



Godfreys Law

CHRISTMAS 2013

Hello and welcome to the Christmas edition of our Newsletter. We are not sure where the time has gone but once again it seems to have flown by!

The switch to daylight saving has been most welcome - what a difference that makes to life! It's great to get home in the light and be back outside after work to get stuck into the huge number of gardening jobs that warmer weather brings such as weeding and lawn mowing.

We have had some staff changes recently and take this opportunity to welcome some new staff members, being Janelle Liu (being admitted to the bar early December), Alison Hankinson (Registered Legal Executive), Bridget Morton (Receptionist) and Charles Mullins (Solicitor). You can see more details about our new staff on our website www.godfreyslaw.co.nz. We are lucky to have secured four new talented staff members.

In other staff news Paula Lancaster has gone on maternity leave for a year. Stepping into Paula's role, but not shoes, is Jacqui Wiltshire. Many of you will know Jacqui through your dealings with her on conveyancing matters. Jacqui is stepping up to a new challenge which we know she will complete with the same dedication and attention to detail as she has in the past.

By now many of you have been to see us at our new office. As we are upstairs we appreciate access may be difficult for some. We are pleased to advise that we have an informal agreement with the good people at the Haemophilia Foundation (whose office is on the ground floor under ours) so that we can share rooms on a mutual basis, when needed. If getting upstairs is an issue for you, please do not worry – just tell us when arranging your meeting and we will gladly arrange a ground floor meeting room for you.

Inside this newsletter we have a number of informative articles which we hope you will find useful. We also have details of our Christmas hours and close down period.

We wish you and your families a happy and safe Christmas season. Merry Christmas to you.

Kind Regards

Philip Sewell and Brad McDonald.

Inside this issue:

- **Importance of Enduring Powers of Attorney**
- **Using the Family Trust Instead of a Will**
- **EQC/Insurance Claims – Do Not Take Things at Face Value**
- **Christmas/New Year Office Hours**

Importance of Enduring Powers of Attorney - by Philip Sewell

I have recently resumed work as Counsel to Assist in the Family Court jurisdiction – this time, in cases under the Act of Parliament called the “Protection of Personal and Property Rights Act”.

It is this Act which creates Enduring Powers of Attorney (“EPA”); and it also deals with people who have no such document but require someone to manage their affairs.

In these situations, an independent lawyer (such as me) is appointed for the subject person, to check the application and the suitability of the applicant. It is interesting work and I get to meet lots of different families in a wide variety of situations. There are some people who would never have capacity to be able to grant an EPA – but equally, there are many who could have dealt with this earlier in their lives and avoided a lot of fuss later.

In most cases the orders are made without a fuss and the manager can then deal with the person’s property affairs or with issues of personal care and welfare.

This would seem to be an ideal result, but under the Act, Property Managers are obliged to file reports, which are then audited (at some cost) by the Public Trust. For example the Property Manager must file his or her first report within three months of being appointed; and then every year after that.

This does not sound too onerous, but in practice, it is just one more thing to attend to. By contrast (and this is the point of this article), there is no such reporting requirement or audit by the Public Trust with an EPA. So in a family situation, the Enduring Power of Attorney is a much easier tool to put in place and much easier when the time comes to use it.

There is no right or wrong time to get an EPA signed but if there is a sudden change of circumstances (for example, a party widowed, or a change of health), then it should be done quickly.

If you are worried about your current EPA or if you do not have one please contact your usual advisor for advice on this important topic.

Using the Family Trust Instead of a Will

For a whole generation of Kiwis, there was a big focus on Family Trusts, particularly with regard to the prospect of paying rest home fees in the future. Readers of our newsletter will know of recent changes in policy and application of those rules and that for many people who did form trusts, they may not succeed in allowing those persons to get the residential care subsidy. If you have not seen those articles, then please let us know because this is important information to be informed about.

However, Trusts for some people have a secondary and important purpose. We all know that Wills can be challenged by close relations and often those challenges succeed. So if by one’s Will, one wants to have some unusual provisions (e.g. leaving someone out or giving a much smaller share), such decisions can be challenged and there is a likelihood of the Will being set aside.

By comparison, if at time of passing the deceased owns no assets, there is nothing to challenge. Decisions made by that person’s Family Trust are much more difficult to challenge and if someone is excluded or gets much less, it is very difficult (assuming that the Trustees carry out their duties properly) for a claim to succeed.

So for many people, while the original purpose of the Trust may have passed, the Trust structure (with a well worded letter of wishes) can now be used in a way similar to a Will. This is worth thinking about for those who have some special requirements for their family assets or overall estate.

EQC/Insurance Claims – Do Not Take Things at Face Value

As we move through the repair and re-build process IT IS IMPERATIVE that when buying property you:

- ask questions about the status of all EQC and Insurance claims, lodged by the vendor, in respect of property you are looking at purchasing; and
- insist on seeing a “Scope of Works” for every claim (even if the vendor or agent tells you that the claim has been settled) and hand the “Scope of Works” to the person carrying out your Property/Building inspection so they can check that the work has in fact been done.

If the vendor or their agent tells you that a claim has been settled you need to ask what they mean by this. Do they mean that the vendor has:

- a) received the funds from EQC or the Insurer but have done nothing with it? – in which case the cash should be credited to you on settlement so you can carry out the repairs; or

- b) received the funds from EQC or the Insurer and have carried out the repairs - which the person carrying out your Property/Building inspection should be able to confirm if they have a copy of the "Scope of Works". In this instance you should also ask to see receipts for the work done.

THE REASON FOR THIS WARNING

In some instances vendors are inserting clauses to say that the claim has been settled and will not be assigned to the purchasers on settlement and purchasers are agreeing to that, assuming that the work has been completed. However things are not always as they seem. In some cases the vendor has received the funds but done no work; they just want to keep the money. If that is the case the purchaser then has to do the work at their own cost, and that can be significant.

Christmas/New Year Office Hours

We thought it wise to inform you of when the firm will be open and closed over the Christmas/New Year period.

Our last day of work for 2013 will be Friday 20 December. We will be open until 5.00pm on that date. Our office will then be shut until Wednesday 8 January 2014 at which time we will reopen with our usual hours of 8.30am to 5.15pm.

Therefore, like all things at this time of year, planning ahead is key. If there is something that you require in or around this period please contact your usual advisor to give them a "heads up" so that some forward planning can be undertaken.

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HAVE WE GOT YOUR NAME AND ADDRESS CORRECT?

If we have mis-spelt your name or have your address details incorrect, could you please amend them below?

Then simply detach this form and return to us at PO Box 131, Christchurch 8140, or email admin@godfreys-law.co.nz

Contact Name: Mr/Mrs/Miss/Ms
Preferred First Name(s) _____ Last Name _____

Postal Address: _____

Telephone: (0) _____ Facsimile No: (0) _____

Email: _____

Important: This newsletter is not legal advice. Clients should not act solely on the basis of material contained in this newsletter. Items herein are general comments only and do not constitute or convey advice per se. As well, changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas referred to. This newsletter is issued as a helpful guide to clients for their private information.