

IN BRIEF FROM RAINEY COLLINS

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Welcome

to the first issue of our Rainey Collins newsletter "In Brief". We believe in adding value to the services we provide our clients and this newsletter is part of keeping you up to date with changes to the law which may affect your business or personal life. In this issue you will find articles on Trusts, Health and Safety, Relationship Property, Debt Collection, Tips for 1st Home Buyers and Will Disputes.

We value your feedback so if you have any comments on any of the articles or the Newsletter in general then please contact us.

James Johnston
Chairman of Partners



Trusts – Do You Need One?

Trusts provide an important method of protecting assets and of planning your financial affairs. Like most things they have both advantages and disadvantages, so before embarking on any trust scheme, it is vital that all the likely consequences are properly considered.

What is a Trust?

A Trust is a legally binding arrangement under which assets are held by trustees for the benefit of others. The person making the trust is called the settlor, and those for whom the assets are held are the beneficiaries. The persons who hold the trust assets are the trustees.

Why set up a Trust?

Trusts exist fundamentally for the protection of assets. They can give protection from: -

1. Creditors, eg if you are exposed to financial risk because of the nature of your business.
2. Claims by a child's spouse or de facto partner. Putting assets into a trust for your child rather than gifting them outright, protects those assets from being claimed by that child's partner on a relationship breakdown.
3. Similarly assets can be protected from being dissipated by spendthrift children or can be set aside for a child with special needs.
4. If assets have been held in a trust for a sufficient time, they are unlikely to have to be used for the rest home care of the person making the trust.
5. Death duty or inheritance tax, while not currently imposed in NZ, can be avoided or minimised by the use of a trust.
6. Trusts can be helpful in reducing income tax, but it is very important to realise that a trust set up solely for the purpose of avoiding tax, will be invalid.

Setting up a Trust

Essentially all that is needed to set up a trust is to prepare and sign a Trust Deed, and then transfer the intended assets into the trust. However, a number of important issues need to be considered as part of this procedure. For example, decisions have to be made about who the trustees are to be, who the beneficiaries are to be, how long the trust is to last, what assets are to be transferred, what control can the settlor have, and what is to happen if circumstances change; to mention just some of them. The transfer of the assets needs to be carried out properly and in such a way that liability for gift duty is not incurred.

All these and other matters need to be resolved as part of the process, so it is most important that advice is obtained from someone experienced in the field. He or she can also advise about the likely costs both of establishment and of ongoing administration and can help with all the other questions which will inevitably arise.

For example, the new Property Relationships Act came into force on 1 February 2002 and significantly changes the way trusts will work when the asset to be put into trust is relationship property and also changes the implications and status of some existing trusts.

Perhaps most importantly of all, an experienced adviser will be able to help with the fundamental first decision, "do I or don't I need a trust?" Everyone has different needs and objects, and while a trust might be the perfect solution for one person, it may not be appropriate for another.

Nick Miles



Contents

Welcome.....	1
Trusts – Do You Need One?	1
Important Changes to the Health & Safety Legislation.....	2
How to Preserve Your Family Taonga/Heirlooms.....	2
Do I Need a Property Relationship Agreement?.....	3
Being Given the Run Around by Bad Debtors?	3
Tips for Buying Your First Home	3
Left Out of a Will?	4

Important Changes to the Health & Safety Legislation

Stiff sentences are being imposed for breaches of the Health and Safety Act. You need to know about the new provisions and how they will affect your business.

The major changes are:

- The imprisonment penalty has been doubled to 2 years
- Maximum fines have increased to \$500,000
- Harm now includes mental harm and stress
- A new definition of "all practicable steps" to avoid harm
- Vehicles are now places of work
- Volunteers are now covered in some circumstances
- All employees are entitled to participate in improving safety
- Employees may refuse to do work if they believe it is likely to cause serious harm
- Insurance against fines is illegal

Changes to the legislation took effect from 5 May 2003.

The Health & Safety in Employment Act provides duties on employers, persons in control of places or plant, self-employed, principals (eg hirer of a contractor) and employees. You can be more than one of these at a time.

Volunteers who do work for another person regularly on an ongoing basis and the work is

an integral part of the business of the other person will be covered by the amended legislation. However, volunteers doing a fundraising activity (amongst other things) are excluded. Even though volunteers are exempt in certain circumstances from the Health and Safety legislation the Crimes Act imposes duties to take care of everyone.

You must take all practicable steps to identify then eliminate or isolate hazards. This must be regularly reviewed. Keep written records of this process as proof that it was properly carried out. "All practicable steps" now depends on the circumstances including the nature and severity of the harm, the current state of knowledge of the harm and its avoidance and the availability and cost of avoidance.

Harm now includes mental as well as physical and covers stress from work hazards.

Employees must be given reasonable opportunities to participate in improving safety in the workplace. If you have 30 or more employees you must follow a set process for adopting an employee participation scheme. Employers must give some leave for safety training of employee representatives.

The only defence to a prosecution is a total absence of fault.

If your activities are covered by the Act you must:

- Keep a register of all incidents where a person was or might have been harmed.
- Report serious harm to OSH immediately and in writing within seven days.
- Do not disturb the accident scene (except for safety reasons) if serious harm occurs.
- Provide employees with an opportunity to have input into your safety plan.

It is now unlawful to be indemnified or insured against fines and penalties under the Act.

We have prepared an easy to follow Safety Action Plan. If you would like a free copy then please contact me on aknowsley@rcw.co.nz or 0800 733 424 or check out our web on www.rcw.co.nz

Even if you are not covered by the Act still take all care to identify and eliminate hazards so no one is hurt during your activities.



Alan Knowsley



How to Preserve Your Family Taonga/Heirlooms

If your relationship broke up you could easily lose your family's treasured heirlooms/taonga unless you take steps to agree on keeping them separate.

As a general rule when a marriage or a de facto relationship comes to an end each party is entitled to half of the "relationship property". One of the categories of property, which is not considered "relationship property" and is instead considered the separate property of one or other of the parties to the relationship is taonga or heirlooms.

It is uncertain how the Courts will define "taonga" or "heirlooms". It may be that an heirloom will be a possession which has been in the family and passed down through a

number of generations. It may be that taonga will be identified by their place in a family's or person's history irrespective of how old they are. In neither case, though, have the Courts defined exactly what the meaning of those phrases will be.

In view of that uncertainty, it is important for people who have items of particular significance to them, to come to an agreement with their partners before entering into the relationship or before marrying which clearly specifies what each party understand their taonga or heirlooms to be

and to clearly indicate what is to happen to those heirlooms or taonga if the relationship comes to an end.

This agreement will not have any legal effect if it is not in writing and the parties to the agreement have not had independent legal advice on the consequences of signing it. So once you and your prospective partner or spouse have agreed on what to do, you need to seek legal advice on getting that agreement made binding.

Mark Lillico

Do I Need a Property Relationship Agreement?

The Property Relationships Amendment Act 2001 dramatically changes the implications of entering into a de facto relationship. The Act also changes some of the law when married couples separate and divide up property. Some key points are:-



- Matrimonial Property will be called Relationship Property.
- De facto relationships include those between a man and a man and a woman and a woman.
- A person could be in two relationships at the same time that qualify under the Act.
- In very broad terms the Act provides for a 50/50 split of the house and other property regardless of when it was bought or whose name it is in if the relationship breaks down on or after 1 February 2001. This is subject to some exceptions.
- Usually a de facto couple have to be together for three years but the 50/50 split can apply earlier in certain circumstances for example if the couple have had a child.
- A de facto relationship before a marriage is counted as part of the three years.
- If one partner has put his or her career on hold to care for children or look after the home that person may be entitled to more than 50% of the property.
- It is possible for couples to make an agreement to contract out of the Act and strict rules about the format of those agreements apply after 1 August 2000.
- Putting property into a trust or company does not necessarily protect the property from coming into the 50/50 split.
- The Act has implications for Asset Planning and making your will.

Shelley Stevenson

Call Toll Free 0800 733 424

Being Given the Run Around by Bad Debtors?

The best way to deal with bad debts is not to have any at all! How can this be achieved?

1. Diligent, regular book keeping
2. Stringent credit checking of applications for new accounts

We can assist with systems to avoid bad debts.

However, every firm at some time has bad debtors and for the sake of the company's survival and the job security of its employees (and its own credit rating), bad debts must be identified and dealt with promptly. Early attention to debt recovery is vital to its success and how necessary it is to deal with recalcitrant payers firmly at the earliest opportunity.

We at Rainey Collins have a dedicated debt-recovery team. We have a great deal of

experience in the debt collection field and are very aware of what a drain on a firm's resources bad debtors are.

Some of the steps, which may be involved in debt collection, are:

- Letter of demand
- Phone calls to debtors home and or work.
- Instalment arrangements to suit.
- Judgment (undefended)
 - preparation and filing proceedings, appearance on judgment

HOT TIPS

Tips For Buying Your First Home

1. Work out what you want. Make a prioritised list of your requirements. Things to consider:
 - Where do you want to live? Location is vital. Access, sun, shelter and privacy are important. Remember, lots of things about a property can be altered but not where it is situated.
 - How big a house do you need? Should you allow for future children, or do you only need room for a couple. If future resale is part of your plan, then quite often a three bedroom home is easier to sell than a two bedroom one.
 - Check availability of public transport and proximity to schools, shops and other amenities.
2. Work out how much you can afford.
 - Check your eligibility for mortgage finance and how much borrowing you can afford to service.
 - Investigate the different kinds of mortgages that are available. There are useful publications and other material available to help you with this.
 - Don't be afraid to shop around with various Banks and mortgage brokers. You are doing them a favour by offering them your business.
3. Talk to us. Our Property Team will be able to give you practical tips about negotiating price and other terms and about the conditions that should be put in any offer that you make.
4. Look at lots of properties and try to get a feel for the market in the areas where you are interested.
 - A good land agent can make all the difference, but to best help you needs to have a clear idea of what you are looking for.
5. Don't sign anything until you have had it checked by us. We are always available, after hours if necessary, to do this. It is vital to get the contract right before it is signed.

Nick Miles

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Being Given the Run Around by Bad Debtors? *continued*

- Judgment (defended)
 - preparation and filing proceedings
 - receiving a statement of defence, preparation of all timetabling matters, attending to discovery of documentation, briefing any witnesses, preparing for hearing
 - attendance at hearing
- Enforcement
 - bankruptcy
 - attachment of wages
 - writ of sale of property
 - winding up of company

Fees will vary depending on the complexity and amount of the claim and the steps involved in pursuing the debtor, the cost of serving proceedings will depend on how difficult the debtor is to locate, advertising costs vary depending on location.

We usually charge for an initial letter of demand at a set fee which includes some follow up contact by phone with the debtor. The amount of fees can be discussed with you and discounts are available for high volumes of work.

We are engaged to collect debts throughout New Zealand for individuals and large corporate clients. We have a reputation for success. Give us a try with your bad debtors.



Tracy Robinson

Call Toll Free 0800 733 424

Left Out of a Will?

You may still have a claim even if you have been left out of a person's will or you have not been provided what you expected or something you were promised.

Here are the ten most common ways people leave their wills open to challenge.

1. Where the deceased is your defacto partner you may bring a property relationship claim.
2. Where the deceased is a close family member you may be entitled to a family protection claim if adequate provision has not been made for your maintenance and support.
3. Where the deceased has not kept a promise to reward you for services you may have a claim for payment or a testamentary claim.
4. Where the deceased is a close family member or defacto who has not left a will at all (or the will is invalid) you may have entitlement under the Administration Act.
5. Where the process of making the will involved some error, the will may be invalid and the estate may be dealt with under different rules.
6. Where the deceased had an interest in Maori land it may be possible to challenge how that land was dealt with under a will if it is not dealt with in accordance with statutory guidelines.
7. Where a person has made a will when they were suffering a disability that will may be challenged and replaced with an earlier will.
8. Where a person has made a will in circumstances of undue influence, distress or fraud that will may be challenged.
9. Where the deceased created a reasonable expectation that you or another person would gain an interest in assets to which you have contributed you may have a claim that a constructive trust in your favour should be recognized.
10. Where the deceased has left a valid will but the terms contain a mistake or are open to interpretation, then those terms of the will may be challenged.

It is important to note that time limits will apply for people to do something in these situations.

Alan Knowsley

RAINEY COLLINS LAWYERS

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