

Autumn NEWSLETTER 2021

Exciting changes ahead for Webb Farry

After more than 40 years' at 79 Lower Stuart Street we are excited to share the news that we are on the move!

We will be the proud occupants of the top two floors of a Webb Farry branded building at 70 Stuart Street (previously R&R Sport and Torpedo 7).

We are so fortunate to stay in our prime location close to the Court, Hospital and CBD with all the fabulous boutique cafés, bars and retailers nearby.

When presented with an impressive blank canvas with character features and the opportunity for a fresh modern look it was too good to miss.

For the next few months, our reception, boardroom and client meeting areas will be at Level 8, ASB House. Some of our team will remain in our office on the first floor of 101 Stuart Street (new entrance between Potpourri Café and Gallery De Novo).

These temporary arrangements will enable the exciting fitout of our new offices to be completed for us later this year.

Our postal address (PO Box and DX), phone number, website and email addresses will all remain the same. We welcome you to visit us at ASB House from Monday, 15 March 2021 and look forward to unveiling our new building later in the year.

NEW STAFF



LAUREN BRENT
ASSOCIATE
LL.B, B.A

Lauren has joined Webb Farry as an Associate Solicitor following her move with her partner from Wellington to Dunedin this year.

After completing her Law Degree and a Bachelor of Arts with the University of Canterbury in 2013, Lauren was admitted to the Bar in October 2015.

Upon graduating University, Lauren worked in her hometown of Christchurch at a leading boutique law firm before moving to Wellington in October 2019. Lauren has had experience in a variety of legal work with a particular focus on property law both residential and commercial, company law matters, relationship property, estate planning and elder law.

Lauren is looking forward to living back in the South and is particularly excited to explore the regions great outdoors and the delicious food culture that Dunedin has to offer.

NEWLY INTRODUCED STAFF

Our new staff introduced in the previous newsletter Bridey Woudberg and Ben Taylor are settled in and building client relationships.



BRIDEY WOUDBERG
ASSOCIATE
LL.B, B.A



BEN TAYLOR
SOLICITOR
LL.B

RESIDENTIAL TENANCIES AMENDMENT ACT 2020

By Rachel Stedman

Changes to Tenancy law:

The Residential Tenancies Amendment Act 2020 ("Act") came into force on 11 August 2020. The Act amends the Residential Tenancies Act 1986 and is intended to increase the security of tenure for tenants, promote good-faith relationships, protect a landlord's interest in their property and ensure that tenants receive fair rights for the rent that they are paying.

These changes are more onerous for landlords and make it more difficult to evict tenants therefore it's important that you seek advice in relation to your tenancy matters.

The amendments are implemented in three stages - two of which are already in force. The first stage relates to transitional and emergency housing and also makes changes to the way that landlords can charge rent. Stage two deals with the changes as outlined in this article and came into effect on 11 February 2021. The final stage, relating to family violence and assault, will come into effect on 11 August 2021.

Changes to Rent:

Rental fees must be stated when advertising and rental bidding is banned, meaning that landlords cannot encourage or invite tenants to compete

on rental prices but can still accept offers from tenants to pay higher rent. Landlords are now also limited to increasing rent once every twelve months - up from

Agreements and record keeping:

Tenancy Agreements are required to be in writing and must be provided to the tenant before the beginning of the tenancy. Not providing Tenancy Agreements in writing is now punishable by a fine or fee. The Residential Tenancies Act still applies in situations where there is no written agreement.

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Landlords also have further record keeping obligations, including keeping the Agreement itself, variations to the Agreement, building, maintenance and repair reports, tenancy adverts, healthy homes information, notices and correspondence between tenant and landlord. This information must be produced on request by the Ministry of Business Innovation and Employment.

Tenant changes to premises including fibre broadband:

A landlord must not unreasonably withhold consent if the tenant asks to make minor changes to the property. This could include installing curtains, baby-proofing, earthquake-proofing and similar minor changes. The landlord must respond to any request by a tenant within 21 days. A landlord can extend the time frame for response if the landlord believes that the changes are more than minor.

If a minor change is made, the tenant must, on or before the expiry of the tenancy, return the premises to a condition that is substantially the same as the condition that the premises were in before the minor change was made unless a different agreement is reached.

Tenants can request that the landlord allow the installation of fiber broadband and landlords must allow it unless installation would compromise the structural integrity, weather tightness or character of the property, breach any regulations, or if the landlord is intending to undertake extensive renovations of the property within the next 90 days that would be affected by the installation.

Eviction and termination:

Previous law allowed periodic tenancies to be terminated without cause with 90 days' notice. Notice periods required for termination are now dependent on the reason for termination.

No Cause Termination for a periodic tenancy is no longer legal. Notice periods under the Act vary depending on the given situation.

Fixed Term tenancies automatically become periodic at the end of the

tenancy term unless lawfully terminated by the landlord, the tenant gives 28 days' notice, or if both the landlord and the tenant agree to extend, renew or end the fixed-term tenancy before the fixed term tenancy expires.

If tenants are displaying 'anti-social behaviour' or there are other issues landlords must provide evidence of three separate antisocial events in the 90 day period or prove that their tenant has been more than 5 days late paying the rent on 3 occasions within 90 days.

Every notice to end a tenancy must be in writing, give the address of the tenancy, the date when the tenancy is to end, and must be signed by the person giving the notice. If the notice to end the tenancy was given to the landlord before 11 February 2021 the tenants needed to give 21 days' notice. These notices are still effective.

From 11 August 2021 (or earlier if determined by the Government), if a tenant is subject to family violence they can withdraw from a tenancy without any financial penalty by giving two days' notice and evidence of the family violence. If a tenant has assaulted the landlord or owner, or a member of the landlord's family or the landlord's agent and the police have laid charges against the tenant, then the landlord can issue a 14 day notice to terminate the tenancy. Regulations are still being developed in relation to these changes.

Assignment of the Lease:

Landlords can no longer remove the option for a tenant to assign their tenancy to someone else. Any proposed assignment by a tenant must be in writing. The landlord must consider each request on a case-by-case basis and not decline the request unreasonably. The landlord can attach reasonable conditions to the assignment or can agree with the tenant to end the tenancy instead.

The tenant remains liable to the landlord for any matter incurred prior to the date of assignment, however does not remain liable for any tenancy matter after the date of assignment.

The landlord may claim any costs reasonably incurred in respect of assignment, subletting, parting with possession, or termination from the tenant and must provide an itemised account of expenses to the tenant.

Healthy Homes information:

If requested by a tenant, the landlord must provide information relating to healthy homes standards to a tenant within 21 days of the tenant's request.

Disputes:

Previously, names were made public in published decisions by the dispute tribunal. A suppression order can now be issued to remove any names from the public register.

The Tenancy Tribunal now has the power to make awards up to \$100,000 which is an increase over the previous limit of \$50,000.

Infringement offences and Unlawful Acts:

The enforcement system has been strengthened in favour of penalties against non-compliant tenants and landlords. Penalties can be imposed by the chief executive of MBIE and include these actions:

- An enforceable undertaking (EU). An EU is a binding agreement which sets out steps to remedy a breach. A failure to comply is an unlawful act and penalties can be imposed for failing to follow it.
- Improvement notices can be issued which must include a reasonable time period for the person to remedy the breach. Failure to comply with an improvement notice is an unlawful act and may result in a penalty being imposed. A person who has been issued with an improvement notice may file an objection with the Tenancy Tribunal.
- MBIE can issue an infringement notice for a breach and impose a fine.
- MBIE can seek penalties of up to \$50,000 against a landlord of a boarding house or a landlord with six or more tenancies that has intentionally failed to meet their obligations under the Act.

These changes may appear onerous at a glance and breaches of obligations can result in penalty but should not scare a landlord out of their business endeavors. Our job is to simplify these changes for you and to bring clarity to your obligations. If you would like to discuss your situation, please give us a call to discuss.

CHANGES TO SICK LEAVE ENTITLEMENTS

As has been anticipated, there are some proposed changes to the Holidays Act 1993 (“the Act”) that are expected to come into effect later this year. The changes look to double the minimum number of sick days available to employees from 5 to 10 days per annum, after they have worked with an employer for six months.

The Holidays (Increasing Sick Leave) Amendment Bill (“the Bill”) is currently before the Select Committee of the New Zealand Parliament and is under review. As part of their review, they will be gathering information and opinions from a range of sources, including the public, as to the positive and negative impact of the Bill before preparing a report to go before Parliament.

The Bill does not propose wide ranging or expansive changes, but primarily seeks to provide a further five days sick leave to all employees, subject to them qualifying for full sick leave entitlements under their existing conditions of employment. This will come into effect

two months from receiving royal assent. However, employees will only be able to utilise the further sick leave as from their next sick leave entitlement date (subject to start dates of employment) following the Bill receiving royal assent. This means, for employees who have worked for less than six months, this will be on the six-month anniversary date of their employment contract, or for employees who have worked longer than six months, when they reach the anniversary of the first time they completed six months.

The changes are brought on primarily in the wake of the COVID 19 pandemic, however, the request for changes to the minimum numbers of sick days has long been a topic of public interest and is reflective of a call for greater care and treatment for workers. This is highlighted by New Zealand having comparatively less sick leave days than many other OECD nations.



Despite the changes to the Act, there will be no changes to an employee’s entitlement to roll-over their sick leave each year. The maximum amount of sick leave an employee can hold unused is 20 days.

Keep an eye out for the changes later this year when the Bill is expected to come into effect. If you have any queries as to your entitlements or obligations, contact us for further advice.

VIRTUALLY WITNESSED DOCUMENTS – ARE THEY VALID?

The main purpose of having a witness to a document is to authenticate that the person signing was in fact the person noted on the document. The implementation of electronic signatures was already common practice and with the advancement of technology, was always likely to increase in use. In New Zealand, however, law requires that for an electronic signature to be legitimate, it must comply with the following:

- The document must identify the signatory.
- The electronic signature is as reliable as appropriate for the purpose of the document being signed.
- A signature is presumed to be ‘as reliable as appropriate’ if it has been provided by the signatory with their knowledge and consent. It must be an accurate signature and the electronic document cannot be changed once it has been signed.

- The person receiving the signature fully permits the use of it in electronic form.

These requirements are to ensure that electronically signed documents are correctly executed and that the signatory is fully aware that they are legally bound to the documents which they electronically sign. Just because the document was not signed in ‘wet ink’, does not mean the document or contract does not exist. Witnessing serves as a safeguard against forgery and duress, however it has been argued that face to face interaction is still the best way to achieve this.

The onset of the Covid-19 pandemic forced businesses and individuals to find alternative ways to sign documents that required witnessing. In response to Covid-19, the New Zealand Government implemented multiple immediate modification orders under section 15 of the Epidemic Preparedness Act 2006 relating to the requirements of signing and witnessing wills, enduring powers

of attorney, deeds, oaths and declarations. These temporary orders modified the witnessing requirements of specific legislation and allowed for certain documents to be witnessed virtually through the use of platforms such as Zoom, Skype and FaceTime.

Many banks and commercial institutions in New Zealand are now allowing electronic signatures and virtual witnessing, provided that a clause is inserted into each document which specifies that the documents were virtually witnessed and the signatory has been adequately identified in accordance with Anti-Money Laundering legislation.

So yes – virtually witnessed documents are valid. However, caution should be taken when witnessing is required for a contract that is covered under the law of another country or jurisdiction that has not yet introduced or allowed for remote witnessing.

LEAVING CHATELS UNDER A WILL

There is a presumption often made by the will maker that they can leave the chattels they have to the executors and the family to sort out once they have died. A generic chattels clause is inserted in the will and the rest is left to chance.

Please be aware that chattels division issues because a great deal of friction and angst for a grieving family, more often than it should and the deceased would never have intended these consequences. Specific thought, instructions and drafting are needed when preparing a will.

Some options include:

- If specific gifts from the chattels are to go to a specific person, then state that under the gift section of the will.
- If you are making a list, including the gifts in a document, state in the will that there is a list - the Court asks to see the list if it is mentioned in the will itself.
- Make sure at least one of the Executors is in the family group and can organise and control the family in respect of chattels issues – nothing should be taken or distributed other than in accordance with the will protocols.

- If a spouse survives the deceased and is a second wife/husband or long term partner, then if the deceased has children from a previous relationship the status of the chattels requires some decisions. While the surviving spouse/partner has relationship property rights, the deceased's children have rights too.

As careful planning is needed, the advice is to make haste slowly and understand that grief and emotions at the time around a death can blur clear thinking. Keep your lawyer in the loop to help chart the best course.

WHO'S
WHO

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