the previous Workplace Savings New Zealand first home withdrawal guide.

This guide does not include information about:

- The First Home Grant. This grant is administered by Kāinga Ora Homes and Communities (previously known as Housing New Zealand) and not by KiwiSaver scheme providers.
- The previous home owner (sometimes called “second chance”) KiwiSaver first home withdrawal. Kāinga Ora will initially need to determine whether the member is in the same financial position as a first home buyer.

## Background

KiwiSaver is governed by a number of acts and regulations, with the principal act being the [KiwiSaver Act 2006](#). [Schedule 1](#) of this Act contains the rules all KiwiSaver schemes must follow, with clause 8 setting out the following eligibility criteria for a KiwiSaver first home withdrawal:

- The member must have been a member of a KiwiSaver scheme and/or complying superannuation fund for a combined total of at least three years,
- The member must have not owned a home or land before whether alone or jointly with another person (subject to the qualifying person exception in regulations 30 and 31 of the KiwiSaver Regulations 2006, and exceptions described in 1B(1) below),
- The member must have not made a first home withdrawal before,
- The member must be buying a home or land in New Zealand,
- The member intends for the home or land they are buying to be their principal place of residence.

Details of other legislation affecting KiwiSaver can be found on [this page](#).

## Section 1: Scenarios regarding eligibility criteria

1A. The member must have been a member of a KiwiSaver scheme and/or complying superannuation fund for a combined total of at least three years.

Question	Answer
<p>1. Will my prior period of membership in a complying superannuation fund count towards my eligibility for a KiwiSaver first home withdrawal?</p>	<p>Yes. A complying superannuation fund is a registered superannuation scheme with membership rules broadly in line with the KiwiSaver rules. If you were a member of one of the schemes listed on the Disclose register as complying, your membership of that scheme (prior to joining KiwiSaver as there cannot be any double counting) will count towards your eligibility period for a first home withdrawal. You will need to provide evidence of your time in the complying superannuation fund with your application. For example, a letter confirming membership time or a transaction history from the complying superannuation fund.</p>
<p>2. I previously closed my KiwiSaver account when I applied for a Permanent Emigration withdrawal. I've since returned to New Zealand and have opened a new KiwiSaver account. Do I meet the 3-year requirement to make a first home withdrawal as I originally joined KiwiSaver more than 3 years ago?</p>	<p>In order to be eligible to make a first home withdrawal, either: (a) at least 3 years must have expired since Inland Revenue received your first contribution OR (b) you have been a member of one or more KiwiSaver schemes or complying superannuation funds for a combined total period of 3 years or more. You only need to meet one of the two tests set out in the clause 8(1) of Schedule 1 to the KiwiSaver Act.</p>
<p>3. My settlement date is one month before I will have been in KiwiSaver for three years. Can I still make a first home withdrawal?</p>	<p>No. Legislation requires three years to have passed since you joined KiwiSaver.</p>

1B. The member must have not owned a home or land before, whether alone or jointly with another person.

Question	Answer
<p>1. Can I make a first home withdrawal if I currently own property?</p>	<p>The general rule is that if you currently own a property or land you will not qualify.</p> <p>However, limited exceptions do apply and we recommend you consult your solicitor to determine your eligibility. For example, you may be eligible if you hold:</p> <ul style="list-style-type: none"> <li>• A leasehold estate.</li> <li>• An estate in land as a trustee who is not a beneficiary under the relevant trust.</li> <li>• An estate in land as a bare trustee.</li> <li>• An estate in land as a trustee who is also a discretionary contingent or vested beneficiary under the relevant trust, where there is no reasonable expectation that you will be entitled to occupy the land as your principal place of residence before the death of the occupier or of their survivor.</li> <li>• Shares in (or a director of) a company that owns an estate in land.</li> <li>• An interest in Maori land.</li> </ul>
<p>2. Can I use KiwiSaver for a first home withdrawal if I own a leasehold estate?</p>	<p>Yes.</p>
<p>3. Can I use KiwiSaver for a first home withdrawal if I am a trustee of a trust which already owns property?</p>	<p>Yes, provided you are not a beneficiary of that trust (i.e. you could be entitled to benefit from the property). If you are a beneficiary you will generally not be eligible, although there are some exceptions (such as when you have no reasonable expectation of being entitled to occupy the land as the principle place of residence until the death of the person who currently occupies the land or the death of the occupier's survivor), so we recommend you talk to your solicitor to determine your eligibility. Your solicitor will need to understand all available facts of the trust and how it is set up.</p>
<p>4. I am a shareholder and / or director of a company which currently owns a property, and am currently using that property as my home. Do I qualify for a first home withdrawal?</p>	<p>If you intend to purchase your first home in your personal capacity, but you are a shareholder and / or director of a company which already owns property, then you are permitted to make a first home withdrawal, provided you meet all of the other criteria. This is the case even if the property owned by the company is currently being used as your 'home', provided you intend for the 'new' property to be your principal place of residence. This is because the legal entity that owns the other property is the company, not you. The company's name would appear on the title to that property, not your name, so you don't personally hold an estate in land. You have an interest in the company, as a shareholder, but not directly in the property that the company owns. If you originally bought the property in your personal</p>

	capacity, you would not qualify for a first home withdrawal, as you have previously owned an estate in land.
5. Can I make a first home withdrawal if I have previously owned property?	<p>If you have previously owned property, generally you would not qualify for a first home withdrawal. There are some exceptions (as described in 1B(1) above). However, if you no longer own property, you may be able to apply to Kāinga Ora (previously known as Housing New Zealand) for confirmation that you are in the same financial position as a first home buyer.</p> <ul style="list-style-type: none"> <li>• If Kāinga Ora determines you are eligible, they will provide you with a confirmation letter. You must send your confirmation letter to your provider as part of your application.</li> <li>• It is important to note that if you have previously made a first home withdrawal, you cannot make another first home withdrawal regardless of Kāinga Ora's determination that you're in the same position as a first home buyer. You can only ever make one first home withdrawal from your KiwiSaver account.</li> </ul>
6. I've owned a property overseas before, but never in New Zealand, am I eligible to make a first home withdrawal?	<p>If you have previously owned property overseas, generally you would not qualify for a first home withdrawal. However, if you no longer own property, you may be able to apply to Kāinga Ora for confirmation that you are in the same financial position as a First Home Buyer. If Kāinga Ora determines you are eligible, they will provide you with a confirmation letter. You must send your confirmation letter to your provider as part of your first home withdrawal application.</p>
7. I live with my partner who already owns a home. I am going to purchase a half share from them; can I apply for a first home withdrawal?	<p>Yes, provided you meet all the other first home withdrawal eligibility criteria.</p>
8. Can I apply for a first home withdrawal if I have been gifted land?	<p>No. If the title of the gifted land is in your name you will not be eligible for a first home withdrawal as you already own the land. Even if the title of the gifted land isn't in your name (because the land is in the name of a trust or in a company name) you still cannot make a first home withdrawal because you can't use your KiwiSaver savings to build <u>(unless you are building a house on Māori land, as described in 1D(6) below).</u></p>
9. I have recently separated from my spouse and both our names are on the title of our home. I want to buy my spouse's half share; can I make a first home withdrawal from my KiwiSaver account?	<p>No, because you currently own a home (this includes joint ownership of a property), you will not be eligible for a first home withdrawal from your KiwiSaver account.</p>

<p>10. I am a trustee of a trust but am a bare trustee (i.e. acted as trustee but controlled the property subject to instructions by beneficiaries). The trust has now sold the property and I had no financial gain from the sale. Can I still make a first home withdrawal?</p>	<p>Yes, you should be able to make a first home withdrawal because you haven't previously held an estate in land (because of the type of interest you had as a trustee). You will be required to provide a statutory declaration (as part of the first home withdrawal form/process) that states that you have never held an estate in land, so it would be advisable to check with your solicitor now that you can make this declaration.</p>
<p>11. Can a first home withdrawal be used if I am a shareholder of a company that owns forestry land?</p>	<p>Yes, you can complete a first home withdrawal request (provided all other general criteria are met) if you are a shareholder of a company that owns forestry land.</p>

1C. The member must not have made a first home withdrawal before.

Question	Answer
1. I've made a first home withdrawal before – can I make another one?	No, not under any circumstances.
2. I've made a first home withdrawal before, but Kāinga Ora have advised me that I meet the criteria of a first home buyer and that I'm eligible for a first home withdrawal. Can I make another one?	No. Only one first home withdrawal can ever be made. Kāinga Ora assess only one of the criteria for a first home withdrawal, which is providing confirmation that you are in the same financial position as a first home buyer. All of the other eligibility criteria still need to be satisfied and one of those is that you have never previously made a first home withdrawal.
3. My partner and I are jointly purchasing a property; however my partner has owned a house before and is ineligible for a first home withdrawal. Am I still able to make a first home withdrawal?	Yes, so long as you meet all the eligibility criteria. Only the member who has not owned a home before will be eligible to make a first home withdrawal.

1D. The member must be buying a home or land in New Zealand, and the member intends for the home or land they're buying to be their principal place of residence (includes various types of property and property ownership).

Question	Answer
<p>1. Can I use KiwiSaver for a first home withdrawal if I'm buying a home in the name of a trust?</p>	<p>Generally yes, provided the trust is purchasing a property that is your first home, you are a trustee and beneficiary of the trust, and you intend to live in the property as your principal place of residence. To be eligible:</p> <ul style="list-style-type: none"> <li>• The sale and purchase agreement clearly states your name as purchaser (or a deed of nomination clearly states your name as nominee); and</li> <li>• You confirm via statutory declaration that the property to be purchased is intended to be the principal place of residence for you and your family.</li> </ul> <p><i>As an example, if your name is Mary Smith, the sale and purchase agreement should say that the purchasers are "Mary Smith and John Smith as trustees of the Smith Family Trust". If the sale and purchase agreement specifies the purchaser as just "the Smith Family Trust", your provider will require documents (like a copy of the trust deed and any documents showing a change of trustee) that show that you are a current trustee.</i></p> <p>Your provider may require additional documentation (for example, a copy of the trust deed) and the application is subject to the details set out there.</p>
<p>2. Can I make a first home withdrawal if the sale and purchase agreement is in the name of another person who then nominates me to complete the purchase?</p>	<p>Your provider can accept a sale and purchase agreement that allows for a nominee, together with a deed of nomination, so long as the deed of nomination provided:</p> <ul style="list-style-type: none"> <li>• clearly states your name as nominee;</li> <li>• contains an express statement that the nominee agrees to accept all of the rights and obligations of the purchaser under the sale and purchase agreement; and</li> <li>• has been signed by both the nominator and nominee.</li> </ul> <p>Your provider must also receive written confirmation from your solicitor that a copy of the deed of nomination has been provided to the vendor. Your name must appear on the letter of undertaking from your solicitor. Please speak with your solicitor for more information.</p>
<p>3. Am I eligible for a first home withdrawal if I'm going to buy land and build on it later?</p>	<p>Yes, provided that the land you buy is intended to be your principal place of residence, but you must apply for the withdrawal before you purchase the land.</p>

4. Can I make a withdrawal to build a house on land I own?	No, you cannot own land and then apply for a first home withdrawal to build the home.
5. Can I make a first home withdrawal for a rent to buy property?	No, you must be buying the property outright with a sale and purchase agreement to be eligible to make a first home withdrawal.
6. Can I make a first home withdrawal if I am building a house on Māori land?	<p>Yes, as long as you provide:</p> <ul style="list-style-type: none"> <li>• Evidence of your right to occupy the Maori land; and</li> <li>• A copy of a building contract which is an agreement for sale and purchase of your interest in the house that is being built. The contract must show you as the purchaser and name the land that the build is happening on.</li> </ul> <p>You must also meet the other first home withdrawal criteria and provide any other first home withdrawal documentation that we need. Your provider would pay out to your solicitor who, if the agreement is unconditional, would normally pay out to the building company.</p>
7. Can I use KiwiSaver to buy a property overseas?	No, you cannot use KiwiSaver to purchase a property outside of New Zealand. However, you will be able to make a permanent emigration withdrawal 12 months after you permanently emigrate to any country other than Australia.
8. Can I make a first home withdrawal if a tenant will be renting at the house I'm buying until I move in due to a tenancy agreement that is already in place?	Yes. You will be able to make a first home withdrawal for a property that has a tenancy agreement still in place at the time of purchase, as long as you intend to have the property as your principal place of residence (for example, you intend to move in when the tenancy ends). Remember that on the first home withdrawal application you will be confirming by way of statutory declaration that the property is intended to be your principal place of residence.
9. Can I make a first home withdrawal if I'm going to live in the property but intend to also have tenants?	Yes, you can make a first home withdrawal if you intend for it to be your principal place of residence. You will have to sign a statutory declaration to say that the property is intended to be your principal place of residence.
10. Can I make a first home withdrawal to buy a relocatable house?	No, because the KiwiSaver rules allow a first home withdrawal only for the purchase of an 'estate in land' – this means that you cannot make a first home withdrawal for things like relocatable homes, caravans, boats or buses. However, if you're buying land to put the relocatable house on, then you can make a first home withdrawal for the purchase of the land.
11. Can I make a first home withdrawal to buy a relocatable house to put on Maori land?	<p>Yes, you can make a first home withdrawal to buy a relocatable house to put on Maori land provided:</p> <ul style="list-style-type: none"> <li>• The sale and purchase agreement for the relocatable house is conditional upon its relocation onto the Maori land; and</li> <li>• You give us evidence of your right to occupy the Maori land.</li> </ul> <p>Relocation costs for transporting the house cannot be included in your first home withdrawal request.</p>

<p>12. Can a first home withdrawal be used to buy a farm which includes a homestead on the same title?</p>	<p>Yes. You can complete a first home withdrawal as long as you meet all eligibility criteria and do not already have an interest in the farm.</p>
<p>13. Can I complete a first home withdrawal to purchase a holiday home?</p>	<p>No, you can't complete a first home withdrawal request as the property is a holiday home and therefore not intended to be your principal place of residence.</p>
<p>14. Can a first home withdrawal be used for a home and income situation such as where there are two free-standing homes, or a block of units, one of which I plan to reside in?</p>	<p>Yes, you can complete a first home withdrawal provided it is intended to be your principal place of residence and assuming a single title of land under a single sale and purchase agreement (you will have to meet all of the standard eligibility criteria for a first home withdrawal).</p> <p>There is nothing in the KiwiSaver rules which prevent there being an 'income' element to the purchase, with a portion of the property being rented out.</p> <p>If commercial land is involved, it is unlikely you will be able to complete a first home withdrawal as there may be a lot of conditions to meet before the property could be used as a home, i.e. zoning consent and construction works. Those conditions may take time and may not be guaranteed to occur.</p>
<p>15. Can a first home withdrawal be used to buy a company share apartment?</p>	<p>Not all 'purchases' of residential property involve the purchase of an 'estate in land' which is what is required by the KiwiSaver rules. This includes the purchase of an apartment via shares in a flat owning company, where the company's constitution entitles you for the time being to a particular parcel of shares with the 'licence to occupy' a particular flat. While you will be entitled to a licence to occupy a flat, the purchase itself is of a block of shares and not an estate in land. Accordingly, you will not be able to complete a first home withdrawal for this type of purchase.</p>
<p>16. I meet the first home withdrawal eligibility but would like to remove my name from the sale and purchase agreement (for example, for security reasons I don't feel comfortable with my name appearing on LINZ public registry)</p>	<p>While we sympathise with your situation, you will not be able to complete a first home withdrawal request without your name on the sale and purchase agreement. The removal of your name from the sale and purchase means that you are no longer a purchaser of the estate and would no longer be eligible to withdraw your KiwiSaver savings. Contact LINZ to see if they are willing to redact your personal details under these circumstances.</p>
<p>17. What is an estate in land?</p>	<p>There are different types in New Zealand:</p> <ul style="list-style-type: none"> <li>• Freehold estate (also known as fee simple) which includes a cross-lease, tenant-in-common and joint tenant</li> <li>• Leasehold estate</li> <li>• Stratum estate (also known as Unit Title)</li> <li>• Cross lease</li> <li>• Maori land</li> </ul>

18. I'm currently living overseas. Can I make a first home withdrawal to purchase a home in New Zealand?

No, someone living overseas would not be eligible for a first home withdrawal as they would not be residing in the home as their principal place of residence. However, if you are intending to move back to New Zealand into the property as your principal place of residence immediately after purchase, you may be able to.

## Section 2. Scenarios regarding financing and settlement arrangements, and amount that can be withdrawn.

Question	Answer
1. How much can I withdraw for a first home?	You can withdraw up to the total amount in your KiwiSaver account, except for \$1,000 and any amount transferred from an Australian complying superannuation scheme. If the tax amount owing on your KiwiSaver account is more than \$1,000, this extra amount may also be held back to pay Inland Revenue. The withdrawal amount is to be capped at the price of the house, as noted in the agreement for sale and purchase.
2. What are the eligibility criteria to withdraw the Government contributions?	<p>If you've lived in New Zealand during your entire time as a KiwiSaver member, then you can withdraw your Government contributions (formerly known as member tax credits) for a first home withdrawal.</p> <p>If during your KiwiSaver membership, you lived overseas for any period and did not have a permanent residence in New Zealand over that time, you will not be entitled to withdraw Government contributions received during that same period and these will be returned to Inland Revenue. You will need to state the time spent overseas on your withdrawal form.</p> <p>There are some exceptions to this rule if you were working overseas in the service of the New Zealand Government or as a volunteer for certain registered charities.</p> <ul style="list-style-type: none"> <li>• For a list of New Zealand State Services refer to: <a href="http://legislation.govt.nz/act/public/1988/0020/latest/DLM130706.html">http://legislation.govt.nz/act/public/1988/0020/latest/DLM130706.html</a></li> <li>• For a list of eligible charitable organisations refer to: <a href="http://legislation.govt.nz/regulation/public/2011/0355/latest/DLM4047101.html">http://legislation.govt.nz/regulation/public/2011/0355/latest/DLM4047101.html</a></li> </ul>
3. Who will the money be paid to?	The withdrawal amount will always be paid directly to your solicitor's trust account before your payment is due (finance/settlement date).
4. Can I use KiwiSaver to pay the initial deposit on a first home?	You may be able to make a first home withdrawal to make a deposit payment, however providers require a minimum number of working days to process a first home withdrawal application (you will need to confirm this with your provider). There are certain circumstances, such as buying at auction, where this may not be possible, because you (the buyer) will be asked to put down a deposit amount at the auction. Talk to your solicitor for more information.
5. What happens if the purchase falls through?	As part of the first home withdrawal process, your solicitor has signed a letter of undertaking stating they will pay your KiwiSaver savings

	back to your provider if settlement is not completed by the due date. In practice, if you are still actively looking for a house, your provider may allow your solicitor to hold onto the money for your next purchase. Ensure you discuss with your solicitor the pros and cons of them holding your money rather than them being returned and re-invested.
6. My solicitor/provider/Kāinga Ora informed me that I was eligible for a first home withdrawal when in fact I wasn't. Can I make a withdrawal given I was informed I could and now my financing relies on this?	No. By law, you must still meet all first home withdrawal eligibility criteria, even if a party in the process has given incorrect information.
7. I / my solicitor/provider has made a mistake in the process which has caused me to settle without my first home withdrawal amount. Can my provider do a 'late' first home withdrawal to ensure I don't miss out?	No, because you will no longer meet the eligibility criteria for a first home withdrawal.
8. I / my solicitor / provider made an error in the process which has caused me to withdraw an incorrect amount. What needs to happen??	If the first home withdrawal amount has not yet been used by your solicitor (i.e. it is still sitting in their trust account) and/or the first home withdrawal was for financing the deposit (and therefore you do not yet own an estate in land), then your provider can treat the withdrawal as void and reverse the transaction. Your solicitor should refund the first home withdrawal to your provider and send them a revised application form to withdraw the correct amount of available funds for settlement.
9. My settlement was long and/or delayed which has resulted in money sitting with solicitor for a period of time. There are now more funds available to withdraw from my KiwiSaver account. Can I make a further first home withdrawal?	Only one first home withdrawal can ever be made. You cannot seek a second withdrawal in the case that there are now more funds available in your account. If settlement didn't go through and your solicitor still holds the funds, your solicitor may refund the withdrawal to the provider. If this happens, you can re-apply again for a first home withdrawal at a future time for the amount available at that time.
10. Can I specify to my provider to leave savings and withdraw first home withdrawal funds just before settlement date? i.e. delay the withdrawal.	This is your choice and is dependent on whether your provider can facilitate this request.
11. Can I make a withdrawal in two portions / over two different transactions for the same property, provided that this all occurs before settlement? (For example, one tranche for the deposit payment and a second withdrawal for settlement)?	You can only make a first home withdrawal once, so if you have already made a deposit withdrawal, you can't make another withdrawal again at settlement.  A first home withdrawal application to your KiwiSaver provider should be in the form of one withdrawal only, which should be for the full amount you require (regardless of deposit amount). It is at your solicitor's discretion as to how the withdrawal money is used once it

	has been received by them, i.e. they are free to use some for deposit and then rest for final settlement.
12. I have made a payment towards or a deposit on a land and build package. Can I make a first home withdrawal?	This can depend on the contract. If you put down a deposit on a development, you may not own the property until it is completed. Talk to your solicitor to better understand your situation. Refer to question 1D(4).
13. Can I set up a mortgage diversion facility once I have made a first home withdrawal?	No. No new mortgage diversion facilities can be set up from 1 June 2009.

## **Appendix 1 – Webpage links to relevant legislation**

KiwiSaver Scheme Rules: <http://legislation.govt.nz/act/public/2006/0040/latest/DLM379487.html>

Previous home owner FHW: <http://www.legislation.govt.nz/regulation/public/2006/0358/latest/DLM1141414.html>