



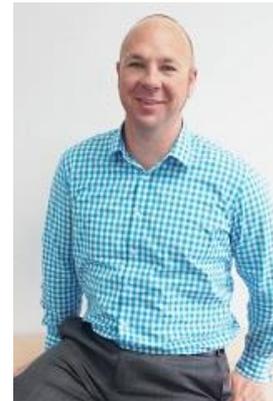
Godfreys Law

Issue 11 June 2015

Welcome to our winter newsletter

The property landscape has dramatically changed since the 2010/2011 earthquakes with the ever changing issues and practices the focus of this newsletter. In this issue we have an article about the detailed work required in “as is where is” sales, which are popular now, there is also information about excess payment invoices which EQC is sending out, and if you need assistance in your negotiations with your insurer we have provided some information on Logic Cost Consultancy, who work closely with clients to achieve the best settlement outcome possible. Happy reading.

As always, if you have specific queries and concerns it is best to contact us to take advice on your situation rather than rely on these general comments – we are here to help!



Phil Sewell and Brad McDonald – business partners at Godfreys Law

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- **90 Day Trial Periods** *Get them right before an employee starts*

Motatapu Adventure Race

A pretty wet and cold morning greeted the staff who competed in the various events in Wanaka and Arrowtown in March. It was all smiles at the three quarter mark of the mountain bike race for these characters while Brad McDonald and Anja Hess completed the 15km Miners Trail from Arrowtown.

Picture: Jacqui Wiltshire, Julie Aitken, Brett Harraway and Philip Sewell at aid station 3 – 15km to go!



Excess on EQC Repairs – Unwelcome Invoices – Charles Mullins

Have you had repairs done by Fletchers on behalf of EQC? If so you should expect to receive an invoice for the excess payment that should have been paid at the time the work was completed. Whereas most insurance claims would involve the payment upfront by the customer, for repairs managed by Fletchers the excess remains unpaid in many cases.

EQC has only now realised that this has not been done and are beginning to send invoices to customers whose homes were repaired. EQC is saying that their priority was to fix homes as quickly as possible so home owners were not asked to pay an excess before the repairs began. This of course means that for many people they are now going to be faced with a bill that they possibly had not anticipated.

The amount of the excess payable is calculated according to a formula under the Earthquake Commission Regulations. Claims where the combined total value of the building repair and the related contents claim is less than \$20,000 will have an excess of \$200 (this is the minimum) for each claim. If the combined total is more than \$20,000 the excess is 1% of the total value. EQC has indicated the charge will generally be in the range of \$200 to \$600.

Those who have had repairs completed under the programme should expect to see an invoice pack arrive in the mail. The pack will include a letter, an invoice and a calculation sheet demonstrating how the excess has been arrived at. On the positive side it will be evident how much the repair cost for those who were never aware of the total figure.

In circumstances where the house has changed hands, we are informed by EQC that it considers the excess is payable by the owner of the property at the time the repair was completed.

Further information can be obtained from the EQC website www.eqc.govt.nz/chrexcess. If you have any issues contact your usual advisor at Godfrey's Law.



If it is too good to be true then it probably is – beware buying 'As is where is' properties – Philip Sewell

There has been a growing trend for property owners to sell their damaged homes on an 'as is where is' basis. We anticipate this trend to continue as insurers are increasingly cash settling claims instead of completing the repair or rebuild.

The term 'as is where is' means the property is being purchased in its current state of repair (or disrepair) without the repairs being completed from the insurance settlement. It will also mean that there is no current insurance policy covering the premises.

Advice for purchasers

- If you intend to rent the premises make sure you advise the tenant that the property is uninsured and obtain public liability insurance;
- Review the insurance settlement agreement to check whether the insurer has salvage rights on the demolition of the property;
- Obtain a builders/engineer and geo tech reports to confirm the extent of damage to determine the extent of damage particularly checking for structural integrity if you intend to rent the premises;

- If the property is on a 'cross lease' it is important to review the lease as there is usually an obligation to reinstate or repair the premises as well as an on-going covenant to insure; and
- Even though the property is already damaged, would you still buy it if there was more damage? For example, if there was a fire after the date you sign up but before the date of settlement. Would you still want to pay the same price? We think you wouldn't but often the sale documents do not include any way for adjusting the price in this situation. One should proceed carefully and get the right changes made to the insurance provisions

Advice for vendors

Many vendors are very keen to sell "as is where is" because currently, the likely sale price is still quite good – and in combination with the insurance settlement claim, is very good. Most land agents are good in amending the sale documentation to properly protect vendors, but it is important to get these details checked before committing yourself!

How to get the best deal out of your insurance settlement?



That's the question lots of Christchurch people have grappled with. Some have done well, some not so well – some have engaged multiple professionals as part of the campaign while others have managed to deal with the negotiation themselves.

There is no right or wrong way but in our view, you must be equipped with the **best information** before anything else can be done. Too often the reports and estimates from insurance companies are inadequate and have not addressed everything or done it wrongly.

With this in mind, I have been really impressed with the quality of work done by Barry Lynch and his team at "**Logic Cost Consultancy**" (who are quantity surveyors and project managers). They do more than just have a quick look at the numbers. They will check that the methodologies for the building work have been worked out and are appropriate, then apply an appropriate rate (rather than just pick a standard rate out of the "silo of rates"). Then a conclusive report is produced. They can tell you about the significant successes they have had when doing the work in this thorough way. Sure there is a cost to getting this done, but the extra payments can be significant. Without information of that quality one cannot be sure if the figure being offered is fair or even close. Part of the process is about negotiation but that cannot really be done without best information first!

Go to their website www.logicgroup.co.nz or contact Barry Lynch at barryl@logicgroup.co.nz

Are you relying on trial periods for new employees? Brad McDonald

The ability to include a trial period in Individual Employment Agreements has been available to employers for some time now. Unfortunately I am still seeing a lot of issues around the incorrect use of trial periods including general confusion as to the steps to be undertaken to implement a legally binding and enforceable trial period provision in employment agreements with new staff.

The aim of this article is to give some information to demystify the process for you. Here are some pointers:

1. Trial period provisions may only be used for new employees. Any attempt to put an existing employee on a trial period will be null and void at law.
2. The employee must sign off on the trial period provision before they set foot in the workplace to commence work. There have been a number of widely reported cases where employers have been tripped up because the employee had already started work prior to signing their employment agreement which included the trial period provision. Generally in such a scenario the trial period will be null and void.
3. The clause must be correctly drafted. The trial period provisions contained under Section 67A of the Employment Relations Act 2000 make it very clear that the trial period must be in writing, must contain certain specified information and be signed before the employee commences employment.

Trial periods are an extremely effective tool for employers to take a relatively no risk "free look" at new employees before deciding on their suitability for on-going permanent employment. However ignore the provisions relating to the proper establishment and enforcement of trial periods at your peril!

If you wish to discuss any aspect of trial period provisions or any other aspect of employment law please feel free to contact Brad McDonald to discuss your particular circumstances or concerns.