

Welcome to the final edition of *Property Speaking* for what has been a tumultuous 2020. Whilst we cover some topics in this issue that relate to COVID, we are keen on looking forward to greener 2021 pastures.

To talk further about any of the topics we have covered, or indeed on any property matter, please don't hesitate to contact us – our details are on the right.



Changes to the Building Act 2004

Consents not needed for small builds

Changes to the Building Act 2004 came into force on 31 August 2020.

The changes vary the circumstances under which you are required to obtain a building consent for sheds, awnings, carports, outdoor fireplaces and so on.

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Understanding your property title

'Estate', 'ownership with others' and 'interests'

Before you buy a property it is important that you understand exactly what you are purchasing. Your property title records (or should record) all of the interests that affect your title. That way, you are fully informed about any rights or obligations you may have – before you buy.

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Allowing for COVID-related settlement delays

When New Zealand headed into COVID Level 4 in March, real estate transactions stalled because it was almost impossible to complete the legal paperwork, give vacant possession and so on. Since then, many parties include a clause in their agreement that addresses COVID-related issues.

Residential Tenancies Amendment Act 2020: three stages of changes

Changes aiming to modernise the Residential Tenancies Act 1986 are now coming into effect.

Reminder: Temporary COVID residential tenancies changes have ended

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Changes to the Building Act 2004

Consents not needed for small builds

Changes to the Building Act 2004 came into force on 31 August 2020. The changes vary the circumstances under which you are required to obtain a building consent.

The exemptions

You are no longer required to obtain a building consent from your local council for the new exempted works. This does not stop you from applying for building consent if you want to be certain that your proposed building is up to standard.

The new exemptions include:

- » Single storey detached buildings up to a maximum of 30m²
- » Carports up to 40m²
- » Ground floor awnings up to 30m²
- » Ground floor verandas and porches
- » Permanent outdoor fireplaces or ovens, and
- » Ground-mounted solar panel arrays.

All plumbing and electrical work for these structures still need consent. For a full list of the exemptions and the conditions attached see the Building Performance website [here](#).

Even if you don't need building consent, all building work in New Zealand must comply with the building code. Although, you may not need to apply for building consent, you

may still need to engage the services of a Licenced Building Practitioner (LBP) to supervise the works and certify that the building work complies with the building code. You can view the building code [here](#).

Building contracts

If you need to engage a LBP to undertake some, or all, of your building works, you should review their building contract thoroughly.

If you are doing the building yourself and only require a LBP to supervise the works, the contract should specify this.

On the other hand, if the LBP is to be responsible for building your project then you should ensure that the contract (a copy of the building plans should be attached to the contract) sets out what they will be responsible for and what work you will carry out. This ensures you will not be charged for work you thought you would be doing yourself.

If you use a LBP there are warranties implied under the Building Act that will apply to the building works; among these is a warranty that the work will be completed.

The LBP should provide you with the opportunity to review their work and have any cosmetic defects remedied. Any warranties provided by the manufacturer of the materials should be passed over to you once the works have been completed and you have paid for the LBP's services.



If you are planning on selling your property within the next 5–10 years after the works have been completed you should also ensure that the warranties or guarantees can be assigned to your buyer.

Applying for building consent

If you want to check if your project requires consent, the easiest thing to do is call your local council.

If you need to apply for a building consent because your proposed building project is not exempted, you can do this through your local council. Your LBP can make this application on your behalf if it is set out in their contract, or you can do it yourself.

On receipt of your application, the council has 20 working days to review it. During that time they can ask you for further information; the 20 working days will pause until the additional information has been provided.

Once the consent has been granted you must start the build within 12 months. You have up to two years to complete the works, unless otherwise agreed with the council.

When your build is completed, the council will review the work and issue a code of compliance certificate if it complies with the building code.

Understanding your property title

'Estate', 'ownership with others' and 'interests'

Before you buy a property it is important that you understand exactly what you are purchasing. Your property title records (or should record) all of the interests that affect your title. That way, you are fully informed about any rights or obligations you may have – before you buy.

Estate

The property that you buy will be an estate in freehold, leasehold, cross lease or stratum (freehold or leasehold).

A *freehold* estate means you own both the land and the buildings on the property.

For a *leasehold* estate, you own the buildings and another entity, most usually your local council, owns the underlying land. If you buy a leasehold property, you must comply with a lease; this will also be registered against the title, and you pay a lease rental to the landowner.

In a *cross lease* situation you own a share in the underlying land and you rent your house from the other owners. Likewise the other owners will rent their houses from you. Each owner will have a separate lease registered against their title. It is important that each lease is on the same or very similar terms so you each have the same rights and obligations.

An estate *in stratum* is similar to a cross lease but applies to unit title properties. A unit title property means you own a defined part (shown on the record of title) of a building, commonly an apartment, and you share ownership in the common areas of the development such as lifts, lobbies and driveways. Unlike a cross lease, strata titles have stringent rules contained in the Unit Titles Act 2010 which restrict how the property is administered, usually through a body corporate. It also imposes disclosure obligations on you when you look at selling your interest.

Ownership with others

If you are buying the property with one or more other people, there are two main ways your ownership is registered: as joint tenants or as tenants in common.

Being registered as *joint tenants* is usual for two people who contribute equally to a property. If one of you were to die, the property is automatically transferred to the survivor during the estate administration. You cannot leave your interest to a third party under your will.

If two or more people share the ownership in shares, for example, you may have a half, one-third or even a five-eighths share, then you will be registered on the title as *tenants in common*. People registered as tenants in common can deal with their property



interest independently from other interests, for example, you can leave your share in the property to someone else under your will.

If you are registered as tenants in common it is also a good idea to enter into a property sharing agreement with the other owners. A property sharing agreement details how the property can be used, who pays the expenses and when your share can be sold.

Interests

There are additional interests that may be registered against your title. These are rights or obligations, separate to ownership that may be held against your property.

Easements are a legal right for you to do something over a neighbouring property (appurtenant to) or which allows your neighbour to do something over your

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Allowing for COVID-related settlement delays

When New Zealand headed into COVID Level 4 in March, real estate transactions stalled because of difficulties completing essential elements of settlement, such as the legal paperwork, giving of vacant possession and the inability of moving companies to access the property. In response, a number of buyers and sellers adjusted their agreements to delay settlement until alert levels decreased.

Since then, we have found that many parties continue to include a clause in their agreement that addresses COVID and associated restrictions on movement. There are various versions of this clause that are being used.

If you are buying or selling, it is important that you check that any such clause in your agreement is suited to your particular circumstances, particularly if you are buying or selling property outside of the region in which you live.

As the recent Auckland lockdown has shown, regions may have different restrictions on movement. Also, with the introduction of '0.5'-style alert levels, the alert level alone may be insufficient to indicate whether settlement can take place.



You should consider whether your agreement needs flexibility to allow settlement to take place at a time when:

- » You will be able to shift in or out of the property
- » Any tenant in the property will be able to move out of the property
- » You will be able to visit the property to complete a pre-purchase inspection, and
- » You will be able to meet with us in advance to sign the documents necessary for settlement.

Before signing any agreement, we recommend you discuss with us whether to include a clause addressing the possibility of further COVID lockdowns and the wording to use, particularly if you are dealing with property outside of your region.

Residential Tenancies Amendment Act 2020: three stages of changes

Changes aiming to modernise the Residential Tenancies Act 1986 (as briefly outlined in our Autumn 2020 edition) are now coming into effect.


Since 12 August 2020: As part of the first phase of the Residential Tenancies Amendment Act 2020, the frequency with which landlords can increase rent for a residential tenancy has been reduced. Since 12 August, rent can only be increased once every 12 months (replacing the previous timeframe of once every 180 days, ie: six months).

From 11 February 2021: The second phase will begin on 11 February and includes changes to:

- » Increase the level of awards the Tenancy Tribunal can make from \$50,000 to \$100,000
- » Prohibit landlords from inviting 'bidding wars' between prospective tenants
- » Introduce a requirement that landlords must consider all requests to assign a tenancy
- » Limit when a landlord may terminate a periodic tenancy, and
- » Provide that all fixed term tenancies will convert to periodic tenancies unless a tenant gives 28 days' notice, the landlord and tenant otherwise agree or a landlord has grounds to terminate the tenancy.

From 21 August 2021: Phase three is currently scheduled to introduce new rules from 21 August 2021. These allow tenants to end a tenancy in situations involving family violence and to allow a landlord to end a tenancy with 14 days' notice if they, their agent or a member of the landlord's family is assaulted by a tenant.

There is further detail on the changes [here](#). If you have any queries about the new tenancy rules, please be in touch.


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Changes to the Building Act 2004

Warranties if you're selling your property

There are standard sellers' warranties in the agreement for sale and purchase which say any building work you have done has received the necessary consents. If you have undertaken building works, discuss this with us before signing your sale agreement so we can make sure you are protected.

If you need assistance reviewing your building contract or reviewing the warranties in your sale agreement come and see us. ●

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property (subject to). The most common easements include rights of way, driveways or walking tracks, the right to drain water or stormwater or the right to drain sewage – to name a few.

Covenants are legally binding promises. Covenants are commonly found registered against new subdivisions and can include promises to build your house to a similar design to the other properties in the subdivision or to keep your grass cut to a certain length. There can also be covenants over your farm which restrict you from keeping pigs, or require you to maintain native bush and restrict you from cutting it down for firewood.

Building line restrictions stop you from building within certain areas of your land. Formerly these were registered in favour of the local council over the front part of a property, near the road frontage. If the council proposed to widen the road, it could purchase the area protected by the building line restriction and the council wouldn't need to remove any buildings before widening the road.

Consent notices are requirements that the local council imposes on a property when you apply for resource consent. This commonly occurs during a new subdivision and may include requirements to have the building foundations designed by a suitably qualified engineer. A consent notice may also require multiple properties to share a right of way to reduce the number of driveways on a busy road.

When you are considering making an offer on a property, talk with us early on so we can explain the implications of the various terms in the title. ●

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Reminder: Temporary COVID residential tenancies changes have ended

The temporary changes introduced to protect renters of residential housing during the initial stages of the COVID pandemic have now ended.

In our Winter edition, we set out the law changes made to increase certainty for renters between 26 March and 25 September 2020. These protections had prevented landlords from terminating residential tenancies except in exceptional circumstances or making any rent increases.

Although the greater restrictions on terminating a tenancy were lifted on 25 June, landlords were still unable to increase rent for residential tenants until 25 September.

Since 26 September, the Residential Tenancies Act 1986 reverted to its usual rules – albeit with some adjustments. Landlords can increase rent provided tenants are given the required 60 days' written notice of the increase and comply with the new timing requirements set out in the previous item [here](#). ●

