# Echo Property Magazine

## Property tips and traps

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**THE NORTHERN RIVERS' BEST REAL ESTATE GUIDE**

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# Property transactions: the tips

Simon Haslam

## *'I wish I had known that before I…'*

Regrets, we've all had a few, but misunderstanding the legal, taxation and financial implications of property transactions turns out to be quite common, even for reasonably savvy people – and it can be costly. It's better to check with your advisor before it's too late, even if you think you've got it nailed.

We asked local lawyer **Adam van Kempen** (from BVK Solicitors and Attorneys) and accountant **Nick Moran** (from Mayberry Meldrum Anderson Accountants and Taxations Consultants) to outline a few commonly misunderstood issues.

Adam van Kempen from BVK Solicitors and Attorneys

Nick Moran from Mayberry Meldrum Anderson

## First home buyers

The federal First Home Guarantee (FHG), under which first home buyers can get a loan to purchase a property with as little as 5% deposit, is just part of one of what lawyer Adam van Kempes says is one of the best environments for first home buyers in terms of guarantees and concessions offered. However the caps on the house prices that this can apply to (in NSW $900,000 for capital cities and major regional centres and $750,000 for other areas of the state), whilst great for new home buyers, are less useful in the Northern Rivers, particularly Byron Shire, due to high house prices.

In addition to the First Home Guarantee, all states offer stamp duty exemptions and concessions for first home buyers. Some states in addition also offer a cash grant for new home purchases – in NSW $10,000. Stamp duty is exempt on homes up to $800,000 and reduced for homes between $800,000 and $1m. For vacant land, on which you intend to build as a first home owner there is no duty up to $350,000, and concessions on land between $350,000 and $450,000.

Adam points out that, unlike the federal guarantee, this is statewide and does not take into account the difference in prices between regional areas and capital cities – so while this will be great for some people, in some capital cities and regional areas the benefit of these concessions is diluted again by high real estate prices.

## LMI: you are not insured!

Adam says, 'One of the advantages of the FHG scheme is that it removes the [lender's] requirement for you to take out and pay for Lenders Mortgage Insurance (LMI) if you have a deposit of less than 20% of the purchase price. This can be a huge expense: for example, if you wanted to buy a property for $750,000 but only had a 10% deposit ($75,000) rather than 20% ($150,000) then the cost of the LMI would be a whopping $27,500.

'With a small deposit, big loan and deteriorating labour market, there's a potential to get into trouble in a falling real estate market. Most people assume that in paying for very expensive LMI, they are the ones who are insured if something goes wrong and they end up in default in their mortgage payments, but that is not the case. By paying for LMI, it is the lender who gets the benefit of the insurance. For example, if you were to default on a home loan, and the property was sold as a result – with the bank still owed, say $100,000, then the insurer would pay that money to the bank – but then would seek to recover the money paid from you – most people don't realise that in this situation they are paying exorbitant insurance premiums to insure the lender – not themselves.'

# and traps you need to know

## Your will: capital gains tax and overseas executors

Adam says, 'At the other end of the spectrum is the consideration of real estate in Estate Planning terms. Historically, many people have appointed an overseas resident as the executor of their will in Australia, for various reasons including, commonly, ex-pats appointing an overseas sibling or family member. From 1 July 2016 (with certain changes) the federal government introduced a 'Foreign Residents Capital Gains Tax' of 12.5% on the sale price of the property.

'In order to avoid paying this tax to the Tax Office on completion of a sale the vendor or seller must produce a "clearance certificate" issued by the ATO – and if the vendor is the estate executor, who is foreign, they will not be able to get such a certificate and the tax must be paid to the ATO, regardless of whether the original owner of the property was resident in Australia and could have produced a clearance certificate in their name. So if you own property in Australia and have a foreign non-resident executor – change your will!'

## Land tax

Adam says, 'Land tax is levied on the unimproved land value – for most properties at 1.6% of the land value – that is it ignores that value of any building and improvements. It is the value set by the Valuer-General that is also used by councils to determine rates.

### Land tax and family trusts

'People often talk about purchasing property (or leaving property in a will) in or to a family trust for asset protection or other financial planning reasons, and sometime there are good reasons for doing so. Family trusts however are classed as 'special trusts' because of their discretionary nature; no beneficiary has a right to any distribution from the trust – it is up to the discretion of the trustee. Properties held in family trusts do not have the benefit of the land tax threshold in NSW (currently $1,075,000 for 2024).

### Threshold applies to whole portfolio

'The land tax threshold apply applies once – to the aggregate land value of all the taxable properties that are owned. This is commonly misunderstood; if you own two taxable properties, and each of them is below the threshold, you will still pay land tax to the extent that the combined value exceeds the threshold.

### Land tax and Byron Bay CBD rents

'The mechanism by which land tax affects the commercial mix in towns like Byron Bay is poorly understood by the general public. One of the huge problems facing commercial landlords and tenants in Byron Bay in particular, but also throughout the region, is the massive increase in land values – many have doubled in the past year. Despite the ability to "average" increases over up to three years, this means that land tax – which is often paid by tenants as part of their "outgoings" in their lease – has in some instances more than doubled. So, in addition to very high retail rents in the Byron CBD and other areas, tenants are now being slogged with massive and unsustainable outgoings – through the landlord, but ultimately from the NSW state government.'

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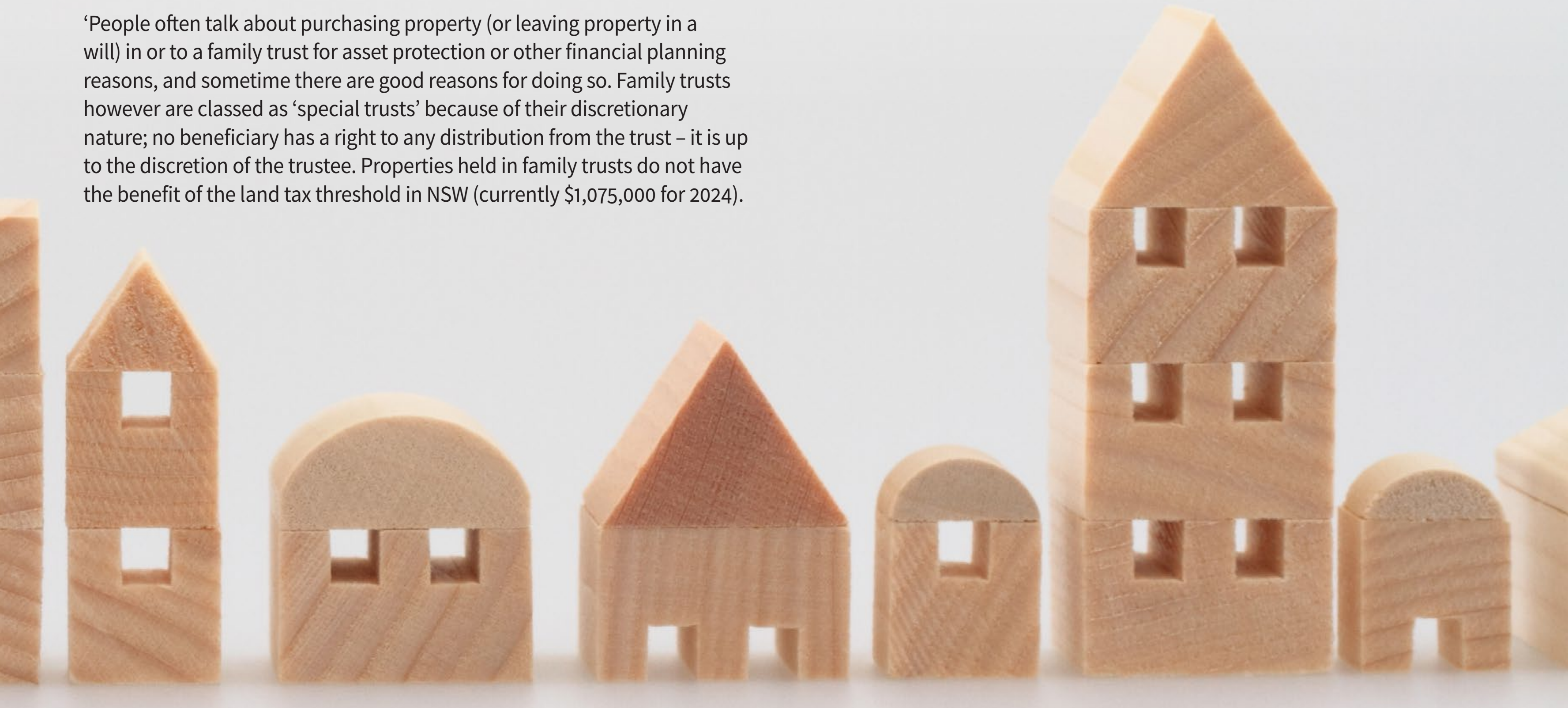

# Property transactions tips and traps

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## Capital gains tax main residence exemption

Local accountant Nick Moran surprised us by saying that one of the most misunderstood issues for his clients was something they'd all heard about.

Nick Moran says, 'Almost everyone who owns or has owned property is aware of the main residence exemption: that is you do not pay capital gains tax on the sale of your main residence. The basic case can be very simple – you own a property which is where you and your family live, and when you sell this property for more than you paid for it you will not declare or pay tax on the gain. However for something that can be so simple, there are numerous factors that can turn the simple into the very complex. We talk to so many clients about main residence exemption and it is not uncommon to hear the phrase "I wish I had known that before".'

'Here are some of the common factors that vary the basic main residence exemption, and importantly some tips to get the most out of the exemption:

## The six-year rule

'If you have a main residence and stop living in it, you can elect to continue treating this as your main residence for up to six years while it is generating income, or indefinitely if it is not. Importantly you need to vacate the home – renting on AirBnb over the summer will not count and WILL impact your main residence exemption.

'If you move from one home to the next, and rent out your former home, this gives you the flexibility to choose which property will be treated as your main residence.

'Another example is property owners who are 'rentvesting' i.e. you rent where you live and own a property which you rent to tenants. If you had lived in that property even for a short period before renting, it may qualify for the full main residence exemption on sale,' says Nick.

## Using your home to generate income

'If you rent out part of your home, or holiday let your home for small periods, or run a business from home, you will impact your ability to apply the main residence exemption in full. You may still qualify for a partial exemption depending on the length of time you generated income and the percentage of your property used to generate income. It is important to understand this before using a home to generate income as the capital gains tax cost may outweigh the income received.'

## Holding costs

'Where you are not entitled to the full main residence exemption, any property holdings costs that have not been claimed as a deduction can reduce the future capital gain on sale by increasing the property cost base. Say you rent out your home every school holidays, or 25% of the year. This means 25% of your future capital gain will be taxable and you will likely have claimed a tax deduction for 25% of your holding costs: mortgage interest, rates, insurance, etc. The remaining 75% of these holding costs can increase your cost base and reduce your taxable capital gain. It is important to keep a record of these costs, even if you stop using your home to generate income. Doing so can make a huge difference to your future tax bill.

'Any time you are considering purchasing or selling property, or using your property to generate income, it is highly recommended to seek advice before you take action so that you can understand and make the most out of the concessions available.'