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**Newsletter**

**AUTUMN 2012**

Hello and welcome to our first newsletter for 2012.

We hope that this newsletter finds you and your family well.

This is the first issue of our "new look" newsletter. We trust that you like the new look of the newsletter. We would like to hear any comments or feedback that you may have on the look, feel or the content included. You can contact either of us by email or phone with any thoughts you may have.

The year has got off to a steady start here at Godfreys.

Julie Aitken has been busy assisting our red zone clients negotiate the CERA sale process and purchase replacement properties. Most of this work has now been completed. It is great for our clients whose homes were red zoned to secure and move into new homes. We have also been busy discussing and advising clients on their gifting programmes since the abolition of gift duty and other recent developments in this area.

By now many of you have been to see us at our new offices. As we are upstairs we appreciate access may be difficult for some. We now have client car parks which are proving very popular – but upstairs access can be an issue for some people. We are pleased to advise that we have an informal agreement with the good people at the Haemophilia Foundation (whose office is ground floor under ours) so that we can share rooms on a mutual basis, when needed. If getting upstairs is an issue for you, please do not worry – just tell us when arranging your meeting and we will arrange a ground floor meeting room for you.

This Newsletter focuses on current issues to be aware of when purchasing property in Canterbury, an outline of a recent decision on allowable gifting limits for the purpose of residential care subsidies and an update on Enduring Powers of Attorney.

We hope that you find our newsletter informative and more visually appealing.

We look forward to seeing you soon and assisting you with your legal needs.

Regards

Philip Sewell and Brad McDonald

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Inside this issue:

- **Buying Property - Current Issues**
- **Tough stance being taken by MSD**
- **EPAs Update**

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**Important:** This newsletter is not legal advice. Clients should not act solely on the basis of material contained in this newsletter. Items herein are general comments only and do not constitute or convey advice per se. As well, changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas referred to. This newsletter is issued as a helpful guide to clients for their private information.



MEMBER  
**PROPERTY  
LAW SECTION**  
New Zealand Law Society

## BUYING PROPERTY – CURRENT ISSUES

By Julie Aitken and Jacqui Wiltshire

### Contract Special Conditions

Since September 2010 the special conditions attached to the standard Agreement for Sale and Purchase Agreement have evolved to deal with issues arising when buying property in an earthquake zone.

The following topics are now covered in addition to the standard clauses that were common to agreements prior to the earthquakes.

### Assignment of EQC and Insurance Claims

Various clauses are used by Real Estate agencies. These clauses need to cover the various possible scenarios in relation to EQC claims and payments. For example a vendor may have made a number of EQC and/or insurance claims, been paid on some claims, or even undertaken some repairs or banked EQC or insurance payments and does not intend to complete repairs.

A standard Deed of Assignment will be executed by a Vendor and Purchaser at the time of settlement to transfer the various EQC and insurance claims to the Purchaser.

### Building report/Structural Engineer's reports

If you require finance, it will be prudent to check with your bank as to its requirements regarding the type of technical reports that are required. These clauses need to cover all aspects of the building and not just be limited to its structural integrity.

### Insurance

It is now standard to include a condition giving the purchaser the ability to arrange cover with the vendor's insurer. Be aware that some cover provides for stand down periods in relation to earthquakes or limited earthquake cover – so you need your bank to confirm the cover is acceptable to it. We suggest that you consult with your own insurance broker to ensure that the cover is acceptable for you.

### Sections

If you are buying a section then prior to confirmation you need to have arranged full replacement insurance for the house at the completion of the build. Be aware that builder's risk cover does not include earthquake cover.

### Auction

If you are intending to purchase a property at an auction you need to make contact with the vendor's insurer prior to the auction and arrange insurance cover (unless you can arrange your own insurance).

**We recommend you seek legal advice before you sign any Agreement for Sale and Purchase.**

### Land Categories

#### Residential Property Zones

We are all now familiar with the clarification of land into different coloured zones. The classification of your property can be checked at [www.landcheck.org.nz](http://www.landcheck.org.nz).

### Technical categories

In October 2011 CERA announced new 'Technical' categories. Properties in the "Green Zone", including new sections, are being categorised as TC1 (Green/grey), TC2 (green/yellow) and TC3 (green/blue). These categories relate to the ground condition and whether a specific type of foundation is required for the house/building to be fixed or erected on the section.

If the property you have purchased is graded TC2 or TC3 there are geotechnical obligations which have to be met before you can commence building and a Geotechnical Engineer's report will need to be obtained. A developers Geotech report for the subdivision will not be sufficient. Often a site specific report is required. It is also important to note that at present it may take anywhere between six to nine months to obtain that report. Also, there will be an increase in costs for foundations to meet the required standards and for a typical house these could be up to \$10,000.00 in respect of TC2 land. At this stage, there is no indication of the increased costs for foundations on TC3 land but it is expected to exceed that for TC2 land.

**We strongly advise** that you make enquiries with regard to the new TC categories if you are purchasing a property **and** get a geotech report as part of the purchase process. It is not always apparent from the look of the land that there may be geotechnical issues. It is preferable to get this report prior to purchasing a property rather than finding out at a later date that the property is not suitable for the purpose for which it was purchased.

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## TOUGH STANCE BEING TAKEN BY MINISTRY OF SOCIAL DEVELOPMENT ON RESIDENTIAL CARE SUBSIDY

By Philip Sewell

There was a lot of anticipation last year with respect to the abolition of gift duty on 1 October. That attracted little attention when it took place and has done since – but of much more interest are changes in the application of asset testing rules, for this subsidy. These came out during 2011 but do not seem to be widely known yet.

Recently we saw a decision when this new approach was applied. Not all the details can be given in an article like this – but the important point is that a couple had carried out a gifting programme over about 17 years. The wife had gone into care and had applied for Residential Care Subsidy. It was declined because the applicant and her husband had "deprived themselves of assets". The case was fully argued, but on appeal (Social Security Appeal Authority), the decision was upheld. Only \$27,000 per year for the 17 years was allowed (not \$54,000 as they thought) – with the result that the couple had too many assets to get the subsidy.

If you are internet-savvy, you could look at the decision on line. You will find it at <http://www.nzlii.org/nz/cases/NZSSAA/2011/91.html> – it makes interesting reading!

Put another way, all the plans, gifting programme, trust and the like did not achieve what this couple and their advisors had planned with respect to rest home fees.

We expect that some of our clients could end up in a similar situation. Trusts have been very popular and many of our clients now have them, and for many people, it was because of a general concern about who pays fees in the rest home situation.

Due to the changes announced last year, **some** of these plans might not now work.

