

Subdividing?



Whether you are subdividing a 1000m² section or a 100 hectare block of land, the basic process is the same. You should become familiar at the outset with the following stages of subdivision.

Due Diligence Phase

Initially, depending on your particular subdivision, meet with either all or some of the following: surveyor, solicitor, engineer, council planner, architect, and accountant. Usually your surveyor and solicitor can tell you who will need to be consulted. The head title and district plan will be analysed to assess whether subdivision is possible and, if so, what conditions/restrictions might apply. At this point, the decision will be made as to whether it is feasible to continue with the subdivision on the basis of your original subdivision plan.

Preparation of Scheme Plan and Resource Consent Application

Your surveyor will prepare the scheme plan and resource consent application to submit to council. The scheme plan must show all boundaries on the existing head title and the layout and size of the new lots. It must also show the location of buildings, roads, significant natural areas, rivers or streams, reserves, easements, schedules and any other information required to assess the effect upon the environment (as required by the Resource Management Act 1991). Once completed, the surveyor will submit the resource consent application to the council.

Grant of Resource Consent

Prior to granting a Resource Consent, a site inspection is carried out by the council planner checking that the subdivision complies with the policies, objectives and rules set out in the District Plan. The planner will in most cases carry out consultation with the Regional Council, Council Engineers and Building Inspectors to check that the subdivision meets their requirements. All going well, the council gives its approval and will grant resource consent. Most subdivisions that comply with the plan will be processed on a non-notified basis and a decision should be made within 20 days.

Implementation of Conditions

In most cases, Council imposes conditions such as provision of water and sewer connections to new residential lots, formation of rights-of-way and vehicle crossings. These conditions and any others imposed will need to be met before new certificates of title are issued.

Council Approval

When conditions have been met and development levies paid (if required), the surveyor requests section 223 and 224(c) (Resource Management Act 1991) certificates. These certificates are issued when the council is satisfied that the plan and implementation of conditions conforms to the subdivision consent. If any conditions have not been complied with, the council issues a consent notice.

Issue of Title

The final stage involves the surveyor submitting the survey plan for approval and deposit by Land Information New Zealand (LINZ). At this stage the solicitor lodges the necessary documents for the issue of title including: order for new certificates of title, easements to grant rights of way, drainage easements, water right easements, and easements to create land covenants. The Solicitor simultaneously lodges these documents together with the section 223 and 224(c) certificates and consent notices with LINZ. The titles are usually issued 10-15 working days thereafter.

Finally

Make a point of getting to know the above steps. You will then be able to take more control of the process while relying on the relevant experts to guide you through the finer points of that process.



90 Day Trial Periods Introduced

On 12 December 2008 the Employment Relations Amendment Bill was passed. The amendment allows employers who have fewer than 20 employees to terminate the employment of new staff within the first 90 days of employment without fear of a personal grievance for unjustified dismissal; provided the parties have agreed to a trial period in the employment agreement.

The amendments are effective from 1 March 2009. The date of determining whether the employer has fewer than 20 employees is the date the employment agreement was entered into. The legislation does not specify who is counted as an employee and so, potentially, casual and part-time employees could be counted. The following conditions apply to the trial period:

- It will only apply to employees who have not previously been employed by the employer.
- Both parties must agree to the trial period.
- The trial provision must be a written provision in the employment agreement.
- The trial period must not exceed 90 days – so it could be for a shorter period than 90 days.
- During the trial period the employer may dismiss the employee by giving notice of termination.
- The employer must give notice of termination to the employee within the trial period in order to be protected by the trial provision.
- If the employee is dismissed they are not entitled to bring a personal grievance or other legal proceedings in respect of the dismissal.
- Employees will still be able to bring personal grievance claims for unjustified disadvantage, sexual or racial harassment, discrimination or duress.

In all other respects the employee is to be treated no differently from other employees whose employment

agreements do not contain a trial period. The obligation of good faith remains during the trial period with the exception that the employer is not required to consult and to provide information to the employee prior to termination.

Commentators have mixed views on the amendments. Australia and most other OECD countries allow trial periods.

The New Zealand Government has introduced this legislation in an effort to encourage employers to provide employment opportunities to people without financial risk to the employer if the employment relationship does not work out.

In an announcement on 11 December 2008 the Minister of Labour, Hon. Kate Wilkinson, stated that “By lowering the legal risks employers face, they will be more confident in giving people the opportunity to prove themselves” and that “The 90 day trial will provide real opportunities for people at the margins of the labour market”.

Given that the trial period must be agreed between employer and employee, those employees who are in demand and have some bargaining power will no doubt attempt to negotiate the removal of the trial period.

Employment problems can take some time to surface so employers will need to be vigilant to ensure they act within the 90 day period.

Unit Titles Law Change Updated

The Unit Titles Bill ('the Bill') was introduced to Parliament on 5 March 2009 and if passed into law will repeal and replace the Unit Titles Act 1972 ('the Act'). The Act governs multi-unit developments such as apartment blocks, townhouses, and office buildings. The Act was not designed to deal with the complex, large scale developments of the present day and the Bill goes a long way to revamp the badly outdated legislation.

One major change to the Act will be the specific disclosure requirements for vendors and developers of unit title properties. Vendors especially will need to be aware of the proposed disclosure requirements as it is mandatory for them to provide disclosure statements to a purchaser on the following occasions:

- before a Sale and Purchase Agreement is signed
- 5 working days before settlement
- at any time before settlement if the purchaser requests

Vendors need to be aware that if a disclosure statement is not provided to the purchaser within the specified

timeframe then the purchaser may be able to defer settlement or even elect to cancel the contract. Vendors will also need to be careful to provide purchasers with accurate information as purchasers will be entitled to rely (in a legal sense) on that information.

Developers will be required to provide the body corporate with disclosure statements dealing with the construction systems of the buildings and their compliance with the Building Act.

Another major change is the move from the need for a unanimous resolution of the members of the body corporate to a 75% majority. The purpose for this change was to prevent voting on important matters from being blocked by one unit owner.

The common property of unit titles will now be owned by the body corporate. Presently common property is owned by the unit owners as tenants in common. It is proposed however that unit owners should still have a beneficial interest in the common property.

The body corporate will be required to make a long-term maintenance plan which must include expected maintenance requirements for the following 10 years, an estimate of costs involved with those maintenance works, and the basis for levying the costs from the unit owners.

The Act is very inflexible regarding unit entitlements which determine voting rights and how much unit owners contribute towards body corporate costs.

The Bill seeks to address this by separating unit entitlements into two elements:

- ownership interest – which is determined by the value of the unit
- utility interest – which is determined by the extent to which the unit owner uses the shared facilities and services

Another major change is the way in which disputes under the Act are dealt with. Under the Bill any disputes will be referred in the first instance to mediation and then adjudication through the Tenancy Tribunal. Disputes were previously resolved solely through the courts.

As apartments and townhouses become a preferred style of living in the modern world, having a knowledge of unit owners' rights and obligations under the Act is necessary. After the Bill is passed, all existing unit titles and bodies corporate will have 15 months to bring themselves in line with the provisions of the new Act.

TRUSTEE DUTIES

The duties of a trustee need not be onerous, but a failure to carry out those duties may, in a worst case scenario, result in a claim against you by a beneficiary who has suffered a loss as a result of your actions or omissions.

For those readers who have consented to act as a trustee for a friend or family member without really understanding what that role entails - the list below, while not exhaustive, sets out some of the most important trustee duties.

The duty of efficient management

- Whether you are an original, substitute or additional trustee you must first become familiar with and abide by the terms and conditions of the Trust Deed.
- Know the extent of the assets and liabilities of the trust and make sure that these are properly held in the name of the trustees.
- Ensure that the trust is managed and administered properly and that the trustees meet to discuss and agree on issues. Do not be a rubber stamp of the settlor's wishes. Take minutes of these meetings and record all resolutions.
- Make sure that the administration costs of the trust are kept to reasonable levels.

The duty to keep and render accounts to beneficiaries

- Make sure that a clear audit and paper trail is kept of all decisions and transactions. This will involve secure storage of the trust deed, minutes of meetings and resolutions, financial accounts, correspondence and other trust documents.
- If the beneficiaries request information, the trustees have a duty to make certain information available, such as the trust deed, financial statements and investment strategies.

The duty to act personally

- Carry out your trustee duties personally.
- You may instruct an agent to carry out your decisions but you must make your own decisions and not be dictated to by other trustees, the settlors or beneficiaries.
- Trustee resolutions must be unanimous.

The duty of loyalty

- Always act in the best interests of both present and future beneficiaries and be impartial between beneficiaries.
- Avoid conflicts of interest.
- Do not benefit or profit from your position as trustee unless authorised to do so.
- You must always protect the interests of the beneficiaries.

In all things, a trustee's standard of care is measured against that of an ordinary prudent business person managing the affairs of others. Of course a higher standard is required if the trustee is a professional person such as a lawyer or accountant.

The management of trusts often come under scrutiny and all of the benefits of having a trust may be lost if the trust records and procedures do not meet the required standard. It is therefore important to keep a clear audit and paper trail and to bear the above trustee duties in mind. It is also important to insist that you, as a trustee, are kept up to date with all of the trust's affairs.

Resource Management Act – Amendments Proposed

The National Government plans to introduce changes to the Resource Management Act (the RMA) to reduce unnecessary delays, uncertainties, and costs. On 16 December 2008 the Minister for the Environment, Hon. Nick Smith, announced the appointment of an RMA Technical Advisory Group to support the Government's program of reform for the RMA.

National will introduce a Resource Management Amendment Bill to:

- simplify and streamline the Act by limiting the definition of environment and reducing the consent categories
- provide priority consenting for large projects to reduce delays. The yet to be established Environmental Protection Authority will be required to process large project consents within a timeframe of 9 months
- improve consent processing by establishing a new complaints mechanism
- prevent vexatious or frivolous complaints by reinstating the Environment Court's power to award security for costs
- improve consent planning by simplifying council plans

- remove the ministerial veto on coastal consents (This is in response to the controversial Whangamata Marina decision)
- establish an Environmental Protection Authority (EPA) by expanding the existing Environmental Risk Management authority and increasing its responsibilities. The EPA will be responsible for National Policy Statements, National Environmental Standards and major consents.

The Hon. Nick Smith states that the aim of the reforms is to get "good environmental outcomes without the high costs, long delays, and lack of certainty under the current Act".

Phase 2 of the proposed reforms will take place at a slower pace and will include:

- a review of infrastructure regulation and the interaction between the RMA and the Public Works Act
- development of a programme of action with regard to water quality and allocation
- a review of the RMA and urban design in our major cities.

Watch this space for further updates!

Hand-Held Cell Phone Ban for Vehicle Drivers

From 1 November 2009, motorists are no longer able to text or talk on a hand-held cell phone while driving. This comes from a change in the New Zealand Road Rules.

The change will see drivers using hand-held cell phones behind the wheel incurring an \$80 fine along with 20 demerit points. This change is seen by many as a welcome relief and a good step towards making New Zealand roads a safer place.

New Zealand will join at least 50 other countries who all have bans or partial bans on the use of hand-held phones by drivers.

However, drivers will still be able to use cell phones if they do so with a hands-free device and two-way radios. There will also be an exemption for 111 emergency calls.

Holidays Act

Although the National Government is planning to review the Holidays Act, they have promised to retain 4 weeks annual leave and to allow employees to trade the fourth week for cash.



*Cameron & Co
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Merry Christmas
and a
Happy New Year*

FIND US

CAMERON & COMPANY
BARRISTERS & SOLICITORS

City Office

Fourth Floor URS House
(formerly Landsborough House)
287 Durham Street
(Corner Durham and Gloucester Sts)
Christchurch. PO Box 1985
Tel: 03-379 3110, Fax: 03-379 1911

Branch Offices:

Barrington Law Office
20 Athelstan Street
Christchurch
Tel: 03-337 0218
Fax: 03-331 8135

Upper Riccarton Law Office
Cnr Yaldhurst Road & Peer Sts
Christchurch
Tel: 03-348 8061
Fax: 03-348 8079

www.cameronco.co.nz