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# Property Speaking

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## Welcome to the Summer edition of *Property Speaking*. We hope you find the articles of interest and useful to you.

### If you would like to talk further about any of the topics covered in this newsletter, please don't hesitate to contact us.

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*The next issue of* Property Speaking *will be published in April 2012.*

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# Using KiwiSaver to Buy Your First Home

## Good benefits available

*If you are buying your first home, or if you fit Housing New Zealand's (HNZ) criteria to be in the same position as a first home buyer, your KiwiSaver scheme may help buy your property.*

## First home deposit subsidy

HNZ administers the deposit subsidy which is paid directly to your lawyer on the settlement date. You must have belonged to and contributed to a KiwiSaver Scheme for at least three years. The subsidy is $1,000 for each year of contribution to the scheme, up to a maximum of $5,000 if you have been contributing for five or more years. You may only receive the deposit subsidy once.

You can apply to HNZ for subsidy pre-approval; the pre-approval expires after 90 days but extensions are available. If you have found a property you would like to buy and you have an Agreement for Sale & Purchase, you can apply to HNZ for the subsidy . HNZ needs at least four weeks from submitting an application before it can pay the subsidy to your lawyer.

## First home savings withdrawal

Your KiwiSaver provider will administer your savings withdrawal; you will need to contact them to establish their requirements. HNZ will be involved in this process if you are not a first home buyer and need HNZ to assess if you are in the same position as a first home buyer.

After three years in a KiwiSaver scheme you may be able to withdraw your savings, employer contributions and all returns, such as interest. You cannot withdraw government contributions and the $1,000 kick-start.

## Criteria

For both the First Home Deposit Subsidy and the First Home Savings Withdrawal you must:

- Be 18 years old
- Not have received a deposit subsidy before
- Be a member of a KiwiSaver scheme
- Have contributed at least the minimum percentage of your income to a KiwiSaver scheme for at least three years
- Have a combined annual income of $100,000 or less (before tax) for one or two buyers, or have a combined yearly income of $140,000 or less (before tax) for three or more buyers
- Be buying a fee simple, stratum estate freehold or leasehold, cross-lease or leasehold property
- You must not own any other property
- You must buy within the maximum house price caps ($400,000 for Auckland City, Wellington City and Queenstown Lakes District, and $300,000 for all other areas)
- You must live in the house or apartment, you cannot use the subsidy to buy an investment property
- If you are buying land you must build within 12 months of purchase, and
- For the first home savings withdrawal you will need to contact your KiwiSaver provider to find out if there are any additional requirements.

If you are a previous home owner, you can't currently own a property and you must not have realisable assets totalling more than 20% of the house price cap for the area in which you are buying.

Using KiwiSaver funds to help buy your first home can be a good use of capital. For more information click here or don't hesitate to be in touch with us.

# Types of Property Ownership

## Implications for death, separation, and rest home subsidy

*When you own a property, such as your house, with one or more people, what are the implications if one of you dies, you decide to separate or one of you moves into a rest home?*

## When an owner dies

*Scenario One – Joint Tenancy (Mary and John)* Mary and her husband John own their house. They are listed as owners on the title to the property as John Smith and Mary Smith. If John dies, Mary becomes automatically entitled to the property. This happens regardless of any provision in John's Will.

*Scenario Two – Ownership in Shares (Brad and Joan)* Brad and Joan own their house together, but they are listed as owners on the title to the property as Brad Brown as to a half share and Joan Brown as to a half share. If Brad dies, his half share of the property is dictated by his Will. He could leave his half share to Joan outright. In this case, however, this is a second relationship for both Brad and Joan, and each has children from former relationships. Each wants to protect their half share so that ultimately their own children will have an inheritance. But Brad also wants to look after Joan; he does this by making provision under his Will allowing her to continue living in the house. When Joan dies the house would be sold and half of the sale proceeds would go to Brad's children and half to Joan's children.

## Remarriage or new relationship

*Scenario One – Joint Tenancy (Mary and John)* Mary meets a new partner Tom and he moves in to live with her. Mary is madly in love and doesn't ask her lawyer for advice. She doesn't realise the consequences that can arise under the Property (Relationships) Act 1976 (PRA). After four years together, Tom moves out as he has a new relationship. Mary's house has become the 'family home' under the PRA and Tom has an entitlement to half of the house as relationship property. Mary can't afford to buy out Tom's share of the house; the house is sold and the net proceeds split between Mary and Tom. Mary can't afford to buy another house and has to rent. Her children are upset.

*Scenario Two Ownership in Shares (Brad and Joan)* Joan and Brad are in the same situation as Mary and Tom above, but there's a different outcome. Joan owns half the house so when her new relationship breaks down after three years only her half is relationship property (the other half is still owned by Brad's estate). The house is sold; Brad's children get half the sale proceeds; Joan gets a quarter share and Tom gets a quarter share. Brad's children are happy; Joan's children are upset with having to divide up only a quarter-share. If Joan's share had been in a trust, it may have led to a different outcome for Joan's children.

## Rest Home Subsidy

***What happens if one partner goes to a rest home?*** The house is exempt from asset assessment while one partner still lives in it. This applies whether the house is jointly owned or owned in shares.

***What happens if one dies and the other goes to a rest home?***

*Scenario One – Joint Tenancy (Mary and John)* John dies and Mary becomes the sole owner of the house. Sometime later Mary cannot manage alone and goes to a rest home. The value of the house is taken into account when WINZ assesses Mary's eligibility for the rest home subsidy.

*Scenario Two Ownership in Shares (Brad and Joan)* Brad dies and Joan goes into care. The house is sold and half of the sale proceeds go to Brad's estate for his children. Joan's half share is taken into account by WINZ in assessing her eligibility for rest home subsidy. You should note, however, that WINZ may treat this form of ownership as deprivation if assessing for a rest home subsidy.

## Conclusion

Both types of property ownership have advantages and disadvantages. There are steps that could be taken to avoid some of these consequences such as a contracting out agreement under the PRA or formation of a trust to ring-fence assets. It should be noted that the above scenarios don't only apply to real property; they also apply to personal property such as shares, bank deposits, and so on. There is no one answer for organising one's affairs. We consider everyone's individual circumstances including level and type of assets and your wishes. We can provide timely advice at a crucial time when you're faced with major changes in your life.

# Property Briefs

## Rating valuations

Property owners will have recently received notices of rating valuations (RV) for properties that they own. Local authorities must undertake an RV every three years under the provisions of the Rating Valuations Act 1998 (RVA). The RV comprises a land value and a value of improvements, which totals at a capital value. The capital value is then used to determine the level of annual rates that will be payable by a property owner.

Earthquakes and an inconsistent property market are reflected in the latest general valuations. If you disagree with the RV on your property, it's possible to object under the RVA provisions. You will need to contact the local authority in the district in which your property is situated, or the contracted valuer (Quotable Value in many cases), and formally object in writing. A valuer may then contact you to arrange a property inspection. If you still don't agree with the revaluation figure, you are then entitled to have your objection heard by the Land Valuation Tribunal.

The objection process is quite straightforward. If, however, you go all the way to the Tribunal to have your objection heard, you may wish to have some professional advice, please be in contact with us.

## The repeal of gift duty and Solvency Statements

Despite gift duty being abolished from 1 October, if you are in business you should exercise caution when considering making large gifts to a family trust or any other party. The Property Law Act 2007 (PLA) contains a provision allowing the courts to set aside property transactions where that transaction has been completed with the intention of avoiding the payment of a debt. S346 of the PLA sets out the test for determining whether a transaction was completed with 'intent to prejudice a creditor'. The elements of that test are:

1. Was the debtor (person making the gift) insolvent at the time, or became insolvent as a result of completing the transaction, or
2. Was the debtor engaged, or was about to engage, in a business or transaction for which the remaining assets of the debtor were, given the nature of the business or transaction, unreasonably small, or
3. The debtor intended to incur, or believed, or reasonably should have believed, that the debtor would incur, debts beyond the debtor's ability to pay[1].

It's therefore vital that any gift made to a family trust should be accompanied by the donor's Solvency Statement recording that the donor is 'solvent' and able to pay his or her debts as they fall due at the time the gift is made. In preparing the Solvency Statement, it's very important for a debtor to carefully consider the test set out in s346 before completing the gift or other transaction.

If you're considering completing your gifting programme, do talk first with us and also your accountant. We can advise on the preparation of a Solvency Statement as well as any other issues around your trust.

## Unit Titles Act 2010: first important date 21 December 2011

The first important date for bodies corporate is fast approaching. The Unit Titles Act 2010 requires all bodies corporate to hold a general meeting before 21 December 2011. Its purpose is to appoint a chairperson and, where necessary, a committee all of whom must be appointed from owners in the unit title development. The chairperson's duties are not onerous, but items such as record keeping, calling meetings and completing documents on behalf of the body corporate are all part of the role. The meeting may also address the opening of bank accounts for the body corporate's Operating Account and Long Term Maintenance Fund. The next important date is 1 October 2012. At that time the existing body corporate rules are all revoked. Before 1 October all bodies corporate should review their existing rules and prepare new operational rules for their development. Those new rules must be notified to the District Land Registrar following the body corporate's approval.

The other important obligation is for bodies corporate to have a 10-year maintenance plan in place by 1 October 2012.

1 Section 346(2) Property Law Act 2007

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