

Fineprint

In this issue:

- 1 40 Business Tips for Every Small and Medium Enterprise
- 3 The Rural Lease
- 4 Helping your Children into their First Home
- 5 "Who Let the Dogs Out?"
- 6 Postscript



40 Business Tips for Every Small and Medium Enterprise

Keeping your business in tip-top condition

If there's a universal principle to remember when getting into business, that one rule might be 'know what you want to achieve in business.' Business can be a complex (and at times frustrating) affair, but having clear commercial objectives can be the difference between success and failure. We have 40 tips to keep your business in tip-top condition.

Planning for success

- 1 **Return of Investment:** Before undertaking any commercial activity, consider how you will see the return of your investment.
- 2 **Business plan:** State in your written plan how your investment will work for you. Set a time frame and review your progress against your plan at regular intervals. Every six months, review where you are against where you want to be in your plan.
- 3 **Budgets:** No matter where your capital investment will be coming from, plan on where and how much of your investment you will need to spend to make your business plan work.
- 4 **Capital raising:** Your options to raise finance for your business are your own resources, from borrowings, by seeking investment from private investors or by looking for investment from the public.

5 Know your trading entity:

Individuals and companies are legal persons. Partnerships, joint ventures and trusts are (sometimes complex) legal relationships.

6 Governance:

The root of good governance is the responsible management of other people's investment.

7 Reputation:

Consider the 'down side' of any business decision. Ask yourself, "Would this damage my reputation or business if it went viral on social media, was printed on the front page of the newspaper or put before a judge?"

8 Build good systems:

True businesses are systems of routine or repeat processes.

9 SaaS:

There's an abundance of Software-as-a-Service (SaaS) providers that may have an app helpful to your business. Find it, get it and use it.



- 10 **Website:** Integrate a website into your overall business strategy. As well as being your virtual shop front, the website analytics can provide you with valuable data about your site visitors.
- 11 **Online sales:** Give the paying public reasons to visit your website – as they would your traditional bricks-and-mortar premises.
- 12 **Ask for work:** Don't be shy to Find business, provided you also have the capacity to Mind and then Grind that work.

Business fundamentals

- 13 **Financial performance:** Know your financial ratios in order to understand the drivers of your financial performance.
- 14 **Financial reporting:** Report profit/loss, balance sheet and cash flow (at least) monthly. Good accounting software should compile and produce these reports for you.
- 15 **Cash flow:** Cash flow starts with getting paid and ends when you do not.
- 16 **Solvency:** This is your ability to meet your debts as and when they fall due. A test is to divide current assets by current liabilities (in your balance sheet). That ratio should be greater than one.

Running a profitable business

- 17 **Stock-in-trade:** Your stock-in-trade is either inventory or work-in-progress. Get customer orders first, then fulfil those orders.
- 18 **Terms of trade:** Have a standard (and up-to-date) terms of trade and send it with each estimate or quote. Summarise the payment conditions from your terms of trade on your invoices.
- 19 **Invoicing:** Invoice your customers as soon as practical after completing the work (or at each stage) when the value of your good work will be remembered.
- 20 **Payment options:** Have several payment options to make it easy for your client to pay your invoice – online or credit card are best.
- 21 **Debtor control:** Taking on a customer with a reputation for poor or non-payment of invoices can be more damaging to your cash flow than not taking on the work to begin with.
- 22 **Debt collection:** Remind debtors of overdue accounts at 30 days, final warnings at 60 days, start debt collection at 90 days – with reasonable variances permitted.
- 23 **Know your tax liabilities:** The IRD should always be the first to be paid. Know your tax liabilities, how they are calculated and pay on time.
- 24 **Pay your taxes:** You should never go broke paying tax. If you receive funds from your customers, then you have also the tax to pay the IRD.
- 25 **Credit control:** Some creditors are more equal than others but any creditor can (potentially) put you out of business.
- 26 **Foster good rapport with your secured creditors:** Secured creditors are likely to have a long-term interest in your commercial survival. They may have securities registered over your business (and personal) assets to protect their investment.

Financial know-how

- 27 **Know the levels of stock-in-trade:** Calculate stock-in-trade days by dividing inventory (in your balance sheet) by the cost of stock-in-trade sold x 365 days.
- 28 **Know how long it takes to get paid:** Calculate the day's receivables by dividing account receivables (in your balance sheet) by credit sales (in your income statement) x 365 days.
- 29 **Know how long it takes to pay your creditors:** Calculate days payable by dividing cost of stock-in-trade sold (in your income statement) by accounts payable (in your balance sheet) x 365 days.
- 30 **Know how leveraged you are:** Calculate interest-bearing debt to equity ratio by dividing non-current interest bearing debt (in your balance sheet) by equity (in your equity statement).

Employment

- 31 **Employees:** Create a culture/business environment that makes employees want to work for you.
- 32 **Have employment agreements:** Having an employment agreement for each employee is a legal requirement for business. Think about incentives that can spur productivity.
- 33 **Know the entitlements for your employees:** Underpaying employment entitlements can have devastating effects on a business, particularly if the underpayments have extended over time.
- 34 **Outsource:** You don't have to be an expert at every aspect of business. Buying-in expertise to your business is a good way of adding-value.

Other issues to consider

- 35 **Insurance:** Obtain insurance for your business. As your business grows (hopefully) so will your income. So review the adequacy of your insurance benefit at each renewal.
- 36 **Keep an eye on contract expiry dates:** These could be your lease, licenses, insurance policies, contracts with major suppliers and so on. Diarise key dates and act in good time.
- 37 **Personal property security interests:** Your creditors may like to charge all your business assets as security for their trading accounts. This may not always be necessary so review the creditor's terms of trade carefully.
- 38 **Release old personal property security interests:** Arrange for out of date and irrelevant PPSA security interests to be released and removed from the PPSR when you no longer deal with those creditors.
- 39 **Expert advice:** You have enough to deal with running your business. So ask for help from experts such as us as your lawyers and your accountant, banker and insurance broker.
- 40 **Succession planning:** If you don't intend to maintain or build your business using the tips above, then you'll need to think succession plan – succession plan – succession plan.

The success of a business rests with the business owner. Plan well, have good systems, believe in yourself and your product or service, and have a clear goal. Above all else, make sure you're profit-driven. ■



The Rural Lease

It's not just another piece of paper

While it may appear straightforward, your rural lease should be treated as the long-term commercial contract it is. Leases are frequently entered into between a landowner and a lessee in a relaxed manner often on the basis of a handshake or through an off-the-shelf standard lease form in which the blanks have, or frequently haven't, been filled in. A poorly considered, inadequately completed or unwritten lease can result in dissatisfaction, stress and, in extreme cases, damage or loss for one or both of the parties.

If you're the landowner, the lease of your prized possession and major capital investment should be treated seriously. You need to take precautions to ensure that you and your lessee agree up-front on what's to happen, how it's to happen, and when to avoid any risk of ambiguity or uncertainty as to how the land will be farmed and how it will be left at the end of the lease term.

Every farm differs in its location, setup, use and terrain and every landowner differs in what they expect and what they require in the care and maintenance of their land. Clarifying and recording in writing both parties' intent is critical to ensure that your ongoing relationship is beneficial to you both.

Tenure

Due to the annual farming cycle, farm leases are frequently held for a number of 12-month periods, allowing the parties to predict with reasonable certainty the pasture and crops that will be planted or pending at the end of the lease. This allows both the outgoing and subsequent incoming lessees to make plans for their farming operations. A lease is usually described by the length of the first term plus the length of any subsequent renewal, for example, a duration of 3 (years) + 2 (years) or 3+2.

Rent reviews

You need to give detailed consideration to the proposed terms, rights of renewal, and when and how rent reviews will be handled. Discussions which seem easy and amicable before you both enter into a lease frequently prove more challenging once possession of the land has passed and the lease has begun. As the landowner, you're normally at your lessee's discretion as to whether the lease is renewed or not at the end of each term, although there are usually strict obligations in terms of notice a lessee has to give to renew.

Who pays for what?

The typical lease includes details as to who pays the other farm costs such as rates, water charges and outgoings such as electricity. In a situation where you're going to remain on-site,

you should discuss access rights and apportionment of outgoings with your prospective lessee.

You may also want to talk about who deals with noxious weed control and maintenance of the farm improvements such as gates, fences and yards. Most leases will provide for fair wear and tear of improvements. However, specifics such as the responsibility for repairs to smashed yards, broken fence posts and destroyed shelter belts and trees by a lessee's stock may need sorting out.

The nitty gritty

Leases are easily entered into and are a binding contractual agreement. If there are difficulties and issues arising from your lessee's occupation and use of the land, there are formal processes to enforce the contractual obligations.

Unlike a commercial building tenancy, as a rural landowner you can't change the locks to regain control of the premises. Legal steps and processes must be started and procedures followed fully to ensure that you don't create a breach of the lease causing detriment to your lessee and making yourself liable for damages and the costs that might result from this.

A condition of a lease that's frequently requested – and granted lightly – is the ability for your lessee to have the first right of refusal to buy if you're considering selling the property. This harmless request, once bound into a contract, can become a predicament for you as you're unable to deal freely with your land in the event of a sale as you've willingly surrendered your freedom to contract with other buyers with little benefit beyond the lease.

When considering entering into a lease, whether you're the landowner or prospective lessee, commercial prudence dictates that you should consult with your respective lawyers before the contract is completed.

It's not the standard terms in a lease that govern your relationship, but rather the quintessential terms that quantify your agreement as to how the lease will operate that's vital. Preparation and forethought in the beginning will result in a written document that truly reflects the intentions of both parties and with which you can both live. ■

Helping your Children into their First Home

Mitigating your risk if their relationship breaks up



If your children were born after the mid-1980s they're probably finding it more challenging to buy their first home than you did. Over the past two generations, housing has become less affordable in relation to average earnings and with the introduction of the Reserve Bank's LVR (loan to value ratio) restrictions, buying a first home can be even more difficult.

Home ownership rates for those aged 15–40 years fell from 35.3% in 2001 to 22.1% in 2013. By comparison, home ownership rates amongst those aged 70–74 years remained more stable; at 80.6% in 2001 and 77.5% in 2013¹.

Getting financial help from the oldies

There are many good reasons to buy a home. Home ownership can provide a sense of purpose and security. Paying off a mortgage is a form of compulsory saving. However, if a couple hasn't saved (or can't save) enough for a deposit, their home ownership aspirations may be delayed by months or even years. The parents (or grandparents) may wish to help out financially.

If you're in a position to help, there are a variety of ways to do this:

- Gifting some or all of the required deposit to the young couple
- Providing a guarantee to the bank, or
- Offering a loan to the young couple – either in addition or as an alternative to the bank lending.

There's no 'one size fits all' solution. The best method of providing financial assistance will depend on a number of factors including the circumstances and future prospects of all parties, the property being purchased and your (probable) desire to treat all your children equally.

Relationship risks

So you go ahead and provide some financial help. The home is purchased. But what happens if the couple then separate?

Nobody wants to see a chunk of their hard earned savings lost to a beloved son-in-law or daughter-in-law, who turns out to be not quite so beloved after all. Also, if you are that son/daughter-in-law, you need to know for your own financial security what you own and what you don't.

The courts have been asked on many occasions to determine whether funds have been provided by way of gift or loan. It's usually the intention of the donor which determines the nature of the transaction. However, that intention can't always be established, in which case there's a legal doctrine known as the 'presumption of advancement' which presumes that the funds were provided by way of gift.

It's often difficult, however, to predict how the courts will interpret a set of facts, particularly if nothing has ever been recorded in writing. But what can be predicted is that all court cases will be expensive and emotionally draining for all concerned.

As lawyers, we don't want to discourage you from helping your children. It is, however, our job to help you understand and address the issues.

What can you do to help avoid the risks?

There are a number of things that you can do to help reduce the risks of your precious capital ending up in the hands of an ex-daughter or son-in-law. You could consider:

- A property agreement that can be entered into between your child and their partner acknowledging the nature of any money provided by parents (commonly known as a pre-nuptial agreement or a contracting out agreement)
- A comprehensive loan agreement can be completed and signed, and/or
- A mortgage or a caveat can be registered against the property.

Whilst this may look hard-nosed, it's important that you take steps to mitigate the financial risk to you if your adult child's relationship breaks up.

***The young pay taxes
So the old live in mansions
They wanted when young.***

Haiku

Summary

It's clear that a trend is emerging for the older generation to help the younger generation to buy their first homes. If you're going to provide some financial assistance to your children it's important to clarify at the outset the manner in which that help is being given. Is it a gift or is it a loan for which you expect some repayment? Whatever the form of help given, it's vital to correctly document those arrangements.

If you are going to give your children a hand-up with the purchase of their first home, do talk with us before any money changes hands. As both your own situation and that of your children will be unique, we can help you mitigate the financial risk of your child's relationship breaking up and ensure the capital provided stays in the family. ■

1 Statistics New Zealand



“Who Let the Dogs Out?”

Music group *Baha Men* asked this in their 1998 single. It's a question you may well be asking if it's your dog that gets out and is involved in a dog attack.

It seems not a week goes by without a news story about a dog attacking an adult, child or another animal. Sadly there seems to be an epidemic of dog attacks from Kaitaia to Bluff. Some of the more horrendous incidents have involved death and serious injury to people of all ages.

The Dog Control Act 1996 was introduced to make better provision for the control of dogs. The role of enforcing this legislation lies with local government, and councils throughout the country generally take a hard line when there's been a dog attack.

The legislation deals with many issues and offences including registration, barking, animal welfare, worrying stock, protected wildlife and dog attacks. The more serious offences, once proven in court, can result in the destruction of the dog. The law makes it mandatory for a court to order destruction of the dog unless it's satisfied the circumstances of the offence were exceptional.

Some benchmark cases

The Halliday case² sets out the criteria for the test of 'exceptional circumstances'. The High Court has looked at this issue in a string of cases since the Halliday decision.

The courts will look at various factors including the nature of the attack, the owner's history as a dog owner, any previous attacks by the dog and the steps the owner has taken to prevent an attack occurring.

In the Halliday case, the dog 'Spook' rushed out and bit a visitor on the thigh. There was some dispute as to whether the visitor entered the hallway of the house or was on the doorstep when bitten by Spook.

Luckily for Spook the 'exceptional circumstances' test was met and his life was spared. However, this is unusual. In the Evans case in 2012³ Justice Miller noted that *"one bite is all it takes."* In this case, Mr Evans went to the High Court to challenge the court order for the destruction of his dog. The dog had attacked and mauled a neighbour's dog. His Honour didn't consider the attack of one dog on another to be out of the ordinary and Mr Evans' dog was destroyed.

Dog owners love their pets and see them as a member of the family. In today's society thousands of dollars are spent on fancy food, toys, blankets, dog day care and luxury boarding kennels. But at the end of the day – biology is king. Dogs are wild animals at heart. They can be unpredictable, particularly when threatened or wanting to be protective.

If you own a dog or even if you are looking after a dog for a friend you could find yourself in the District Court dock if an attack occurs. The law requires you to keep your dog under control at all times. ■

NZ LAW Limited is an association of independent legal practices with member firms located throughout New Zealand. There are 58 member firms practising in over 70 locations.

NZ LAW member firms have agreed to co-operate together to develop a national working relationship. Membership enables firms to access one another's skills, information and ideas whilst maintaining client confidentiality.

Members of NZ LAW Limited

Allen Needham & Co Ltd – Morrinsville
 Argyle Welsh Finnigan – Ashburton
 Bannermans – Gore
 Bartrop Graham – Feilding
 Berry & Co – Oamaru & Queenstown
 Boyle Mathieson – Henderson
 Breaden McCauley – Paraparaumu
 Corcoran French – Christchurch & Kaiapoi
 Cruickshank Pryde – Invercargill & Queenstown
 Cullinane Steele – Levin
 Daniel Overton & Goulding – Onehunga, Devonport & Pukekohe
 DG Law Limited – Panmure
 Dorrington Poole – Dannevirke
 Downie Stewart – Dunedin & Balclutha
 Dowthwaite Law – Rotorua
 Duncan King Law – Epsom, Auckland
 Edmonds Judd – Te Awamutu
 Edmonds Marshall – Matamata
 AJ Gallagher – Napier
 Gawith Burridge – Masterton & Martinborough
 Gifford Devine – Hastings, Havelock North & Waipukurau
 Gillespie Young Watson – Lower Hutt & Upper Hutt
 Greg Kelly Law Ltd – Wellington
 Hannan & Seddon – Greymouth
 Horsley Christie – Wanganui
 Innes Dean-Tararua Law – Palmerston North & Pahiata
 Jackson Reeves – Tauranga
 James & Wells Intellectual Property – Hamilton, Auckland, Tauranga & Christchurch
 Johnston Lawrence Limited – Wellington
 Kaimai Law Bethlehem – Bethlehem
 Knapps Lawyers – Nelson, Richmond & Motueka
 Koning Webster – Mt Maunganui
 Lamb Bain Laubscher – Te Kuiti
 Law North Limited – Kerikeri
 Le Pine & Co – Taupo & Turangi
 Lowndes Jordan – Auckland
 Mactodd – Queenstown & Wanaka
 Malley & Co – Christchurch & Hornby
 Mike Lucas Law Firm – Manurewa
 Norris Ward McKinnon – Hamilton
 David O'Neill, Barrister – Hamilton
 Osborne Attewell Clews – Whakatane
 Wayne Peters Lawyers – Whangarei
 Purnell Jenkinson Oliver – Thames & Whitianga
 RMY Legal – New Plymouth
 RSM Law Limited – Timaru
 Rennie Cox – Auckland
 Chris Rejthar & Associates – Tauranga
 Sandford & Partners – Rotorua
 Simpson Western – Takapuna, North Harbour & Silverdale
 Sumpter Moore – Balclutha & Milton
 Thomson Wilson – Whangarei
 Till Henderson – New Plymouth & Stratford
 Wain & Naysmith Limited – Blenheim
 Walker MacGeorge & Co – Waimate
 Welsh McCarthy – Hawera
 Wilkinson Rodgers – Dunedin
 Woodward Chrisp – Gisborne

² *Halliday v New Plymouth District Council*, Unreported CRI-2005-443-011, Heath J, New Plymouth High Court, 14 July 2005

³ *Evans v Queenstown Lakes District Council*, Unreported, CRI-2012-425-45 [2012] NZHC 2963, Miller J, Invercargill High Court, 6 November 2012

Postscript



NORRIS
WARD
MCKINNON

Parental leave changes

Expectant parents will no doubt be pleased of changes to the parental leave regime. From 1 April 2015, paid parental leave increased from the current 14 weeks to 16 weeks. Parental leave payments can be transferred from the mother to a spouse or partner. Women can also be entitled to up to 52 weeks of employment-protected unpaid parental leave, if they meet the criteria.

From 1 April 2016 there are more changes to the paid parental leave regime:

- The paid parental leave period will increase a further fortnight to 18 weeks.
- Paid parental leave will also be available to primary carers providing permanent foster care such as Home for Life parents, people who have permanent guardianship, and grandparents caring for grandchildren.
- More people will be eligible for paid parental leave – in particular if you've changed jobs, have seasonable or casual work, and if you have more than one employer.
- There will be greater flexibility. Currently the rules prevent a person on parental leave from coming back to work for training and planning days. From 1 April 2016, people could, for example, work an occasional day or attend a course without jeopardising their parental leave entitlements.

To find out more about parental leave, [click here](#) ■

Debt collectors will now need a licence

From 6 June 2015 debt collectors/repossession agents, and their employees, will be required to have a licence and be registered if they want to repossess goods from people who haven't paid their bills.

A company will pay \$515 and a sole trader \$510 for registration, and their licences will last for five years. Creditors will only be allowed to repossess an item if it's listed on the credit contract. Debt collectors won't be able to take certain essential items such as beds and cooking equipment. Those people who breach this new law can be fined up to \$40,000. A lender who uses an unlicensed agent will also be liable on conviction for a fine of up to \$600,000. These changes increasing consumer protection come under the Credit Contracts and Consumer Finance Amendments Act 2014, with the Commerce Commission enforcing the rules. ■

Tradies win in 'claw-back' case

In February the Supreme Court⁴ reversed a Court of Appeal decision on a liquidator's ability to 'claw back' money up to two years prior to their appointment as liquidator.

Known as a 'voidable transaction', the law allowed the payment to be recovered/clawed back by the liquidator if the company in liquidation was insolvent at the time someone was paid. The appeal concerned an interpretation of s296(3) of the Companies Act 1993. Under this section, a court must not order repayment by someone who proves that when they received a payment from the insolvent company, they acted in good faith, had no grounds to suspect insolvency and *gave value, including value that has been given previously on account* [our italics] for the payment.

The Supreme Court has ruled that three companies – Allied Concrete, Fences & Kerbs and Hiway Stabilizers New Zealand do not each have to return tens of thousands of dollars to liquidators who wanted to set these transactions aside.

The construction industry has called the decision 'a victory for common sense.' ■

4 SC 51/203 (2014) NZSC Trans 6

PARTNERS

Ron Backhouse
Paul Barris
Martin Bradley
Sam Hood
Barbara McDermott
Geoff McDonald
Dan Moore
Gillian Spry

ASSOCIATES

Glenda Graham
Phil Hyde
Josephine Naidoo
Rachel Scott
Shelley Slade-Gully
Chris Steenstra
Gill Whinray

PRACTICE MANAGER

Carmen Simmonds

NORRIS WARD MCKINNON

Level 7, Norris Ward McKinnon House
711 Victoria Street
Hamilton

Private Bag 3098
Hamilton 3240

Email: lawyers@nwm.co.nz
Website: www.nwm.co.nz

Phone: 07 834 6000
Fax: 07 834 6100