

ARE YOU A LANDLORD, OR TENANT? (THAT INCLUDES JUST ABOUT EVERYONE IN BUSINESS)

The Property Law Act 2007, which came into force on 1 January this year, enacts a considerable amount of changes that both Landlords and Tenants in a commercial situation should be aware of. The Act does not affect residential tenancies.

Some of the important changes are:

- * That a Landlord cannot re-enter the premises and "change the locks" when the rent is in arrears without first giving written notice to the Tenant and there are certain requirements for the notice to be effective.

- * The right of distress i.e. seizing the Tenant's chattels and selling them has been abolished.

- * The presumption when a lease runs past its expiry date of a monthly tenancy has changed to a periodic tenancy, which relates to the rental interval, rather than just straight monthly. This has a flow-on effect on giving the correct notice.

- * The requirement for obtaining Landlord's consent to various matters such as change of use, assignments etc, have been altered so that the Landlord has only very narrow grounds for denying consent and needs to act in a timely manner. The restrictions contained in this clause need some careful consideration as the pendulum has swung even further to the Tenants rights.

There are a number of other changes which relate to commercial leases, but we do emphasise all changes referred to in this article are effective as from January 1 2008, even though your lease may pre-date that date.

Accordingly, when you are looking to review, or renew leases as a landlord, attention needs to be paid to the updating of the form of lease. Fortunately a new form of commercial lease has been produced by the Auckland District Law Society and that should be regarded as reasonably standard within the commercial community in Auckland and may be used in most cases.

OTHER CHANGES

There are many changes in the Property Law Act outside the lease area which is not surprising as this is the first major re-write of the legislation in 50 years. There are changes for mortgagees and lenders acting to enforce their securities as well as a number of changed time limits and required notices. No action under securities or leases should be taken without reference to the amended requirements.

We would be happy to give you advice on any specific matter, please refer to the Partner with whom you normally deal.



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EMAIL/SPAM

The Electronic Messages Act 2007 prohibits unsolicited electronic messages with a New Zealand link from being sent.

1. An unsolicited commercial electronic message is a commercial message that the recipient has not consented to receiving. It is usually intended to market or promote goods, services, land or an interest in land or a business or investment opportunity.
2. If the message originates in New Zealand or if the person who sends the message is physically present in New Zealand when the message is sent or an organisation whose central management or control is in New Zealand when the message is sent then it has a New Zealand link. The Act goes further in describing and explaining the meaning of a New Zealand link.
3. A fine of up to \$200,000.00 can be imposed for breaches.

The definition of unsolicited commercial electronic messages is very wide and even this newsletter may be seen as falling into that category. We believe that this will affect almost anyone in business in New Zealand. We strongly advise that if you wish to send unsolicited commercial electronic messages then you should consult with Wyan Nelson or Tamara Liebman of this office who will assist you.

FIRM TALK

We are pleased to welcome back Tamara Liebman who is working on reduced hours and believe it or not her daughter is now a year old.

Wyan Nelson has joined the firm after emigrating from South Africa. Wyan was a sole practitioner in a provincial town North of Cape Town with a very varied experience in Intellectual Property, Banking and Commercial work. We welcome Wyan, his wife and two sons to New Zealand and are doing our best to make him a "Blues" supporter.

Eddie Doherty (Consultant) recently completed an impressive trip with his Tiger Moth Bi-Plane to Dunedin and whilst he is not allowed at the controls these days he's still a good weatherman and navigator.

WILLS REVISITED

In November 2007 a new Wills Act came into force replacing essentially the Act of 1837, applying to the Wills of persons who died on or after 1/11/07. Interestingly not a great deal has changed. It is more modernisation however, some points of interest are:

The previous used and well known terms of Testator and Testatrix are replaced by the term Will-Maker. The Will-Maker can make, change, revoke, or revise a Will.

1. A Will must be in writing.
2. At least two witnesses must be together in the Will-Maker's presence when the person signs the Will.
3. The witnesses must state on the document in the Will-Maker's presence that they were there when the Will-Maker signed and sign the document in the Will-Maker's presence.
4. Although an executor may witness a will under the new Act, we believe it is in a will-makers best interest to:
 - a. Instruct his/her lawyers to assist in drafting the will.
 - b. To sign it in the lawyers office so that the lawyer can assist on the legalities of the signatures.
 - c. Not to make a witness to the will a beneficiary of the will.
5. There is no effect on the validity of the Will if the witness did not know that it was a



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Will.

There are rules about witnessing and who (or their spouse, or partners) may benefit from the Will and this is likely to invalidate the Will, or disentitle that person. Generally the Will-Maker must be 18 years, or older, but there are some exceptions to the rule.

It is important to have a current Will as if the worst happens serious and expensive complications in the distribution of the persons estate can arise.

A Will-Maker can also revoke a Will by making a later valid Will, or by expressing his intentions to revoke a Will, or part of a Will in a document. All of this must be properly signed and witnessed as mentioned earlier. Again, there are more ways to revoke a Will, or part of it in the Act and we will be more than pleased to give you further advice on this.

You should remember that if a Will-Maker marries, or enters a civil union, the Will **will be revoked** and therefore we advise that if you are contemplating a marriage, or a civil union, that you get advice from us regarding your Will and the possible Marriage Relationship Contract, or an Pre Nuptial Contract, or a Will in contemplation of marriage.

Wills (as Trusts) need to be reviewed on a regular basis and we recommend you do so if you have not reviewed your will in the last 5 years approximately. We suggest you contact Helen Thode or Kerry Sharpin in the first instance.



ROMALPA CLAUSE

1.1 A Romalpa clause is a clause in a contract reserving to the vendor title in goods until the goods are fully paid for. Normally title is transferred from the seller to the buyer on delivery of the goods. Where a Romalpa clause applies the buyer takes possession of the goods, but the seller retains ownership until the price is fully paid. The name comes from the original case where it was decided that a reservation in title in goods was able to be recognised legally.

2 What must a vendor do to obtain the protection of a Romalpa Clause

2.1 Under the Consumer Guarantees Act 1993 a Romalpa Clause is only effective if the following conditions are met:

- (a) The buyer must confirm in writing, that it has received oral advice on the effect of the Romalpa clause in the contract on the buyer's undisturbed right of possession to the goods; and
- (b) The buyer must receive a written copy of the contract, containing the Romalpa clause.

2.2 The vendor must register under the Personal Property Securities Act 1999 the Romalpa clause in accordance with the requirements of that Act to retain priority over other creditors and in some cases a Receiver or Liquidator.

Romalpa clauses in their drafting and in their practical application are technical and difficult. We suggest you contact Brian Everett, Nigel Harrison, Kerry Sharpin, Wyan Nelson or Tamara Liebman to discuss this situation and assist as these clauses should form part of your Terms of Trade and/or credit applications.

An Old Joke

An old offender was brought before a police magistrate in New York. He asked her age.

She replied: "Thirty Five"

Suddenly he remembered that she had been before him two years ago. He consulted a book of reference, found her name and age, thirty five.

"How is this? You were here two years ago, and you announced your age as thirty five?" he asked.

"Sure Sir", said the Irishwoman. "I am not one of them people that say on thing today and another tomorrow".

Tueapeka Times, Volume XXIII,
Issue 1719, 20 August 1890, Page 3

Stu Rees – An Entertainment Lawyer

According to his website, www.stus.com, "Stu is an entertainment lawyer who represents mostly visual art creators".

He is a former cum laude graduate from Harvard Law School and lives in San Diego, USA with his wife and two small children.

Being a cartoonist himself, he believes it helps him to understand his client's needs better.

We are using two of Stu's cartoons in this issue of our newsletter and think Stu is an example of a lawyer who managed to combine his hobby (cartooning) with his legal practice and by doing that manages to provide an expertise to his clients.

You can access his website at www.stus.com and if you have any entertainment or copyright law questions, you can contact Wyan Nelson, Tamara Liebman or Brian Everett at our office.

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