

update

Thinking about Renting out Your Home or Investment Property?

The purchase of a residential property with a view to letting it out is a popular investment choice for many New Zealanders.

If you are considering such an investment, or indeed already rent out a property, then you need to be familiar with the provisions of the Residential Tenancies Act 1986 (the “Act”) which sets out the requirements for many residential tenancies.

Some of the main points are as follows:

1. Tenancy Agreements to be in Writing

The Act provides that all residential tenancy agreements must be in writing. However, an agreement is still enforceable even if it is not in writing.

2. Term of Tenancy

The Act recognises two types of tenancies:

- Fixed term tenancies that are for a specified term;
- Periodic tenancies that are not for a defined term but continue until terminated by either party in the manner set out below at point 5.

The Act does not apply to fixed term residential tenancies that are for less than 120 days or for five or more years. However, in the latter situation, both the landlord and the tenant must agree that the Act will not apply.

3. Bond

The Act permits the landlord to require a prospective tenant to pay up to four weeks rent as a bond in advance. The money is held by the Tenancy Tribunal and is only refundable once both parties sign a form agreeing on the amount to be allocated to the tenant and/or the landlord. The landlord is entitled to deduct from the bond the cost of any repairs that are the responsibility of the tenant but cannot use it to recover costs associated with fair wear and tear. If the parties cannot agree upon the amount of bond to be refunded, then the matter will have to be referred to the Tenancy Tribunal.



4. Form of Tenancy Agreement

The Act prescribes a simple form of tenancy agreement; a copy can be downloaded from the website of the Tenancy Tribunal: www.dbh.govt.nz

5. Terminating a Residential Tenancy

Either the landlord or the tenant can give notice to bring a tenancy to an end. In the case of the tenant, at least

21 days notice must be given. In the case of a landlord, 90 days notice must be given but only 42 days is required if the landlord:

- Requires the premises for his or her own use or that of his or her immediate family;
- Has entered into an agreement to sell the property and the terms of that agreement require vacant possession;
- Requires the property in order that one of his or her employees can live in it so long as the landlord has previously notified the tenant that the premises are normally used for that purpose;

All notices to terminate a tenancy must be in writing.

6. Disputes

The Tenancy Tribunal deals with all disputes arising out of residential tenancy agreements regardless of the issues involved. Either party can make an application to the Tribunal either during the tenancy or after it has ended.

If you are a landlord, it pays to fully familiarise yourself with the responsibilities and duties imposed upon you by the Act. It could save you a lot of time and trouble in the future.

The Disputes Tribunal



Last year Edith, an elderly widow, paid a local painting contractor \$7,000 to paint part of her house. After only 12 months the house looks terrible and needs to be painted again. The painting contractor has refused to fix the work and Edith has found another more reputable painter who will redo the work for a further \$7,000.

Edith's lawyer has advised her that she can sue the first painter in the District Court but that the cost of doing so may make it uneconomical for her. Fortunately for Edith, she can bring a claim in the Disputes Tribunal.



What Types of Claims are Covered?

The tribunal is very versatile and can hear claims about almost anything, from car repairs to grazing stock, from a faulty new computer to hair dressing for a wedding gone terribly wrong.

There are some limitations. There must be a dispute - you can't file a claim if someone simply refuses to pay a bill, when there is no argument about whether they owe the money. The Tribunal is also limited in terms of disputes concerning employment, land sales, wills, rates, taxes, and other statutory amounts.

For most disputes the tribunal is an informal, inexpensive, quick and private way to resolve the disagreement.

If the dispute relates to something worth up to \$7,500, a claim can be filed as a matter of right. If the value is between \$7,500 and \$12,000, both sides must consent for the matter to be heard by the tribunal. The tribunal has no jurisdiction to hear a claim over \$12,000.



Procedure

The tribunal is much more flexible than a District Court. No one is allowed to be represented by a lawyer and the rules provide that the tribunal shall determine disputes "according to the substantial merits and justice of the case". In doing so it is not bound to give effect to strict legal rights or obligations. This emphasis on what is fair and just, rather than the letter of the law, allows a referee to take matters into account that a judge in a District Court may be prevented from considering.

In Edith's case, she may have signed a contract with a clause prohibiting her from claiming compensation more than 6 months after the work was completed. The referee is not bound by that provision and may award her \$7,000, if that seems to be fair and just. The referees are also not bound by the evidential rules of a court.

Preparation is the Key

Probably the single most important aspect of bringing (or defending) a claim in the tribunal is preparation. Make sure that you have copies of any important documents, such as bills, receipts, photographs or reports. Ensure that any important witnesses can attend. If they cannot do so in person they may be able to attend by telephone and support a written summary of what they saw or know. Review each step of your claim (or defence) thoroughly before the hearing so that you can anticipate any challenge that the other party might make and anticipate any concerns that the referee may have.



Conclusion

Long memories of the problems associated with the Disputes Tribunal's predecessor, the Small Claims Tribunal, mean people sometimes assume the tribunal is only suitable for the most basic disputes. In fact, if you prepare your claim carefully and thoroughly, it can be an excellent forum to resolve a dispute of up to \$12,000.



Retirement Villages – Legal Titles



Retirement villages are becoming an increasingly popular choice for older New Zealanders who wish to take advantage of the security and flexibility of the lifestyle on offer.

If you are considering purchasing a home in a retirement village, then you need to be aware of exactly what it is you are buying and in particular the sort of legal title that you will purchase when you acquire your new home. The most common types of legal title used for retirement villages are:

1. Licence to Occupy

A licence to occupy entitles the resident to live in the unit but ownership of the unit is retained by the retirement village. For that reason, it is usually not possible to borrow funds from a bank or other financial institution secured against a licence to occupy.

2. Unit Title

A unit title is issued under the Unit Titles Act 1972 and confers legal ownership of the unit or house upon the resident. It is therefore technically possible for the resident to borrow against the value of the property. However, the occupation agreement with the retirement village will probably include re-sale restrictions which will in turn restrict the resident's ability to borrow.

3. Cross Lease

A cross lease title is one whereby the ownership of the freehold is shared by all of the residents who then grant leases to each other to live in the units and/or houses for a token rent.

4. Lease for Life

The retirement village owner grants a lease in a unit or house in the village which continues on until the resident either dies or leaves the village.

The Retirement Villages Act 2003 (the "Act") introduced new compliance procedures for retirement village operators, which are in the process of being phased in. These procedures include a requirement for the following documents to be provided to all intending residents:

- a Disclosure Statement, which includes information about the type of legal title offered and the ownership and management structure of the village, and
- an Occupation Right Agreement, which confers the right of occupation of a unit or house upon a resident, together with the right to use services and shared facilities in the village.

In addition, the Act provides that with effect from 1 May 2007, each retirement village must have a Code of Residents Rights. This code summarises the basic rights which all retirement village residents are entitled to and covers matters such as consultation, dispute resolution and the right to be provided with services and other benefits promised in the Occupation Right Agreement.

Legal Advice

The Act makes it mandatory for intending residents of a retirement village to receive independent legal advice before signing an Occupation Right Agreement. This means the resident's signature has to be witnessed by a lawyer who must certify that he or she has explained the general effect of the agreement and its implications in such a manner which is easily understood by the intending resident. An agreement that has not been properly certified may not be enforceable by the retirement village operator.

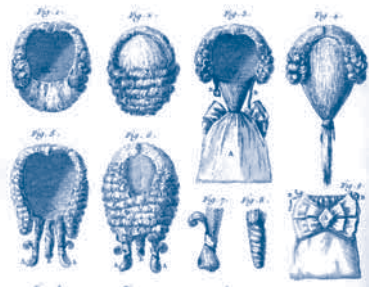
In summary, the new compliance procedures introduced by the Act should afford greater protection and security to retirement village residents.



Consumer Guarantees Update

A recent High Court decision has finally answered a long-standing question arising from the Consumer Guarantees Act 1993: can a consumer take it upon themselves to arrange for the repair of a defective good and then claim the full cost back from the supplier; or, must the consumer first give the supplier the opportunity to provide a remedy?

The decision is unequivocally clear - the consumer must first afford the supplier the opportunity to remedy the defect. This is in line with the general policy of the Act that the suppliers of goods are liable to provide remedies as they, and not the consumers, should bear the risk of defective goods.



Lawyers – New Rules of Conduct and Client Care

The Lawyers & Conveyancers Act 2006 came into force on 1 August 2008.

One of the over-riding purposes of the Act is to protect consumers of legal services. One of the ways this will be done is to require lawyers to comply with the new Rules called Client Care Rules.

The following Client Care and Services Information sets out the rights you are entitled to whenever you receive legal services from a lawyer. This firm will ensure that you receive each of these rights.

CLIENT CARE AND SERVICE INFORMATION

Whatever legal services your lawyer is providing, he or she must:

- Act competently, in a timely way, and in accordance with instructions received and arrangements made.
- Protect and promote your interests and act for you free from compromising influences or loyalties.
- Discuss with you your objectives and how they should best be achieved.
- Provide you with information about the work to be done, who will do it and the way the services will be provided.
- Charge you a fee that is fair and reasonable and let you know when you will be billed.
- Give you clear information and advice.
- Protect your privacy and ensure appropriate confidentiality.
- Treat you fairly, respectfully and without discrimination.
- Keep you informed about the work being done and advise you when it is completed.
- Let you know how to make a complaint and deal with any complaint promptly and fairly.

The obligations lawyers owe to clients are described in the Rules of Conduct and Client Care for Lawyers (the rules). Those obligations are subject to other overriding duties, including duties to the courts and to the justice system.



We are very glad to introduce **Pearse Smyth**, a new solicitor who has been working with Chris Fogarty in our Barrington Law Office since January this year. He started his legal career in Ireland in 1998 and was admitted to practice as an Irish lawyer in 2001.

Pearse has a wide range of experience in dealing with private client matters. He has practised and continues to practise in property, commercial property, commercial law, family law, wills, probate and has recently become involved in resource management law issues.

Pearse is delighted to be working in our Barrington office as he lives in the locality and enjoys the opportunity to walk to work.

In his spare time Pearse enjoys reading, watching movies, hill walking (on sunny days only) and food (both cooking and eating). Although he is thoroughly enjoying living in New Zealand, we understand that his Christchurch partner Kate was the main reason for his migration to our shores!

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