



FLETCHER VAUTIER MOORE
LAWYERS

LAWS *of* SUCCESS

THE NEWSLETTER *of* FLETCHER VAUTIER MOORE, LAWYERS

DECEMBER 2004



Christmas Wishes

In our December edition of "Laws of Success" we remind our readers of the significance of the Holidays Act 2003 as it relates to working on public holidays. For a full commentary, including crucial changes by virtue of the Holidays Amendment Bill, please check our website at www.fvm.co.nz under Legal News.

Mediation is increasingly becoming a preferred option to court hearings as a means of resolving disputes. Marian Lyders talks about this topic on page 2.

To LIM or not to LIM? Bruce Fraser provides an insight on Land Information Memorandums, commonly referred to as LIMs. For most people the purchase of a property is their biggest single transaction, and obtaining a LIM can prevent any unpleasant surprises.

On page 3 our office hours and contact details over the Christmas/New Year break are listed for your information.

We take this opportunity to wish all of our clients and friends a safe and happy Christmas season.

Steve Fraser
Business Manager

Holidays Act Highlights

The following is a reminder of the key points regarding the Holidays Act 2003:

- An employee can only be required to work on a public holiday if that is specified in their employment agreement.
- If a public holiday falls on a day that an employee would normally have worked, and they have that holiday off, they are to be paid their relevant daily pay for that day, including any overtime or allowances they would have received.
- **All** employees who work a public holiday (ie. not just those who would normally have worked that day) qualify for at least time and a half of their relevant daily pay, regardless of their role or income.

2004/2005 Christmas/New Year Statutory Holidays

Saturday 25 December	Christmas Day
Sunday 26 December	Boxing Day
Monday 27 December	Christmas Day Holiday
Tuesday 28 December	Boxing Day Holiday
Saturday 1 January	New Year's Day
Monday 3 January	New Year's Day Observance
Tuesday 4 January	Day After New Year's Day Holiday

For advice or clarification on public holiday regulations, please contact any one of our Employment Team specialists at our Nelson or Richmond Offices.

*by Nicole Ironside
Senior Solicitor, Nelson Litigation Team*

(Due to space restrictions, only Holiday Act key points have been printed in this edition. To view the full article including Holidays Amendment Bill implications, visit our website www.fvm.co.nz and click on Legal News. The full article will be published in our February edition.)

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The Advantages of Mediation - What you should know



by Marian Lyders
Senior Solicitor, Motueka Litigation Team

Mediation is a negotiation process where parties having a dispute appoint an impartial third party to assist them to reach an agreement that is acceptable to them.

Mediation usually happens when people have reached a stalemate and believe they can no longer handle the dispute without this assistance. The mediator has no decision-making power and his or her role is to create a process where parties can clearly identify the matters in dispute and then work towards creating solutions that they are each comfortable with.

Mediation is very different from arbitration where the parties employ a third party to make a decision on how the issues in dispute are to be resolved or settled. The procedures in arbitration are very similar to a court hearing, although they can be conducted in a less formal manner. Both mediation and arbitration are private processes which are not open to public scrutiny. If the parties cannot reach an agreement in mediation, then what is said during the mediation cannot be used by either party if

the matter goes on to arbitration or alternatively to a court hearing. This confidentiality is to encourage the parties to talk frankly and openly in order to reach an agreement.

So why mediate?

Mediation has many advantages including:

1. The agreement reached is the parties' agreement, tailor-made to suit their needs and interests, not a decision imposed upon them by a third party. They remain in control of the outcome and, unlike arbitration, there is not a "winner" and a "loser".
2. Mediation is a much more cost effective option for people. It is usually less costly than arbitration, and far less costly than going to court, especially with the dramatic increase in court filing fees.
3. Mediation can be arranged within a fairly short time as opposed to a far greater length of time spent waiting for court proceedings.
4. Mediation helps to establish, strengthen or restore relationships of trust between the parties and often shows them more effective ways to communicate with each other in the future if they have an ongoing relationship.
5. When people have a dispute they usually feel that the other party is not listening to what they are saying.



Mediation creates an environment where the parties are able to listen to each other's views, which then enable them to work together to reach a settlement.

6. Where parties are needing to terminate a relationship, whether in a business sense or a more personal sense, mediation enables them to do that in a way that minimises costs and stress on the parties.
7. In many disputes the issues that parties think they are in dispute over are merely symptoms. Mediation allows them to identify the real issues that need to be resolved and to create solutions for these issues.

Mediation is a very dynamic and powerful process that has a high success rate in resolving disputes, and is even more effective where parties engage a mediator very early on in the dispute.

Should you have any queries as to whether mediation could assist you, then please contact Marian Lyders at our Motueka Office, or Nicole Ironside at our Nelson Office. 🏡

On-line Conveyancing Update

Over the past few months our Conveyancing Team have been testing newly installed on-line conveyancing software, which will enable us to communicate with our clients and, with their authorisation, their agent and personal banker to keep them informed of the current status of their conveyancing transaction. Fletcher Vautier Moore is currently the only Nelson law firm using the benefits of this technology.

As soon as a contract is received, and as various conditions are confirmed, the software is programmed to send a text message followed by an e-mail advising that fact.

Clients involved in conveyancing transactions will be informed more fully of this new facility as their conveyancing transaction progresses.

Browse previous newsletter issues at www.fvm.co.nz under Newsletters

To LIM or not to LIM?

That is the question facing many prospective home buyers and sellers.

While in the Nelson/Tasman area LIMs are not yet universally seen as a fundamental part of a purchase, they are regarded as such in many other parts of the country. There is a school of thought that it is negligent for a lawyer acting for a purchaser not to advise the client to get a LIM on the property, but that view has yet to be tested in the Courts.

What is a LIM?

LIM is an acronym for Land Information Memorandum. LIMs are a creation of statute and first appeared in 1991 following an amendment to the Local Government Official Information and Meetings Act. A LIM is obtained from the relevant territorial local authority ("TLA"), often referred to as the council.

A LIM should not be confused with a PIM (Project Information Memorandum). The two are quite distinct and serve quite separate purposes. The nature and purpose of a LIM is discussed in this article. A PIM however, as its name implies, elicits information in relation to a proposed project, such as the construction of a new building. A PIM will assist the developer in

identifying issues which might arise with the TLA in relation to the project and whether or not that project will comply with council requirements.

An application for a LIM must be in writing and accompanied by "any charge fixed by the territorial authority in relation thereto". There is no standard charge for a LIM, each TLA sets its own fee. (Most lawyers acting for a purchaser will obtain a LIM for their client at cost.)

Once requested, the TLA must issue the LIM within ten working days.

The LIM must include information regarding/identifying:

- Special features or characteristics of the land which are known to the TLA but not shown on the district plan. For example known hazards such as potential erosion, falling debris, subsidence, slippage, alluvium, or likely presence of hazardous contaminants must be disclosed;
- Private and public stormwater and sewage drains in the TLA's records;
- Rates owing on the land;
- Notification received from a statutory organisation having the power to classify land or buildings (e.g. Historic Places Trust);



by Bruce Fraser
Partner, Nelson Commercial Team

- Consents, certificates, notices, orders or requisitions affecting the land and or any building on the land previously issued by the TLA;
- Advice received by the TLA from a network utility operator pursuant to the Building Act 1991;
- Any certificate issued by a building certifier pursuant to the Building Act 1991; and
- The land use and conditions attaching to that use.

The TLA may also provide other information as it sees fit and while most will provide some other information on the property there is no "standard" additional information disclosed.

Limits on a LIM

While a LIM will provide information helpful in enabling a purchaser to identify potential problems or issues with the property, it is not absolute. Purchasers should not regard a LIM

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Office Closure

Nelson, Richmond and Motueka

Our offices at Nelson, Richmond and Motueka will close for the Christmas vacation at 4.00 pm on Thursday 23rd December, and will reopen on Monday 10th January 2005 at our normal opening times (Nelson 8.00 am, Richmond and Motueka 8.30 am).

Havelock and Takaka

Our final visit to Havelock for the year will be on Friday 17th December. Visits every Friday will commence in the New Year on Friday 14th January. Please telephone (03) 548 1469 or (03) 574 1390 to arrange appointments.

Weekly visits to our Takaka Office will wind up for the year on Thursday 16th and Friday 17th December, commencing again in 2005 on Thursday 3rd and Friday 4th February. For Takaka appointments, please telephone 0800 287 030.

Emergency After Hours Service

Should you require legal assistance during our office closure periods for all our offices, please telephone our Nelson Office phone number 548 1469. Call Care Answer Service will be taking care of our switchboard, and their professional staff will have details of our legal staff available over the Christmas break.



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as providing a guarantee on the property being purchased. A LIM will not disclose:

- Notices or consents issued by regional councils;
- Proposals to declare land for road or reserve;
- Land considered to be of cultural significance, such as a Maori burial site; or
- Copies of building plans.

Further, a LIM does not identify property boundaries and easements over the title. Registered easements and site restrictions will be identified when the title is searched. In contrast, the boundaries of a property can only be confirmed by a survey of the property.

Questions or issues beyond the scope of a LIM should be specifically raised with your legal adviser. A lawyer cannot advise in relation to matters or issues of which they are unaware and which are not brought to their attention.

LIM/Building Act Cross Over

Improvements and works carried out on a property frequently require a building consent or permit from the TLA. Before granting that consent the TLA will inspect the plans and ensure that

the proposed work is in accordance with the applicable New Zealand standards and council requirements. When the work is complete the TLA will issue a code compliance certificate.

Often, however, a property owner may carry out work such as the addition of a deck without the requisite TLA approval. Further investigation may be necessary. A council cannot issue a building consent retrospectively for works

already completed without a prior consent or permit.

In such circumstances an independent building consultant is often retained to inspect the works and provide an opinion as to whether or not the works meet the code standard. If such an opinion is obtained then a copy of that report is usually put on the council file as evidence of the matters covered and the TLA will usually then not take further action.

Conclusion

A LIM is not a complete answer but it will provide information of relevance to a prospective property purchaser. The LIM will identify some matters of relevance and minimise the areas of risk. For most people the purchase of a property is the biggest single transaction they will ever undertake. It will involve several hundred thousand dollars, and a few extra dollars for a LIM is relatively cheap insurance.

However, a LIM will not address all matters. Any particular concerns or structures on the property should be raised with your legal adviser so that they are properly considered. If you proceed with the purchase and find there are problems, the principle of "buyer beware" will apply and, short of a misrepresentation or breach of warranty, the problem will be yours, not the vendor's.

For a vendor, there are advantages in obtaining a LIM before marketing the property. Not only will it identify areas of concern (so that you have the opportunity to rectify these before the property is put on the market), but it also means that a contract condition is able to be addressed more quickly so that the contract is confirmed at the earliest possible date. ▲

Staff Announcements

Ashley Fleming was promoted into a Junior Personal Assistant role in our Nelson Office Conveyancing Team, having previously been our Junior Administrator and Receptionist since February this year.

In mid-November we welcomed **Grace Donnelly** as Ashley's replacement to work alongside our Senior Receptionist, Sharon Booth. Grace is the firm's third Employment Scholarship Programme student (formerly known as Launchpad).

Would you like to receive our newsletter via e-mail?

If so, please contact Penny Menzies, PA to Management Team, Nelson Office

E-mail: pmenzies@fvm.co.nz, Telephone: 03 548 1469



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Motueka 12 Wallace Street, PO Box 23, Tel: (03) 528 7030, Fax: (03) 528 9120

Takaka and Havelock by appointment