



FLETCHER VAUTIER MOORE
LAWYERS

LAW *for* SUCCESS

THE NEWSLETTER of FLETCHER VAUTIER MOORE, LAWYERS

DECEMBER 2005



Christmas Wishes

On behalf of the Partners and Staff at Fletcher Vautier Moore, we extend to you our very best wishes for the Christmas season.

We trust you will enjoy our final issue for 2005, providing some “food for thought” for both individuals and business owners. Any future suggestions you may have are welcomed.

Steve Fraser
Business Manager

Do you have an Enduring Power of Attorney?



Pam Coltman
Legal Executive
Richmond Team

What is an Enduring Power of Attorney?

An Enduring Power of Attorney (EPOA) is a document that allows you to legally appoint a person or persons (as attorneys) to manage your property, or your personal care and welfare.

A signed EPOA may be kept with your solicitor for safekeeping. You continue to handle your own affairs until such time as

you ask your attorney to step in, or you suffer serious illness or incapacity.

Who should have an EPOA?

All adults should have an EPOA, and should be considered to be of equal importance to making a Will.

Anyone is at risk of an accident or serious illness at any time; it is therefore important to have an EPOA prepared prior to a need arising.

In the event of illness or serious accident, you may lose the ability to sign documentation or even communicate your wishes. If you require continuing care, it is likely funds will be needed, but who will be able to access those

funds on your behalf to pay for your care?

Doctors and healthcare professionals are now requiring an EPOA in certain circumstances, and retirement villages are requesting that you have such a document when applying for residence.

In the absence of an EPOA, should you become incapable of managing your own affairs, it may be necessary for your family to apply to the Court for the appointment of a manager to act on your behalf. This course of action is expensive and time consuming, especially when there is a simple, effective and inexpensive alternative available in the form of an EPOA.

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“House for Sale – Contact Owner”

Before deciding whether selling privately is for you, it pays to first weigh up the advantages and disadvantages.

Some of the potential advantages to consider are:

- The most obvious is the fact that there is little or no commission payable.
- Direct contact with your purchaser. As a consequence, there may be fewer misunderstandings regarding what chattels or fixtures are included, the possession date, deposit amount, and keys handover etc. There may be greater good faith, understanding and co-operation between the seller and the purchaser arising from direct contact.
- Without an agent, your lawyer or legal executive has a greater role in the process and can prepare the contract, therefore having an opportunity to ensure its accuracy prior to signing.

However, balancing any advantages are a number

of potential disadvantages you should be mindful of:

- First, you pay for the cost of your own signage, private advertising or a “private sale” package from a private sale company.
- A purchaser may discount the price they are prepared to pay to reflect the lack of commission, seeking a slice of that “saving”.
- Without an agent acting as an intermediary, how will you know if you have extracted the best price possible from your purchaser?
- If your private sale fails to produce a buyer, you may list with a real estate agent but your initial costs will have been incurred.



If you are considering selling your house privately, we recommend contacting us at an early stage.

We can assist by preparing a draft contract, which you can present to an interested purchaser at an early stage.

We also recommend and encourage providing a copy of the title and also pre-ordering a LIM so that a purchaser is able to complete their assessment and analysis of the property in a shorter timeframe, as opposed to waiting at least two weeks to receive a LIM from the Council. The cost of a LIM is usually under \$200 and means that any contract can confirm in a shorter timeframe. Further, you go into the sale process far more informed without any surprises, which may be highlighted when a purchaser requests a LIM.

If you would like to know more about selling privately and whether this is the best option for you, contact Maurice Higgs on 539 1732 or Paula Welsh on 539 1720 at Nelson, Pam Coltman at Richmond on 543 8711, or Denise Rogers at Motueka on 528 7030. ▲

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What's the difference between an ordinary Power of Attorney and an EPOA?

An ordinary Power of Attorney has the same function as an EPOA, but the validity of an ordinary Power of Attorney ends in the event of the person granting it subsequently suffering from mental incapacity as a result of illness or accident.

In contrast, an EPOA is effective for life, irrespective of the person's mental capacity or incapacity.

Conclusion

Arrangements for an EPOA should not be left until the need actually arises. Incapacity through accident or illness can be sudden, and simple precautions taken now can avoid considerable difficulty and expense later.

We recommend that you arrange for an EPOA while you are able to determine who is going to be responsible for your affairs.

Contact us today to discuss your requirements. ▲

Register! Register! Register!

Do you supply goods to others under terms of trade which preserves your right to ownership until full payment is received?



*Chris Royds
Partner
Nelson Commercial Team*

Despite the imminent arrival of Christmas, it is not too late to complete the necessary step of registering that interest on the Personal Property Securities Register (PPSR) under the Personal Property Securities Act (PPSA).

The PPSA has now been operative for over two and a half years. However, misconceptions remain regarding the need to register security interests on the PPSR.

Why? Because the PPSR operates as a notice board of the existence of security interests and it is this notification that protects your position.

The PPSA established an interest register which people can search to find out if other parties have interests in respect of a company, organisation or private person's personal property.

"Security interests" include reservation of title clauses in terms of trade, consignment goods, leases of personal property (greater than one year), hire purchase agreements, or specific or general charges over personal property of a person, organisation or company.

The consequences of failure to register your security interest under a reservation of title clause can be disastrous.

A bank or other creditor taking a security interest that is registered on the PPSR may defeat your claim to goods supplied.

Section 66 of the PPSA provides that a perfected security interest has priority over an unperfected security interest in the same

property. This means that a party who has registered the existence of a general security interest will out rank a supplier of goods with a reservation of title interest but who has not registered that interest.

A recent High Court case illustrates the ruthless consequences of failure to register the existence of a security interest:

The Facts: Portacom New Zealand Limited leased buildings to a timber company. The prefab buildings were leased for a term greater than one year and pursuant to Portacom's standard lease terms and conditions. The timber company had borrowed funds from a bank and as a result, the bank had been granted security over all of the timber company's personal property pursuant to a General Security Agreement. The bank registered the existence of this security interest on the PPSR.

In contrast, Portacom had failed to register its interest as owner of the leased Portacom buildings on the PPSR. The timber company defaulted in payment to the bank and the bank exercised its rights under the General Security Agreement. As a result, the bank took possession and sold the five leased Portacom buildings.

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Christmas Break Closure

Nelson, Richmond and Motueka

Our offices at Nelson, Richmond and Motueka will close for the Christmas vacation at 1.00 pm on Friday 23 December and will reopen on Monday 9 January 2006 at our normal opening times (Nelson 8.00 am, Richmond and Motueka 8.30 am).

Takaka

Our final weekly visits to Takaka for 2005 will be on Thursday 15 and Friday 16 December, commencing again on Thursday 2 and Friday 3 February 2006.

For Takaka appointments, please telephone 0800 287 030.

Emergency After Hours Service

Should you require legal assistance during our office closure periods, 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.



Register! Register! Register!

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Decision: The High Court held that, because the bank had registered its interest in all of the timber company's personal property, it was free to sell the Portacom buildings. Portacom were not able to retake possession of prefab buildings they owned. Section 66 applied.

This case is a graphic illustration of how critical it is to register the existence of any security interest.

As a general rule, if you relinquish possession of personal property to another party and you have a written contract preserving your ability to retake possession, then you should register the existence of this interest on the PPSR.

It is not too late, and is a simple process, to register the existence of your security interest on the PPSR.

For further advice, telephone Chris Royds direct on 539 1736. ▲

Richmond Commercial Services

Bruce Fraser, Partner, is now attending our Richmond Office to meet an increased demand for commercial services in the Richmond area.



Bruce has over 20 years' legal experience, currently specialises in commercial and company law, and may be contacted direct on 539 1735. ▲

Visit Website for Legal Articles

Visit our website www.fvm.co.nz to view a variety of extended legal articles including:

- Holidays Act Highlights
- Protection Against Asset/Income Testing
- Structuring your Business for Maximum Benefit
- Thinking of Subdividing?

Staff Announcements

Tenielle Laubscher replaced **Grace Donnelly** as Junior Receptionist/Administrator as part of the Employment Scholarship Programme, a 12 month office apprenticeship-type scheme managed by NMIT. Tenielle is the fourth student the firm has supported through this programme.

We also welcomed **Lauren Wallace**, Solicitor, who joined our Richmond Resource Management Team to cover for **Kate Mitchell** while on parental leave. Lauren joined us from Auckland where she practised as a barrister, specialising in a wide range of resource management, property law and local government matters. Lauren's full profile can be viewed at www.fvm.co.nz under 'Our People'.

We farewelled **Sheryl Andrews**, a part-time PA at our Richmond Office and welcomed **Julie Jar** to the team as her replacement.

Meg Scally, Solicitor, Nelson Litigation Team, moved to Auckland, and **Deb Bloomfield**, a PA with our Nelson Litigation Team, returned to Blenheim. ▲



Would you prefer 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: 03 539 1717



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

Visits to **Takaka** every Thursday/Friday and to **Havelock** by appointment

www.fvm.co.nz