

Newsletter

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THINKING ABOUT RENTING OUT YOUR HOME OR INVESTMENT PROPERTY

The purchase of a residential property with a view to letting it out is a popular investment choice for many New Zealanders.

If you are considering such an investment, or indeed already rent out a property, then you need to be familiar with the provisions of the Residential Tenancies Act 1986 (the "Act") which sets out the requirements for many residential tenancies.



Some of the main points are as follows:

➤ Tenancy Agreements to be in Writing

The Act provides that all residential tenancy agreements must be in writing. However, an agreement is still enforceable even if it is not in writing.

➤ Term of Tenancy

The Act recognises two types of tenancies:

- Fixed term tenancies that are for a specified term;
- Periodic tenancies that are not for a defined term but continue until terminated by either party in the manner set out below at point 5.

The Act does not apply to fixed term residential tenancies that are for less than 120 days or for five or more years. However, in the latter situation, both the landlord and the tenant must agree that the Act will not apply.

➤ Bond

The Act permits the landlord to require a prospective tenant to pay up to four weeks rent as a bond in advance. The money is held by the Tenancy Tribunal and is only refundable once both parties sign a form agreeing on the amount to be allocated to the tenant and/or the landlord.

The landlord is entitled to deduct from the bond the cost of any repairs that are the responsibility of the tenant but cannot use it to recover costs associated with fair wear and tear. If the parties cannot agree upon the amount of bond to be refunded, then the matter will have to be referred to the Tenancy Tribunal.

➤ Form of Tenancy Agreement

The Act prescribes a simple form of tenancy agreement; a copy can be downloaded from the website of the Tenancy Tribunal: www.dbh.govt.nz

➤ Terminating a Residential Tenancy

Either the landlord or the tenant can give notice to bring a tenancy to an end.

In the case of the tenant, at least 21 days notice must be given. In the case of a landlord, 90 days notice must be given but only 42 days is required if the landlord:

- Requires the premises for his or her own use or that of his or her immediate family;

- Has entered into an agreement to sell the property and the terms of that agreement require vacant possession;
- Requires the property in order that one of his or her employees can live in it so long as the landlord has previously notified the tenant that the premises are normally used for that purpose;

All notices to terminate a tenancy must be in writing.

➤ Disputes

The Tenancy Tribunal deals with all disputes arising out of residential tenancy agreements regardless of the issues involved. Either party can make an application to the Tribunal either during the tenancy or after it has ended.

If you are a landlord, it pays to fully familiarise yourself with the responsibilities and duties imposed upon you by the Act. It could save you a lot of time and trouble in the future.

ECONOMIC DISPARITY CLAIMS

The amended relationship property legislation introduced in 2002 signalled a shift in the way the law viewed relationships, by recognising that the contributions made by parties in a relationship are equal, particularly in the area of earning capacity.

Where a relationship ends and one spouse earns considerably more than the other, section 15 of the Property (Relationships) Act 1976 allows for the disadvantaged spouse to make a claim for compensation as a result of this “economic disparity”.



Grounds for Economic Disparity

The initial challenge is making out the grounds for an economic disparity claim. Firstly, the living standards and income of one spouse must be significantly higher than the other. What constitutes ‘significant’ is unclear as Court decisions vary.

Secondly, the living standards and income must be due to the effects of the division of functions during the relationship. In most cases this has arisen due to one spouse sacrificing career advancement to remain at home to care for the children thereby allowing the other spouse to advance his or her career.

Once the grounds have been made out, the Court has discretion as to whether it considers an award to be just in the circumstances and if it does, then the amount of compensation will need to be determined.

This resolution may sound straightforward in theory. However, Court decisions regarding economic disparity claims have proved to be inconsistent. Even in cases where claims have been successful, awards have typically been conservative. As a result, it can be difficult to establish the grounds for economic disparity as it is unclear how much weight will be attached to any particular factor.

Career or Family?

The decision to advance one’s career or take a more domestic role is one that many people face when having families – but what are the consequences upon separation?



In a recent Family Court case, a wife brought a claim for economic disparity for \$686,000 on the basis that had she not given up work to care for the children she would be earning a similar income to her husband. The claim was initially rejected by the Family Court on the grounds that the economic disparity was caused by her own decision not to return to the workforce, rather than any real need for her to remain at home. The case was appealed to the High Court and the much awaited decision was released recently.

On appeal, the High Court agreed that the division of roles within the marriage was a choice. However, the Court did not consider it appropriate to suggest a different choice could or should have been made. It found the division of roles within the marriage was the primary reason for the disparity in income. The Judge stated: "It is the classic case of a man being given full rein to develop his career and maximise his earning potential while his wife puts her career on hold. The causal link between the economic disparity and the division of roles in the marriage could not be clearer."

The case is currently being appealed to the Court of Appeal; however the High Court judgment sends a clear message that the decision to take a domestic role or advance one's career is a choice. However, just because one spouse chooses to remain in a domestic role, despite other opportunities being available, does not mean they should be treated as the author of their own misfortune. After all, the purpose of the Act is to recognise equal contributions made by parties in a relationship and every type of contribution must be considered.

UPDATE ON THE CHARITIES REGISTER

Are you the trustee of a charitable trust or involved in the administration of a charitable organisation? If so, you should be aware that various sections of the Charities Act 2005 (the "Act") have now come into force. One of the purposes of the Act is to provide for the registration of societies, institutions, and trustees of trusts as charitable entities.

Registration

Voluntary registration began on 1 February 2007. Organisations that currently have tax exempt status will need to be registered by 1 July 2008 to retain this status. Applications should be sent to the Charities Commission (the "Commission") by 1 April 2008 to ensure that registration is complete by July 2008.

When registering, each organisation must provide certain information including:

- the sector the organisation operates in
- the charitable purpose of the organisation
- the benefactors of the organisation

- the trustees or board members
- the rules or trust deed of the organisation.

Once registered as a charitable entity, there is an ongoing obligation to provide and update information on the register such as changes to the trustees, constitution, or trust deed or annual returns. For this reason, it will be advantageous for organisations to hold an annual general meeting in order to make such changes before lodging the application.

Purpose of Registration

Some of the information provided to the Commission will be accessible to the public. The reason for this is to enhance public confidence in the charitable sector.

Following registration, the Commission will provide organisations with an identifying number which can be used to assure the public that the organisation is legitimate. This will be especially advantageous for organisations that carry out fundraising ventures

RETIREMENT VILLAGES – LEGAL TITLES

Retirement villages are becoming an increasingly popular choice for older New Zealanders who wish to take advantage of the security and flexibility of the lifestyle on offer.

If you are considering purchasing a home in a retirement village, then you need to be aware of exactly what it is you are buying and in particular the sort of legal title that you will purchase when you acquire your new home.

The most common types of legal title used for retirement villages are:



Licence to Occupy

A licence to occupy entitles the resident to live in the unit but ownership of the unit is retained by the retirement village. For that reason, it is usually not possible to borrow funds from a bank or other financial institution secured against a licence to occupy.

Unit Title

A unit title is issued under the Unit Titles Act 1972 and confers legal ownership of the unit or house upon the resident. It is therefore technically possible for the resident to borrow against the value of the property. However, the occupation agreement with the retirement village will probably include re-sale restrictions which will in turn restrict the resident's ability to borrow.

Cross Lease

A cross lease title is one whereby the ownership of the freehold is shared by all of the residents who then grant leases to each other to live in the units and/or houses for a token rent.

Lease for Life

The retirement village owner grants a lease in a unit or house in the village which continues on until the resident either dies or leaves the village.

The Retirement Villages Act 2003 (the "Act") introduced new compliance procedures for retirement village operators, which are in the process of being phased in. These procedures include a requirement for the following documents to be provided to all intending residents:

- a Disclosure Statement, which includes information about the type of legal title offered and the ownership and management structure of the village, and
- an Occupation Right Agreement, which confers the right of occupation of a unit or house upon a resident, together with the right to use services and shared facilities in the village.

In addition, the Act provides that with effect from 1 May 2007, each retirement village must have a Code of Residents Rights. This code summarises the basic rights which all retirement village residents are entitled to and covers matters such as consultation, dispute resolution and the right to be provided with services and other benefits promised in the Occupation Right Agreement.

Legal Advice

The Act makes it mandatory for intending residents of a retirement village to receive independent legal advice before signing an Occupation Right Agreement. This means the resident's signature has to be witnessed by a lawyer who must certify that he or she has explained the general effect of the agreement and its implications in such a manner which is easily understood by the intending resident. An agreement that has not been properly certified may not be enforceable by the retirement village operator.



In summary, the new compliance procedures introduced by the Act should afford greater protection and security to retirement village residents.

COPYRIGHT (NEW TECHNOLOGIES AND PERFORMERS' RIGHTS) AMENDMENT BILL

This Bill will amend the Copyright Act 1994, which is now entering its teenage years. The Bill's purpose is to preserve the existing balance between protection and access of copyright works in the face of technological advances. The amendments to format shifting will have relevance for many New Zealanders.

They permit the copying of sound recordings for domestic use as long as the copy is made by the owner of the product and only one copy is made per

device. An example of format shifting is when a sound recording is copied from one format to another such as from Compact Disc to a personal computer

The closing date for submissions was 9 March 2007 and the Bill is now before the Commerce Committee whose report is due on 11 June 2007.

AN OVERVIEW OF DISPUTE RESOLUTION PROCEDURES

Most people have heard of the legendary dispute technique adopted by King Solomon almost 3,000 years ago when he was faced with two women, both of whom claimed to be the mother of a single baby. Solomon ordered that the baby was to be cut in half, with half to be given to each woman. One woman accepted the decision while the other begged the King to give the live baby to the first woman. Solomon concluded that the real mother would not allow the child to be harmed and gave the baby to the second woman.

These days, a similar dispute is more likely to be resolved after a thorough and careful weighing of detailed evidence and submissions,

in a process involving the Family Court, which may take months.

One thing that the story illustrates is the tendency, in an increasingly complex society, to replace straightforward informal procedures with an ever growing number of specialist courts, tribunals and other bodies to deal with a variety of disputes. The contrast between the ancient and modern approaches highlights that if you are involved in a dispute today, one of the first questions you need to ask is which of the many procedures available is most appropriate for you.

Alternative Dispute Resolution

Negotiation is one of the least formal procedures. It involves the parties attempting to resolve the issues between themselves without the involvement of a third party for determination (although each party may be represented by an advocate, who helps them present their arguments during the negotiations).

Assisted Negotiation is still very informal but involves a third party who attempts to help the disputing parties reach a resolution.

Mediation also involves a third party but is a more structured process than assisted negotiation. A mediator will follow a particular process to identify the issues and will take a proactive approach in helping the parties to find a solution that is acceptable to both of them. A key aspect of mediation is that the solution should come from the parties themselves. Although a mediator may suggest a solution, a crucial element of mediation is that the mediator cannot impose a resolution.

Arbitration is the most formal of the alternative dispute resolution procedures and is similar in many ways to a court hearing, with the arbitrator assuming the role of judge. The significant difference between arbitration and the other alternative dispute resolution methods is that an arbitrator does impose a decision on the parties.

Litigation

In this context, litigation is the process of formally bringing a dispute before a court or tribunal, for resolution by a judge or other decision maker, such as a disputes tribunal referee.

The two main courts in New Zealand are the District Court, which deals with disputes concerning amounts less than \$200,000, and the High Court, which deals with disputes concerning \$200,000 and above.

There are also several specialist courts, such as the Family Court, Environment Court and Employment Court. Similarly, there are many specialist tribunals and other forums that can hear and determine disputes in specific areas, such as the Tenancy Tribunal and the Weathertight Homes Resolution Service.

GOVETT QUILLIAM NEWS

The partners are delighted to announce that the following people have joined the firm:



Ethelred Chey

Ethelred Chey ("Ethel") has joined the Commercial team headed by Ross Fanthorpe. He came to New Zealand from Singapore in 1994. Ethel completed a Bachelor of Law and Bachelor of Commerce & Administration at Victoria University in 2005, majoring in Human Resource Management & Industrial Relations and Commercial Law as part of his Commerce degree. In 2005 he received the Victoria University Award for Excellence in Commercial Law. Prior to joining Govett Quilliam, Ethel was an Employment Relations Advisor with EMA Northern in Auckland and a volunteer at the Citizens Advice Bureau.



Lucin Fraser

Lucin grew up in Taumarunui and was schooled in Hamilton. He attended Waikato University but moved to Wellington part way through his degree and in 2006 completed his studies at Victoria University where he graduated with a Bachelor of Laws. Lucin is to be admitted to the bar after completion of his professional studies in mid July.

He is enjoying being in a new area and the lifestyle change from the windy city.

Continuing Education



The following seminars have recently been attended by members of our firm. It is a requirement that all solicitors attend seminars to keep up with legal developments in their fields of expertise. If you would like information on any of the following topics please contact us:

GST: Practical Advice on getting it right - Harini Fernando

The Role of the Lawyer in Protection Orders in the Family Court - Nina Elliott

Trust Account Administration - Nina Elliott, Will Barnes, Harini Fernando, Lucin Fraser

The Maritime Law Association NZ Branch Conference - Paul Franklin

Retirement Villages – The full Impact of the Act - John Eagles

Facts on Tax- John Eagles

8th Edition of the Agreement for Sale & Purchase of Real Estate - Margaret Joyce, Brad Miles, Karen Wood, Sandy Ellice

A New Zealand Representative

John Eagles, our senior partner, has been selected to represent New Zealand in the World Age Group Triathlon event being held in Hamburg on 30 August 2007. The event covers a 1500 metre swim, 40 kilometre bike ride and a 10 kilometre run.

GOVETT BREWSTER ART GALLERY

New Nature: 26 May – 2 September 2007

New Nature is curated by Gallery Director Rhana Devenport and features the work of 13 leading artists and collectives from around the Pacific Rim: Cicada, Fiona Hall, Yee I-Lann, I-TASC (Interpolar Transnational Art Science Constellation), Yeondoo Jung, Kuribayashi Takashi, Rosemary Laing, Lin Tianmiao, Jon McCormack, Caroline Rothwell, Joe Sheehan, Tang Maohong and Michael Zavros.

These artists, working from Japan, China, South Korea, Malaysia, Antarctica, Australia and Aotearoa New Zealand, explore the visual and conceptual constructions of nature as phenomena in a constant state of flux.

The works in New Nature harness gardening, carving, carpet design, painting, sculpture, installation, photography, video, drawing and new media both within the Gallery walls and beyond. Works leak out of the Gallery building with Fiona Hall's Mown inhabiting nearby Pukaka / Marsland Hill Park and I-TASC's sound-emitting sculpture Groundhog located on the New Plymouth foreshore.

Mown is comprised of 1,500 native Aotearoa New Zealand plants in a vast configuration raising questions of militarism, land and memory. Groundhog is a sculptural model of a solar and wind powered weather and communications station deployed by I-TASC in Antarctica earlier this year. The collective's offerings in the exhibition also include audio and video works.

Dr Geoff Park

TUESDAY 26 June 6.00PM – 8.00PM

In conjunction with the exhibition New Nature, ecologist, writer and eco-historian Dr Geoff Park, in his talk The wilderness and the New (and Old) Nature, will consider the notion of wilderness in relation to Taranaki, with a focus on recent research on Egmont National Park. Dr Park is concerned with New Zealand's indigenous ecosystems and understanding the colonial history that led to their near-vanishing. He recently published Theatre Country: Essays on Landscape and Whenua and regularly applies his interest in ecological history to ecological restoration.

Timothy Hill: A FOCUS ON ARCHITECTURE

TUESDAY 26 June 6.00PM – 8.00PM

Timothy Hill is a Principal of Donovan Hill Architects, a Brisbane-based practice that undertakes a wide range of commissions. The firm was recently responsible for the stunning design of the State Library in Brisbane. Hill was the Creative Director of the Royal Australian Institute of Architects National Conference in April 2007 and will discuss aspects of his architectural practice.

Monica Brewster CLUB

An evening of exceptional speakers, art, food and wine

The Monica Brewster Club is presented in association with Govett Quilliam the Lawyers and with the support of Michael Radich Wine Merchant and Cafe Govett-Brewster.

FRI 29 JUNE 10.00am

Govett-Brewster babes

Mums, dads and caregivers get your art and culture fix! Join us for a baby-friendly tour of the Gallery's current show *New Nature* followed by morning tea at Cafe Govett Brewster. \$5 per adult, babies free

SUN 1 JULY 2.00PM

SUNDAY SPECIAL: ARTIST TALK

Kirsten Bradley and Nick Ritar of Australian artist collective Cicada as featured in the exhibition *New Nature*.

SUNDAY 15 JULY 2.00PM

SUNDAY SPECIAL: Exhibition talk

Dr David Craig, sociologist, discusses the work of David Hatcher in *Semantic Bliss*

SUNDAY 22 JULY 2.00PM

SUNDAY SPECIAL: Len Lye talk

Curator Tyler Cann discusses Len Lye and film

SUNDAY 29 JULY 2.00PM

SUNDAY SPECIAL: Exhibition tour

Introduction to a library to scale with Rhana Devenport followed by a tour of Frederick B. Butler quilts and rugs with Diana Gibbons at Puke Ariki

SUNDAY 19 AUGUST 2.00PM

SUNDAY SPECIAL: Sustainable design talk

Tim Wigmore of Okato-based *unless* sustainable contemporary design

Please note that all the Govett Quilliam Guides to many interesting legal topics and opportunities are available online on www.thelawyers.co.nz. Please download them at your leisure.

Please call this office if you would like further information on newsletter items