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Welcome to the Autumn issue of *Property Speaking*. This edition is full of articles that we hope are both interesting 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 – our details are above.

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Best or worst investment?

When the family home no longer suits your needs and the time is right to consider your future requirements, many New Zealanders choose to move to a retirement village. Before making that decision do look at other options, such as remaining at home (if that's suitable) with support delivered to you there, or living with your family, either in their homes or in a 'granny flat'. Here, we will look at the retirement village option … CONTINUE READING

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The next issue of Property Speaking *will be published in July 2014.*

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Kid Gloves Needed

GST schedule in Agreement for Sale and Purchase

GST is always something that you can't trifle with, particularly when you're completing the sale or purchase of a property. This article looks at the financial implications if you make a change after settlement, or if you make a change after the Agreement is signed but before the transaction is settled.

When a purchaser completes the GST schedule in an Agreement for Sale and Purchase, or provides a written statement about their GST status and intended use of the property, the seller is entitled to rely on that information to decide whether the requirements for zero-rating of the transaction are met. A GST-registered vendor must zero-rate a property sale when, at settlement time, the GST-registered purchaser intends to use the property for taxable supplies and doesn't intend to use the property as their principal place of residence. This also applies if the property could be used by a relative of the purchaser.

If the GST treatment of the transaction is incorrect or changes before the settlement date, the consequences will depend on whether the mistake is discovered or the change made before or after settlement, and if the purchase price is plus or including GST. Let's look at some scenarios below.

Claire, a GST-registered vendor, agrees to sell a property to Paula for $500,000. Paula provides Claire with a written statement that she (Paula) is registered for GST, she intends to use the property for taxable supplies and will not use it as her principal place of residence. On the basis of Paula's statements, all the requirements for zero-rating have been met and Claire decides that the transaction is zero-rated for GST.

The mistake is corrected after settlement

At the time of settlement it transpires that Paula is not registered for GST.

The price is $500,000 *plus GST* (if any)

The GST treatment of the purchase price will change from being zero-rated for GST at $500,000, to $500,000 + GST = $575,000. Paula will be deemed to be registered for GST from the time of settlement and Paula, the purchaser, will have to pay to the IRD the GST of $75,000. Claire receives $500,000 after GST; but the cost to the purchaser (Paula) increases by $75,000.

The price is $500,000 *including GST* (if any)

The GST treatment of the purchase price will change from being zero-rated for GST at $500,000, to including GST at $500,000. Paula will be deemed to be registered for GST from the time of settlement and she must pay the GST of $65,217.39 to the IRD. Claire, the vendor receives $500,000 after GST; but the cost to the purchaser (Paula) increases by $65,217.39.

The situation changes before settlement

Before settlement Paula nominates Kate to settle the purchase and Kate is not registered for GST. The purchaser no longer meets the requirements to zero-rate the transaction.

The price is $500,000 *plus GST* (if any)

The GST treatment of the purchase price will change from being zero-rated for GST $500,000 to, plus GST $575,000. Claire returns $75,000 to the IRD. Claire receives $500,000 after GST; but the cost to the purchaser (Paula) increases by $75,000.

The price is $500,000 *including GST* (if any)

The GST treatment of the purchase price will change from being zero-rated for GST $500,000, to include GST $500,000, Claire returns $65,217.39 to the IRD. The cost to the purchaser is $500,000; but the vendor (Claire) receives $65,217.39 less.

There can be serious financial consequences for a purchaser who mis-states their GST position, or when a nomination takes place which changes the GST status of the purchaser. It's imperative that the purchase price is correctly recorded as being plus, or to include, GST to take into account a change in the GST status of the purchaser.

We can't emphasise enough the need to talk with us and your accountant before you sign an Agreement for Sale and Purchase. ■

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Retirement Village Living

Best or worst investment?

When the family home no longer suits your needs and the time is right to consider your future requirements, many New Zealanders choose to move to a retirement village. Before making that decision do look at other options, such as remaining at home (if that's suitable) with support delivered to you there, or living with your family, either in their homes or in a 'granny flat'. Here, we will look at the retirement village option.

What type of retirement village?

There's a broad range of options – from a straightforward apartment purchase with shared facilities (such as a swimming pool and an onsite manager) to a large-scale retirement village including all aspects of care from independent (townhouses or apartments), serviced apartments (if you need additional care), resthome care and private hospital.

Take the time to visit a number of different villages and retirement options in your chosen area. Think about whether you would rather be in a smaller community of people requiring a similar level of care as you (accepting that, as needs increase, you may need to transfer elsewhere) or whether you would prefer a larger village providing a range of support and living arrangements to cater for a broader range of needs.

Talk to your family, friends, and village residents to find the best fit for you. Couples often want a village where care can be given to each partner, so that if one becomes unwell, they could be cared for in a resthome or private hospital facility on the same grounds as the more independent partner.

Your right to live at the village is usually recorded in an Occupation Right Agreement (ORA). This is a contract between you and the village, giving you the right to live in the unit for your lifetime for an entry payment and ongoing obligations to pay for services provided at the village. You don't own your unit; you don't usually take any capital gain (but may bear a capital loss) on the sale of the unit.

The village's statutory supervisor registers a first charge over the land that the village sits on. This ensures that if the village operator defaults on any bank funding, the bank can only sell the village as a going concern; that is each unit cannot be sold separately. The statutory supervisor also reviews the village financial records and insurance cover.

ORA features

» *Facilities fee*: usually a fee in the range of 25%–30% of your entry payment, deducted over the first three to five years of your occupation. This is a book entry deducted from the amount you receive when your unit is sold.

» *Monthly outgoings*: covers services provided to the village, for example, rates and insurance. This may be a fixed rate throughout your occupation, increase in line with CPI or National Superannuation increases, or may be varied by the village on written notice.

» *Additional services costs*: many villages provide a range of additional services (in packages or on a user-pays basis). Ask if you can engage external providers or must you use the village provider?

» *Transfer charges*: you can usually transfer from one unit to another within the village if one is available for a fee (a fixed sum or percentage of the purchase price).

» *Costs on sale*: while your unit is being marketed, you must continue to pay outgoings. Many ORAs also require an administration fee on sale. This can range from hundreds to thousands of dollars.

It's a good idea to get us to review and discuss the ORA with you. Once you sign the ORA, there's a compulsory 'cooling off' period of 15 working days during which you can cancel and obtain a refund of your deposit.

Summary

Buying into a retirement village is often described as the worst investment you can make. There are significant costs involved in the contract you sign with the village operator and you should be aware of these before you sign on the dotted line.

But it's not just about the money. Balancing the financial cost against the other benefits of a retirement village lifestyle and support structure is important too. Think hard about your priorities and understand the costs associated with retirement village living. Then sit back and enjoy the retirement lifestyle that best suits you and your family. ■

Property Briefs

Change on the way for taxation of property investment

Residential property has long been a favourite investment for Kiwis looking to take advantage of no capital gains tax and a rising market. Under the Income Tax Act 2007, however, anyone who purchases a property with the intention of selling it later for a capital gain is required to pay tax on that gain when the property is sold. Designed to catch property speculators, this doesn't apply to a person's own home or property purchased solely with the intention of earning income from rent.

There has been some uncertainty as to when the requirement for an intention to sell should be measured. To clarify this, the government introduced a bill late last year – the Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Bill, clause 7 – that defines the date of purchase as the date that the person acquires an estate or interest in the land. Practically speaking, this will in most cases be the signing of a contract, but not always.

Although a small change, it appears the IRD is going to take a more objective approach to enforce the rules for those who speculate in property. Anybody looking to invest in property should be aware of how these rules may apply to them.

P-lab testing

Methamphetamine (commonly known as 'P' or 'meth') contamination is an increasing problem in New Zealand properties. The by-products of P-use and manufacture are extremely dangerous. P-labs are moved around to avoid detection and are often found in isolated locations. Farm houses and rental properties are attractive targets. It's not just the P-labs that cause contamination; using P in the house also contaminates the entire house. Decontamination is strictly a job for the professionals.

Under the Residential Tenancies Act 1986, a landlord must ensure that a tenanted property has been decontaminated and is safe to live in. A landlord is not obliged, however, to disclose to tenants that the house has previously been used for the manufacturer of P or has been contaminated by P. If asked, however, a landlord must answer any contamination queries truthfully.

When selling, real estate agents must disclose outstanding statutory notices in respect of property. If the standard Agreement for Sale and Purchase is used, the vendor must also disclose these notices. If the real estate agent or the vendor knowingly exposes the public to danger, for example, by conducting an open home at the property, they could be criminally liable. The real estate agent could also be guilty of unsatisfactory conduct under the Real Estate Agents Act 2008.

Owners of rental properties should be vigilant and proactive when it comes to P detection. They should carefully screen prospective tenants, undertake regular inspections and consider installing an alarm system to detect the manufacture of P at the property.

Cross leases

Cross leasing was a very popular form of subdivision in the 1960s as a means to avoid strict planning rules. Cross lease subdivision has now lost favour and these titles are considered inferior as there is always another landowner whose permission must be obtained to allow for any changes to the property. Cross leasing can be defined as a group of residents (usually between two and four) who share ownership of a piece of land with the homes built on that land then leased from the other landowners.

If the property you intend buying is on a 'cross lease title', you need to be aware of the many issues that come with this form of ownership. Many owners are often not aware of their obligations to the other owners under their lease believing that they have full ownership of the house and land.

The rights of the cross lease owner depend on the terms of the particular lease registered on the title. Any owner who wishes to undertake maintenance or development work to the property, will require the consent of the other cross-lease owners. If the building's footprint changes, these changes must be amended on the property's title.

Not all cross leases are the same. If you're considering buying a cross lease property, it's essential to get a copy of the lease agreement and go through this carefully with us before signing the Agreement. ■