

KiwiSaver Amendment Regulations 2007

Preamble

At Wellington this 11th day of June 2007

Pursuant to sections 228 and 229 of the KiwiSaver Act 2006, His Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Finance made in accordance with section 229 of that Act, makes the following regulations.

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1 Title

These regulations are the KiwiSaver Amendment Regulations 2007.

2 Commencement

These regulations come into force on 1 July 2007.

3 Principal regulations amended

These regulations amend the KiwiSaver Regulations 2006.

4 New headings and regulations inserted

The following headings and regulations are inserted after regulation 19:

“Fee subsidy

“20 Fee subsidy

- “(1) The chief executive of the Department must pay a fee subsidy of \$40 per annum in respect of each member of a KiwiSaver scheme.
- “(2) The fee subsidy must be paid in instalments as follows:
- “(a) one-half of the annual fee subsidy is payable on the date on which the Crown contribution made under section 226 of the Act is payable in respect of the member; and
 - “(b) one-half of the annual fee subsidy is payable on each 6 month anniversary of that date, provided that—
 - “(i) the person is still a member of a KiwiSaver scheme on each later instalment date; and
 - “(ii) the KiwiSaver end payment date referred to in clause 4 of the KiwiSaver scheme rules (which relates to lock-in of funds) has not been reached in relation to the person.

- “(3) Each instalment of the fee subsidy must be paid to the person who is the provider of the member’s KiwiSaver scheme on each instalment date.
- “(4) The provider must credit each instalment of the fee subsidy on a pro rata basis across the investment products of the KiwiSaver scheme to which the member has subscribed or been allocated.
- “(5) However, if the member has subscribed or been allocated to more than 1 investment product of a KiwiSaver scheme and 1 or more of those investment products contain unvested employer contributions or any other contributions that are not fully vested in the member, the provider of the KiwiSaver scheme must, to the extent practicable, credit the fee subsidy on a pro rata basis across only the investment products that do not contain those sorts of contributions.
- “Compare: 2006 No 40 s 226(2)

“Mortgage diversion facility

“**21 Mortgage diversion facility**

The purpose of regulations 22 to 29 is to provide for a mortgage diversion facility that allows contributions to be withdrawn from KiwiSaver schemes, and applied towards the payment of amounts that are secured by a mortgage over a member’s principal residence, if the provider and the mortgagee choose to participate in the mortgage diversion facility.

“**22 Participation on terms consistent with principles in Act**

Providers of KiwiSaver schemes and mortgagees may participate, in accordance with the Act and these regulations, in a mortgage diversion facility that is in accordance with the principles in section 229(2) of the Act.

“**23 Which types of mortgages qualify for participation in mortgage diversion facility**

- “(1) A mortgage qualifies for participation in the mortgage diversion facility if it—
- “(a) is a mortgage over the mortgagor’s principal residence; and

- “(b) secures obligations in respect of the mortgagor’s principal residence; and
 - “(c) is not a mortgage that secures obligations under a revolving credit contract.
- “(2) A revolving credit contract—
- “(a) means a credit contract (within the meaning of the Credit Contracts and Consumer Finance Act 2003), whether or not the contract specifies a credit limit, if the contract anticipates multiple advances to be made when requested by the debtor in accordance with the contract; but
 - “(b) does not include a contract that provides for a known or determinable amount of credit by instalments of known or determinable amounts.
- “(3) A contract that allows money that has been repaid in advance of the repayment schedule to be readvanced to the mortgagor is not a revolving credit contract only because the contract so allows.
- “Compare: 1981 No 27 s 2; 2003 No 52 s 5

“24 **What member of KiwiSaver scheme must do first to participate in mortgage diversion facility**

A member of a KiwiSaver scheme who wishes to participate in the mortgage diversion facility in respect of a mortgage must—

- “(a) request his or her mortgagee to participate in the mortgage diversion facility in respect of the mortgage and to have KiwiSaver contributions diverted for that mortgage; and
- “(b) give to the mortgagee a statutory declaration that the property that is mortgaged is his or her principal residence; and
- “(c) give notice to the mortgagee of the name and address of the provider of the KiwiSaver scheme.

“25 **What mortgagee must do to participate in mortgage diversion facility**

A mortgagee must, if the mortgagee agrees to participate in the mortgage diversion facility in respect of a mortgagor,—

- “(a) receive the statutory declaration referred to in regulation 24(b); and
- “(b) give to the mortgagor—
 - “(i) notice of the mortgagee’s agreement to participate in the mortgage diversion facility in respect of the mortgagor; and
 - “(ii) confirmation that the mortgage qualifies for participation in the mortgage diversion facility under regulation 23.

“26 What member of KiwiSaver scheme must do next to participate in mortgage diversion facility

A member of a KiwiSaver scheme whose mortgagee has agreed to participate in the mortgage diversion facility must give to the provider of his or her KiwiSaver scheme—

- “(a) a request to have KiwiSaver contributions diverted in respect of his or her mortgage; and
- “(b) a copy of the statutory declaration referred to in regulation 24(b); and
- “(c) a copy of the information referred to in regulation 25(b).

“27 What scheme provider must do to participate in mortgage diversion facility

A provider of a KiwiSaver scheme who receives the information referred to in regulation 26 must, if the provider agrees to participate in the mortgage diversion facility in respect of the member of the KiwiSaver scheme,—

- “(a) ensure that the member meets the criterion in section 229(2)(c) of the Act (which requires a 12-month minimum period before KiwiSaver contributions can be diverted); and
- “(b) ensure that each amount forwarded to the member’s mortgagee complies with section 229(2)(i) of the Act (which requires the amount to be capped at no more than half of the person’s contribution rate and to be a fixed dollar amount); and
- “(c) ensure that employer contributions are not diverted; and
- “(d) forward the diverted amount to the mortgagee as soon as practicable after receiving the amount.

“28 Termination of participation in mortgage diversion facility

- “(1) This regulation applies if—
- “(a) a provider of a KiwiSaver scheme or a mortgagee decides to terminate participation in the mortgage diversion facility in respect of all or any members (whether the termination is in respect of members who are already having contributions diverted under the facility or other members); or
 - “(b) the member of a KiwiSaver scheme who participates in the mortgage diversion facility in respect of a mortgage—
 - “(i) pays the total amount secured by the mortgage; or
 - “(ii) chooses to cease participation in the mortgage diversion facility; or
 - “(iii) ceases to be a member of the relevant KiwiSaver scheme; or
 - “(c) the mortgage is discharged.
- “(2) The provider must stop forwarding contributions to the mortgagee in respect of the member and must retain the KiwiSaver contributions in the member’s accounts.
- “(3) The person whose act caused this regulation to apply must give notice to the other 2 participants in the mortgage diversion facility.

“29 How regulations affect trust deed

The terms and conditions of the mortgage diversion facility referred to in these regulations—

- “(a) are implied terms of the trust deed of any KiwiSaver scheme that participates in the facility; and
- “(b) override any express terms of the trust deed to the contrary.”

Rebecca Kitteridge,
for Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 July 2007,—

- provide for the Crown to pay a fee subsidy of \$40 per annum in respect of each member of a KiwiSaver scheme. The fee subsidy is payable in 6-monthly instalments; and
- provide for a mortgage diversion facility that allows contributions to be withdrawn from KiwiSaver schemes and applied towards the payment of amounts secured by mortgages, if the mortgagee and the scheme provider agree. The facility is capped at no more than half of the person's KiwiSaver contribution rate.

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