

EHW

LAW NEWS

WINTER 2024



EVANS HENDERSON
WOODBRIDGE

BARRISTERS & SOLICITORS



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Latest News

We are delighted to welcome Jessie Yang to the practice.

Before joining us, Jessie worked for 10 years in China gaining valuable commercial experience, before moving to New Zealand and working in another local law practice for 9 years.

Fluent in English and Mandarin and with a deep understanding of the New Zealand and the Chinese legal systems. Jessie brings a valuable combination of law, business and accountancy backgrounds to effectively assist the Asian community.

There will be more about Jessie in the next edition of the EHW Law News.



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BUYING A BUSINESS IN NEW ZEALAND: KEY CONSIDERATIONS



Buying a business in New Zealand can be both exciting and stressful. It marks the start of a new adventure, but usually involves some uncertainty and risk.

START A NEW BUSINESS INSTEAD?

An existing business should offer an established customer base and cashflow. However, you also inherit existing challenges and may need to make changes to align the business with your vision. Starting a new business allows you to develop everything to your specifications but requires new customers and establishing a market presence from the ground up.

ENGAGING PROFESSIONAL ADVISORS

If you decide to buy a business, it is critical to get professional help and get it as early in the process as you can. Your lawyer and accountant can provide valuable input and advice to help you make an informed and de-risked decision. These advisors assist you to ensure that all necessary considerations and issues are identified and addressed.

THE AGREEMENT

One of the first steps in buying a business is finalising the agreement. We strongly advise using the standard Legal Agreement for Sale and Purchase of a Business, compiled by what is now known as The Law Association (formerly the Auckland District Law Society). This agreement has terms and conditions well understood and accepted in the market and covers most matters that usually need to be considered. Key elements to consider include:

- Names of the vendor and purchaser
- Description of what is being sold
- Price and terms of payment
- Warranties by the vendor
- Conditions such as obtaining suitable finance and due diligence
- Possible restraints of trade
- Issues related to existing employee contracts

Make sure your lawyer reviews the agreement before signing to ensure all critical elements are covered and to identify any potential issues.

WHO OR WHAT SHOULD BUY?

Choosing the right purchasing entity is essential. That choice is likely driven by such matters as limited liability protection, tax considerations, and succession planning. Common options include sole proprietorship, partnership (including limited partnership), limited liability company, and trading trust. Including “and/or nominee” in the purchaser’s name in the agreement allows for flexibility while you discuss the most appropriate entity with your lawyer and accountant.

DUE DILIGENCE

The importance of a thorough due diligence process cannot be overstated. This means a detailed analysis of the business to ensure you are making a sound investment. Key aspects may include:

- Reviewing the business’s leasing and licensing arrangements
- Examining customer and supplier relationships and contracts
- Considering staffing levels and contracts, and interviewing key staff
- Reviewing stock valuations
- Validating asset ownership including checking for any lending securities that may be in place to secure loans made to the business
- Understanding any intellectual property rights being bought
- Analysing financial statements from the past several years

While most due diligence typically occurs after signing the agreement, much of this work can be done beforehand to inform your offer.

BEWARE UNDERESTIMATING TIME

Both buyer and seller usually aim to complete the deal quickly, but delays can occur due to involvement from other parties protecting their own interests. For instance, if the business is in a leased property, landlord consent is required for lease transfer, which can take time. Plan for a few weeks of due diligence and finance arrangement, followed by additional time for landlord consent and other approvals.

MORE ON THE SALE AND PURCHASE AGREEMENT

As we have said, although many business sale and purchase transactions use the standard The Law Association Agreement, and this covers most things, some situations may require additional terms. Examples include:

- Particular employee-related issues
- Vendor finance
- Purchase price “earn outs”
- Additional vendor warranties about the business
- Handling work in progress at settlement

If the purchasing entity is a company with multiple shareholders, a Shareholders’ Agreement is vital. This records the rights and obligations of each shareholder, covering matters such as:

- Incapacity of a shareholder
- How shares will be sold including pre-emptive rights to

other shareholders

- How shares are to be valued in the event of a sale
- Any restraints of trade on a selling shareholder
- Dispute resolution processes

A Shareholders’ Agreement may prevent future conflicts and expenses by providing clear guidelines for common eventualities.

RELATIONSHIP PROPERTY

Finally, buying a business in New Zealand could have implications under the Property (Relationships) Act, as the asset may be, or become, relationship property. This means its value could be subject to equal division between partners upon separation, affecting ownership and financial arrangements. Legal advice is crucial to navigate these implications.

CONCLUSION

Buying a business in New Zealand requires careful planning and consideration. Consulting with your lawyer and accountant early in the process ensures a smooth transaction and awareness of potential issues. While professional advice comes at a cost, it is often far less than the cost of encountering problems later. By following these steps and seeking professional guidance, you can navigate the complexities of buying a business and increase your chances of enjoying a successful and rewarding venture.

UNDERSTANDING THE BRIGHTLINE TAX TEST

The Brightline tax test is a crucial part of New Zealand’s property taxation framework, designed to curb property speculation and ensure that profits from quick property sales are taxed appropriately. Introduced in October 2015, the test has undergone several changes, reflecting the governments’ ongoing efforts to stabilize the housing market and address affordability issues.

The new Coalition Government brought in changes to the Brightline test with effect from 1 July 2024.

HOW DOES IT WORK?

The Brightline test determines whether the sale of residential property is subject to income tax based on the duration of ownership. Initially, the test applied a two-year period; properties bought and sold within two years were subject to tax on any capital gains. This period was extended to five years in March 2018 and then to ten years in March 2021 for properties acquired after the extension.

The latest changes mean that if you sell a property on or

after 1 July 2024, the Brightline test looks at whether your Brightline end date for the property is within 2 years of your Brightline start date.

If you sell a property before 1 July 2024, the sale will come under the Brightline test if the following apply;

- You bought the property on or after 29 March 2018.
- You are selling it within 5 years or before 1 July 2024 (whichever comes first).

CALCULATING THE BRIGHTLINE PERIOD

The start date for the Brightline period is the date the property’s title is registered to the purchaser. The end date is the date the purchaser enters into an agreement to sell the property. If a property is held beyond the applicable Brightline period, it is not subject to the test.

KEY EXEMPTIONS

Certain exemptions are built into the Brightline test to ensure it targets speculators rather than ordinary homeowners.

Main Home Exemption: The most significant exemption is for a person's main home. If the property has been used predominantly as the owner's primary residence, it's typically exempt from the Brightline test. The law has changed so that this exemption will only apply if;

- you used more than 50% of the property's area as your main home; and
- you lived in the property as your main home for more than 50% of the time you owned it.

If you build on the land, you do not have to include the construction period when determining if your usage of the property qualifies for the main home exclusion.

However, frequent buying and selling of main homes can still attract scrutiny and potential taxation.

Inherited Property: Properties inherited are exempt from the Brightline test, recognising that these are often not acquired through typical market transactions.

Relationship Property Transfers: Transfers of property due to the end of a relationship, covered by the Property (Relationships) Act, are also exempt, ensuring fair distribution without additional tax burdens.

IMPLICATIONS FOR PROPERTY OWNERS

Owners selling a property within the Brightline period must pay income tax on the capital gain. This gain is the difference between the sale price and the acquisition cost, adjusted for any allowable expenses, like renovation costs or legal fees. It's important for property owners to maintain comprehensive records to substantiate these expenses and accurately calculate the taxable amount.

COMPLIANCE AND PENALTIES

Failure to comply with the Brightline test requirements can result in significant penalties. The Inland Revenue Department (IRD) actively monitors property transactions and expects accurate reporting of property sales and corresponding tax obligations. Owners are encouraged to seek professional tax advice to ensure compliance with the complexities of the Brightline test.

CONCLUSION

The Brightline tax test is designed to manage property market dynamics and discourage speculative investments. Taxing profits from quick property sales creates a more stable and affordable housing market. Property owners must understand the implications of the Brightline test, including the periods, exemptions, and compliance requirements, to avoid unexpected tax liabilities and penalties. Continuing to stay informed about legislative changes and seeking professional advice remains essential for property investors and homeowners alike.

PRACTICAL STEPS TO AVOID FINANCIAL DIFFICULTIES AFTER THE DEATH OF A PARTNER OR SPOUSE

The death of a partner or spouse is an emotionally challenging time, often compounded by the practical difficulties of managing finances and paying for expenses. Understanding how joint accounts work and the requirements of obtaining probate can help streamline financial matters during such times.

In running a busy Estates practice, we often see things happening where delays and extra costs are incurred when they might have been avoided. So we thought it could be helpful to identify some of the practical steps that can be taken to avoid financial difficulties after the death of a loved one.

JOINT ACCOUNTS

Having a joint bank account with your partner or spouse can be incredibly useful. On the death of one account holder, the surviving partner usually retains access to the funds without the need for probate. This access can provide immediate financial relief to cover urgent expenses such as funeral costs, household bills, and other necessities.

Regularly review and update the documentation associated with joint accounts to ensure both names are correctly listed. Ensure that the bank has up-to-date contact information and identification for both account holders.

PROBATE REQUIREMENTS

Probate is the legal permission granted by the High Court which confirms a will's validity and the authority of the executors to administer the deceased's estate. If your partner or spouse dies with assets solely in their name, these assets may be frozen until probate is granted. This process can take several months, potentially delaying access to funds needed for immediate expenses.

PLAN WITH WILLS AND FAMILY TRUSTS

Ensure that you and your partner or spouse have valid, up-to-date wills that clearly outline the distribution of assets. A well-drafted will can speed up getting probate and reduce the likelihood of disputes, providing quicker access to funds.

Establishing a family trust can be an effective way to manage assets and provide for your loved ones. Assets held in a trust are not subject to probate, allowing for immediate access and avoiding delays and legal complexities.

INSURANCE AND OTHER FINANCIAL PRODUCTS

Do you and your partner have adequate life insurance coverage? Life insurance payouts are typically processed quickly and can provide essential funds to cover expenses during the probate process.

Regularly review and update beneficiary designations on life insurance policies, retirement accounts, and other financial products. This ensures that the funds are directed to the intended recipients without the need for probate.

We encourage our clients to keep detailed records and maintain a list of all financial accounts, insurance policies,

and other assets. Details should include account numbers, contact information for financial institutions, and any relevant passwords. This information should be shared with a trusted family member or legal advisor.

PRE-PAID FUNERAL PLANS:

Anyone watching mainstream television these days will know of the pre-paid funeral plans to cover the costs associated with the funeral and burial. For some people this can be an appropriate way to alleviate financial pressure on the surviving partner and ensure that funeral arrangements are carried out according to the deceased's wishes.

LEGAL ADVICE:

We don't apologise for recommending our clients to consult with a legal professional to discuss estate planning and probate processes. Lawyers and experienced Legal Executives can provide tailored advice based on your specific circumstances and help you implement strategies to minimize financial difficulties.

CONCLUSION

Taking proactive steps in financial planning and understanding joint accounts and probate requirements can significantly ease the financial burden during the difficult time following the death of a partner or spouse.

By maintaining joint accounts, ensuring proper documentation, planning with wills and trusts, securing insurance, and seeking professional advice, you can ensure smoother financial management and focus on what really matters - honouring the memory of your loved one and supporting your family.

HOW ENGAGING A REPUTABLE MORTGAGE ADVISER CAN HELP ALLEVIATE MORTGAGE PRESSURES IN NEW ZEALAND

For many families in New Zealand, mortgage pressures can strain finances and relationships. High or rising interest rates, changing economic conditions, and unforeseen personal circumstances can make managing mortgage payments challenging.

We have dealings and contact with a number of mortgage advisers (previously known as brokers), and in this article we explore some of the issues and identify things you should take into account in considering whether to engage one.

FINANCIAL ASSESSMENT

Understanding your financial circumstances is a key focus of reputable mortgage advisers. They will provide a comprehensive assessment of your situation and take into account your income, expenses, existing debts, and long-term financial goals. This personalised approach helps identify the most suitable mortgage products and strategies to ease financial strain.

ACCESS TO A RANGE OF LENDERS

Mortgage advisers have access to a wide network of lenders, including major banks, credit unions, and non-bank lenders. This broad access allows them to compare various mortgage products and find options that may not be available directly to consumers. By exploring these options, advisers can often secure more favourable terms and interest rates, reducing monthly payments and overall costs.

TAILORED MORTGAGE SOLUTIONS

Every family's financial situation is unique, and a one-size-fits-all approach to mortgages often falls short of the best outcome. A skilled mortgage adviser can tailor solutions to fit specific needs. Whether it's refinancing an existing mortgage, consolidating debt, or finding a more flexible repayment plan, advisers can customise strategies to reduce financial stress and improve cashflow.

GET IN TOUCH

Partners

David Woodbridge
John Henderson
Phil Payton

Associates

Cindy Cotter
Jack Henderson
Jenny Pain - Legal Executive

Staff Solicitor

Chris Cantillon

Senior Team leader (Asian team)

Jessie Yang

Registered Legal Executives

Teresa Cunningham
Jenny Bidois

Contact Details

Phone: 06 327 7159
Email: enquiries@ehw.co.nz
Website: ehw.co.nz
Branches: Marton, Hunterville, Feilding & Wellington



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INDUSTRY EXPERTISE

Mortgage advisers are experienced negotiators who can advocate for and on your behalf. They understand the intricacies of the various mortgage products available and can often negotiate better terms with lenders. This expertise can lead to lower interest rates, reduced fees, and more favourable repayment conditions, easing the financial burden on your family.

TIME SAVING

Understanding the mortgage market can be complex and time-consuming. Good mortgage advisers streamline the process by handling the details and the paperwork, liaising with lenders, and ensuring compliance with regulatory requirements. This reduces the administrative burden on families, allowing them to focus on other important aspects of their lives.

LONG-TERM PLANNING

Beyond securing a mortgage, reputable advisers offer long-term financial planning advice. They can provide insights into managing mortgage repayments, planning for future financial goals, and building a robust financial strategy. This broad approach ensures families are better prepared to handle future financial challenges and reduce stress over debt and the management of it.

CONCLUSION

Engaging a reputable mortgage adviser in New Zealand can be a transformative step for families facing mortgage and/or other debt pressures. Through personalised financial assessments, access to a range of lenders, tailored mortgage solutions, expert negotiation, and long-term planning, advisers can provide valuable support.

An initial discussion with your legal advisors can help identify whether a mortgage adviser can help you. We have contact with a number of advisers and can help with introductions.

DISCLAIMER

This publication is intended as a general overview and discussion of the subjects dealt with and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation.

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