

HOMELEGAL

Level 5, Westfield Tower, 45 Knights Road,
Lower Hutt, PO Box 30 940, Lower Hutt 5040
Ph: 04 891 2188 | Fax: 04 569 3933
info@homelegal.co.nz
www.homelegal.co.nz | 0508HOMELEGAL
**HomeLegal is a division
of Gillespie Young Watson**



Enjoy reading this winter edition of *Property Speaking*. We hope you find all these articles both interesting and useful.

To talk further about any of the topics covered in this e-newsletter, please don't hesitate to contact us – our details are above.



P-contamination in Residential Property

Every day more Kiwis are learning that they have been living in methamphetamine (P) contaminated properties. Discovering you have purchased a contaminated property can be financially, mentally and physically devastating for you and your family. This article looks at P-testing and the risks if you suspect the property is P-contaminated and nothing is done.

PAGE 2 >>

Looking at Buying Your First Home? Look into KiwiSaver

If you're looking at purchasing your first home, it pays to check whether you're eligible to withdraw your KiwiSaver funds using the KiwiSaver First Home Withdrawal and to see if you qualify for Housing New Zealand's KiwiSaver HomeStart Grant. Depending on how long you've been in KiwiSaver, the money you receive will go a long way in helping you open the door to your first home.

PAGE 3 >>

Property Briefs

The oven doesn't work – what to do?

Nothing is worse than planning a celebratory dinner in your new home and finding the oven doesn't work. How can you ensure this doesn't happen?

Commercial CPI rent reviews

Owners of commercial property are often attracted to an annual CPI rent review

Sections without connections

An issue that arises with section purchases is the connection and cost of connecting services (gas, power, phone, internet, ultra fast fibre (UFF), water and sewage).

PAGE 4 >>



DISCLAIMER: All the information published in *Property Speaking* is true and accurate to the best of the authors' knowledge. It should not be a substitute for legal advice. No liability is assumed by the authors or publisher for losses suffered by any person or organisation relying directly or indirectly on this newsletter. Views expressed are those of individual authors, and do not necessarily reflect the view of this firm. Articles appearing in *Property Speaking* may be reproduced with prior approval from the editor and credit given to the source.
Copyright, NZ LAW Limited, 2016. Editor: Adrienne Olsen. E-mail: adrienne@adroite.co.nz. Ph: 029 286 3650 or 04 496 5513.

The next issue of
Property Speaking
will be published
in Summer.

If you do not
want to receive
this newsletter
any more, please

unsubscribe

P-contamination in Residential Property

Every day more Kiwis are learning that they have been living in methamphetamine (P)-contaminated properties. Discovering you have purchased a contaminated property can be financially, mentally and physically devastating for you and your family. This article looks at P-testing and the risks if you suspect the property is P-contaminated and nothing is done.

When purchasing a property there is a lot you should consider. Purchasers are usually advised to include a builder's report, Land Information Memorandum (LIM), obtaining finance and insurance on the agreement's standard conditions. Many purchasers overlook the possible need for P-testing when buying a property. Since 2002 the use of P has skyrocketed, and it's not wise to presume that properties in well-respected areas are safe. P-users come from many different walks of life.

Properties where P has been produced or regularly used are exposed to numerous chemicals which are absorbed by different surfaces and structural features. P-contamination within properties is rarely visible and it can cost huge sums to decontaminate.

The health risks associated with living in a contaminated property should not be taken lightly. Inhaling chemicals such as concentrated acid, mercury and lead can cause cancer, kidney failure, neurological damage and birth defects for unborn children.

Testing for P-contamination

Due to the increase in P use there are now many companies that specialise in P-testing for residential properties. Most companies can be found by a simple Google search. The property will be visited and samples taken from non-porous surfaces, such as bench tops and metal structures. If the property tests positive (over a certain threshold) it will be recommended the property be decontaminated.

Test prices range from about \$150 to \$700 depending on the size of the property and its location. This fee seems a good investment

when you compare it with a potential decontamination bill of up to \$20,000.

In certain situations, some properties are past the point of decontamination and require demolishing. It's important to note that decontamination cannot be done yourself, a professional must be contracted to carry out the work correctly. Specific guidelines for contamination are currently being developed. Some local authorities now note on the LIM that a property has received a positive test for the drug until it has been decontaminated. This could seriously devalue your property.

Furthermore, when selling your property the standard agreement states the vendor has no knowledge of notices from any local authority, tenant or any other party concerning any requests to remedy any issues. If at any stage you are made aware of contamination you would be obliged to inform any prospective purchaser, otherwise there could be a significant loss of value to your property.

Investment properties

It has become very common for people to buy investment properties. However, many of these purchasers don't take the necessary

steps to ensure their tenants are safe from possible P-contamination.

As a landlord you have legal obligations to your tenants. Any landlord who lets a contaminated property is in breach of the Residential Tenancies Act 1986, the Building Act 2004 and the Health Act 1956 and can face severe consequences. A handful of cases concerning P-contaminated rentals have occurred over the years. One recent case concerned a family that rented a contaminated home in Tuakau¹. The Tenancy Tribunal ordered that the landlord refund rent payments to the family and also reimburse them for the costs incurred with dumping their contaminated personal belongings. As a result of this case, landlords now have an obligation to test for P before letting any property.

Purchasing a property is a long-term investment and corners should not be cut. If you don't test for P you are potentially risking the health of your loved ones along with a possible decontamination fee of up to \$20,000. You should seriously consider that a P-test be carried out by a qualified person as a further condition in your agreement. ■

¹ *Visagie v Harper Property Management* 15/06955/MK
16 March 2016

Looking at Buying Your First Home? Look into KiwiSaver



If you're looking at buying your first home, it pays to check whether you're eligible to withdraw your KiwiSaver funds using the KiwiSaver First Home Withdrawal and to see if you qualify for Housing New Zealand's KiwiSaver HomeStart Grant. Depending on how long you've been in KiwiSaver, the money you receive will go a long way in helping you open the door to your first home.

KiwiSaver First Home Withdrawal

If you've been a member of a KiwiSaver fund for three years, you've never owned a

home before and the property will be used as your principal place of residence, then you may be eligible to withdraw your KiwiSaver savings (except for the \$1,000 government kick-start) through the **KiwiSaver First Home Withdrawal** scheme to put towards the purchase of the property.

Housing New Zealand KiwiSaver HomeStart Grant

The **HomeStart Grant** is different from the KiwiSaver First Home Withdrawal scheme; the grant money comes from Housing New Zealand – it does not come out of your personal KiwiSaver account. The HomeStart Grant is an initiative designed to help first homebuyers. If you have been regularly contributing towards your KiwiSaver scheme for at least three years, you may be eligible for a grant of money of up to \$10,000 per person to put towards the purchase of your first home. If you are buying the property with another person (or other people), each of you may qualify for the grant.

How much can you get?

The amount of the HomeStart Grant that you may be eligible for will depend on whether the home being purchased is a new or existing home. If the home has received its Code Compliance Certificate within the last six months, or is a property that has been bought off the plans, or you are buying

land to build a new home, then you may be entitled to a HomeStart Grant of up to \$10,000. For purchases of older properties, you may be eligible for up to \$5,000.

Up to three KiwiSaver members may apply for a HomeStart Grant to purchase a home jointly. The maximum amount that may be granted for a single property is \$20,000 for a new home, and \$10,000 for an older home (regardless of how many people are purchasing the property together).

The criteria

As well as having contributed to a KiwiSaver fund for at least three years, there are other eligibility criteria that must be met. If you are purchasing the first home by yourself, your household income must be below \$80,000 before tax, and it must be below \$120,000 before tax for joint purchasers. You also cannot have owned your own property before. In certain circumstances, however, you may still be eligible if you have previously owned a home – you will just need to receive dispensation from Housing New Zealand.

The value of the home is also important. To qualify for the grant, the value of the home (or section and fixed build cost) must be under \$550,000 for Auckland City, and below \$450,000 for Christchurch City, Hamilton City, Hutt City, Upper Hutt, Kapiti Coast, Porirua City, Queenstown Lakes District, Selwyn District, Nelson, Tasman, Tauranga

City, Thames, Coromandel, Waimakariri, Wellington City and Western Bay of Plenty. For the rest of New Zealand the purchase price needs to be under \$350,000.

The final condition of the KiwiSaver HomeStart Grant is that you need to live in the purchased home for a minimum of six months from the settlement date. If you don't comply with this condition, you may have to repay the grant, along with interest.

What else?

If your ability to purchase the property relies on you receiving your KiwiSaver and/or the HomeStart Grant, you must make the agreement subject to finance and allow sufficient time to make the applications. Housing New Zealand needs at least four weeks from receiving an application through to paying out the HomeStart Grant, so contact us as soon as possible to start the process. Negotiating that no 'cash clause' is inserted into the agreement will ensure no one can take the property out from under you while you're waiting to get confirmation of your eligibility.

Do contact your KiwiSaver provider to check your eligibility and entitlement before you start looking at potential purchases. As well, apply for 'pre-approval' for the HomeStart Grant online to see how much you qualify to receive. This will assist in setting your maximum price range, as well as speeding up the process once you've found a property. ●

Property Briefs

The oven doesn't work – what to do?

Nothing is worse than planning a celebratory dinner in your new home and finding the oven doesn't work. How can you ensure this doesn't happen?

The last thing you think about when making an offer for a property is the condition of the chattels (like the oven). These are listed in the agreement and are often breezed over. When the oven doesn't work when you go to use it, there isn't much that can be done if you haven't thought about it when you signed the agreement.

If the chattels aren't in the same condition as they were when you signed the agreement, you can try to seek a solution from the vendor.

Our best advice is that you should check chattels, such as the oven or the garage door opener, before you sign. If they don't work, you can remedy this by including a clause.

You are entitled to check the chattels before settlement. It's too late to raise issues that weren't issues when you signed, but it isn't too late to check that nothing has changed. This is your only opportunity to try and get something fixed before you have to pay for the property.

Any issues after settlement can either be addressed by contacting us or through the Disputes Tribunal. The far easier way, however, is to make sure everything works before you sign and double-check that it still works before you settle.

Commercial CPI rent reviews

Owners of commercial properties are often attracted to an annual CPI rent review. Standard agreements and deeds of lease make it very easy to agree to what seems like an annual 1% increase but it's not that straightforward.

When it comes to reviewing the rent, you cannot just take whatever percentage you think 'the CPI' is and adjusting the rent accordingly.

The deed of lease contains a formula for calculating exactly what the new rent will be. This involves researching the CPI index (from Statistics New Zealand) and inserting the previous and current index points into the formula which also contains whichever multiplier is agreed. The formula gives you the new rent.

This is often overlooked and a simple 1% increase is agreed to by the parties; this is incorrect.

If your property manager or agent isn't working out the new rent correctly, you could be missing out on income. Check they know what they're doing by understanding it yourself. We can also explain how the CPI review clause works.

Sections without connections

An issue that arises with section purchases is the connection and

cost of connecting services (gas, power, phone, internet, ultra fast fibre (UFF), water and sewage). A good developer knows this, but not all are so diligent.

UFF often requires under-boring, the cost of copper phone wires is high, you may not be getting a traditional 'phone' (it may be linked to UFF) and adding houses requiring power to the grid may overload the current transformer which may need an upgrade. All of these things can result in delays and increased costs for the developer, who may look to pass them on to a purchaser.

Always check the status of the services, and when and how they'll be connected. If you are presented with an agreement with a warranty that they will be connected, ask for a condition instead. A warranty allows you a right to be compensated after the fact. A condition can allow you to terminate the agreement if the condition isn't met. We can help with drafting something suitable. ●

