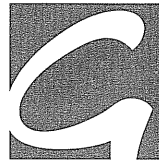


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NEWSLETTER – WINTER 2010

WELCOME!

This is our first newsletter for 2010. We have had a busy and productive start to the year so far. It seems that residential conveyancing remains consistent, along with businesses changing hands. Whilst it is clear that the economy is not yet "out of the woods" there are some positive signs from our perspective.

One major change here at Godfreys is that Jerry French retired from practice at the end of December 2009 after 30 years in the law. During his years at the practice Jerry acted for a large number of people, from all walks of life. His style was always fairly relaxed but with attention to detail. Jerry has plenty to keep him occupied outside of the law, with a keen interest in travel, old cars and sports. He has kicked retirement off in style by riding the length of the South Island from top to bottom down the West Coast. He was joined on this trip by several friends for different stages of the ride. From all reports they had a great time. We have even seen Jerry return here on occasion to collect the mail. Jerry will be sorely missed and we wish him all the very best for his retirement.

We also take this opportunity to welcome on board a new staff member in this newsletter. We hope that this newsletter finds you and your family well.

Regards
Philip Sewell and Brad McDonald

BEWARE – BUILDING REPORT CLAUSES By Jacqui Wiltshire - Registered Legal Executive

There can be a wide variety of clauses about building reports in contracts. In our experience there are one or two clauses that are used regularly. One works in the purchaser's favour when buying, whereas the other is in favour of the vendor when selling.

The latter clause is generally lengthy and has complex timeframes. It is also generally limited to matters relating to a building's structural integrity and weathertightness. Vendors are keen to limit their exposure for all the matters that a building report can throw up. However as a purchaser there may be matters identified in a building report that you would expect the vendor to remedy and put right prior to taking possession.

Unfortunately many purchasers find, due to the wording of the building report clause, that if there are areas of concern, other than the building's structural integrity and weathertightness, they do not have to be remedied by the vendor. This means, if the vendor agrees to remedy any matters relating to the building's structural integrity and weathertightness, the purchaser has no option of cancelling the contract and has to proceed with the contract despite the other defects. As always we recommend you consult with us first before signing an offer to purchase so that we can review these sorts of issues.

DON'T BUY FUTURE PROBLEMS

By Philip Sewell - Partner

We have seen both sides of the leaky homes debate – we have acted for builders (and those in related trades) who have had civil actions taken against them; we have acted for clients with leaky homes (which are difficult to sell). Now we are advising clients who are looking at buying homes which might have a problem (e.g. no eaves, monolithic claddings, doubtful building reports).

If someone buys and later finds problems, it is difficult to get compensation. Some of the claims have strict time limits and those are running out; and in addition, there are not always obvious people to pay the necessary damages.

Also significant is the difficulty of ever accurately telling whether a home has problems or not. Even a building consultant will not say this conclusively unless they actually rip all the walls off. This is called "invasive testing". Unless that is done (and in practical terms it is seldom likely to happen), it may be almost impossible to satisfy future home buyers that a property is free from risk.

We will be telling our clients from now on that any home that might have problems of this nature (due to its type of construction or time of construction) should be avoided. To buy one of those properties now, even at reduced prices, might be buying a bundle of difficult problems in the future. Even if there were no problems, it may be difficult convincing other people (when you come to sell) that this is the case.

For more information or for a general discussion on this topic please contact your usual adviser at Godfreys.

WELCOME ONBOARD

We are pleased to welcome a new staff member - Jennifer Tate. Jennifer has joined our staff as a Solicitor.

Jennifer is from Texas, but we won't hold that against her, and has previous experience having worked for seven years in America and also in another mid-sized Christchurch firm.

Jennifer is interested in Intellectual Property matters in particular, as well as Business and Family law. Contact her to protect your IP today.

PAYMENT METHODS

We are pleased to advise that we now accept payment via the following credit cards; MasterCard and Visa – this can be done over the telephone with Sally. You are also able to make payment to us via our Eftpos facility located at reception for your convenience.



godfreyslaw.co.nz

"WITHOUT PREJUDICE"

By Philip Sewell - Partner

When acting for clients involved in disputes or litigation, often we write letters to try to resolve matters.

Such letters might be tagged "without prejudice" or sometimes "without prejudice except as to costs". The purpose of such letters is so that we can make concessions and admissions (to try to resolve issues) which would otherwise not be wise. Concessions and admissions made in a without prejudice letter can not be binding if the proposed arrangement is not accepted.

Somewhat less clear are the unwritten discussions which lawyers also often have with other lawyers in trying to resolve matters.

Often these are understood to be either without prejudice or off the record or sometimes both.

Professionally there can be difficulties with "off the record" conversations – because we are under a duty to our clients to pass on all information we receive relating to their affairs. Equally however, it is often really useful to have a frank discussion about the merits or weaknesses of a particular case – again, in the hope that matters might be resolved more quickly.

You will now have a better idea of why letters are sometimes tagged "without prejudice". If you want to know more, please contact your usual adviser at Godfreys.

DISPUTES TRIBUNAL CHANGES

By Brad McDonald - Partner

There has recently been an important change to the threshold for the level of claims that can be heard by the Disputes Tribunal.

The Disputes Tribunal Amendment Act 2009 increased the monetary level of claims that can be heard by the Tribunal from \$7,500.00 to \$15,000.00. Furthermore, if both parties consent, that monetary level can be increased to a maximum of \$20,000.00 per claim.

The monetary jurisdiction of the Tribunal has been expanded in an effort to reduce the amount of time small businesses are tied up in District Court battles.

It is expected that this change will reduce costs to a number of parties who would have had their case heard before the District Court. This should also enable many people to pursue claims through the Tribunal who traditionally may have been dissuaded against bringing a claim through the District Court due to time and expense.

Parties are self represented in the Disputes Tribunal.

Parties to a claim before the Disputes Tribunal should be aware that the Tribunal Referees will decide claims based on an application of the law to the facts presented by the respective parties.

Accordingly, before filing or defending a claim in the Disputes Tribunal, it is essential to properly prepare your claim or defence, including an outline of the material facts, the issues and the relevant law. Preparation is the key to success. Please contact your usual adviser at Godfreys if you have any queries relating to the Disputes Tribunal and its processes.

INTERNET MISUSE BY EMPLOYEES

By Clare Miller- Solicitor

Misuse of the Internet by employees is a very real and present possibility in the modern workplace.

Employers need to be concerned about misuse of the Internet by employees due to the effects it has on worker productivity, internet usage fees and the potential for unsafe or illegal material being downloaded to a work computer.

There are many forms of Internet misuse, such as:

- Sending copious amounts of personal emails;
- Spending too much time on on-line shopping sites;
- Spending too much time on social networking sites;
- Downloading large music or video files;
- Downloading objectionable or illegal material.

Consequently it is important for employers to have internet use policies in place to specify what is and is not regarded as acceptable personal use of a work place computer.

Such a policy should provide an outline (not exhaustive) of examples of prohibited internet behaviour.

Please contact Clare Miller to discuss Internet use and Internet policies for employees.

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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.

HAVE WE GOT YOUR NAME AND ADDRESS RIGHT?

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, or email admin@godfreys-law.co.nz

Contact Name:	<u>Mr/Mrs/Miss/Ms</u>	Preferred First Name(s)	Last Name
Postal Address:	_____		
Telephone No:	(0) _____	Facsimile No:	(0) _____
Email:	_____		