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## YOUR HOME

Most couples own their homes either as joint tenants or as tenants in common. A joint tenancy means both names of the owners are on the title and the property is inherited solely by the surviving spouse or partner on the death of the first of the owners.

Property held as tenants in common in equal shares equates to each party owning a one-half share of the house (or other assets) which is distributed on the death of each party in accordance with the terms of that person's Will.

Under the present law any assets in your name either solely or as joint tenants or tenants in common can eventually be used to pay for any liabilities which you may have already incurred or incur in the future. Under the present law, the most effective way you can protect your present assets is to have them owned by an entity other than yourself.

## PROTECTION OF YOUR HOME USING OF A TRUST

By transferring your property to a Trust the property then ceases to be owned by yourself. This involves selling property to the Trust. This usually involves the preparation of an agreement for sale and purchase and selling the property from yourself to your Trustees at market value. Your Trustees acknowledge a debt back to you for the value of the home, and thereafter you immediately embark on a gifting programme to forgive the debt owed by the Trust. The Donors thereafter gift \$27,000.00 each per annum to forgive the indebtedness owing by the Trustees of the Trust.

If this process is undertaken the maximum amount which can be gifted without gift duty is the sum of \$27,000.00 per annum per individual. The rates of gift duty are:

- The rate of gift duty for gifts not exceeding \$27,000.00 is nil;

- \$27,000.00 to \$36,000.00 is 5% of the excess over \$27,000.00;
- \$36,000.00 to \$54,000.00; \$450.00 plus 10% of excess over \$36,000.00;
- \$54,000.00 to \$72,000.00; \$2,250.00 plus 20% of the excess over \$54,000.00;
- Exceeding \$72,000.00 \$5,850.00 plus 25% of excess over \$72,000.00.

You can see that the rapid escalation of Gift Duty usually causes any gift on an annual basis over the sum of \$27,000.00 to be prohibitive.

The beneficiaries of the Trust are named in the Trust Deed and we recommend discretionary Trusts to enable the Trustees to benefit any of the beneficiaries from either the income or capital from the Trust.

## **RESIDENTIAL CARE SUBSIDIES**

The Residential Care Subsidy provides financial assistance for long term residential care in a rest home or hospital.

The means assessment for the Residential Care Subsidy is completed by WINZ. Eligibility for the subsidy may be affected if you have deprived yourself or gifted cash and/or property. You should get legal advice on how your eligibility may be affected before setting out on a gifting program.

Gifts of up to \$5,500.00 a year may be excluded from the financial means assessment. It may be possible to gift up to \$5,500.00 retrospectively for up to five years if you have received a high level of care before application.

The limit for gifts in the five year period preceding the application for Residential Care Subsidy is \$5,500.00 per year. This should not be

confused with the limit of \$27,000.00 per year which is allowed by Inland Revenue as an annual gift without Gift Duty.

Please note these are details from part of WINZ policy and as such are liable to change at any time. Check with a lawyer at any time to see if there have been changes.

## **WHO CAN GET A SUBSIDY?**

You may be able to get a Residential Care subsidy if:

- You have had an assessment of your individual needs that confirms you need long term residential care in a licensed rest home or hospital; and
- You need this care for an indefinite length of time; and
- You are 65 or older (some people aged 50-64 may also qualify); and
- the value of your assets are within certain limits.

Any income you receive goes towards your care - up to a maximum of \$746.06 (New Plymouth). The first \$879.00 of gross income is exempt, \$1,758.00 for a couple both requiring care or \$2,636.00 where only one partner requires care.

The value of your assets must not exceed these limits:

- \$190,000.00 for single or widowed people; or
- \$190,000.00 in combined assets if you are a couple and both in long term residential care; or
- \$95,000.00 in combined assets (not including the value of the house if it is the principle place of residence of the partner who is not in care and car) if you are a couple and only one of you is in care.

These exemption thresholds increase \$10,000.00 per year with the next due 1 July 2010.

### **WHAT COUNTS AS ASSETS?**

The assets taken into account include:

- cash or savings
- investments, shares or stocks
- loans made to other people (including family trusts)
- your house and car if you live alone

### **ASSETS NOT COUNTED INCLUDE**

- your house or car if a partner or dependent child lives at home
- personal belongings such as clothing and jewellery
- pre-paid funeral expenses for you and your partner of up to \$10,000.00 each
- household furniture and effects

### **WHAT COUNTS AS INCOME?**

Income is money you get from any source, including:

- New Zealand Superannuation, any pension or income support payment
- overseas Government pensions
- New Zealand registered private superannuation schemes and annuities (50% is counted as income)

- contributions from relatives
- accident insurance payments
- earnings from investments or business or employment
- income from a family trust

A war disablement pension is not counted as income.

If you have a partner caring for dependant children there are maximum income levels that your partner can earn before part of their income is required to be used to contribute towards your residential care fees.

### **IF YOU OWN A HOME**

Your home counts as an asset if you are single, widowed, or both you and your partner are in long term residential care.

Your home is not counted as an asset if your partner or dependant children live in your home.

If your home counts as an asset, you probably will not be eligible for a subsidy. However, you may be able to get an interest free loan from WINZ instead. The loan must be repaid if you die or sell the home (in some cases the loan does not have to be repaid straight away when you die).

If your assets are above the threshold because you own your own home and you have limited cash or other assets you may be able to get an interest free loan if

- your cash or investments are under \$15,000.00 and you are single *or*
- \$30,000.00 if you are both in care

## **PAYMENT**

The Residential Care Subsidy is paid directly to the home or hospital. The amount that is paid depends on how much you contribute to your care.

## **IF YOU GET A SUBSIDY**

If you receive New Zealand Superannuation, a Veterans Pension or income support most of your payments will go towards your care. The rest is paid to you as:

- a personal allowance of \$34.87 a week (net);
- a clothing allowance of \$236.91 a year (non taxable).

If you have a partner living at home and they receive New Zealand Superannuation, a Veterans Pension or income support, your partner may get:

- a special disability allowance of \$34.96 a week to help with extra costs;
- an increase in their payments.

If your partner does not get payments from WINZ, they may qualify for income support after you go into care.

If your partner receives New Zealand Superannuation or veteran's pension they may qualify for the living alone payment as well.

## **HOW TO APPLY**

If you need long term residential care, contact the needs Assessor in your area. You will need to complete an application.

Govett Quilliam are happy to assist in obtaining and filing all requirements for this subsidy. We can ensure that your assets are protected to maintain the maximum allowable assets.

WINZ will need:

- proof of your income and assets
- proof of pre-paid funeral expenses (if you have a pre-paid funeral)
- your current bank statements
- proof of your IRD (tax) number
- proof of all assets gifted during the last five years

## **ALTERNATIVES TO A TRUST**

### **TENANTS IN COMMON**

Most people in a marriage relationship or partnership have traditionally acquired their homes as joint tenants reflecting their joint effort towards the common property. If your property is currently held in your joint names it is possible to change the form of ownership into tenants in common in equal shares. The creation of a tenancy in common enables you to alter your Will to provide for a life interest to the survivor of the deceased partner's one-half share. Under the present law the survivor never gets to own the whole property outright and one-half is always held by the first deceased estate.

On the death of the survivor the first deceased's estate would then be distributed in accordance with the first deceased's Will. Under present rules, as the survivor never owns the deceased's half-share in the property it is not taken into account in the calculations of the rest home subsidy.

Similarly other assets can be dealt with in this way including all investments. This gives the possibility of saving one-half of the assets if the survivor ends up in a rest home. If both spouses end up in a rest home, then of course it will have no effect.

## **THE BENEFITS OF THE TRUST**

By transferring your property and investments to a Trust, the property and investments then become completely outside of the ownership of the individuals gifting into the Trust. This involves the selling of properties to the Trust and then each of you gifting the sum of \$27,000.00 each per annum from monies owing back from the Trust to yourselves under the sale. The Trust legally owns the property. There are time complications and it is initially more expensive to structure a Trust and forgiveness program. However the long term benefits are substantial.

We recommend that you read the Govett Quilliam Family Trust Guide for further information about discretionary Family Trusts.

## **ENDURING POWERS OF ATTORNEY**

We recommend that you read the Govett Quilliam Guide to Enduring Powers of Attorney in relation to not only Personal Care and Welfare but also Property.

## **WILLS**

If you elect either to hold your property as tenants in common in equal shares or in a Trust, your Wills need to be revised to take into account this matter. The Govett Quilliam Guide on Wills and Estate Administration is freely available.

Please call this office if you would like further information on any guide prepared by this firm. Copies are also available from our website.

- *Asset Protection and Residential Care Subsidies*
- *Business Grants & Assistance*
- *Buying or Setting Up a Small Business*
- *Charities*
- *Companies Act 1993*
- *Consumer Guarantees Act*
- *Credit (Repossession) Act 1997*
- *De Facto Property Rights*
- *Employment Law*
- *Enduring Powers of Attorney*
- *Fair Trading Act 1993*
- *Family Trust*
- *Flexible Working Arrangements*
- *Franchising*
- *Health & Safety in Employment*
- *House Buyers and Sellers Guide*
- *Immigration*
- *Insolvency and Bankruptcy*
- *Intellectual Property and Copyright*
- *Securing Money Lent*
- *Subdivisions*
- *Traffic Offences and Breath Testing Procedures*
- *Wills & Estate Administration*

**Govett Quilliam**  
THE LAWYERS

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