



FLETCHER VAUTIER MOORE  
LAWYERS

# LAWS *of* SUCCESS

THE NEWSLETTER *of* FLETCHER VAUTIER MOORE, LAWYERS

JUNE 2005

## *Winter Issue*

In the June edition of "Laws of Success" we profile the importance of having a current Will, look at a snapshot of the Building Act 2004, and invite you to consider investment via Capital Mortgage Income Trust.

We welcome Chris Royds as a Partner at Fletcher Vautier Moore, and advise that Warwick Heal has now moved to a consulting role in the Nelson Office.

A number of free evening seminars are being run over the next few months - please check our website under 'Seminars' for details.

**Steve Fraser**  
Business Manager

## *Looking to invest?*

In December 2003 Fletcher Vautier Moore Nominees Limited sold all their mortgages to Capital Mortgage Income Trust, and over 95% of our investors transferred their funds into the Trust.

Capital Mortgage Income Trust is a pooling arrangement. Investors commit money to the pool. The funds in the pool are then invested in mortgages over land and buildings and in bank deposits. Mortgage Fund Managers Limited are the managers of the funds. Jock Sutherland and Nick Moore (Partners of Fletcher Vautier Moore) are two of the directors.

The Trust funds have now increased to \$28 million and is paying interest quarterly to investors currently at the rate of 7.3% per annum. Investments are on call.

If you wish to know more about this low-risk flexible investment with a secure and stable income stream, contact Mike Riddell, Accountant, Fletcher Vautier Moore on phone (03) 548 1469. 🏠

## *The Criminal Records (Clean Slate) Act 2004*

Under this new Act, people with convictions that meet certain criteria have the right to have their criminal history concealed. This means when asked if they have any prior convictions, eligible individuals may advise they have no criminal record.

*For the full article, including eligibility criteria, visit our website [www.fvm.co.nz](http://www.fvm.co.nz) and click on Legal News. 🏠*



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## What happens if you die without a Will?



by Shelley Horrell  
Legal Executive  
Nelson Trusts Team

In the legal arena, dying without a Will is known as dying "intestate".

Rules relating to the administration and distribution of intestate estates are set out in the Administration Act 1969 ("the Act"). This includes those who are entitled to administer your estate, and those to whom your estate will be distributed and the proportions they will receive.

The factors that will determine those to whom your estate is distributed include:

- the value of your assets;
- how the assets are owned, ie jointly or as tenants in common;
- your relationship status ie. married, single or de facto;
- whether you have children.

A surviving spouse/partner and immediate family will usually inherit your property and possessions. It should be noted, however, that if you are married or in a de facto relationship with children, your surviving spouse/partner might share your estate with your children if it exceeds a certain value.

If you are single with no children, your estate will be given to your nearest living relatives – firstly parent(s) then to your brothers and sisters and so on as provided in the Act.

Be aware that the distribution prescribed by the Act may not reflect your wishes.

By leaving a valid Will, you are able to state who you would like to be the executor of your estate (the person who will administer your estate and ensure that your wishes are carried out) and who you would like to receive your estate.

When your assets include either:

- an individual share in land; or
- more than \$11,000 invested or held in any bank, shares, bonds, life assurance company, or other financial institution,

a grant of administration will need to be obtained from the High Court before your estate can be administered. If you have left a valid Will, the application to the court for the grant (known as "Probate") is usually straightforward.

However, if you have died "intestate" the application to the court for the grant (known as "Letters of Administration") can be quite complicated. Depending on the situation, the amount of information the Court requires before it will make the grant can be quite extensive and costly to obtain.

Dying without a Will can cause extra stress on your family, as added costs and delays in administering your estate are likely. There are added complications for those who are married, in a de facto relationship or recently separated.

In particular, the Property (Relationships) Act 1976 ("the PRA") requires surviving spouses/partners to make a choice between accepting that which they are entitled to receive under the Administration Act or claiming under the PRA for their share of relationship property. This choice must be made before any application to the court for Letters of Administration can be made. Advice must be given to the surviving spouse/partner about their rights in respect of these two choices.

As mentioned, there are a number of factors that will determine the administration and distribution of your estate on your death.

**If you do not have a current valid Will, we recommend you contact us to discuss your individual situation and how to best achieve your wishes.** 🏠

### Free Seminars

Tuesday 21 and Wednesday 22 June 2005

5.30 – 6.30 pm Venue to be advised

#### HOW CAN FAMILY TRUSTS HELP YOU?

Find out how to protect assets for yourself and your family by taking informed action now.

All new and existing clients are invited to attend one of two free seminars on Family Trusts and asset protection planning including:

- How a Family Trust is established and how it operates;
- Changes to asset testing and residential care subsidies effective from 1 July 2005;
- Protection offered by Family Trusts;
- Commonly asked questions about Family Trusts and protection of assets.

If you are interested in attending, or would like more information, please telephone Penny Menzies on (03) 548 1469 or email [pmenzies@fvm.co.nz](mailto:pmenzies@fvm.co.nz) before Friday 10 June 2005.

## *A snapshot of the Building Act 2004*

**This new Act is another ingredient in the Government's recipe to address the leaking buildings crisis.**

Other components include the progressive changes to the building code and the establishment of the Weathertight Homes Resolution Service.

The Building Act 2004 represents an expansion of the building regime established by the Building Act 1991, but includes some potentially significant changes which are discussed below.

### *Building Consents Issued under the earlier 1991 Act*

First, there has been a degree of misunderstanding surrounding existing building consents (ie. consents issued between January 1993 and March 2005). If you have a building consent issued under the Building Act 1991, then a Code Compliance Certificate (CCC) will issue on the basis of that consent.

### *No more interim CCCs*

A Council (Building Consent Authority) can no longer issue interim CCCs. This change will mean that a developer should consider staging and separating building consents so that a CCC can issue at the completion of identifiable stages.

By example, consider the construction of four units: Under the 1991 Act it was possible to have one building consent for all four units and have interim CCCs issue as each unit was completed. Now a developer should consider obtaining four individual building consents with a carefully programmed development so that the first unit includes the construction of shared services and structural aspects.

The inability to issue interim CCCs is also relevant for buildings intended for public use. The importance of CCCs is explained below.

### *The Measure of CCCs*

CCCs are now issued on the basis of the building consent, as opposed to the building code. The latter previously caused difficulties where the building code changed after the issue of a building consent. Further, there was the potential for heated discussions on site between an inspector and builder when the builder built in accordance with approved building consent plans but outside the building code. Plans and specifications now need to contain far more detail. This is helpful for a builder on site as the plans and specifications should contain all detail necessary to complete the construction, as opposed to referring to the building code.



However, an architect or draughtsman will need to devote more time and detail to the drawings and specifications for building work. The Tasman District Council, for example, has also signaled cost increases for the processing consents, in addition to a higher building levy.

### *CCCs Required Prior to Occupation*

A household unit sold by a "residential property developer" (RPD) must also have a CCC prior to occupation or settlement of the sale of the property. However, the Act permits a written waiver of



*by Chris Royds  
Partner  
Nelson Commercial Team*

that requirement as between a homeowner and a RPD. A RPD is defined to include builders, building companies and anyone who arranges for a household unit to be built.

Second, a CCC must have issued before any building intended for public use is used. It is not possible to contract out or waive that requirement. Consequently, a developer of a multi-use building should consider separate building consents - one consent relating to the building not intended for public use, and another which would be captured by this provision. Given the new CCC requirement, care must also be taken in terms of any design/build/lease contracts as to the proposed completion or possession date.

### *Residential Building Work Warranties*

New warranties apply where a "household unit" dwelling is constructed by a RPD. This change reflects a public perception that warranties exist. The benefit of these warranties flow through to subsequent owners and include warranties that:

- building work is carried out in a proper and competent manner;
- materials used will be new and suitable for the intended purpose;
- the building work and materials will be reasonably fit for its purpose;

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- building work will be carried out in accordance with the building consent and the building code and with reasonable care and skill; and
- the household unit will be suitable for occupation on completion of the building work.

### **Definition of Building Work**

This has been extended to include design. This appears to be a reaction to the leaking home crisis to attempt to extend responsibility and liability to architects and draughtsmen involved in the design.

Other changes to the definition of building work have been to include fencing of swimming pools as requiring a building consent. Further, a building consent is now required for a “moveable vehicle used for residential purposes”.

### **Licensed Building Practitioners (LBPs)**

From November 2009 only a LBP can complete or supervise “restricted building work”. Restricted building work generally means work related to the integrity/structure and building envelope. The licensing requirements and administration of the LBP register is the responsibility of the Department of Building & Housing. Details will flow through in time given that the provisions do not apply until November 2009.

## **Partnership Announcements**



**Warwick Heal**  
Consultant

As at 1 April 2005, **Warwick Heal** retired from the Partnership and continues to practise as a Consultant to Fletcher Vautier Moore.

Warwick may be contacted at our Nelson Office on 548 1469.

**Chris Royds** of our Nelson Office joined the Partnership on 1 April 2005.

Chris has been a senior member of our Commercial Team since late 2001, and has particular expertise in business acquisitions, property developments, trusts and immigration matters.



**Chris Royds**  
Partner

### **Summary**

The above provides a snapshot of some of the significant changes introduced by the Building Act 2004 which highlight the wide application of the building regime to landlords, builders, home owners, home handymen, developers, and numerous others associated with the building industry.

Caution is required especially for property development, and advice should be sought at the outset so a building programme or contract can be structured to reflect the changes.

**Contact Chris Royds on (03) 548 1469, or any one of our Commercial Team solicitors, for advice.** 🏠

### **Staff Announcements**

In mid-May we welcomed the return of **Andrea Martin** as a Personal Assistant at our Richmond Office.

Andrea will be assisting Fiona McConnochie and Pam Coltman, primarily working in the areas of commercial and conveyancing. ▲

*Would you prefer to receive our newsletter via e-mail?*

Please contact Penny Menzies, PA to Management Team, Nelson Office

E-mail: [pmenzies@fvm.co.nz](mailto:pmenzies@fvm.co.nz) Telephone: 03 548 1469



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**Takaka and Havelock by appointment**

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