

*Our aim is to provide access to excellent and affordable legal services
focused on client satisfaction*

NEWSLETTER

Issue 4
Summer 2009

As the end of the school year looms and Christmas planning begins, we are buoyed by the All Whites' triumphant victory at the Cake Tin and the promise of summer – eventually!. This is our last newsletter for the year and we are happy to announce that Philippa Bartrum (a keen equestrian in her spare time) has joined us as a newly qualified staff solicitor.

Our office will be closed from **5.00pm on Wednesday 23 December 2009**, reopening at **8.30 am on Thursday 14th January 2010**.

From all of us at Petrie Mayman Clark, Merry Christmas and Happy New Year!

Inside this edition:

- **Unit Titles Law Change Updated**
- **Trustee Duties**
- **Changes to the District Court Rules**

Contact us by:

Telephone: 03 687-9480
Facsimile: 03 688-9749
153 Stafford Street, Timaru, 7910
PO Box 803, Timaru, 7940
E-Mail: admin@pmc-law.co.nz
Website: www.pmc-law.co.nz



All information in this newsletter is to the best of the authors' knowledge true and accurate. No liability is assumed by the authors, or publishers, for any losses suffered by any person relying directly or indirectly upon this newsletter. It is recommended that clients should consult a senior representative of the firm before acting upon this information.

Our people

Partners

Mark Clark
Wayne van Vuuren

Associates

Nina Mackay
Teresa Lawrence

Consultant

Michael Mayman

Staff Solicitors

Christie O'Driscoll
Maria Green
Philippa Bartrum

Legal Executives

Michael Maynard
Joy Miller
Val Robinson

Administration Manager

Ally Crane

Trust Account Administrator

Dawn Ussher

Legal Secretaries

Margaret Mayston
Angela McGrath
Maureen Fitzgerald
Kate Hayman
Kay McKirdy

Reception-Administration Assistants

Tegan Brady
Renee Bloxham

Unit Titles Law Change Updated



The Unit Titles Bill ('the Bill') was introduced to Parliament on 5 March 2009 and if passed into law will repeal and replace the Unit Titles Act 1972 ('the Act'). The Act governs multi-unit developments such as apartment blocks, townhouses, and office buildings. The Act was not designed to deal with the complex, large scale developments of the present day and the Bill goes a long way to revamp the badly outdated legislation.

One major change to the Act will be the specific disclosure requirements for vendors and developers of unit title properties. Vendors especially will need to be aware of the proposed disclosure requirements as it is mandatory for them to provide disclosure statements to a purchaser on the following occasions:

- before a Sale and Purchase Agreement is signed
- 5 working days before settlement
- at any time before settlement if the purchaser requests

Vendors need to be aware that if a disclosure statement is not provided to the purchaser within the specified timeframe then the purchaser may be able to defer settlement or even elect to cancel the contract. Vendors will also need to be careful to provide purchasers with accurate information as purchasers will be entitled to rely (in a legal sense) on that information.

Developers will be required to provide the body corporate with disclosure statements dealing with the construction systems of the buildings and their compliance with the Building Act.

Another major change is the move from the need for a unanimous resolution of the

members of the body corporate to a 75% majority. The purpose for this change was to prevent voting on important matters from being blocked by one unit owner.

The common property of unit titles will now be owned by the body corporate. Presently common property is owned by the unit owners as tenants in common. It is proposed however that unit owners should still have a beneficial interest in the common property.

The body corporate will be required to make a long-term maintenance plan which must include expected maintenance requirements for the following 10 years, an estimate of costs involved with those maintenance works, and the basis for levying the costs from the unit owners.

The Act is very inflexible regarding unit entitlements which determine voting rights and how much unit owners contribute towards body corporate costs. The Bill seeks to address this by separating unit entitlements into two elements:

- ownership interest – which is determined by the value of the unit
- utility interest – which is determined by the extent to which the unit owner uses the shared facilities and services

Another major change is the way in which disputes under the Act are dealt with. Under the Bill any disputes will be referred in the first instance to mediation and then adjudication through the Tenancy Tribunal. Disputes were previously resolved solely through the courts.

As apartments and townhouses become a preferred style of living in the modern world, having a knowledge of unit owners' rights and obligations under the Act is necessary. After the Bill is passed, all existing unit titles and bodies corporate will have 15 months to bring themselves in line with the provisions of the new Act.

Trustee Duties

The duties of a trustee need not be onerous, but a failure to carry out those duties may, in a worst case scenario, result in a claim against you by a beneficiary who has suffered a loss as a result of your actions or omissions.

For those readers who have consented to act as a trustee for a friend or family member without really understanding what that role entails - the list below, while not exhaustive, sets out some of the most important trustee duties.

The duty of efficient management

- Whether you are an original, substitute or additional trustee you must first become familiar with and abide by the terms and conditions of the Trust Deed.
- Know the extent of the assets and liabilities of the trust and make sure that these are properly held in the name of the trustees.
- Ensure that the trust is managed and administered properly and that the trustees meet to discuss and agree on issues. Do not be a rubber stamp of the settlor's wishes. Take minutes of these meetings and record all resolutions.
- Make sure that the administration costs of the trust are kept to reasonable levels.

The duty to keep and render accounts to beneficiaries

- Make sure that a clear audit and paper trail is kept of all decisions and transactions. This will involve secure storage of the trust deed, minutes of meetings and resolutions, financial accounts, correspondence and other trust documents.
- If the beneficiaries request information, the trustees have a duty to make certain

information available, such as the trust deed, financial statements and investment strategies.

The duty to act personally

- Carry out your trustee duties personally.
- You may instruct an agent to carry out your decisions but you must make your own decisions and not be dictated to by other trustees, the settlors or beneficiaries.
- Trustee resolutions must be unanimous.

The duty of loyalty

- Always act in the best interests of both present and future beneficiaries and be impartial between beneficiaries.
- Avoid conflicts of interest.
- Do not benefit or profit from your position as trustee unless authorised to do so.
- You must always protect the interests of the beneficiaries.

In all things, a trustee's standard of care is measured against that of an ordinary prudent business person managing the affairs of others. Of course a higher standard is required if the trustee is a professional person such as a lawyer or accountant.

The management of trusts often come under scrutiny and all of the benefits of having a trust may be lost if the trust records and procedures do not meet the required standard. It is therefore important to keep a clear audit and paper trail and to bear the above trustee duties in mind. It is also important to insist that you, as a trustee, are kept up to date with all of the trust's affairs.



Changes to the District Court Rules

District Court proceedings are often a drawn out and expensive process for all parties involved. The parties are required to file claims, notices of defence and sometimes counterclaims before the matter is heard. In some cases this process can take months or even years with the parties incurring significant costs. Many potential litigants are deterred by the cost and decide that the process is not worth the effort.

Parliament's radical new changes to the District Court Rules ('the Rules') are an effort to streamline the proceedings, reduce the volume of paper filed in Court and reduce the cost of filing fees. The new rules completely revamp the District Court process by focussing on the speedy and inexpensive determination of proceedings. Emphasis is now placed on reaching negotiated settlements at an early stage.

The new Rules came into force on 1st November 2009. The main changes include the following:

- new court forms which are designed for non-lawyers to understand
- online access to court forms
- online examples of court forms to guide non-lawyers when drafting their own documents
- strict deadlines for filing documents to speed up the court process
- access to shorter trials
- pre-hearing matters are removed
- parties only have to provide copies of documents they plan to rely on in the proceedings

At present there is a significant disparity between the maximum amount of a dispute able to be determined by the Disputes Tribunal and the level which practitioners perceive to be the minimum amount of a dispute that is economically viable to be resolved at the District Court. The new Rules seek to close this gap.

The Rules will provide more of a focus on the dispute itself rather than legal procedure. This will make it easier for non-lawyers to understand and engage in the process.

Pre-hearing matters that are often used by parties to draw out the process will be removed. Parties will have to comply with strict timeframes which will lead to more predictable timetabling for hearings.

The pre-hearing process of discovery is all but eliminated. This has historically been an expensive and time consuming process whereby parties must produce for inspection all documents that relate to the proceedings. This included documents that were adverse to the parties' case. The parties will only have to produce documents that they plan to rely on.

The focus of the new Rules is for parties to exchange their evidence and arguments at an early stage and reach a settlement with minimal intervention from the court. Before a hearing, parties will be required to attend judicial settlement conferences. These will last for 90 minutes, presided over by a Judge and will focus on mediation of the issue. If settlement is not reached during the conference then a trial will be allocated according to the complexity, size and value of the dispute.

