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NEWSLETTER

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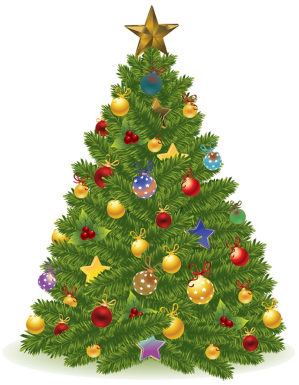
INSIDE THIS EDITION



Changes to building consents

Six new exemptions to the Building Act 2004 ("the Act") have been added, along with the expansion of four existing exemptions.

Homeowners, builders and DIYers will now have an easier time making basic home improvements as the Act has removed the requirement of building consents for low-risk building projects such as sleep-outs, sheds and carports and porches.

These new exemptions are predicted to save homeowners up to $18 million a year and reduce the number of consents by approximately 9,000. It will mean that councils can focus on higher risk building consents which will boost the construction sector and assist with New Zealand's economic recovery from Covid-19.

The new and expanded building exemptions include those outlined below.

Single-storey detached buildings such as sleepouts, sheds and greenhouses up to 30 square meters do not require a building consent. However, kitchen and bathroom facilities in such buildings are not included in the exemption and any plumbing work will still require a building consent and electrical work will need to be carried out by a registered electrician.

Carports up to 40 square metres, ground floor awnings up to 30 square metres, ground floor verandas and porches up to 30 square metres are also exempted. These types of buildings will not require a building consent if the design has been carried out or reviewed by a Chartered Professional Engineer or if a Licensed Building Practitioner carries out or supervises the design and construction.

Permanent outdoor fireplaces or ovens built up to a maximum of 2.5 metres and with a maximum

cooking surface of 1 square metre are exempted. The fireplace or oven must also be at least one metre away from any boundary or building.

Flexible water storage bladders up to 200,000 litres in capacity, which are supported on the ground, for irrigation or firefighting purposes are exempted.

Ground-mounted solar panel arrays up to 20 square metres in an urban zone can be built without the help of a professional and there is no restriction on size in rural zones.

Small bridges up to a maximum of 6 metres in length will not require consent, provided the bridges do not span over a road or rail, and the design has been carried out or reviewed by a Chartered Professional Engineer.

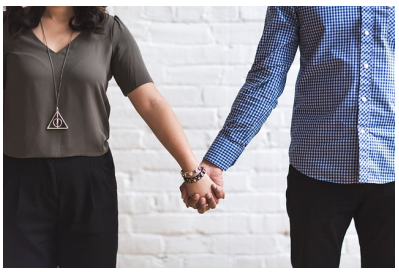
Single-storey pole sheds and hay barns in a rural zone with a maximum of 110 square metres will not require building consents. However, the design needs to be carried out or reviewed by a Chartered Professional Engineer and the construction needs to be carried out or supervised by a Licensed Building Practitioner.

The building work included within the exemptions will still have to meet the requirements of the Building Code as well as any other relevant legislation.

The exemptions were introduced in August of this year along with guidance information issued by the Government. You can access this information by going to www.building.govt.nz and search 'Exempt building work guidance'.

Relationship Property and the necessity of full disclosure

In the previous August Newsletter article on relationship property agreements, matters of relationship property under the Property (Relationships) Act 1976 ("the Act"), and the difference between a contracting out agreement ("COA"), commonly referred to as a "pre-nuptial agreement", and a separation agreement ("SA"), were dealt with.



This article will discuss a vital provision of the Act, which requires the completion of full disclosure by both parties before the agreements can be signed and certified.

Disclosure is the process during preparation of a COA or SA, whereby both parties are required to obtain or provide evidence of all their assets and liabilities.

This may be in the form of property valuations, bank statements, company annual accounts, car valuations, investments portfolios, mortgage statements etc.

Before either party can sign the agreement, disclosure is used so that the solicitors, and in some cases, the accountants, can assess the value of each party's assets and liabilities, whether joint or separate.

Once they have received this information, on the basis that they have received full and complete disclosure, the solicitors should be able to adequately advise their client of their legal position and entitlements under the Act, if they proceeded to sign the agreement and can sign-off the agreement confirming this advice has been given.

Without disclosure, both the parties and their solicitors are unable to accurately assess what their entitlements under the Act may be, and in turn, the parties may receive less than what they are entitled to. This is important, as not only can a client miss out on improving their financial position, but also, where a party has not received sufficient advice and/or information in the disclosure, or there has been deliberate withholding of information or misinformation from the other party, the agreement can be set aside by the court for "serious injustice".

It is the role of the solicitors to protect their clients in this situation, by ensuring the other party and their solicitor have provided full and complete disclosure to the best of their knowledge.

Disclosure is not only used for transparency for the parties, but also as a 'check and balance' on the actions of the solicitors who must sign off the agreements.

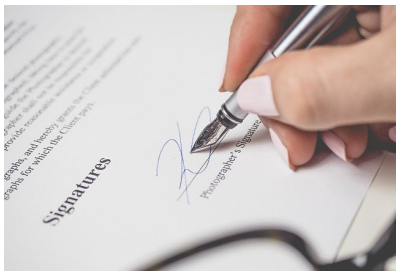
Full and frank disclosure is offered to both parties to allow for full and final settlement of the agreement and transparency of assets.

When signing these agreements, except where deception has unknowingly occurred by one party, the parties can gain a relative amount of peace from the fact that they have entered into this agreement with their 'eyes wide open' as to what they are negotiating, even if they have elected to negotiate an agreement which departs from the principles of equal division under the Act.

Given the potential intricacies of these agreements and finality once signed, it is strongly suggested that you contact a solicitor to discuss these matters further.

In any event, in order to sign either agreement, you will require independent legal advice.

What does Restraint of Trade mean?



A restraint of trade is a provision generally found in employment contracts, which prohibits an employee from working directly or indirectly with a competitor business for a specified time and within a limited geographical area, after their employment ends.

A restraint of trade can be included in other agreements such as a shareholders' agreement, where shareholders agree they will not be interested or engaged in another business similar to the business of their company while they are a shareholder and after they cease to be a shareholder for a specified time and within a limited geographical area. This article focuses on a restraint of trade in the context of employment.

Employers are increasingly striving to protect their confidential commercial information such as trade secrets, client information and product development ideas to maintain a successful business. A restraint of trade assists employers with achieving this by prohibiting employees from using such information after they leave their employment for the benefit of a competitor. However, a restraint of trade does not always provide full protection to an employer.

There are two main types of restraints: non-competition, which prevents a former employee from working in the same or similar industry as their former employer, and non-solicitation, where a former employee can work in the same industry but cannot contact their former employer's clients about their new venture.

The Courts take a prudent approach when assessing the enforceability of a restraint of trade clause and may disregard such a clause from the outset, depending on its reasonableness. Generally, restraints of trade are only enforceable if they are reasonable and not against public interest. This involves assessing the following factors; whether the:

- time period and geographical limitations are reasonable for a particular industry. A time period in the range of 2 to 6 months has commonly been viewed as a reasonable period of restraint, of course this depends on the particular circumstances of each case.
- specified activities (the employee's job) may be restrained reasonably.
- former employer has an exclusive interest capable of being protected, such as a trade secret or patent.

Depending on whether the courts find a restraint reasonable, an employer may seek an injunction to stop an employee from breaching their restraint of trade, and/or damages for the loss as a result of the breach, together with penalties for breaching their employment contract.

It is suggested that restraint of trade provisions are included in employment agreements from the outset of employment negotiations. However, if an employer wishes to add a restraint of trade clause into an employment agreement after it is in place, the employer must consult the employee about this and give them the opportunity to seek independent advice together with consideration in return. Consideration can be in the form of a higher wage or specific payment from the employer to the employee for allowing the employer to enter a restraint of trade clause into the employment agreement.

It is important to understand the implications of a restraint of trade clause as both an employer and employee. The key is to find the balance between protecting your business while ensuring the restraint is reasonable and accordingly, enforceable.

It is advisable to get in touch with your lawyer to discuss restraints of trade either at the outset, during or the end of employment, whether you are an employer or employee.

Employment changes in regards to working from home

The global spread of COVID-19 and subsequent lockdown in New Zealand changed the way that many organisations conducted business.

Employers and employees needed to work together to slow the spread of COVID-19 and keep each other safe. This meant that normal employment obligations to act in good faith were more important than ever.

The implications of COVID-19 and working arrangements meant that if businesses were required to close during the lockdown, they needed to consult with their employees in good faith in order to reach an agreement in the way the workplace would carry on remotely.

In addition, employers needed to adopt a more flexible approach to work hours and productivity and

implement stricter policies around staff staying at home when they are sick.

Employers and employees may have wanted flexible ways of working during this time (for example, staggering start times). Parties should have discussed these matters and agreed to arrangements in good faith.

These changes may have been temporary or permanent and the length of time for this change must have been recorded in the employment agreement variation. Any changes had to be recorded in writing and signed by both parties, and the parties given reasonable time to consider the proposal.

During the COVID-19 period, there may have been circumstances where consultation on changes could reasonably have been shortened if the employer genuinely needed to make rapid adjustments to cope with their circumstances. Shortened processes must still occur in good faith and provide opportunity for workers to seek advice.

As we are now in the COVID-19 recovery phase, normal consultation processes should be followed for any workplace changes proposed during the COVID-19 recovery period. This includes normal consultation timeframes and provision of information.

New Zealanders are notorious for the 'she'll be right' approach when it comes to being sick, however this is no longer appropriate in the post COVID-19 climate. The slightest of runny noses are now considered more seriously and employees are generally told to stay at home, in order to keep the rest of the workplace safe from illness.

It is likely that more New Zealanders will split their time between working from home and from the office in the wake of the pandemic. Where a day away from work was once considered a burden, it is as simple as logging in remotely and continuing to work from home now.

COVID-19 has forced New Zealand into the future and it is likely that it will never be the same again.

Snippets

Does the vendor have to remove rubbish?

Buying a new house is a positive experience and looked forward to by all purchasers. The Vendors too are looking forward to moving on to a different location.

The actual shift is the least enjoyable aspect. It is always difficult to manage and always under time constraints.

Included in the scenario is often the situation where the Vendor runs out of time and energy to completely remove all rubbish from the property as they leave. Common sense tells us all what might reasonably be left behind, but what if there is an unreasonable amount remaining?

There is no legal obligation ultimately.

If you notice rubbish inside and outside when you are making your decision to buy, then on making an offer to do so, put a clause in the agreement requesting that the property being left in a tidy condition and rubbish free. This clause would normally be deemed a warranty.

So while the purchaser cannot refuse to settle because of it, following the pre settlement inspection the purchaser may request that a compensation amount be retained until the rubbish is either satisfactory removed or those funds retained are used to do just that.

What is a testamentary guardian?

Everyone should have a will. When making that will, those who have children should ensure that all possibilities are covered in the case of the will makers untimely death while his or her children are still minors. Hence the inclusion of a testamentary guardian clause in that will.

The clause should clearly state who the guardian or guardians are. It should also state that if there is more than one child then the preference is that those children remain living together at all times.

As both parents are the natural guardians of a child, this testamentary guardianship clause shall not become operative until the second of the parents have died. The clause should go in both parents' wills.

The guardianship issue is an often overlooked but very important provision in any will together with the thinking around it. A big decision for parents to make, and for the testamentary guardians to accept the potential responsibility

If you have any questions about the newsletter items, please contact us, we are here to help.