

# PropertySpeaking

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**GAWITH BURRIDGE**  
LAWYERS

Welcome to the first issue of *Property Speaking* for 2019. We hope you find the articles both interesting and useful.

To talk further about any of the topics we've covered, or indeed on any property matter, please don't hesitate to contact us – our details are above.



## Property sale and purchase agreements

### Important to get the GST component right

Generally speaking, GST on a property sale and purchase between two GST-registered entities results in a 'GST neutral' position for both the seller and the buyer. It's essential that the sale and purchase agreement contains the correct wording, particulars and information in respect of the GST position of the parties to the agreement.

If, however, the parties to the agreement have not correctly recorded their respective GST positions, it can result in a situation where a GST liability is triggered.

We discuss why it's so important to get the GST component right in a property sale or purchase.

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## Looking for your first home?

### Help to get your foot in the door

The purchase of your first home may be more in reach than you think. In 2018, the government aligned the purchase price limits of existing first home buyer schemes with the newly-launched KiwiBuild programme. As a first home buyer, or an eligible 'second-chancer', you could use these schemes to help you into your new home, sooner.

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# Property sale and purchase

## Important to get the GST component right

Generally speaking, GST on a property sale and purchase between two GST-registered entities results in a 'GST neutral' position for both the seller and the buyer. It's essential that the sale and purchase agreement contains the correct wording, particulars and information in respect of the GST position of the parties to the agreement.

If, however, the parties to the agreement have not correctly recorded their respective GST positions, it can result in a situation where a GST liability is triggered. This can mean the seller would effectively receive a 15% reduction of the contracted purchase price (as they may have to return 15% of the purchase price to Inland Revenue). Or, a buyer may end up having to pay an additional 15% on the purchase price if the agreement turns out to be 'plus GST'.

It's vital that the GST position of buyer and seller is recorded accurately in order to avoid a possible nasty surprise at settlement.

## Correctly recording the GST position

The front page of a standard ADLS/REINZ agreement for sale and purchase requires a seller to warrant to the buyer as to their GST status. This is a matter of fact and the seller will either be registered for GST or they won't

be. They will either be required to return GST on the purchase price, or they will not.

Logically, this affects the purchase price a seller is willing to accept.

The parties must also elect whether or not the transaction will be plus GST (if any), or inclusive of GST.

It is important to note that if no election is made as to the GST status of the transaction, then the agreement will deem the contract price to be inclusive of GST.

## Recording the GST particulars

Any further GST information must be included in the GST Schedule to the agreement. This information is used to determine whether or not a GST obligation will exist, or not, for both the seller and the buyer.

It is not always known at the time of signing the agreement whether or not a buyer will be GST-registered or not. Often a buyer will nominate another party to complete the purchase, or may sign the agreement in the name of a non-registered GST entity and plan to nominate a GST-registered entity before settlement, or vice versa.

This means that a seller does not always know with absolute certainty whether the ultimate purchaser of the property will be registered for GST or not.



The agreement contains mechanisms to amend the GST information before settlement. Therefore, it's possible for a buyer to sign a contract in the name of a GST-registered entity, then nominate a non-GST registered entity to complete the settlement.

## Why does this matter?

If a seller is registered for GST and the contract price is treated as being inclusive of GST (whether by means of an election by the parties, or the parties neglecting to make an election as to the GST status of the transaction, or a buyer opting to change their GST status) this will usually mean that the seller will need to return the GST on the purchase price to the IRD.

Should GST be payable on a transaction as a result of any of the situations discussed above and the purchase price is recorded as

plus GST (if any), the buyer would be liable to pay the GST to the seller as part of the property transaction.

Many real estate agents will facilitate the signing of the agreement, and many buyers and sellers may enter into contracts entirely unaware of the GST implications, and the workings and treatment of GST under the agreement, without accounting or legal advice. The consequences of this can be that a GST liability is triggered which the parties were unaware of and hadn't anticipated at the time of signing the agreement.

## What should you do?

Regardless of your experience level in buying or selling property, commercially or residentially, it is imperative that you get professional advice to guide you on navigating the minefield that GST can be.

Often, GST is taken for granted as being 'not applicable' or 'zero rated' or 'not relevant to you' and, sometimes, this is the case. In fact, in most situations, it is the case.

The GST situation, however, can catch out even the most experienced and knowledgeable property people. Your professional advisors are here to work with you in making those decisions. ●

# Looking for your first home?

## Help to get your foot in the door

The purchase of your first home may be more in reach than you think. In 2018, the government aligned the purchase price limits of existing first home buyer schemes with the newly-launched KiwiBuild programme. As a first home buyer, or an eligible 'second-chancer', you could use these schemes to help you into your new home, sooner.

## KiwiSaver First Home Withdrawal

If you have been a KiwiSaver member for three years or more, you may be able to withdraw your KiwiSaver funds (except \$1,000) to contribute to your first home purchase. Each KiwiSaver scheme has different requirements for **KiwiSaver First Home Withdrawal** applications and you should contact your scheme provider directly to check your eligibility.

## HomeStart Grant

Under the **HomeStart Grant** scheme, you could be eligible for a \$3,000 to \$10,000 grant for each person purchasing the property. To access the HomeStart Grant, you must have been contributing to your KiwiSaver scheme for at least three years. The amount of your HomeStart Grant is then

determined by how long you have been a KiwiSaver member and the type of property you are purchasing.

HomeStart Grants are paid towards the purchase price of your home or, in certain conditions, land. As long as you live in the property for at least six months from settlement date, or when the Code Compliance Certificate is issued, you will not need to repay the HomeStart Grant.

While your eligibility for a HomeStart Grant is linked to your KiwiSaver membership, the HomeStart Grant scheme is administered separately from KiwiSaver First Home Withdrawal and requires a separate application. All applications for the HomeStart Grant are processed by Housing New Zealand (rather than your scheme provider).

## Welcome Home Loan

If you can make mortgage repayments but only have a 10% deposit saved, you may be able to access a home loan under the **Welcome Home Loan** scheme. Your 10% deposit can include your KiwiSaver First Home Withdrawal and HomeStart Grant. Under the scheme you will be required, however, to pay additional fees (usually 1% of the loan amount) to cover lender's mortgage insurance, as part of your repayments.

A list of the lenders offering Welcome Home Loans can be found [here](#).



## KiwiBuild Programme

The **KiwiBuild Programme** is aimed at developing affordable homes for purchase by first home buyers.

Under the KiwiBuild Programme, the maximum price a purchaser pays for a home is restricted. In most areas, the maximum price for a KiwiBuild home is \$500,000. In Auckland and the Queenstown-Lakes region, a KiwiBuild home cannot exceed \$500,000 to \$650,000 depending on the size of the home.

KiwiBuild homes come with a minimum three-year ownership period, which may be recorded against your title.

## Am I eligible?

The main eligibility thresholds are all the same for KiwiSaver First Home Withdrawal, HomeStart Grant and Welcome Home Loan. You must be a first home buyer or a 'second chancer' (which is a person in an equivalent financial position to a first home buyer).

If you have never owned property before, you only will be eligible for any of these three schemes if:

1. You are purchasing in your sole name and your income is \$85,000 or less before tax, or

# Property Briefs

## Unit Titles Act 2010: are you complying?

A unit title is a form of property ownership where you own your unit, but the common areas are owned by the body corporate. This ownership structure is common in high-rise apartment blocks.

In smaller unit title developments, all owners are likely to be members of the body corporate committee; in larger developments the body corporate committee is appointed by the owners. An annual levy is paid and the body corporate committee manages and maintains the property, and the common areas, on your behalf (depending on the body corporate rules).

Many unit title owners are unaware that the Unit Titles Act places significant compliance obligations on the body corporate, as well as the owners of each unit. Regardless of whether there are 20 units or two, the obligations are the same. These obligations include:

- » Having body corporate rules
- » Retaining written records of the body corporate decisions

- » Establishing and updating a long-term maintenance plan, and
- » Having separate and identifiable operating expenses and long-term maintenance accounts.

If you are a unit title owner and you are unsure about the way your body corporate operates, there is some basic information [here](#). For more detail relating to your particular situation, we're happy to talk with you about your specific obligations and responsibilities. ●

## Healthy Homes Standards: what you need to know

Becoming law in 2017, the Healthy Homes Guarantee Act establishes regulations to improve the quality of rental housing in New Zealand.

Following public consultation in 2018, the Healthy Homes Standards Regulations were approved by Cabinet on 13 May; you can find them [here](#). The compliance timeframes in the regulations require rentals to comply with the regulations in all tenancies entered into after 1 July 2021 and all rentals will need to comply by 1 July 2024.

The regulations include requirements to:

- » Provide heating in any living room; this heat source must be capable of heating that room to 18°C
- » Ensure insulation either meets the 2008 Building Code or has a minimum thickness of 120mm
- » Provide suitable extractor fans in bathrooms and any rooms with an indoor cooktop, and
- » Have a ground moisture barrier if the rental has an enclosed subfloor, ie: you cannot install underfloor insulation.

If you are unsure of how you must comply, we can talk you through what you need to do to so you can beat the rush come 2021. ●

## Damage to your rental: who foots the bill?

We all know that if a rental is damaged due to fair wear and tear, that the landlord is responsible for the repair costs as part of general maintenance. Fair wear and tear includes things like worn carpet, appliances breaking and scuff marks on the walls.

Some landlords, however, don't realise they are also responsible for paying for other damage. For example:

- » If a property is damaged by a natural disaster the landlord is expected to cover the damage, even if the landlord doesn't have insurance
- » Where the rental is damaged and the landlord's insurance policy will cover the damage, the landlord is responsible for organising the repairs. The exceptions to this are where the damage was intentional, and resulted in an imprisonable offence or where the tenant (or their guest) has caused the insurance policy to be voided, and
- » The landlord is also responsible for any excess and cannot pass this on to their tenant.

It is good practice to regularly check your insurance policy and to make sure your tenants are aware of any restrictions. If you are renting, ask if your landlord has insurance and what the terms of the policy are.

If a dispute arises about damage to your rental, we can help you with this. ●



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## Looking for your first home?

2. You are purchasing jointly with another person and your joint income is \$130,000 or less before tax.

For the KiwiBuild Programme, the eligibility thresholds are slightly higher. You will be able to purchase a KiwiBuild home if:

1. You are purchasing in your sole name and your income is \$120,000 or less before tax, or
2. You are purchasing jointly with another person and your joint income is \$180,000 or less before tax.

If you have previously owned property but no longer own property, you also may be eligible if the assets you can sell to help fund your home purchase are valued at less than 20% of the price limit for an existing home in the area in which you are purchasing. For example, if you want to buy in Wellington City, your assets must be no more than \$100,000 in value. Housing New Zealand offers assessment services to determine whether you are eligible.

In addition to the main eligibility thresholds, some Welcome Home Loan lenders may have their own criteria which affects whether you can access a loan through that lender.

## What can I purchase?

For all of the schemes, the property you purchase must be lived in as your own home and you must reside in the property for a minimum period from settlement date or when the Code Compliance Certificate is issued.

There also are price limits on the types of property you can purchase. These vary from region to region with the price limit for existing homes being between \$400,000 and \$600,000. The limit for new or recently built homes is between \$500,000 and \$650,000. You can check the price limits for your region [here](#).

As the maximum price of KiwiBuild homes is restricted, all KiwiBuild homes can be purchased with the assistance of funds from the KiwiSaver First Home Withdrawal, HomeStart Grant and Welcome Home Loan schemes.

## Accessing the first home buyer schemes

When taking advantage of the first home buyer schemes, being organised early is critical. Each scheme has its own application process and processing time frames. Both the HomeStart Grant and Welcome Home Loan schemes offer pre-approval options which allow you to get a head start on the application process before you begin looking for your new home.

If you are considering using any of the first home buyer schemes, we also can help you with structuring your purchase agreement to ensure that you have enough time to make your applications.

For further information on buying your first home and on the schemes available to you, we recommend that you visit [here](#). When you are ready to buy your first home, please be in touch with us early on. ■

