

YOU AND YOUR PROPERTY

BY RESIDENTIAL PROPERTY LAWYER
MICHAEL HOFMANN-BODY



In my last article I commented on the impending legislative changes which are designed to stop foreign buyers purchasing residential property in New Zealand to the detriment of New Zealanders. To the credit of the Labour government, they promised to implement this legislation and they have taken steps to do so. I am anticipating the legislation will be in force by the time this article is published.

While I am quite comfortable with the intention of the legislation and the desire to provide better outcomes for New Zealanders, history is littered with examples of well-meaning politicians implementing policies intended to benefit their constituents that ended up having quite different outcomes than intended. This is often referred to as the “Law of Unintended Consequences”. A Huffington Post article said the Law evidences itself in three potential ways:

1. Unexpected benefit: A positive unexpected benefit.
2. Unexpected drawback: An unexpected detriment occurring in addition to the desired effect of the policy.
3. Perverse result: A perverse effect contrary to what was originally intended (when an intended solution backfires).

I don't believe any of us can safely predict all the outcomes of this policy

and we should not be surprised if there are one or more unexpected benefits, drawbacks or perverse outcomes from the legislation. Having said that we can't safely predict all the outcomes, there are a couple of outcomes we can predict. The cost of conveyancing is going to increase and the process is going to become more complex. There are going to be new risk points on a sale that will need to be managed by experts who are intimately familiar with the conveyancing process. I suspect some of my competitors are going to cease offering conveyancing services as the area becomes more specialised.

When I was a young solicitor, the process of transferring required just a one-page transfer document. The parties would be independently advised by their respective solicitors and Land Information New Zealand would be satisfied with the production of the single page document as evidence of the parties agreement to

transfer the land. Those days have long since passed. In 2002 LandOnline was introduced. LandOnline is the government's electronic system for transferring land. There is now an obligation on lawyers to execute and retain instruction and authority forms for the transfer. This documentation has to be retained by the lawyer for 10 years. In late 2016, the government, in an effort to establish the extent of overseas purchasers buying and selling land and to track the implementation of the bright line test introduced a tax statement process. This tax statement has to be signed by each buyer and each seller of land. Unless land was being held by someone in their personal name as their main home, it was necessary to obtain an IRD number for any trust or company holding land. This policy, whilst giving the government data to analyse the extent of the foreign buyer “problem” added to the bureaucracy of buying and selling property. It became necessary to obtain



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IRD Numbers well in advance. Without the IRD number, the property could not be purchased or sold. IRD Numbers were obtained for entities that did not generate income and never would.

In 2018 lawyers are going to be presented with further compliance obligations as they are likely (as proposed by the first draft of the bill) to have to certify the residency status of all purchasers. If, for any reason, a lawyer makes a false statement that lawyer could be liable for a fine of up to \$20,000. With penalties like this in play, lawyers are going to refuse to provide their certification unless they are certain of a client's residency. Details of that residency will need to be retained and stored. In addition to this, the previous National government's anti-money laundering legislation is also going to be implemented in 2018. This is going to necessitate all lawyers establishing the source of funds. This is going to require further compliance.

These policies and laws are well-meaning and intended to create a better society for all of us but unfortunately, as the policies are implemented the Law of Unintended Consequences comes into play. It is my hope the Law of unintended consequences will in this case be limited to making the process more bureaucratic and we do not have a perverse result.

I have one word of caution to anyone wanting to sell a property once this legislation comes into force. Before they sign an agreement, they should be absolutely confident the purchaser of the property is not an overseas person. I have great concerns agreements are going to be signed by parties without awareness of the changes to the rules. If the purchaser is an overseas person it is entirely possible the agreement will be unenforceable and this could cause significant disruption and loss.

It is going to become very important you use a specialist conveyancer when you are buying and selling property as the implementation of this law will make conveyancing much more complex.

"If you would like a copy of previous articles on property written by Michael email him on michael@homelegal.co.nz."

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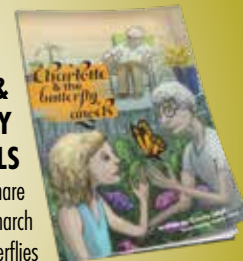
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