



**CRUICKSHANK PRYDE**  
Barristers and Solicitors

ISSUE 19 | WINTER 2015



CRUICKSHANK PRYDE 42 Don Street, P.O. Box 857, Invercargill 9840 | T: 03-214 4069 | F: 03-214 4760 | office@cplaw.co.nz  
Unit 23, Gorge Road Retail Centre, 159 Gorge Road, Queenstown 9300 | T: 03-441 2424 | F: 03-441 2426

Welcome to the Winter edition of *Property Speaking*. We hope you find the articles both interesting and useful.

If you would like to talk further about any of the topics covered in this e-newsletter, please don't hesitate to contact us – our details are above.

### INSIDE:

## Doing Up Your House?

### Make sure you know what renovations need a building consent

*If you're looking at renovating your house, you should be aware that a building consent may be needed for more work than you think. Replacing your bathroom with 'like for like' is not as simple as that as many people don't realise a building consent is required for wet rooms and tiled showers. Although you may be happy with unconsented work, it may end up costing you thousands of dollars when it comes time to sell your property ...* [CONTINUE READING](#)

## Student Flats

### Obligations of both landlords and tenants

*The start of semester two in student centres, like Dunedin, signals the beginning of the search for the perfect flat for the coming year. Likewise, landlords will be seeking tenants who will keep their investments in the black. It's also a time when funds run tight, flatmates fight over the price of keeping warm in this very cold winter and their landlords hope that the rent continues to trickle into their account on time ...* [CONTINUE READING](#)

## Property Briefs

### Buying a property? Look a little deeper ... [CONTINUE READING](#)

### Taxing property gains: the proposed 'bright line' test ... [CONTINUE READING](#)

If you do not want to receive this newsletter, please [unsubscribe](#).  
The next issue of *Property Speaking* will be published in early summer.

DISCLAIMER: All the information published in *Property Speaking* is true and accurate to the best of the authors' knowledge. It should not be a substitute for legal advice. No liability is assumed by the authors or publisher for losses suffered by any person or organisation relying directly or indirectly on this newsletter. Views expressed are those of individual authors, and do not necessarily reflect the view of this firm. Articles appearing in *Property Speaking* may be reproduced with prior approval from the editor and credit given to the source.

Copyright, NZ LAW Limited, 2015. Editor: Adrienne Olsen. E-mail: [adrienne@adroite.co.nz](mailto:adrienne@adroite.co.nz). Ph: 029 286 3650 or 04 496 5513.

## Doing Up Your House?

### Make sure you know what renovations need a building consent

*If you're looking at renovating your house, you should be aware that a building consent may be needed for more work than you think. Replacing your bathroom with 'like for like' is not as simple as that as many people don't realise a building consent is required for wet rooms and tiled showers. Although you may be happy with unconsented work, it may end up costing you thousands of dollars when it comes time to sell your property.*

New Zealanders have always had a 'DIY' mentality when it comes to renovating their own homes. DIY has become increasingly popular due the current buoyant property market and, of course, TV shows that encourage renovation such as 'The Block'. When planning the renovations, one of the last things people turn their minds to is the need for building consents, but we believe that should be one of the first.

### Building consents

The building consent process ensures the job is done in line with industry standards, meaning the work is safe; it also minimises the risk of future issues. For proposed building work that's straightforward the building consent process is a simple one, and it's something your local council will be happy to talk you through.

While the Building Act 2004 provides a list of work that does not require a building consent, it's always best to check with your local council. Under the Act, a building consent is not required when an authorised person (such as a registered plumber or drain layer) uses a comparable component in the same position as the old unit. What many people don't realise is that this exception of replacing a vanity, toilet, shower or bath in the same position without the need to apply for a building consent *does not* extend to replacing a shower tray and liner with a tiled 'wet area'. This is partly due to the significant waterproofing that's needed to ensure there are no future water issues.

### What is the risk?

Dealing with any wet areas is always a concern as problems may only become evident when it's too late. Renovating the bathroom is an area that can add real value to your home, so it pays to do it properly – and with a building consent.

Even if there are no problems with work carried out without a building consent, there may be issues when it comes to selling your property. We have seen a number of house sales fall through, or the purchase price decreased at the very least, due to the lack of building consents.

The standard Agreement for Sale and Purchase provides a warranty by the vendor that, where the vendor has done or caused or permitted work to be done on the property, that any works:

- » Had a permit, resource consent, or building consent required by law
- » To the vendor's knowledge, were completed in compliance with those permits or consents, and that
- » Where appropriate, a code of compliance certificate was issued for those works.

If you give these warranties, but it turns out that you didn't obtain a building consent for work such as the installation of a tiled shower, then you could open yourself up to claims from the purchaser, and it may cost you a lot of money to remedy.

It's best to find out whether you need a building consent before you start the work, and not when it comes time to sell. If you think it's too late already, we recommend at least applying to your local council for a certificate of acceptance, which can be issued for work that was done without a building consent.

Spending an extra few hundred dollars following the right processes now may end up saving you a lot more money and time in the future. If you have any questions regarding consents when you are selling or buying a home, you should talk to us as soon as possible. ■

## Student Flats

### Obligations of both landlords and tenants

*The start of semester two in student centres, like Dunedin, signals the beginning of the search for the perfect flat for the coming year. Likewise, landlords will be seeking tenants who will keep their investments in the black. It's also a time when funds run tight, flatmates fight over the price of keeping warm in this very cold winter and their landlords hope that the rent continues to trickle into their account on time.*

Knowing your rights and obligations is vital before entering into a rental agreement. Can you afford the rent if your flatmate departs? Is the property warm and dry? In Christchurch, will you need to move out for earthquake repairs?

For a landlord, there are other important things to consider. You are entrusting the tenants with your investment. Will the rent reliably cover the mortgage and rates? Can you afford urgent repairs when required?

If the relationship turns sour and parties can't agree on a resolution, then the Tenancy Tribunal can assist. The Tribunal's orders can be enforced in the District Court, but the process can be expensive. Before signing an agreement, keep these tips in mind to maintain a healthy landlord-tenant relationship:

#### For tenants

- » Pay your rent on time. Remember that if one flatmate fails to pay, your landlord is entitled to request the full rent from the rest of your flat.
- » Your landlord may request a bond of up to four weeks' rent. This bond must be lodged with the Department of Building & Housing within 23 days of receipt.
- » Keep the property clean and habitable. It's also a good idea to take photos of the property before moving in, particularly if there's any damage.
- » Ensure that all your flatmates sign the lease. If one of your flatmates leaves or is replaced, this should be recorded on the lease agreement, or in a new agreement, signed by your landlord and the new flatmate.
- » You must follow any applicable body corporate or apartment rules. Your landlord also needs to let you know if these change at any time.
- » Some tenancies are excluded from the rules outlined in the Residential Tenancies Act 1986. In these cases, include a clause to ensure that the Act will apply. Potential exclusions include when you live with a member of the landlord's family, use the property for holidays, or for purchasers who have entered into an agreement to buy the property.

#### For landlords

- » Give your tenant 48 hours' notice before an inspection.
- » Provide the property to your tenant in a clean and habitable state. If your property is damaged by a natural disaster discuss with your tenant and your insurer if it's safe for them to stay.
- » Remove your belongings, and the belongings of any previous tenant, before the new tenancy begins. Note that you can't discard a former tenant's belongings, but you can charge them for storage.
- » Advise your tenant of any ownership changes in the property and change of bank account details for rent payments.
- » You must give 42 days of written notice to a tenant to depart if you or a new owner would like to move in. In all other cases, you must give tenants 90 days' written notice to end the lease.
- » Appoint a New Zealand-based contact before leaving the country for longer than three weeks.

Most importantly, the best way for a tenant-landlord relationship to thrive is by maintaining good communication. If you would like further tips or templates related to residential tenancies, talk with us or **[click here](#)**.

#### Changes from 1 July 2016

The government has recently proposed changes to the Residential Tenancies Act. These are expected to take effect from 1 July 2016 and include compulsory insulation (with exemptions available for eligible properties), compulsory installation and maintenance of smoke detectors, and fast track mechanisms to re-tenant a property where existing tenants have disappeared. ■

## Property Briefs

### Buying property? Look a little deeper ...

Before you buy a property, it's prudent to check for any geotechnical issues. Often any known geotechnical matters or hazards are highlighted in the Land Information Memorandum (LIM) from your local council. If concerns are highlighted it's up to you to investigate further.

Some properties are inherently prone to geotechnical-related issues. These may include properties on cliff tops or riverbanks, near, above or below a steep slope, where soft, saturated soils or uncontrolled fill may be present – particularly under dwellings or structures, in regions prone to earthquakes and in proximity of previous mining activity.

These properties are often at higher risk of suffering or being exposed to geotechnical issues such as: erosion, avulsion (the sudden removal of land by the change in a river's course, or by flooding, to another person's land), rock or debris fall hazards, subsidence and differential settlement due to poor or unfavourable foundation conditions and/or slope instability, slope instability and deformation, alluvion (the deposit of earth, sand, etc left after a flood), flooding, liquefaction and the presence of hazardous contaminants or unknown fill.

To avoid any unforeseen problems, obtaining geotechnical advice and an assessment before you buy a property is sensible. Alternatively, if you are planning to develop or subdivide a property there may be a local authority requirement to obtain a geotechnical report in accordance with building and resource consent processes. Identified geotechnical issues may have an impact on the design, viability and ultimately cost of your proposed development.

If you're concerned about geotechnical issues in a proposed property purchase, please talk with us early on so we can discuss making provision in your Agreement for Sale and Purchase for a geotechnical investigation. ■

### Taxing property gains: the proposed 'bright line' test

In May the government announced proposed changes to the tax rules for New Zealand and non-resident investors who buy residential property with the intention of selling the property and making a gain. The proposed 'bright line' test will require income tax to be paid on any gains and will be taxed at the seller's normal income tax rate. It's proposed that this rule will take effect from 1 October 2015.

The purpose of these proposed changes is to supplement New Zealand's already existing tax laws. Currently, anyone who buys a property with the intention of on-selling the property for gain is liable to pay tax on that gain. However, enforcement under the current law doesn't appear to be across the board. The government's intention is that the tax changes will affect New Zealand and non-resident investors equally.

When you're signing an Agreement for Sale and Purchase, it's proposed that you must provide an IRD number as part of the transaction. Non-residents will need to have a New Zealand bank account in order to obtain an IRD number.

Under the proposed changes, there will be a tax on any gain from the sale of a residential property if you have owned the property for less than two years. It's important to note that gains made on the sale of a property held for *more* than two years will still remain subject to income tax if the property was acquired with the 'intention' of on-selling the property for gain.

Under the proposed changes, there will be a few limited exceptions to the 'bright line' test. Vendors will not be taxed on gains if:

- » The property is their main home
- » It's inherited from a deceased estate, or
- » The property is being sold as part of the relationship property agreement, such as a separation.

Exceptions may also apply to transfers between associated parties (from an individual to their family trust, for example). More details on the exceptions are expected to be released in due course. If you are buying or selling a property it's essential you fully understand the nature and effect of these proposed changes – and don't hesitate to talk with us about the implications for your personal situation. ■