



FLETCHER VAUTIER MOORE
LAWYERS

LAWS *of* SUCCESS

THE NEWSLETTER *of* FLETCHER VAUTIER MOORE, LAWYERS

MARCH 2005

Welcome to 2005

In this edition of *Laws of Success*, we outline some of the misconceptions surrounding vehicle WOF and registration fines, and we highlight the importance of family trusts as a means of protecting assets for you and your family. In recent years family trusts have become an increasingly popular method for clients to protect family property for future generations. Plans to hold a further series of free trust seminars for our clients are currently being discussed by our Trust Team. Details will be advised closer to the time.

On page 3, Victoria Chisnall provides an overview of the changes to the registration of title instruments and other associated documents, as Land Information New Zealand (LINZ) move toward an electronic processing system, and Nicole Ironside continues on from her December article by discussing the implications arising from the Holidays Amendment Bill.

At the end of January we welcomed to the firm Lee James, Solicitor, as our latest appointment to our Motueka Office. Lee's brief profile can be found on the back page.

We trust all our clients and business associates will find something of interest in this issue.

Steve Fraser
Business Manager

Vehicle WOF and Registration Fines

Contrary to the common misperception that fines for no vehicle warrant of fitness or registration (and some other 'stationary' motor vehicle offences) bears a standard fee, for which the court has no jurisdiction, the High Court in Nelson has determined otherwise.



In the standard "ticket" issued for a lack of warrant or registration, it gives you the option of requesting a hearing and making submissions to the District Court in respect of the level of the fine for which you are liable. This option is open to you, even if you admit the offence of having no warrant or registration, if you think there are circumstances (yours or those surrounding the offence) that should be reflected in the level of the fine. Ordinarily this takes place in front of Justices of the Peace sitting in the District Court, not a Judge.

The issue of whether a JP really has discretion to alter a "set" fine has been the subject of various High Court decisions around the country. The difficulty being that some High Court decisions said there was no discretion, and some thought there was. The decision in the Nelson High Court last year traversed all the decisions and after a full argument set the record straight.

A JP does have discretion to alter the "set" fine. However, that includes the discretion to give a greater fine than that imposed by the "ticket", and also may attract court costs on top of the fine imposed. 🏠

*by Kaye Lawrence, Senior Solicitor
Nelson Litigation Team*

Contents

1 Welcome 1 Vehicle WOF and Registration Fines 2 Protecting Assets For You and Your Family
3 Holidays Amendment Bill 3-4 eDealing 4 Staff Announcements

Protecting Assets For You and Your Family

As you go through life you gather assets, and it is only natural to want to protect those assets, not only for yourself, but also so you can pass them on to your family.

We all know that circumstances beyond our control can result in assets being lost or devalued, however, prudent planning steps taken in a timely fashion can help to minimise those risks.

Estate planning incorporating a family trust, which has been properly set up to meet your needs and wishes, may provide you and your family with the best possible protection for your assets. However, before embarking on any estate planning, it is important to understand what a Family Trust is, how it is made up, and how it functions.

The steps you should take will be determined by your particular circumstances, but in general terms a family trust can provide benefits in the form of protecting family property for future generations, prevent loss of assets if your children have relationship splits, and, in respect of rest home charges, remove a proportion of your assets from the income and asset testing rules. In addition, prudent planning steps can minimise and provide flexibility in respect of income tax rates, can protect assets from creditors, and can provide protection from the reintroduction of death duties or introduction of other duties.

Most people will have heard of family trusts, but what exactly are they? In simple terms, a family

trust is a legally created entity which can do almost all things a person can do.

Trustees are appointed, usually the husband and wife plus an independent person, and they act as the “engine room” of the family trust. The Trustees own the Trust’s assets in their names, and make all decisions in relation to the actions, assets and income of the Trust.

The only persons who can benefit from the actions and decisions made by the Trustees are the “beneficiaries” of the Trust, who can be anyone, although would usually be the husband and wife, their children, their grandchildren and remoter relatives. While the maximum life of a Trust under New Zealand law is 80 years, the Trust can be wound up any time short of the 80 year period if the trustees decide to do so. Once the Trust is set up, then assets are transferred from the individuals to the Trust.

Assets, for instance a family home, can be transferred from the individuals to the Trust at the time of set up or at any later date as appropriate, and must be transferred at “market value” with the usual documentation completed.

When an asset is transferred to the Trust, the Trustees pay for the asset by way of a Deed of Acknowledgement of Debt (in essence a loan agreement) for the value of the asset transferred. The individuals setting up the Trust can then gift away the value of that debt at the rate of \$27,000.00 per person per annum, being the maximum duty free gifting capacity.



An immediate planning advantage obtained by transferring an asset into a Trust is that the asset (appreciating in value) is now owned by the Trust. Any increase in value belongs to the Trust. On the other hand, the Acknowledgement of Debt given by the Trustees to the individuals is not affected by market forces and accordingly is “pegged”.

To obtain the greatest advantage, it is important to get planning steps underway sooner rather than later, as you will not only peg the value but commence the gifting steps to your advantage.

As part of the overall planning action, it is essential that your Wills are updated to incorporate a forgiveness in favour of the Trust should there be any debt still owing by the Trust to you when you pass away.

We recommend that you obtain legal advice to ensure you are informed whether a family trust is right for you, as one size does not necessarily fit all.

At Fletcher Vautier Moore we have an established and experienced team of trust and planning practitioners at our Nelson, Richmond and Motueka Offices available to advise and assist you through these planning steps. 🏡

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: 03 548 1469

eDealing - the Land Registration Process of the Future

Introduction

In recent years, New Zealand's land registration process has been progressively "going on-line". To date this has resulted in all title instruments and associated documentation (eg. mortgages and easements) being scanned onto one central database known as "Landonline".

The next step promoted by Land Information New Zealand is "eDealing" which allows lawyers to prepare and lodge routine

conveyancing dealings online via a computer, including transfers of ownership, and the registration and discharge of mortgages. eDealing lodgment is instantaneous and there will be no need for the traditional paperwork such as Transfer Instruments and/or Mortgage Instruments.

Fletcher Vautier Moore has recently acquired the hardware necessary to use eDealing, and expects to start using it during the course of 2005.



*by Victoria Chisnall
Solicitor
Nelson Commercial Team*

There are, however, important differences between the traditional paper transaction and the new electronic "eDealing" transaction that you should be aware of.

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Holidays Amendment Bill

Continuing on from the Holidays Act Highlights article in our December issue, the following article discusses key points relating to the Holidays Amendment Bill.



*by Nicole Ironside
Senior Solicitor
Nelson Litigation Team*

There is a crucial change to an employee's entitlement to time and a half, by virtue of the Holidays Amendment Bill.

If the employee already receives penal rates for work done on the day of the public holiday, he or she must be paid the **greater of** time and a half of the relevant daily pay, but excluding any penal rates, or the usual relevant daily pay including penal rates.

Penal rates are defined in the Bill and there are some important transitional provisions. In the case

of individual employment agreements, employers have until 1 April 2005 to amend those agreements to reflect an employee's new rights.

The Bill also makes an important change to the "Mondayisation" of public holidays. Employers may need advice on the effect of this.

An employee is entitled to an alternative holiday when he or she works on a public holiday which falls on a day they would normally have worked. The alternative holiday must be taken as a whole day off, on a day that would otherwise be a working day for the employee.

Payment for an alternative holiday is based on the payment the employee would have received had they worked on the day they have chosen to take off. If alternative holidays have not been taken at the time employment ends, then all such alternative holidays must



be paid out at the rate of the employee's relevant daily pay for their last day of employment.

There are a number of issues surrounding the payment for public holidays and alternative holidays which employers should also be aware of.

If you wish to be advised on these issues, or require clarification on the effects of the Holidays Amendment Bill or any other employment matter, please contact Nicole Ironside on phone 548 1469, or any of our Litigation Team members at our Nelson, Richmond or Motueka Offices. 🏠

continued from page 3

Future Changes arising out of eDealings

In the present paper transaction environment, you, the client, sign documentation relating to your particular transaction and then, before a document is lodged for registration at Land Information New Zealand (LINZ), a lawyer must sign the document "correct". In doing so a lawyer verifies the correctness of the documentation, the identity of the parties, the execution of the documents, and all matters leading to a change in the status of ownership of the land in question.

With eDealing there will no longer be any physical documentation. The certification and on-line signing by a lawyer leads to an automatic and instantaneous alteration of the Land Register when a document is submitted. Only licensed/authorised users will have access to this system, and their documentation will be audited by the Registrar General of Land on a regular basis.

The main change that you, the client, will notice arising out of the introduction of eDealing is the requirement that an Authority and Instruction Form (A & I Form) is completed at the outset of a conveyancing transaction. As its heading suggests, the A & I Form provides us with your authority to act on your behalf and your instructions as what the scope of our retainer is. The A & I Form has three particular functions:

1. It proves that we have authority to act on your behalf for the listed transactions;

Staff Announcements

Lee James, Solicitor, was welcomed to the firm at the end of January.

Based at our Motueka Office, Lee focuses on the areas of commercial and property law, family trusts and civil litigation.

Lee has been a Motueka resident for the past eight years, during which time she has practised law in the Nelson area.



In addition to juggling her career with parenting, Lee's expertise in commercial and property law is complimented by her Motueka business interests.

Lee James LL.B.
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2. It provides a record that the proof of identity requirements have been complied with; and

3. It provides us with the ability to nominate another lawyer or conveyancer to certify and sign the dealing on your behalf.

Each client will be required to personally sign the A & I form. When requesting that an A & I Form is executed by our clients, we are bound to give proper attention to the identity and bona fides of our clients.

Particularly the lawyer involved in the transaction must have personally known the client for more than 12 months, or he/she must obtain proof of identity in the form of a photo ID, such as a driver's licence or passport, which is then copied and attached to the A & I Form.

In circumstances where we cannot physically attend on our clients, ie. where you live outside the Nelson/Tasman region, we are required to ensure that the person witnessing the A & I Form and obtaining the appropriate proof of identity is an appropriate witness, such as another lawyer, a notary public or a Justice of the Peace.

Conclusion

With the electronic age now firmly established in the New Zealand land registration arena, the next step is the introduction of "paperless" conveyancing transactions. However, in an effort to avoid the fraudulent use of the eDealing system, increased measures are required to ensure that a lawyer has the authority of and instructions from a client, and that a client's identity is established at the outset of a transaction. 🏠



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