



YOU AND YOUR PROPERTY

Our regular contributor Michael Hofmann-Body is currently on sabbatical.

In this issue property lawyer Jeremy Hucker, who is heading the HomeLegal team in Michael's absence, discusses what you should know if you decide to subdivide.

As property lawyers, we are often called upon to advise clients on subdivisions. Our clients range from families looking to subdivide their section through to developers undertaking large and complex subdivisions. Although the issues that arise in each subdivision are varied (and sometimes numerous) there are key issues that need to be addressed in the course of every subdivision.

We would recommend that, prior to commencement of the subdivision, you make enquiries of and assemble a team of professionals to call upon during the course of the subdivision. The "team" should include your surveyor, accountant, lawyer and also your financier. You should also consider talking to a real estate agent at this early time. We find that the subdivisions which go the smoothest are where clients have obtained professional advice at the outset and hence are able to anticipate and avoid any problems down the track.

One of the key reasons it is necessary to talk to your accountant and lawyer prior to the commencement of a subdivision relates

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to tax. Depending on the nature of the subdivision, a subdivider may be deemed a developer under the current tax legislation and this may lead to further problems such as, for example, GST (and in particular whether GST will be payable upon sale of the land). For that reason it is important to determine prior to the commencement of any subdivision what legal entity will complete the subdivision. If a subdivision is commenced without such questions being addressed, it may be very difficult at a later stage to put in place a different structure, and that may prove costly!

Once those issues have been addressed, it will be necessary to apply to the local authority for a resource consent. The resource consent records the basis on which the local authority gives its consent to the subdivision, and any conditions in the consent must be complied with.

Your lawyer will need to review the resource consent and also the subdivisional plan which is prepared by your surveyor. It is at this time your legal advisers can add real value to your subdivision. They will anticipate what consents are required and from whom, and assist in the preparation of any new easements and land covenants which may need to be registered. We often find that our clients wish to set minimum standards for their subdivision and will want to impose building covenants. For example, a client may only want certain building materials to be used on any new houses constructed on the land, or to first approve any building plans. Similarly, they may wish to put a covenant on the land to prevent any further subdivision. It is important that those documents are soundly drafted and are robust enough to deal with issues that may arise.

Finally, once new certificates of title have issued for the subdivided land, your lawyer will be able to assist in the process of sale in conjunction with your real estate agent. Given that a subdivision can take some months to complete, we find that our clients are keen to arrange sales as soon as possible in order to repay some of the costs that have been incurred by them during the course of the subdivision. It is, again, important that a lawyer have input into drafting the agreements so the sales proceed as smoothly as possible.

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Like anything, you usually get what you pay for these days, and we find that our clients who see us at an early stage inevitably benefit when things are right from the outset. Prepare well and things will go well.

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