

## CGT AND FAMILY LAW – WILL YOU HAVE TO PAY?

Before December 2006 Capital Gains Tax "roll over relief" usually applied when people transferred the ownership of their home between themselves after the breakdown of their relationship. Now a new law means that this tax exemption may not apply and you will need to even more carefully consider how you arrange your property settlements to minimize the impact of CGT.

The ATO will now take into account the way in which both the Transferor and Transferee used the property when determining whether the CGT exemption will apply. This means that property transfers that were previously tax free may be hit with tax bills when a home is sold.

While the Capital Gains Tax payable may not always be a significant sum of money, if there is a long period between your separation and your property settlement, or there is a boom in the property market, the tax payable when you eventually sell may be substantial.

CGT roll over relief now also applies to "Binding Financial Agreements" and "Termination Agreements" as well as Court Orders. These written agreements are not registered with a court, but are legally binding. Being able to use a financial agreement instead of having to obtain a Court Order could save you a lot of time and money.

### **EXAMPLE:**

*John and Jane own a house together as their main residence for tax purposes. After their separation, Jane leaves the home and buys a new property that becomes her main residence. Twelve months later, John and Jane agree to property settlement Court Orders.*

*Under the Orders, Jane will transfer her half of the house to John. If John later decides to sell the house, he may now have to pay part Capital Gains Tax on the increase in the value of the home for the 12 months between when Jane bought her new home and the date the property settlement was agreed.*

## LESSEES BEWARE - EXERCISING YOUR OPTION!

In a Supreme Court of NSW case, a lessor, Henry, granted a lease to Lewis for three years with an option for renewal for three years in respect of restaurant premises in Sydney. The following year, McGregor and another person purchased the restaurant business and took an assignment of the lease. The option for renewal contained in the Lease provided that the tenant must serve on the landlord a notice of exercise of option no earlier than 1 August 2004 and no later than 1 November 2004. These dates were incorrect in the Lease as the year should have been noted as 2003. The lessees purported to exercise the option by letter dated 3 November 2003 which was delivered to the lessors on 3 or 4 November 2003.

At the time of service of the notice of exercise, the lessees were then in arrears in rent. On 1 September 2003 before the service of the notice of purported exercise of the option, the lessor's solicitors advised the lessees that the lessors would enter into a fresh lease on certain conditions. The conditions included the payment of arrears of rent, a security deposit and one months rent in advance.

On 15 October 2003, the lessor's solicitors wrote to the lessees informing them that they were no longer prepared to enter into a new lease and, provided that the rent was paid, the tenancy

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## Have Your Say

We are always seeking new material for inclusion in the newsletter. All submissions for the newsletter will be considered and could include a technical paper on a pertinent property issue, an experience that you would like to share with the membership or even a funny story that we all may relate to. The newsletter is sent out four times a year and any time spent in preparing articles will count towards CPD points. Submissions should be forwarded to Tracey Viarella by fax on 02 42948304 or by e-mail to TViarella@bigbpond.com.au



could continue on a month to month tenancy. In February 2005, the lessees instituted proceedings in the Supreme Court of NSW against the lessors seeking a declaration that they validly exercised the option for renewal of the lease and an order for specific performance and an order that the lessors be restrained from taking possession of the property.

The Court held that the option had not been exercised effectively.

The case demonstrates that an option for renewal needs to be exercised by lessees strictly within the time specified in the lease, and in the manner specified for exercise in the lease. In other words, late exercise of an option for renewal cannot be relied on to be cured by the Courts.

be exercised when reviewing the terms of a reverse mortgage as the different loan products in the market have terms that significantly vary. It is also prudent to consider alternatives to a reverse mortgage such as the sale of the existing property and "downsizing" to a smaller and perhaps more manageable property that costs less to purchase than the amount generated by the sale of the existing property.

***The 3 property related articles prior have been kindly provided by Rankin Nathan Lawyers who have offices in Sydney  
Ph: 02 9247 1300 and Newcastle  
Ph: 02 4929 9333.***

***For further information contact Simon Cotterill or Andrew Sheeley of Rankin Nathan Lawyers***

## REVERSE MORTGAGES AN INCREASING TREND

A relatively new loan product is being offered by several financial institutions in Australia, primarily to senior citizens. This product is known as a reverse mortgage. It is generally a condition of obtaining a reverse mortgage that the borrower seeks independent legal advice.

A reverse mortgage is a mortgage, secured over land owned by the borrower, that generally does not have to be repaid during the lifetime of the borrower or whilst the borrower remains in occupation of the land.

Reverse mortgages can assist those people who own their own property but do not have significant savings and are generally living, fortnight to fortnight, on a fixed income such as a CentreLink pension. Many people see reverse mortgages as a way of alleviating current financial constraints by borrowing monies against property they own so that they can have funds available to cover unforeseen expenditure or maintenance improvements on the property or for lifestyle reasons. Considerable care should



**CROWNE PLAZA™**

**HUNTER VALLEY**

**COUNTRY CONFERENCE**

**Saturday 16 June 2007**

The 2007 Country Conference is being held at the new Crowne Plaza Hotel at the Hunter Valley.

The venue is located within the well known wine region which provides a fantastic opportunity to enjoy all the Hunter has to offer at the perfect time of year.

The Crowne Plaza facilities include the Hunter Valley Country Club 18-hole Golf Course, heated

pool, spa, tennis courts and basketball court. The venue also has a 24-hour health and fitness centre and on-site beauty salon. Please visit the Crowne Plaza website at [www.crowneplaza.com.au/huntervalley](http://www.crowneplaza.com.au/huntervalley) for further details.

The Institute has arranged for a number of rooms to be held for Friday and Saturday nights, however, these will be released to the public on 11<sup>th</sup> May, 2007. Please book early to avoid disappointment.

A registration brochure will be forwarded in the near future. Please note it is the responsibility of the delegates to arrange for their accommodation booking.

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**Media Release**  
**7 March 2007**



## **SPEEDING UP VALUATIONS FROM TWO DAYS TO TWO HOURS**

NICTA and Lending Industry XML Initiative (LIXI) are releasing new protocols that could see the valuation stage of a home loan application reduce from two days to just two hours.

LIXI is inviting valuers, software developers and lenders to attend the official launch of the Valuations Reference Implementation. The event, Implementing LIXI-Compliant Valuations Services, is a demonstration which will be held on March 7 in NICTA's Research Lab at the University of Melbourne at 2pm.

After the launch, LIXI members will be able to download a set of web services including documents and sample codes – and do so at a lower cost. Previously, LIXI offered one membership package but for the first time, the industry can choose to buy portions of LIXI's intellectual property (IP), making it more accessible, relevant and affordable to all areas of the industry.

For the past five years, not-for-profit group LIXI has worked to develop e-commerce standards for electronically processing and administrating home loan information using a Credit Application Language (CAL).

LIXI's technical focus is to describe the loan process in terms of the data created and manipulated. Its collaboration with NICTA is

about improving interoperability through ecommerce standards for business processes by incorporating CAL and web service technologies.

According to Socrates Vasiliadis, CEO, LIXI, valuation is an area where the industry was expressing confusion and it was a relatively self-contained problem that a set of standards could address.

"The industry confusion stemmed from a lack of formally documented, standard processes where similar software was written for the same problems. Not only will this development reduce technology costs for the valuer community, it will also offer improved efficiency and better relationships with lenders."

The collaboration, called the Business Process Working Group, includes representatives of NICTA and LIXI, which incorporates all the major participants in the Australian lending industry.

According to Paul Mackie, Industry Liaison, NICTA Empirical Software Engineering (ESE) Program, having the standard vocabulary is not sufficient to guarantee e-business interoperability between so many participants in the industry.

"The goal is for all parties to be able to communicate easily with each other, and have the means to evolve without re-engineering interfaces for each new participant they do business with. To get to that point the industry needs a reference architecture and the standard guidelines on how to implement the technology," he said.

This development will assist valuer intermediaries in the industry such as SmartVal who will also use the technology to improve their online document management systems.

Plans are underway for NICTA and LIXI to prepare reference architectures for other lending processes such as the circulation of loan product information from lenders to the many thousands of mortgage brokers in the industry.

For more details on the reference implementation launch, including registration, register to Implementing LIXI-Compliant Valuations Services, go to [www.lixi.org.au](http://www.lixi.org.au)

### **About NICTA**

NICTA is a national research institute with a charter to build Australia's pre-eminent Centre of Excellence for information and communications technology (ICT).

NICTA is building capabilities in ICT research, research training and commercialisation in the ICT sector for the generation of national benefit.

NICTA is funded by the Australian Government as represented by the Department of Communications, Information Technology and the Arts and the Australian Research Council through *Backing Australia's Ability* and the ICT Centre of Excellence program

NICTA was established and is supported by its members: The Australian Capital Territory Government; The Australian National University; NSW Department of State and Regional Development; and The University of New South Wales. NICTA is also supported by its partners: the University of Sydney; University of Melbourne; the Victorian Government; the Queensland Government; Griffith University; Queensland University of Technology; and Queensland University.

#### About LIXI

LIXI has more than 85 members, including banks, non bank lenders, broker groups, mortgage aggregators, mortgage insurers, valuers, solicitors and settlement agents.

## **\$8.2 MILLION 'BLUEPRINT' FOR CUTTING SMALL BUSINESS RED TAPE**

**A consortium led by Rockdale City Council in partnership with the NSW Local Government and Shires Associations (LGSA) this week won Federal Government confirmation of an \$8.2 million online project which will cut red tape and promote business efficiencies impacting on 38 councils and a third of the State's population.**

The project - "Local ePlanning Blueprint" - will use online capacity to streamline local planning and regulation compliance for small business. It will be managed by the LGSA's Online Solutions group.

The Federal Government is providing funding worth \$6.2m under the Regulation Reduction Incentive Fund (RRIF). The balance of project resourcing is provided by the LGSA and the consortium of metro and country councils.

Over two years, the project will build user-friendly online systems and be able to deliver online planning services not only to the nominated councils, but others wishing to join in streamlining their service delivery.

The President of the Local Government Association, Cr Genia McCaffery, said the success of the program will come from direct collaboration through the initial group of bid councils who handle one third of the State's

planning and development transactions.

"We will run a communication campaign promoting the project by engaging small businesses and other stakeholders involved with local government, such as the private developer sector, small business associations and professional networks.

The President of the Shires Association, Cr Col Sullivan OAM, said NSW small business will save more than \$43 million per annum as a direct result of streamlining applications for development, licenses and permits.

"As other councils join in, these savings will be substantially greater," he said.

"The Local ePlanning Blueprint project will certainly deliver major savings in submitting and tracking development applications, as well as a wide range of local regulation compliance.

"In short, we will be delivering more timely and less complex solutions for small businesses and infrastructure providers who deal on a daily basis with their local council," Cr Sullivan said.

The NSW bid had strong support from the Minister for Planning, Frank Sartor, and business networks, especially Australian Business Limited and local Chambers of Commerce.

The Chairman of Online Solutions, Cr Paul Braybrooks, said the bid proposal focused on Local Government's capacity to deliver resources to local community based groups. "We intend to effectively engage with our small business community in the roll-out of this program.

"Local ePlanning Blueprint will be a new online vehicle to save substantial time and reduce business costs. It will bring small business and government agencies into closer contact to better understand and achieve time savings and cost reductions," Cr Braybrooks said.

Successful implementation of the project for participating Councils will call for a multi-disciplinary approach bringing together the skills and perspectives of planners, economic development managers, IT personnel, business managers, communications and frontline staff, as well as others, to deliver an integrated package that will benefit the Council in the long term as well as the local business community.

Together, the 38 councils account for 31 per cent of development applications in NSW; 34 per cent of the State's population; and cover 136,000 small businesses.

Based on 56 key transaction types, the councils

undertake more than 670,000 planning and development transactions each year with small business. Local ePlanning Blueprint aims to reduce this to 515,000, a 26 per cent saving.

The major gain for small business will be time saved through online activity. Time taken using existing structures within the area administered by the 38 councils is 770,000 hours per year. Over two years, this is estimated to be reduced by more than 50 per cent to just 305,000 hours annually.

For more information on the "Local ePlanning Blueprint" project contact LGSA Online Solutions Program Director Allison Hornery on (02) 9242 4053

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## MARKET EXPECTATIONS, CHALLENGES TO PROPERTY VALUES

*By Chris Lackey*

The question is frequently asked "what is happening to property prices" and "when do you expect property prices to increase?" After three years of declining or near negative growth, some respite would be welcomed by vendors and mortgage lenders.

There are, however, numerous factors which continue to be hurdles for the residential property market, a number of which are summarised as follows:

- ♦ Australian borrowers are within an increasing interest rate climate, the most recent increase in the official cash rate to 6.25% being the eighth increase since May 2002 reinforcing a cautious attitude to new borrowing and further pressure to existing borrowers.
- ♦ Home loan repayments as a proportion of family income have risen from 26.9% in 2002 - 2003 to 32.4% for 2005 - 2006, such rate likely to have increased due to a further 0.5% interest rate impost.
- ♦ Consumer price index for all groups has increased from 2.6% in the year 2003 to 2004 to 4% in the year ending June 2006, however interest rate costs have increased and property prices have declined squeezing disposable income.
- ♦ Australians are currently saving a minimal amount of their household income, which needs to change, particularly given the loss of equity in home ownership and potential

for increasing rents due to low new home construction.

- ♦ Globally, there is a tightening of monetary policy ie. the increasing of interest rates, which has been actioned due to inflationary pressures.

Australia has seen the longest run of uninterrupted economic growth since Federation. The main focus has been on the resources market with demand from China and India, however, the impact of such growth has been relatively localised to areas such as Western Australia. The majority of business within Australia is conducted through New South Wales and Victoria, which are performing poorly. New South Wales is therefore missing out on economic growth which flows through to the real estate market. Areas such as Perth now have the second highest average property price in Australia behind Sydney.

Present conditions show little relief. Additional challenges include drought conditions for farmers and high exposure to manufacturing, which is labouring under a strong Australian dollar. On the positive side, unemployment levels are at record lows, trade with China and India may continue to grow and a recent survey has voted Australia to be the third best place in the world to live, which can't be a bad thing.

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## TWO TIER MARKETING

*By Chris Lackey*

There have been a number of recent sales which have underlined the continuing problems of two tier marketing to investors at inflated prices.

Resales are now beginning to occur within Auburn in a large high rise residential apartment complex. When originally valued by our office, sale prices could not be substantiated particularly when applying sales evidence outside of the development.

Recent resales include the following:

Unit purchased 12/2002: \$380,000, resold  
03/2006 \$313,000. Loss \$67,000.

Unit purchased 12/2002: \$415,000, resold  
11/2005 \$375,000. Loss \$40,000.

Similarly, significant losses are being experienced in a large, high rise apartment complex within Caringbah which again involved two tier marketing to investors. Recent resales



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including the following:

Unit purchased 31/05/2002 \$450,000, resold  
31/05/06 \$320,000 Loss \$130,000

Unit purchased 19/05/2004 \$428,260, resold  
20/07/06 \$335,000 Loss \$93,260

Our office recently undertook a valuation for mortgage purposes of a 1.5 year old three bedroom villa in Mount Druitt which was purchased new at \$365,000, however, resold July 2006 at \$232,500, showing a loss of \$132,500. Clearly the property was never worth \$365,000 and either represented two tier marketing, fraud or a purchaser naive of the local market. Mount Druitt has historically, however, been a target for two tier marketing schemes due to the availability of medium density zoned sites suitable for lower cost redevelopment capable of being marketed as new products to investors at affordable, relatively inflated prices.

## UNAPPROVED GRANNY FLATS

*By Chris Lackey*

The Sunday Telegraph of the 2/2006 reported a Sydney landlady had been ordered to repay a tenant \$10,000 in rent because the converted garage he leased in Double Bay had not been approved for human habitation. The Consumer Trader and Tenancy tribunal ruled the lease to the tenant was illegal and unenforceable. Interestingly, the landlady claims she has paid separate council and water rates on the rented garage for 25 years, however, council claims it has never approved it for occupancy.



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Send your details to Marelle at the AVI on:

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The situation where garages are converted to granny flats or sleep outs without council approval is prevalent throughout Sydney and generates confusion where owners misinterpret the approval of the overall structure to be transferable to an alternate granny flat use. The situation may only ever become apparent via a complaint from a neighbour. A purchaser may view the possibility of housing a relative within a converted outbuilding to be of benefit. This attracts premium price above that ordinarily attributed to its use as a garage. From the legal standpoint and valuers perspective, however, the value attributable can only be as its approved use. This also has consequences in terms of assessing the market rental value for the property, there being no additional rental attributable to an illegal flat. However, this does not preclude additional rent being included for a flat approved for habitation.

There has also been a sudden rush to implement regulations that impose significant compliance burdens on landlords, agents, vendors and tenants in relation to the installation and maintenance of smoke detectors. New South Wales government regulation states that there is an obligation to install smoke alarms by the 1<sup>st</sup> May 2006 with an extension until 1<sup>st</sup> November 2006 to comply. Regulations demand that from 1<sup>st</sup> May 2006, vendors under a contract for the sale of land must attach a statement to the contract that the dwelling complies with new smoke alarm laws. Given the increasing burdens placed upon landlords by the Residential Tenancy Act and amendment to smoke alarms regulation, the continued occupation or leasing of illegal flats would be at significant risk of litigation should a fire or injury occur.

## AVI website

[www.valuersinstitute.com.au](http://www.valuersinstitute.com.au)

This newsletter is general in nature and should not be taken as being definitive statements on the subjects covered. Readers should seek professional advice before acting on any of the contents.