

Welcome to our first issue of *Property Speaking* for 2018. We hope you find the articles in this edition both interesting and useful.

To talk further about any of the topics we've covered, or indeed any property matter, please don't hesitate to contact us – our details are above.



## Is your rental safe and healthy?

### Penalties for landlords dragging the chain

New laws came into effect on 1 July 2016 that require landlords to make their properties safe and healthy for tenants. These new laws provide some lead time for properties to be brought up to standard; they will apply to all rented properties from 1 July 2019. Will your rental property meet the new standard?

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## Bright-line test period extended

Property investors will be familiar with the bright-line test where there are potential tax issues if a residential rental property is owned for less than two years and it is sold ... To help keep a lid on the property market, the Minister of Revenue recently announced an extension to the bright-line test period from two to five years.

### Keeping New Zealand safe from money launderers

As you will no doubt be aware, from 1 July 2018 all law firms will be subject to the requirements of the Anti-Money Laundering and Counter Financing of Terrorism Act 2009 (AML for short). At first glance you may wonder why we must adhere to these very strict requirements and why you will be asked for additional information.

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## Pre-purchase inspections – what you can object to and what you can't

The final step before you settle your property purchase is to undertake a 'pre-purchase inspection'. This gives you the right (under the contract you signed) to inspect the property one last time and raise any last minute issues about the property with the real estate agent and with us before settlement.

### Purchasing from a developer who isn't a builder – what are the pitfalls?

One of the increasingly popular options for purchasing a new house is to buy from a property developer who may not have actually built the house. Contract builders are brought in to construct new homes in subdivisions; the developer then sells on. But there can be pitfalls ...

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# Is your rental safe and healthy?

## Penalties for landlords dragging the chain

New laws came into effect on 1 July 2016 that require landlords to make their properties safe and healthy for tenants. These new laws provide some lead time for properties to be brought up to standard; they will apply to all rented properties from 1 July 2019. Will your rental property meet the new standard?

A recent Tenancy Tribunal decision shows that the Ministry of Business, Innovation and Employment (MBIE) is not shy of showing its teeth to ensure that tenants have safe and healthy homes by complying with the health and safety amendments to the Residential Tenancies Act 1986. The Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016 outline requirements for rental properties, including underfloor and ceiling insulation, and requiring smoke alarms within three metres of each bedroom.

### Hefty fines

MBIE brought a claim<sup>1</sup> against Mrs Liu, a landlord in breach of the recent building

standards implemented in July 2016. Mrs Liu was fined \$4,000 for failing to insulate her tenanted properties, and there was an additional \$100 fine for failing to complete an insulation statement as part of the tenancy agreement.

### Exemptions

There are some exemptions to the new regulations. These can be properties that, for example, cannot be insulated because they have concrete floors or no ceiling access. Properties that are to be demolished or to be substantially rebuilt within 12 months also do not need to comply.

Unless your property is exempt you will have 90 days to make your property compliant once you enter into a new tenancy agreement. All properties must be compliant from 1 July 2019 – just over a year away.

### Must include insulation statement

All new tenancy agreements must also include an insulation statement, that can be downloaded from [here](#) (along with the standard tenancy agreement form [here](#)). The insulation statement identifies whether

your property meets the minimum standards under the Building Act 2004. It's important for landlords to understand what insulation they have in their property as some types will be unacceptable. For example, underfloor foil is no longer allowed to be installed (but will be acceptable if already installed): it can be non-compliant if worn. You may be liable for fines up to an eye-watering \$200,000 if deteriorating foil creates a fire risk when it comes in contact with electrical wires.

### Financial help is available

Upgrading a rental property to meet these new standards can be financially stressful. Thankfully, many local councils offer low interest loans for property owners looking to improve heating and insulation in their properties; the loan can be repaid through a small increase in periodic rates payments. We recommend that you check with your local council to find out about your local scheme.

The Energy Efficiency and Conservation Authority also provides subsidies of up to 50% off the costs of insulating tenanted and owner-occupied homes. These grants are available to landlords whose tenants have community services

cards or special health needs. You will, however, need to be quick; these grants are only available until 30 June 2018.

### Landlords – get cracking

The Tribunal's decision against Mrs Liu sets a warning to landlords. MBIE set up the Tenancy Compliance and Investigations Team in 2016 specifically to audit landlord compliance. In 2017 alone this team audited five of the country's largest property management companies; it found varying levels of compliance across the sector.

The regulations are set out in the Healthy Homes Guarantee Act 2017 which came into force on 5 November 2017. This legislation states that non-compliance with the new insulation and smoke alarm requirements is punishable with fines of up to \$3,000.

All of these new laws and obligations can seem overwhelming, but there is help available to guide you through this process. We recommend that you take the first step towards meeting your obligations sooner rather than later. More information can be found [here](#). Alternatively you can discuss these requirements with your local council, or get in touch with us. ●

<sup>1</sup> *The Chief Executive of the Ministry of Business Innovation and Employment vs Liu, Lina* [2018] NZTT Christchurch 4090222 / 4090244

An illustration of a property market scene. It features a central house with a 'SOLD' sign, a magnifying glass over a document, a percentage sign in a blue box, a 'SOLD' sign in a yellow box, and a hand holding a house icon. The background is orange with circular patterns.

## Bright-line test period extended

Property investors will be familiar with the bright-line test where there are potential tax issues if a residential rental property is owned for less than two years before it is sold. In addition to rental properties, the sale of a holiday home can be subject to a tax liability, as it is not a primary residence which is exempt.

In the current buoyant property market, many property investors have been considering selling other properties that form part of their rental portfolios.

### Extended from two to five years

To help keep a lid on the property market, the Minister of Revenue recently announced an extension to the bright-line test period from two to five years.

The five-year period took effect from 29 March 2018; the two-year

period continues to apply to any property bought before this date.

Inland Revenue states that, in general, the acquisition date is the date of registration of the purchase and that the 'disposal date' is the date on the agreement.

### Care needed when selling

If you are selling a property within, or close to, the two-year period from when you purchased it, do talk with us before you sign the agreement; you do not want to get caught by any unexpected tax liability. These rules are complex and are strictly enforced by the IRD. There have been recent examples where sellers have misunderstood the timeline and have found themselves liable for tax in relation to the sale.

In the future, if you're selling your investment property, you will need to consider whether or not the period you have owned it is covered by the two-year rule or the five-year rule. ■

## Keeping New Zealand safe from money launderers

As you will no doubt be aware, from 1 July 2018 all law firms will be subject to the requirements of the Anti-Money Laundering and Counter Financing of Terrorism Act 2009 (AML for short). At first glance you may wonder why we must adhere to these very strict requirements and why you will be asked for additional information.

New Zealand is currently regarded as one of the safest and least corrupt countries in the world; it's important that we retain this position. As an export nation we rely on other countries being confident that they can send money to New Zealand and also to receive money knowing that it is not being tainted by the proceeds of crime.

Banks have been complying with the AML legislation since 2013; we must now be part of the process to help prevent criminal activity and the transfer of the proceeds of crime.

### We must verify your identity

From 1 July onwards, as part of the AML customer due diligence, we must verify the identity of all our clients; this will help legitimise each client's transaction.

While you are already familiar with providing your driver's licence as ID, we will now need additional information such as a copy of your birth certificate and a current bank statement, or rates demand, to verify your full name, date of birth and address.

There may be situations where we must ask you about the nature and purpose of the proposed work you are asking us to do. As well, we may require information confirming the source of the funds for a transaction.

### Checking for every new matter

The law applies to everyone and all transactions where money is received and/or paid through our trust account – for every new matter.

For our part, we must file regular reports with the appropriate authorities detailing the transactions we have dealt with and also notifying them of any suspicious activity. Once these new requirements have been operating for some time we will all become familiar with them and it will not cause any inconvenience. However, it's important to understand the reason for the legislation and why you will be asked for this additional information. ■

## Pre-purchase inspections – what you can object to and what you can't

The final step before you settle your property purchase is to undertake a 'pre-purchase inspection'. This gives you the right (under the contract you signed) to inspect the property one last time and raise any last-minute issues about the property with the real estate agent and with us before settlement.

Having a pre-purchase inspection is not, however, the right time to try to negotiate a price reduction, or to attempt to raise new issues about the property.

Your rights under the pre-purchase inspection are limited to ensure that the property (and the chattels listed in the agreement as coming with the property) are in the same condition as they were when you signed the agreement.

This can result in some confusion and frustration, particularly if something

is broken, not working, or missing – which you may not have noticed when the contract was signed.

The best way to manage the pre-purchase inspection is to be diligent before you sign the agreement; it's often difficult to think of this detail when you're making an offer. You should take note of the condition of the house, its land and the chattels and record these with photographs. If you notice any damage, such as a hole in the wall and you want it fixed, let us know before you sign the agreement. Test the lights, taps and oven and other chattels. Also ensure the garage door opens and closes properly. All these must be checked before you sign. The agreement protects you if you do this – but you will be in for a shock if you don't.

As always, make sure you talk with us before you sign your agreement. ●

## Purchasing from a developer who isn't a builder – what are the pitfalls?

One of the increasingly popular options for purchasing a new house is to buy from a property developer who may not have actually built the house. Contract builders are brought in to construct new homes in subdivisions; the developer then sells on. This can result in a nice new house at a reasonable price.

However, there are risks associated with this type of purchase about which many people are not aware. Some of these risks can be mitigated with sensible contractual protection built in, others are simply risks that you can't reduce.

When you contract directly with a builder to build a house, you are protected by the Building Act 2004. This legislation contains warranties for your protection – in terms of the quality of the build and the builder's obligations to you. You are also protected by the contract, as often a guarantee will come with the property from Registered Master Builders or New Zealand Certified Builders.

The main issue with purchasing from a developer is that none of the above guarantees are given by them. These protections need to be *assigned* to you and, sometimes, if you are not speaking with us at the time the contract is signed, this critical

point can be missed. The consequence of this is that you can end up with a brand new house, but no contractual rights to enforce any warranties or claims against anyone at all, should anything go wrong.

This is particularly important because many developers use a limited liability company to contract with you to sell you the property. Should you seek to enforce a contract against a company, it may simply cease to exist, with no person or brand or reputation to back up what could be a poor quality build.

To ensure that you are as protected as you can be, you should discuss with us the options to have the various contractual and statutory warranties and protections assigned to you.

This must happen *before* signing the agreement. We can negotiate on your behalf to determine what protections are available to you and to draft suitable wording. There is a possibility we may not be able to secure any protection from the developer for you; in this case you will need to make a decision to proceed or not, knowing the risks.

If you're buying a house from a developer, it's in your best interests to talk with us very early on so we can secure the best protection possible. ●

