

NEW TRUSTS ACT

There is a new Trusts Act coming into force January 2021. There are some great modernising aspects to the changes. However, Trust Law is made by law over 600 years plus various Acts of Parliament. One new Act of Parliament does not solve all of the issues that may arise.

The wording has become more modern and that's good. When we are drafting new Trust Deeds, we need to be looking at our language. Using more modern language makes it more readable by everybody. Occasionally though we lose words that have a lot of meaning to lawyers. For example, "perpetuity period". That's going to be changed to be "maximum duration of the Trust". The words "Date of Distribution" is now becoming "Expiry of Trust".

Another change is the power of appointment and discharge of Trustees. Who is going to hold that power? The Trust can now run for 125 years so if you leave the Settlers as the ones holding the power it is not going to work. They will not be alive in 125 years. Can they delegate it and if so to who? Is that one or more people? The Trust running on for 125 years, do we need someone else that is going to have the power to appoint and remove Trustees? So how do we draft the clause that is going to cover Mum and Dad delegating the power of appointment to eldest daughter and then who

is she going to be empowered to delegate the power to? How are Mum and Dad when setting up their Trust going to decide whether they like or trust the eldest child of their eldest daughter? Is that even appropriate? You bothered to appoint her as a Trustee, do you trust her to decide who should hold the power of appointment when she goes? Alternatively, do you think she is easily persuaded by her brother/sister/spouse/child/neighbour/boyfriend? The previous Trust Act did cover this situation and provided that if there is no-one left then the Executors of the Will of the last Trustee become the Appointees and can appoint if no-one else has the powers.

The point is that the Executors of the last Trustee may not know the family and therefore that is repugnant to the Settlers thinking who might be making appointments in a hundred years' time. However there has to be some provisions somewhere and the one in a hundred-year events happen and they certainly will be happening in the lifetime of new Trusts running for 125 years.

We are changing our Trust Deeds and are happy to talk to you at any time about your trust or a new trust, contact Catherine, Michele or Marg to get started.

COVID-19

COVID is still in the background. We hope our clients are safe and well.

We are resilient in these times. We have valued and wonderful clients throughout New Zealand and often have skype and zoom sessions with them. Please contact us if that suits you.

SOME BIG CHANGES

Residential Tenancies Amendment Act 2020



One that might have slipped past you is that rent increases can only happen once every twelve months. There are quite a few nuts and bolts aspects to it as well. Some new features include for example, if there is Family Violence, the tenant who experiences family violence can withdraw from a tenancy without financial penalty by giving two days' notice and evidence of the family violence.

If the Landlord is assaulted or the Landlord's agent, then the Landlord can terminate the Tenancy only if the Police have laid a charge against the tenant in respect of the assault.

Please contact us if you want to discuss any of the other fine tuning for Tenancy. The Tenancy website is really useful too but do remember that the Tenancy Act does not apply in respect of family, if a family let a house to a family member without a Tenancy Agreement, it does not apply at all. That area is wide open. If you are in that situation there are some things to be aware of particularly, call the payment "contribution towards costs" or "insurance or rates." Do not call it rent. Some other points are:

- Landlord's will not be able to end a periodic tenancy without cause by providing 90 days' notice. New termination grounds will be available to landlords under a periodic tenancy and the required notice periods will change in February 2021.
- Making minor changes – Tenants can ask to make changes to the property and landlords must not decline if the change is minor. Landlords must respond to a tenant's request to make a change within 21 days.
- Prohibitions on rental bidding – Rental properties can not be advertised without a rental price listed and landlords cannot invite or encourage tenants to bid on the rental.

Again, if you want to discuss this further, please contact us.

Also remember that if it is a Tenancy you need to provide a Tenancy Agreement in writing and it is unlawful if you do not.

ENDURING POWERS OF ATTORNEY



Do you have these in place?
What do they mean?

Enduring Powers of Attorney – Property

Mum is 80 and going into a rest home and suddenly needed EPA's, two daughters volunteered. Luckily for the daughters, mum was still competent and could get legal advice as to the meaning of what she was signing.

Two attorneys' are fine for EPA – Property. This would mean that the daughters can sort out all matters financial to do with mum, applying for rest home subsidy and organizing her funds appropriately.

Enduring Powers of Attorney – Welfare

You can only have one attorney at a time to sort out welfare and personal care. You need written advice from a Doctor detailing that "Mum" is no longer competent to make decisions on her care, then the EPA Welfare becomes activated.

These signed documents are held in our Deeds safe on "Mums" behalf.

What happens if there are no Powers of Attorney in place and "Mum" is not competent?

You will have to apply to the Court for Appointments. They operate the same as Enduring Powers of Attorney but are reviewed by the Court every 3 – 5 years. These Court appointments are known as orders under the Protection of Personal Property Rights Act – PPPR for short.

Applicants and the PPPR Act

This Act is put in place for the protection of people who are unable to make decisions for themselves. Our staff are experts with the process and application of these Court Appointments.

Catherine recently attended a seminar on Mental Capacity. As science develops there is more understanding of the brain, and how it functions and how it will not function in certain situations. There is more and more understanding of capacity issues, partial capacity and capacity for certain actions, so now we are looking more at brain activity, brain action, and brain ability, not just the deficits.

Another interesting point is that there are 127 conditions which cause persons to lose mental capacity. There are slightly different signs and features to all the different conditions.



APPOINTMENTS

At QuinLaw we will always try to be available at hours to suit your needs. We will meet you after hours and on weekends if necessary. Just let us know your special requirements and we will try to meet them.