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Ph: 03-343 5880 | Fax: 03-343 5888 | E-mail: partners@mbp.co.nz | Web: www.mbp.co.nz**Welcome to the first issue of *Rural eSpeaking*.****This newsletter will be published electronically about three times a year, more if there are burning issues or there is news that may have an immediate impact on your business.*****Rural eSpeaking* is emailed to you free!**

It is all part of our service to you to ensure you receive quick efficient communication of rurally-focused business news, articles and stories of interest.

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*Much farm property is passed down by inheritance through the generations. As a general rule, inherited property is separate property under the Property (Relationships) Act 1976 and is not available for sharing with the non-inheriting spouse. However, there are some circumstances where the inherited property itself may remain separate, and any increase in the value of that property can become relationship property and therefore available for division with the other spouse...* CONTINUE READING**Getting a fair deal with network utility operators**

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LEGAL PRACTICES

## Inherited Property Implications of the Property (Relationships) Act 1976

*Much farm property is passed down by inheritance through the generations. As a general rule, inherited property is separate property under the Property (Relationships) Act 1976 and is not available for sharing with the non-inheriting spouse. However, there are some circumstances where the inherited property itself may remain separate, and any increase in the value of that property can become relationship property and therefore available for division with the other spouse. In the landmark decision of *Rose v Rose*<sup>1</sup> earlier this year, the Supreme Court clarified the law in relation to claims for a share of the increase in value of separate property.*

### Background

Mr & Mrs Rose married in 1979 and separated in 2003. At the time of the marriage, Mr Rose was already the sole owner of a farm property and a partner with his father and brother in a partnership which carried on the farming business on that property and also on two other blocks separately owned by his father and brother.

The brothers sold large portions of the land in 1989 to reduce debt, but the remaining land had potential for growing grapes and they began the development of vineyards on their properties. When their father died in 1995, the two brothers inherited his share of the land and the farming partnership.

### After separation

After they separated, Mrs Rose claimed a share of the increase in value of Mr Rose's land, and a share of the increase in value in the land and partnership owned by Mr Rose and his brother.

As to the partnership vineyard assets, the court observed that the partnership business was effectively Mr Rose's job carried out for the common benefit of both he and his wife. It was not merely an investment. The partnership's funding for the vineyard development was secured over the home in which the couple lived and which was relationship property. As a result, Mrs Rose shared a one half of the increase in value of the shared property since the vineyard was planted on it.

As to the property owned solely by Mr Rose, the court found that Mrs Rose indirectly contributed to the increase in value. By her funding of the household and the children, from her own earnings, she enabled Mr Rose to spend long hours on the partnership and allowed him to moderate his drawings so that more money (or in reality more borrowing capacity) was available for the development of the vineyards. Mr Rose's development work was funded by increasing the partnership's indebtedness and, thus, Mr & Mrs Rose's relationship debt. Mrs Rose's efforts impacted directly on the value of his land, at the expense of a debt of which Mrs Rose had to bear her share.

Notwithstanding Mr Rose's claims that a large proportion of the increase in value of the land was due to inflation, the court awarded Mrs Rose 40% of the increase in value of Mr Rose's land.

### Implications

Until this decision, the courts have generally required the spouse to have made some tangible contribution to the property in question. Now it is clear that indirect contributions of the type in *Rose* can result in a successful claim.

For families who have farmed through the generations and hope to continue to do so, this case is an illustration of the difficulties that can occur through relationship breakups. As always, sound advice in structuring land-owning entities can limit the effects of this legislation.

<sup>1</sup> SC 73/2007 [2009] NZSC 46

## Getting a fair deal with network utility operators

### Helping you make an informed decision

*When a network utility operator approaches you requiring access over your property or to buy your land or an interest in it, it is in your best interests to get some professional advice. This article sets out some of the matters to be considered that will help you make an informed decision.*

Network utility operators (NUOs), such as telecommunication, electricity, rail, roading, or airport providers, on occasion require entry to, and/ or an interest in, rural land to conduct surveys or investigations, service or maintain existing facilities, or to construct new amenities. An NUO's requirement may be as minimal as requiring access to the property for a registered surveyor to conduct preliminary surveys, however it may be as significant as requiring that you sell a portion of your productive land for the construction of a new amenity.

### Get professional advice

When you are approached by an NUO, the first thing you should do is get some professional advice. NUOs will invariably be represented by large legal firms that will generate documentation that is prepared with the best interests of the NUO in mind. If you agree to the NUO having entry or buying an interest in the land on their terms without talking with your professional advisers, you could end up giving the NUO more rights to your property than is necessary.

### To be considered

Matters that should be considered include:

- » Restrictions on the extent of the NUO's rights so that its access is restricted to the minimum extent necessary
- » The extent to which the NUO is obligated to 'make good' any damage that it causes as a result of its entry and the time period in which that must be completed,
- » An indemnity from the NUO for any loss you may suffer as a result of the NUO's entry
- » The value of any compensation payable by the NUO
- » Restrictions on your use of the land and obligations in the event that you wish to sell
- » Restrictions on who may carry out the work on the NUO's behalf and access the property for that purpose, and the
- » Duration of the NUO's rights.

If you do not seek professional advice, you may inadvertently give the NUO more rights over your property than it necessarily requires, and for a very low price!

Talking with us, and other professionals if required, can help ensure that the NUO provides you with the relevant information you need to make an informed decision. We can advise you on your legal rights, help you through the negotiations, ensure that you get a fair deal and that any documentation entered into with the NUO looks after your interests so far as possible—not just those of the NUO.

The best thing is, in most cases, the NUO should agree upfront to meet all your reasonable expenses in obtaining the professional advice you require.

## Over the Fence

### Reverse sensitivity covenants

It is common for a rural landowner to subdivide off a surplus lot or house site. If you are contemplating subdivision you should consider registering a 'reverse sensitivity' or a 'no complaints' covenant against the subdivided title.

This covenant could prevent any future owner of the subdivided lot from complaining, eg: under the Resource Management Act, about the use of the balance of the landowner's property.

In a rural environment this might mean that no complaints could be made by the owner of the subdivided lot in respect of stock management, sprays, odours, use of agricultural machinery and equipment.

When you are contemplating a subdivision, visualise the future 'neighbour from hell' and ask us to help protect you by preparing a reverse sensitivity covenant.

### Resource consent breaches

In November<sup>1</sup> a District Court judge decided that convictions can be recorded in the District Court against parties found guilty of breaches under the Resource Management Act.

In a case brought by Environment Bay of Plenty against forestry management consultant PF Olsen Limited, the judge ruled that the council can make the decision whether to issue an infringement notice or to prosecute summarily (in the District Court) for breach of a resource consent.

Do not assume that a breach of resource consent will result in an infringement notice only; the regional council may elect to prosecute.

### ACC cover for earnings fluctuations

What do farmers, contractors and commission-based sales people have in common? Nothing. Except their earnings are often at the mercy of seasonal conditions, currency changes or market fluctuations. If your earnings vary from year to year, you should seriously consider ACC CoverPlus Extra.

Currently if you're injured and have to take time off work, you can receive up to 80% of the previous year's income (provided you can show proof of earnings) if you have ACC CoverPlus or ACC WorkPlace Cover. So if your income stays the same year in year out, or if last year's income was good, this level of cover should be sufficient. But what happens if:

- » Your income fluctuates and last year's earnings were poor?
- » You're just starting out in your own business and have no income history?
- » Your personal income is not a true indication of your true earnings capacity because you're splitting income with a partner or spouse or you have taken advantage of options to reduce your tax?

*ACC CoverPlus Extra:* With ACC CoverPlus Extra cover, if you are injured and have to take time off work, you are guaranteed a pre-agreed level of income regardless of how much you earned in the previous year. Unlike ACC CoverPlus and ACC WorkPlace Cover (where the weekly payment is reduced if your business continues to generate income), ACC CoverPlus Extra payments remain fixed at the pre-agreed level. To know more, look at [www.acc.co.nz](http://www.acc.co.nz)

Source: ACC

### Remember

#### 15 DECEMBER – 28 FEBRUARY.

If you are purchasing or leasing a Fonterra supplying farm or changing the nature of your supplying entity, the application period is 15 December 2009 to 28 February, 2010. Applications outside the application period are accepted at Fonterra's discretion.

#### 24 DECEMBER:

NZ Dairy Industry Awards: entries close on 24 December 2009 – see [www.dairyindustryawards.co.nz](http://www.dairyindustryawards.co.nz)

<sup>1</sup> Bay of Plenty Regional Council v PF Olsen Limited DC ROT CRN;08063501462 [13 November 2009]