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## HOW TO SECURE YOUR DEBTS

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The Personal Property Securities Register (“the Register”) is an electronic record of any debt security interests held against any personal property (except land) owned by an individual or organisation. In order to register a security interest over property a creditor needs to have ownership rights in the property.

### Purpose of Register

If someone owes you money (“the debtor”) for personal property that you have provided to them, then you are a secured party and have a security interest in that property. Your security interest attaches to that property for the purposes of the Personal Property Securities Act 1999, if you have given value to the debtor and the debtor has rights in that property. For example, an electrician installs lighting into a shop and the shop-owner fails to pay for it. The electrician has given ‘value’ to the shop-owner (the lighting) and the shop-owner has ‘rights’ in the lighting because they own it. Therefore, the electrician has a security interest in the lighting.

The purpose of the Register however, is to allow you to further protect your security interest by registering it. This enables you to enforce your security interest against a third party. For example, a debtor may sell property that you have a security interest in to a third party. If your security interest is registered then you are able to enforce your interest against that third party.

### Priority of secured parties

The goods that you have a security interest in may also be subject to a security interest from another party. By registering a security interest on the Register, you are granted priority over other unregistered security interests. If all security interests are registered, then priority is given in order of the date of registration. Therefore, when it comes to registering a security interest against goods, time is of the essence.

### Registering your security interest

In order for you to register an interest on the Register, you must register a financing statement.

The cost for registering a financing statement is \$3.00 and the process for doing so is as follows:

You must set up a Secured Party Group ID (“group ID”) the first time you access the Register. All future registrations are made under this group ID. Once you have set up your group ID then you are able to register a financing statement against your debtor.

The following details are necessary in order to register a financing statement:

- In regards to a debtor that is an individual; full name, date of birth and address.
- In regards to a debtor that is an organisation; type of organisation i.e. company, partnership or trust and organisation’s contact address.

It is imperative to retrieve this information from a debtor when entering into a security agreement with them as the fields are mandatory and a financing statement cannot be registered without it.

You must also enter information about the collateral (personal property) including the type (e.g. goods) and a description.

### Searching the register

The Register can also be searched by anyone at a fee of \$1.00. The following searches are all available on the Register:

- Debtor Person Search
- Debtor Organisation Search
- Motor Vehicle Search
- Aircraft Serial Number Search
- Financing Statement Number Search

It is advisable to search the Register before entering into an agreement to sell, supply or buy in order to avoid people that repeatedly do not pay their debts.

## GOVERNMENT TARGETS DRUGGED DRIVERS

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The Land Transport Amendment Act ("the Act") was passed on 25 July 2009 and will come into force on 1 December 2009. The Act was in response to the public's growing concern about drug-impaired drivers posing a serious risk on our roads. All drivers should be aware that the Act not only covers controlled drugs but also prescription medicine that is not taken in accordance with the instructions of a health practitioner.

Under the Act it is now an offence for a person to drive or attempt to drive a motor vehicle when they are impaired and their blood contains evidence of the use of a controlled drug or any prescription medicine.

Currently police officers are only able to ask a driver to take an impairment test but they cannot force them to do so.

Under the Act a police officer will have the ability to require a person to undergo a compulsory impairment test if they have good cause to suspect that a person has consumed either prescribed medication or illegal drugs. An individual can be required by a police officer to undergo an impairment test if they are:

- a driver or someone attempting to drive a motor vehicle
- a person whom a police officer has good cause to suspect has recently driven or attempted to drive a motor vehicle under the influence of drugs, or
- the driver of a vehicle that has been involved in an accident or if they are unable to locate the driver then a person whom the police officer has good cause to suspect was in the vehicle at the time of the accident.

## EVERY ROSE HAS ITS THORN

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New Zealand's highest appellate court, the Supreme Court, has recently delivered its decision in *Rose v Rose*. The case is about the classification of property. The Property (Relationships) Act 1976 ("the Act") defines relationship property and separate property. Relationship property is the pool of common property and at separation it is to be divided equally, unless there are extraordinary circumstances that would make equal sharing repugnant to justice. However, *Rose v Rose* exemplifies how there are also pathways whereby separate property becomes relationship property.

### Relationship Property

Relationship property as defined in the Act includes:

- the family home – whether acquired before or during the relationship
- family chattels – whether acquired before or during the relationship

### Impairment tests

The impairment tests to be implemented are already used extensively worldwide and New Zealand police officers are to receive specialist training from trainers in the United Kingdom. Proposed tests include balance (the one-leg stand test), coordination (the walk and turn test), and the eye-pupil response test.

If a person fails the impairment test then a blood test will follow to establish whether the person has taken a controlled drug or any prescribed medication.

### Defences

There are however some defences available. It is not an offence if the person consuming the controlled drug or prescription medicine has done so in accordance with:

- a current and valid prescription, and
- any instructions from a health practitioner or the manufacturer of the drug or medicine.

It is also not an offence if the person has been administered the drug or medicine by a health practitioner without a prescription, and they have complied with any instructions the health practitioner has given them.

### Penalties

The penalties for drug-impaired driving are similar to the current penalties for driving under the influence of alcohol; six months disqualification of licence and a fine of up to \$4,500.

Any evidence gathered for a conviction under the Act cannot be used as evidence in a prosecution under the Misuse of Drugs Act 1975.

- all property jointly owned
- property owned immediately before the relationship began, if it was acquired in contemplation of the relationship and it was intended for the common use or the common benefit of the partners
- all property acquired after the relationship began, unless it is separate property (s9 and s9A) or the succession, survivorship, trust and gift provisions (s10)
- increases or gains in relationship property, subject to exceptions
- increases in the value of one partner's separate property, if the increase is attributable to:
  - the use of relationship property
  - the direct or indirect actions of the other spouse or partner

### Separate Property

Separate property is defined in the Act as being any property that is not relationship property.

### **Rose v Rose**

The basic approach of the courts has been that if the non-owning partner contributes to an increase in the value of the other partner's separate property that increase in value becomes relationship property.

In this case, Mr Rose's separate property included a farm that he owned prior to the marriage.

Mrs Rose sought to share the increase in the value of the farm at the date of separation. Mrs Rose argued that during the course of the marriage relationship her outside earnings combined with her duties as a homemaker enabled her husband to keep his farm and develop it into a vineyard. During the term of the marriage relationship the farm appreciated in value significantly due to inflationary pressures and its location within a prime grape region in Marlborough.

The Court accepted Mrs Rose's argument and held that Mrs Rose was entitled to a 40% share in the increase in the value of the separate property. Mr Rose was given a 60% share giving him greater credit for the inflation and general increase in the value of the land.

It is considered a landmark decision because despite the apparent indirectness of Mrs Rose's contributions, she was awarded a 40% share of the increase in the value of the separate property.

### **A Suggestion**

One way you may possibly prevent separate property becoming relationship property is to record it in a section 21 Agreement, which also specifies that no matter what the contributions made to the relationship by the other partner during the life of the relationship, it is to remain separate property.

## **CROSS LEASE OWNERSHIP**

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Ownership of a cross lease property means you own a share of the underlying land and lease flats (or houses) to yourself and other owners for (normally) 999 years. A cross lease plan is annexed to the certificate of title and is commonly referred to as the 'Flats Plan'. This shows common areas, restricted areas and delineates the area of each flat.

### **The common areas**

The common areas, for example a driveway, may be used by all owners by virtue of their joint ownership of the land (if marked as a common area on their lease). There will be a covenant that the common area is not to be used for any purpose other than access for vehicles and pedestrians.

### **The restricted areas**

The restricted areas are intended to provide each owner with a private area for their use such as a courtyard or garden. The rights that the owner enjoys over the restricted area depend on the actual terms of the lease itself. It is imperative that a prospective purchaser search all the leases of the property in order to ascertain the full extent of all restricted areas.

### **The flats**

The area of each flat should be clearly delineated on the plan. A prospective purchaser should take the opportunity to compare the Flats Plan with the actual buildings on the property to ensure that there have been no additions, alterations, or demolitions which are not shown or recorded on the Flats Plan. The alterations or additions may encroach either on to the common area or on to a restricted area and the owner has no leasehold title to them, and is in breach of the lease if consent is not sought and the Flat Plans altered.

### **Objecting to title**

If you are purchasing a cross-leased property you can object to title if the Flats Plan is defective. You are able to object to title subsequent to signing an agreement for sale and purchase, provided you do so within the correct timeframe.

If alterations or additions have been made to the flats so the exterior dimensions have changed, the vendor will be unable to give you a leasehold title to the alterations/additions and the title is defective.

On receiving an objection notice from a purchaser, the vendor usually has one of three options. S/he can correct the title, cancel the agreement, or negotiate with the purchaser.

To correct the title, the vendor must:

- have a cross-lease plan of the alterations or additions prepared and deposited in the Land Registry Office, and
- surrender the cross-lease and have a new cross-lease of the altered or enlarged building executed and registered.

This process is costly and relies on the co-operation of all parties.

In summary, a cross-lease title should be checked carefully to ensure there are restricted areas, common areas and the Flats Plan is correct. If you want to purchase a cross leased property and there is a problem with the Flats Plan, you may be able to have the vendor rectify the issue and proceed accordingly.

## THE HAGUE CONVENTION

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New Zealand is a signatory to the Hague Convention on Civil Aspects of Child Abduction ('the Hague Convention'). The purpose of the Hague Convention is to provide a mechanism that enables abducted children to be returned to custodial parents. It has been implemented into New Zealand law under the Care of Children Act 2004.

### Basic Principles

The Hague Convention has three basic principles:

- Custody of the child should be determined in the country where the child usually lives.
- The rights of the child are the primary consideration.
- Children should not be taken or kept overseas without the prior agreement of other people legally entitled to give their consent.

The Hague Convention was introduced to combat the problem of non-custodial parents taking their children overseas without the custodial parent's consent.

### Seeking return of child to New Zealand

In order to use the Hague Convention to seek the return of your child to New Zealand the following requirements must be met:

- Your child is under 16.
- Your child was habitually resident in New Zealand before they were taken overseas.
- Your child has been taken or retained in a country that is a party to the Hague Convention.
- Your child was taken or is being retained outside of New Zealand without your prior consent or the consent of the Court.
- You were entitled to be consulted about your child being taken or being kept out of New Zealand, because of your rights in relation to the child.

### Grounds to oppose return of child

If a person has applied for the return of your child under the Hague Convention then there are circumstances where you can refuse to return your child. Any one of the following situations may be grounds for doing so when:

- The application for return was made more than one year after the child was removed and they are now settled into their new environment.
- The person who is making the application for the return was not exercising their custodial rights at the time the child was removed.
- The person making the application consented to or later accepted the removal of the child.
- There is a grave risk that the child's return would expose the child to physical or psychological harm.
- There is a grave risk that the child's return would place the child in an intolerable situation.
- The child objects to being returned and has reached an age and maturity where it is appropriate to give weight to the child's views.
- The return of the child is not permitted by the principles of New Zealand law relating to human rights.

### Child's views

A child is able to object to being returned back to the country they came from. The weight that a court gives to the child's objections will vary due to their age and maturity.

The Hague Convention is only enforceable in countries that are signatories. This means that you cannot use the Hague Convention to have a child returned from a country that has not signed the Hague Convention, for example China.

## SNIPPETS

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### Residential Tenancies Amendment Bill

In May 2009 the Residential Tenancies Bill was introduced into Parliament in order to further clarify the rights and obligations between landlords and tenants. It is designed to encourage the development of a rental market that provides stable, quality housing to those who rent their homes. Until the Bill is passed into law the existing provisions of the Residential Tenancies Act 1986 remain in force.

The changes include:

- extending the provisions of the Act to include tenants in boarding houses and some rented accommodation where meals or cleaning services are provided;

- introducing common principles to indicate when landlords or tenants are responsible for charges such as water or rates;
- introducing a more transparent process for terminating or renewing tenancies;
- increasing the value of fines and exemplary damages to encourage landlords and tenants to comply with obligations under the Act;
- providing for residential tenancy disputes to be resolved more quickly, fairly and cost effectively with improved dispute resolution processes;
- improving the enforceability of Tenancy Tribunal Orders; and
- prohibiting tenants being charged 'letting fees'.

### Combating Illegal Street Racing

Introduced to Parliament in May 2009, the Land Transport (Enforcement Powers) Amendment Bill and the Vehicle Confiscation and Seizure Bill are the Government's responses to the ongoing problems of illegal street-racing around the country. The Bills are designed to work in unison and will enhance the powers of police and road controlling authorities to tackle this problem.

The new laws are targeted at only a small portion of the community. For everyday responsible drivers, nothing will change.

The Land Transport (Enforcement Powers) Amendment Bill will:

- allow local authorities to create bylaws that prevent vehicles cruising city streets;

- allow the compulsory impoundment of vehicles involved in illegal street racing; and
- contain tougher penalties for noise offences, failure to give driver details, licence breaches and registration plate offences.

The Vehicle Confiscation and Seizure Bill will:

- allow vehicles to be seized and destroyed as a last-resort option to punish and deter the most serious repeat offenders of illegal street racing;
- allow vehicles repeatedly used by people with overdue traffic fines to be sold to pay those fines;
- allow vehicles to be confiscated that are owned by third parties who allow an offender to use his or her vehicle; and
- clarify legislation so vehicles can be confiscated by the Courts from an impoundment yard.

### CONTINUING EDUCATION

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It is a requirement that all solicitors attend seminars to keep up with legal developments in their field of expertise. The following seminars have been attended by members of our Firm. If you would like information on any of the following seminars please contact us.

**Trusts Conference** – Paul Anderson

**Drafting for Success in the Family Court** – Paul Shearer, Keryn Broughton and Nina Elliott

**The New Trial Committal Process and Disclosure Regime** – Andrew Laurenson and Lucin Fraser

**Residential Property Transactions** – Stu Barraclough

**The New REINZ – Agreement for Sale and Purchase** – Paul Franklin and Sandy Ellice

**Property Relationship Masterclass** – Paul Shearer

**The Art of Written Persuasion** – Lucin Fraser

**Health Information Privacy Code** – Paul Franklin

**Relationship Property** – Paul Shearer and Kaye McKenzie

**The New District Court Process** – Lauren Wallace and Lucin Fraser

### GOVETT QUILLIAM PROFILES

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#### John Ruyters – Practice Manager/Accountant



John and his wife Raylene hail from Dunedin originally and John started his working life with AMP Society. Shortly after John and Raylene married, they were shifted by AMP to Wellington and a few years later, to New Plymouth. The writing was on the wall that eventually AMP would recall them to Wellington and realising that they were on to a good thing in New Plymouth, John took up a new position with Govett Quilliam in 1983. John is still with the firm more than a quarter of a century later and still in the same position, but the work content has changed remarkably from those earlier days. The rapid change and integration of technologies has meant that John has grown into the role of technology supervisor and problem solver for many of the issues which arise throughout the Govett Quilliam network. John also tends to the affairs of a number of clients with a speciality in investment and elder law and the various facets of his job means that there is rarely a dull moment.

Outside the office, John enjoys outdoor activities, 'sampling' a variety of wines, socialising with friends and travel. In preparation for grand-fatherhood for the first time, John has been growing a few grey hairs.

#### Debbie Osborne – Personal Assistant



Debbie hails from Huirangi and is proud to be a country girl at heart. She spent seven years living in London and travelling throughout Europe before returning to complete her teaching degree in 2000. After several years teaching, Debbie chose to return to legal work and was employed by Govett Quilliam as a personal assistant in July 2006. Since that time, Debbie has worked for the commercial team, in particular in the estates area, as well as doing in-house computer training, precedent work and completing one of the Legal Executive papers available through Open Polytechnic. Debbie enjoys reading, movies, music, crafts and has recently discovered the joys (and frustrations!) of gardening and home DIY. She also has a new nephew to spoil rotten and is loving being home in Taranaki.

## GOVETT QUILLIAM NEWS

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### **GQ v RaboBank Squash Game**

Govett Quilliam and RaboBank squared off in a titanic squash battle at the YMCA on Friday 7 August. GQ personnel included Franklin, Laurenson, Flitcroft and Keast while RaboBank fielded Bettington, Cooper, Cleland and Arnold.

The games were very tight with Cleland securing a win against Laurenson and Arnold drawing with Franklin. Flitcroft pulled one back for GQ against the mighty Bettington to set up a fantastic final with Keast winning the competition with a narrow victory against Cooper. 2–1 to GQ the final result.

## GOVETT-BREWSTER ART GALLERY

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### **HOLIWATER: INSTALLATION AND PERFORMANCE: 19 September - 4 October 2009**

The *Holiwater* Project is inspired by direct experience of the sacred Ganges river of India – its rhythms, its beauty, its people, its meaning for humanity and, sadly, its rapid deterioration.

### **CHINA IN FOUR SEASONS: GUO FENGYI: 12 September – 29 November 2009**

The exhibition *China in Four Seasons: Guo Fengyi* features the astonishing drawings of one of China's most captivating artists.

### **JUDITH WRIGHT: CONVERSATIONS: 19 September – 29 November 2009**

Expanding on this suite of exhibitions' exploration of drawing and its flow into the moving image, Judith Wright's practice enters the realm of the intimate, the personal and the exquisitely subtle.

### **NALINI MALANI: 10 October – 29 November 2009**

Nalini Malani is an exemplary pioneer of experimental art in India. Her works are experientially powerful and are informed by astute political and historical observation.

### **OPEN WINDOW**

A highly visible ongoing exhibition space for emerging New Zealand artists.

Katie Breckon: 12 September – 10 October

Kurt Adams: 17 October – 27 November

### **MONICA BREWSTER EVENING**

The Monica Brewster evening in association with Govett Quilliam brings an impressive array of national and international artists and cultural thinkers to New Plymouth. It offers an evening of exceptional speakers, art, food, wine and conviviality. Entry \$12, Friends of The Govett-Brewster Art Gallery \$8, students with ID free.

### **Gaylene Preston: Tuesday 29 September 6.00 - 8.00pm**

One of New Zealand's leading filmmakers, writer, director and producer Gaylene Preston has made some of the most enduring popular classics of Aotearoa cinema.

### **Nalini malani: Tuesday 13 October 6.00 - 8.00pm**

Nalini Malani will speak about the evolution of her complex and multi-disciplinary practice and its concerns.

### **Alberto Baraya: Tuesday 24 October 6.00 - 8.00pm**

Colombia's Alberto Baraya explores present-day consumption and use of nature.

For more information on exhibitions and events phone (06) 759-6060 or visit [www.govettbrewster.com](http://www.govettbrewster.com)

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