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focused on client satisfaction.*

NEWSLETTER

Issue 1
Autumn 2009

Welcome to the first edition of the PMC newsletter for 2009.

We trust you all had an enjoyable, restful Christmas and New Year break, and took advantage of the hot weather conditions (especially in January). Fingers crossed for a mild Autumn season – although recent snow on the hills might indicate otherwise!.

Happy reading!

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Subdividing

Whether you are subdividing a 1000m² section or a 100 hectare block of land, the basic process is the same. You should become familiar at the outset with the following stages of subdivision.

Due Diligence Phase

Initially, depending on your particular subdivision, meet with either all or some of the following: surveyor, solicitor, engineer, council planner, architect, and accountant. Usually your surveyor and solicitor can tell you who will need to be consulted. The head title and district plan will be analysed to assess whether subdivision is possible and, if so, what conditions or restrictions might apply. At this point, the decision will be made as to whether it is feasible to continue with the subdivision on the basis of your original subdivision plan.

Preparation of Scheme Plan and Resource Consent Application

Your surveyor will prepare the scheme plan and resource consent application to submit to Council. The scheme plan must show all boundaries on the



existing head title and the layout and size of the new lots. It must also show the location of buildings, roads, significant natural areas, rivers or streams, reserves, easements, schedules and any other information required to assess the effect upon the environment (as required by the Resource Management Act 1991).

Once completed, the surveyor will submit the resource consent application to the Council.

Grant of Resource Consent

Prior to granting a Resource Consent, a site inspection is carried out by the Council planner checking that the subdivision complies with the policies, objectives and rules set out in the District Plan. The planner will in most cases carry out consultation with the Regional Council, Council

Engineers and Building Inspectors to check that the subdivision meets their requirements. All going well, the Council gives its approval and will grant resource consent. Most subdivisions that comply with the plan will be processed on a non-notified basis and a decision should be made within 20 days.

Implementation of Conditions

In most cases, Council imposes conditions such as provision of water and sewer connections to new residential lots, formation of rights-of-way and vehicle crossings. These conditions and any others imposed will need to be met before new certificates of title are issued.

Council Approval

When conditions have been met and development levies paid (if required), the surveyor requests section 223 and 224(c) (Resource Management Act 1991) certificates. These certificates are issued when the Council is satisfied that the plan and implementation of conditions conforms to the subdivision consent. If any conditions have not been complied with, the Council issues a consent notice.

Issue of Title

The final stage involves the surveyor submitting the survey plan for approval and deposit by Land Information New Zealand (LINZ). At this stage the solicitor lodges the necessary documents for the issue of title including: order for new certificates of title, easements to grant rights of way, drainage easements, water right easements, and easements to create land covenants. The solicitor simultaneously lodges these documents together with the section 223 and 224(c) certificates and consent notices with LINZ. The titles are usually issued 10-15 working days thereafter.

Finally

Make a point of getting to know the above steps. You will then be able to take more control of the process while relying on the relevant experts to guide you through the finer points of that process.

90 Day Trial Periods Introduced

On 12 December 2008 the Employment Relations Amendment Bill was passed. The amendment allows employers who have fewer than 20 employees to terminate the employment of new staff within the first 90 days of employment without fear of a personal grievance for unjustified dismissal, provided the parties have agreed to a trial period in the employment agreement.

The amendments are effective from 1 March 2009. The date of determining whether the employer has fewer than 20 employees is the date the employment agreement was entered into. The legislation does not specify who is counted as an employee and so potentially, casual and part-time employees could be counted. The following conditions apply to the trial period:

- It will only apply to employees who have not previously been employed by the employer.
- Both parties must agree to the trial period.
- The trial provision must be a written provision in the employment agreement.
- The trial period must not exceed 90 days – but it could be for a shorter period than 90 days.
- During the trial period the employer may dismiss the employee by giving notice of termination.
- The employer must give notice of termination to the employee within the trial period in order to be protected by the trial provision.
- If the employee is dismissed they are not entitled to bring a personal grievance or other legal proceedings in respect of the dismissal.
- Employees will still be able to bring personal grievance claims for unjustified disadvantage, sexual or racial harassment, discrimination or duress.

In all other respects the employee is to be treated no differently from other employees whose employment agreements do not contain a trial period. The obligation of good faith remains during the trial period.

Commentators have mixed views on the amendments. Australia and most other OECD countries allow trial periods.

The New Zealand Government has introduced this legislation in an effort to encourage employers to provide employment opportunities to people without financial risk to the employer if the employment relationship does not work out.

In an announcement on 11 December 2008 the Minister of Labour, Hon. Kate Wilkinson, stated that “By lowering the legal risks employers face, they will be more confident in giving people the opportunity to prove themselves” and that “The 90 day trial will provide real opportunities for people at the margins of the labour market”.

Given that the trial period must be agreed between employer and employee, those employees who are in demand and have some bargaining power will no doubt attempt to negotiate the removal of the trial period.

Employment problems can take some time to surface so employers will need to be vigilant to ensure they act within the 90 day period.



Consumers Guarantees Act – An Overview

The Consumer Guarantees Act 1993 (the Act) does exactly what its name suggests; it sets out statutory guarantees that goods and services must meet. However, although it covers a broad range of day-to-day transactions, the Act does not apply to every sale and purchase.

There are two central requirements of the Act. Firstly, that the goods and services must have been sold or provided by someone “in trade”, such as a shop selling goods or a person whose work involves them providing a service. Secondly, the protection only applies to someone who is a ‘consumer’. The Act provides that a ‘consumer’ is someone who acquires goods or services that are ordinarily acquired for personal, domestic, or household use or consumption. The definition focuses on what is being purchased, rather than on who is purchasing it. Examples of things covered by the Act would include the purchase of goods such as clothes, a DVD player, a car and groceries, or services such as car repairs, house painting, a haircut or accountancy services.

Because the guarantees are statutory, they apply whether or not they are mentioned in any contract that relates to the supply of the goods and services. However, it is important to know that a supplier can exclude the guarantees if the goods or services are bought for business use. For example, if you buy an ordinary household dishwasher for use in the office, the supplier may expressly contract out of the guarantees.

Building Act 2004 – Update

In October last year part of the Building Act 2004 was amended. The changes increased the types of building work/renovations that are exempt from the requirement to obtain a building consent.

The building owner is the person responsible for getting a building consent. We would recommend that any owners planning to complete building repairs or improvements check with their local Councils to see if they require a building consent. Even if you don’t require a building consent, you should lodge with your local Council a record of what building work has been completed.

If you do not, you may have a problem when you sell. Most purchasers require a Land Information Memorandum (LIM). This is supplied by the local authority, and provides known information about your

The Act also does not cover goods or services that are ordinarily bought for commercial use, such as farming equipment or a printing press. Nor does it cover items bought privately, such as from a garage sale or a school fair.

There are a range of guarantees set out in the Act. Essentially they require goods to be of acceptable quality. This means they must be fit for their normal purpose, free from minor defects, safe and durable. For example, a hairdryer must blow hot air, not stop working intermittently because it overheats after a few minutes use, and keep functioning for a reasonable time after you buy it.

Similar guarantees exist for services, including the service being provided with reasonable care and skill, within a reasonable time (unless you agree to a specific time), for a reasonable price (unless you agree to a specific price) and fit for the purpose you bought it for.

If the fault can be fixed or repaired, you must give the supplier the opportunity to fix the problem. They don’t have to refund your money if they repair the problem, or provide a replacement item. If they do not fix the problem within a reasonable time you may take steps to fix it yourself and claim the cost of doing so from the supplier.

property. If the authority has not received details of your exempt building work, they cannot include that information in the LIM.

The purchaser may refuse to approve the LIM if there has been building work not disclosed to your Council. Although you will be aware that the work done did not require a building consent, to keep the contract alive you may be required to get your house inspected by a building inspector. This leads to delay and expense.

Hence our advice to give even exempt building work details to your local Council.

For a guide as to what building work does not require a building consent, check the website www.dbh.govt.nz.