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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:

1. 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.

2. 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.

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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.

3. 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.

4. 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

5. 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.

6. 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.

The “Anti-Smacking” Bill

The current position

Section 59 of the Crimes Act 1961 (“Section 59”) allows parents and any person in place of a parent justification to use reasonable force against a child for correctional purposes.

The proposed changes

In June 2005, the Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Members Bill (“the Bill”) was introduced to Parliament by Green Party MP Sue Bradford. The Bill originally sought to repeal Section 59 entirely, removing reasonable force used against children for correction purposes as a defence to offences involving assault. The effect of repealing Section 59 is that the defence of reasonable force against a child for the purposes of correction would not be available to parents. Instead, the use of force against a child would have the same legal ramifications as the use of the force against an adult.



In November 2006 following referral to Select Committee, the Justice and Electoral Committee (“the Committee”) reported back to Parliament recommending by majority that the Bill be passed subject to recommended amendments. The substantive amendment recommended by the Committee does not envisage an outright repeal of Section 59. Rather, the Committee recommends that Section 59 be replaced with a provision enabling reasonable force to be used against children for purposes such as protecting a child from harm, providing normal daily care and preventing a child from doing harm to others.

The international position

The United Nations Convention on the Rights of the Child (“the Convention”) was ratified by New Zealand in March 1993. The UN Committee on the Rights of Child issued a general comment in June

2006 concerning the use of violence against children. The comment emphasised elimination of

violence and humiliating punishment of children through law reform and other measures as an immediate and unqualified obligation for ratifying states of the Convention. More than a third of European countries now afford children equal protection from assault including Germany, Norway and Sweden. The Bill, if adopted by Parliament, will be a step towards aligning New Zealand with its commitments under the Convention.

Interestingly, United Kingdom legislation is at odds with this trend towards equal protection for children from assault. United Kingdom legislation that came into force on 15 January 2005 allows the assault of children to continue to be justified as "reasonable punishment". The United Kingdom has twice been rebuked by the UN Committee on

the Rights of the Child since it ratified the Convention in 1991 for failing to afford children equal protection from assault.

Conclusion

It is clear that parental rights to chastise children and the rights of children to be protected from violence are at odds with one another. It is also clear that the issues the debate raises are sensitive and topical having received a fair degree of media attention. The Committee received 1,718 submissions on the Bill prior to issuing its report of which 1,471 came from individuals and 248 from organisations. However, it does appear likely that the Bill will be adopted by Parliament in one form or another.

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:

1. 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.

2. 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.

3. 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.

4. 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.

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