



FLETCHER VAUTIER MOORE
LAWYERS

LAW *for* SUCCESS

Christmas Wishes

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

We trust you will enjoy our final issue for 2006, which includes details of our office closure for the Christmas break.



The Dangers and Short-Falls of DIY Wills

A Will is probably the most important document you will ever sign, so it's important to get it right.



*Judy Lucre
Legal Executive
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Due to the nature of administering estates, the Courts must be extremely strict when it comes to the accuracy and correctness of signed Wills.

Wills must follow a strict format and meet certain requirements, such as correct witnessing and signing, otherwise problems arise, especially if Probate is required. Problems usually result in unnecessary expense,

sometimes extensive, together with delays and stress on the family.

Probate is the Court's authority for the executors to deal with the estate's assets, and must be obtained in any estate with assets valued at over \$11,000 (apart from joint assets when the first partner dies).

When applying for Probate, an original signed Will is presented to the Court together with supporting documents. Should any errors in the Will be detected by the Court, Probate will not be issued, necessitating in further documents to explain or correct any error.

People usually choose to write their own Will to save cost, whether it be with or without the aid of a Will kit purchased from a

stationery shop or online.

In reality, however, they run the risk of causing far more expense when their estate is administered should their DIY Will contain any short-falls.

Some of the most common short-falls we see with DIY Wills include:

- Signing and witnessing requirements have not been met in a variety of ways;
- There is no date;
- No executors have been appointed or an executor is deceased;
- Instructions or wishes are confusing.

Another potential error is that a Will could have become damaged

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in such a way that the Court requires an explanation. An example is where a Will may have been hole-punched before being stored in a folder. Any marks on a Will, whether by a paperclip, staple, hole-punch or other means, requires extra documents to be filed with the Court explaining the reasons for the marks.

To some this may sound very finicky, but it is the Court's duty to investigate any factors which

could suggest a Will has been tampered with.

As you can see, when a Will contains errors it can become a costly exercise, particularly when obtaining Probate (or Letters of Administration with Will annexed if your Will does not validly name an executor).

To ensure you "get it right", we recommend you contact your legal advisor to assist in preparing your Will. Not only will this avoid any potential extra cost, delay and stress when your estate is administered, but it will

also ensure your instructions and wishes are clear.

Your legal advisor will also be able to explain other commonly asked questions such as the entitlement of a spouse, whether married or defacto, the pitfalls of unequal distribution to children, and the possibility of a claim against an estate under the Property Relationship Act, Family Protection Act and Testamentary Promises Act.

Contact us today for friendly, professional advice, and peace of mind. ▲▲

E-dealing – Registering Documents On-Line



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Over the last decade we have seen a number of significant changes at the New Zealand Land Registry.

For example, Land Registry offices throughout New Zealand have condensed which saw the closure of the Nelson Land Transfer Office amongst many other offices.

Further, and more recently, the introduction of Landonline which involved scanning and capturing all paper certificates of title into a computer database accessible via the internet. Landonline enables searching by authorised users via the internet, which is advantageous as it allows quicker and cheaper title and document searching.

The next phase of change is "e-dealing" which allows lawyers to register straightforward documents via the Landonline system.

The only documents that are able to be registered by e-dealing at this stage are "straightforward dealings", such as:

1. Discharges of mortgages;
2. Transfers of title ownership;
3. New mortgages; and
4. Withdrawals of caveat.

There is a small cost saving in registration fees. For example, the present registration fee of a discharge of mortgage is \$70 including agency, whereas under e-dealing it would cost \$41 including agency.

The other advantage is immediate registration. At present, a registration parcel, consisting of a discharge of the previous owner's mortgage, a transfer to the new owner and the owner's new mortgage, would take three to four weeks to complete.

In comparison, if registration is completed by e-dealing,

registration is completed on the day of settlement so that the new owner's name and mortgage appears on the title the day they shift into their home.

A disadvantage, however, with e-dealing is that lawyers are now charged with additional responsibility regarding the registration. Further, we have obligations in terms of record keeping and storage costs. The benefit, however, is the efficiency of registration.

At Fletcher Vautier Moore we have been progressively coming to grips with e-dealing over the past 18 months. We are now fully e-dealing capable. The main changes our clients will see are different types of Land Title documents called Authority and Instruction forms, the need to produce a photocopy of their driver's licence, cheaper registration fees and the fact that their name will appear on the property they are buying on the day they shift in.

If you have any specific queries or would like further information, please contact Chris Royds who is leading this project. ▲▲

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Debt Recovery - The Enforcement Process

In our last newsletter we discussed the information-gathering stages of a debt recovery process. We will now explore the enforcement of judgment, being the final phase.

The fundamental touchstone behind any part of a debt recovery process is whether or not it will produce an economic result.

It goes without saying that you cannot get blood out of a stone. At each step of a debt recovery process, the question must always be asked, "If successful, what will I recover?" and "Will commencing or continuing with this process be worthwhile, taking into account the time and effort involved?"

Having obtained judgment, a creditor can commence enforcement action, either in the District Court (Examination, Charging Orders, Distress Warrants) or in the High Court (Examination, Charging Orders, Distress Warrants, Bankruptcy, Winding-Up).

Examination:

By far the most common enforcement action taken in the District Court is the examination procedure. This is where an examination is conducted before a District Court Examinations Officer who takes a sworn statement from a debtor as to their assets and liabilities. Based on this information, the Court Officer will order repayment of the debt, usually by weekly instalments, directly from an employer via deductions from the debtor's wages, or from WINZ payments to the debtor.

A creditor is entitled to attend the examination with or without their solicitor to ask the debtor questions. While the examination process can be efficient, as with any process, it has its flaws, for instance where a debtor may choose to

be deliberately obstructive, the effectiveness of this process is greatly reduced.

Generally speaking, orders against individuals are for relatively modest weekly sums, so while this process is effective for the repayment of small sums, alternative action should be considered for larger debts.

Charging Orders:

Charging Orders can be obtained in the District or High Court. After judgment they can be obtained as of right, without reference to a debtor. A Charging Order effectively secures a creditor's rights to a debtor's property, to the value of the debt. In certain circumstances, a Charging Order can force a sale of property.

Distress Warrants:

Distress Warrants can be issued within 48 hours of judgment being given. Once issued, a Distress Warrant gives a Bailiff the power to seize goods and chattels to satisfy the judgment debt. This procedure is not often used, as a simple denial of ownership can defeat a Bailiff's right to possession. If, however, a creditor investigates a debtor, checking various registers for charges against goods, a Distress Warrant can become a powerful tool in extracting money from a recalcitrant debtor.



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Where it is suspected a debtor is destroying crucial evidence or disposing of property to avoid paying debts, there are procedures available to impound property prior to court cases so as to preserve that evidence or property.

The primary remedies in the High Court are winding up of companies, and bankruptcy of individual debtors.

Winding Up:

Generally speaking, winding up of a company commences with the preparation and service of a Statutory Demand. The basic requirement for this to occur is either judgment against a company for a specific debt, or confirmation that there is no dispute that money is owed.

If a company fails to make payment or sufficient

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Christmas Office Closure

Nelson, Richmond and Motueka

Our offices at Nelson, Richmond and Motueka will close for the Christmas vacation at 1.00 pm on Friday 22 December, and will reopen on Monday 15 January 2007 at our normal opening times.

Takaka

The last attendance for 2006 at our Takaka Office will be on Thursday 21st December, commencing again on Thursday 1st and Friday 2nd February 2007. Attendances during January 2007 are available by appointment. 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 on 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. Thank you.



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compromise within 15 working days of the Statutory Demand being served, steps may be taken to wind the company up.

Depending on Court availability, the winding up procedure can take from 8 to 10 weeks to complete. It costs around \$2,500 (including filing fees) of which may be recovered, assuming the company has any money.

If it is disputed that money is owed, the Statutory Demand procedure cannot be used until any dispute is resolved, usually by separate proceedings.

Unless specifically excluded, the Official Assignee will act on the liquidation of a company. In essence, his or her task is to sell the assets of the company and pay out creditors. Often there is insufficient funds to meet all debts, and the decision of placing a company in liquidation or not will generally be made based on whether it makes sense spending good money after bad.

Bankruptcy:

Bankruptcy is commenced with a debtor committing an act of bankruptcy, the most common of

which is failure to pay within 14 days of receiving a Bankruptcy Notice. Once an act of bankruptcy has been committed, a creditor may petition the Court to adjudicate a debtor bankrupt.

Again, this process usually takes between 8 to 10 weeks with costs of between \$2,000 and \$2,500 (including filing fees), and may be recoverable if funds are available.

The bankruptcy procedure requires

personal service of all documentation. A company must maintain an address for service, whereas an individual does not.

Where there is difficulty in locating an individual in order to serve them with documentation, there is a process of substituted service. This is when documents can be served on a relative or friend who is likely to bring the documents to the debtor's attention.

For a creditor, it is important

to obtain an alternative contact person for the debtor in case that alternative person needs to be used as an address for substituted service.

Once a debtor is deemed bankrupt, their affairs are organised by the Official Assignee. They cannot go into business again for themselves or leave the country without permission, and cannot incur debts of more than \$100.

Other Remedies:

A special section of the Admiralty Rules covers the situation for debts owed by individual boats or shipping companies.

Where debtors are purposely absconding from the jurisdiction to avoid paying their debts, there is a procedure for them to be arrested before they leave the country.

Our Recommendations:

Because the recovery of money, while simple on the face of it, has a number of complexities, our strong recommendation is that you obtain legal advice *before* your business starts advancing money or extending credit. This will ensure the risk and expense of any debt recovery process is minimised.

For specialist assistance and advice, contact Phil Bellamy or Andrew Challis. ▲▲



Staff Announcements

Over the past few months we have farewelled our Business Manager, Steve Fraser, and our Nelson Junior Receptionist/Administrator, Tenielle Laubscher, who was part of the NMIT Employment Scholarship Programme.



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

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

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

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