

BURROWES and Company

Barristers and Solicitors

Client Newsletter

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LANDONLINE

Landonline is an online service used by surveyors, lawyers and other professionals. It provides access to the electronic land titles register, maintained by Land Information New Zealand, and enables a registered user to search certificates of title, lodge title dealings and survey data.

Landonline has been introduced gradually over the last few years. However the Government has recently announced that the electronic lodgement of all land title transactions and survey plans will be compulsorily phased in by 1 July 2008. This means that all dealings in land will be registered electronically and there will no longer be any paper based dealings.

One of the principal benefits of electronic registration is that all information is processed in real time. This means that information held on the register is always up to date and the processing of dealings is faster and easier.

With 98% of records held in Landonline, it makes it

easier to search and locate records from other parts of the country, and improves the quality, consistency and accuracy of data.

Landonline has secure access which guards against threats to the integrity of the titles register.

While the cost of e-registration is presently lower than that of paper registration to encourage e-dealing, the prices are currently under review and are expected to rise again shortly.

Burrowes and Company has now registered for, and been trained in how to use Landonline.

PROPOSED STATUTORY PROBATIONARY PERIOD FOR NEW EMPLOYEES

New Zealand is one of the few OECD countries that does not have a statutory probationary period for new employees. However there is a Private Members Bill before Parliament which proposes to change that and would align New Zealand with the majority of the OECD countries.

In March 2006 the National Party's Employment Relations (Probationary Employment) Amendment Bill ("the Bill") was sent to a select committee for consideration. The Bill introduces a 90 day probationary period for all new employees during which, or on the conclusion of which, either party may terminate the employment. The Bill provides the probationary period is not to form part of any new individual employment agreements or collective agreements under the Employment Relations Act 2000 ("the Act") and it repeals the existing provisions for probationary employment arrangements contained in the Act. It also allows the parties to agree to a lesser period of probationary employment.

During the probationary period the Bill excludes either party from recourse to dispute resolution procedures contained in the Act – including personal grievance

claims for unjustified dismissal. The parties may agree to a longer probationary period but the law relating to unjustified dismissal will apply to any probationary period that exceeds 90 days.

The Bill has been criticised for allowing employers to sack employees without reason within the 90 day probationary period. Proponents of the Bill believe it will cut down on the amount of paper work small businesses are required to do under the current employment legislation.

Submissions on the Bill closed on 19 May 2006. The Transport and Industrial Relations Select Committee is due to report back to the House before the end of September.

BRIEFLY...**Preparing for
Influenza**

The Law Reform (Epidemic Preparedness) Bill is currently before the Government Administration select committee.

The Bill's purpose is to ensure the Crown has the ability to respond to a human outbreak of Avian influenza, or a similar infectious disease.

The select committee is due to report back by 31 July.

BRIEFLY...**Seriously
Misleading**

A New Zealand High Court case earlier this year sought to determine whether the lack of a specific description of collateral in a financing statement amounted to a seriously misleading defect, irregularity, omission or error under the Personal Property Securities Act 1999.

Service Foods Manawatu Ltd (In Receivership and In Liquidation) v NZ Associated Refrigerated Food Distributors Ltd was concerned with the enforceability of a security interest over goods held by the receivers of the company. The Court held that provision of a broad, rather than specific, description of the goods was insufficient to render the financing statement seriously misleading.

BODY CORPORATES

What Are They And How Do They Work?

Developments involving unit titles are becoming increasingly popular as more and more people elect to live in apartments or town house developments, particularly in inner-city areas. These developments can take the form of clusters of town houses, terraced housing or low and high rise apartment blocks. A body corporate is made up of all of the owners in a unit title development.

Unit Titles Act

Body corporates are governed by the provisions of the Unit Titles Act 1972. The Act allows for the subdivision of land into units so that each unit is owned by an individual owner and common property is owned jointly by all of the owners.

The Act sets out rules for the use and management of both the Units and the common property. If you are considering purchasing a property with a Unit Title, or you already own one, then you should be aware of your obligations as a member of the body corporate.

Costs

The cost of maintaining the common areas and the external structure of the building is the responsibility of the body corporate whereas the cost of maintaining the internal buildings are for the cost of the individual owners.

A body corporate will therefore levy a charge on an annual basis to cover the cost of maintenance of common areas. The body corporate is also responsible for insuring the whole development and indeed this is one of its most important functions. These costs are shared on a proportionate basis by the individual owners.

Rules

A body corporate also makes rules in relation to the development as a whole. There are standard rules set out in the schedule to the Unit Titles Act but these can be amended to suit the individual requirements of particular developments or from time to time as the owners may decide. You should be familiar with the matters contained in the rules as these are important in

the event of any conflict or disagreement between individual owners and/or the body corporate.

Secretary

A body corporate must appoint a secretary to oversee administration. This can be one of the owners of the units or, in the case of larger developments, a professional firm is often appointed.

The secretary is responsible for convening meetings of the body corporate, preparing minutes, effecting insurance, collecting levies and paying accounts as well as other administrative tasks. If a professional firm is appointed a management fee will be payable and the cost of that is added to the charges collected from the owners by the body corporate.

If you are considering purchasing a property which is part of a unit title development, it pays to make enquiries as to how the body corporate is run and the charges which are levied as in the case of larger developments, these can sometimes be quite significant.

So long as they are properly run, body corporates are an extremely effective way of managing property and minimising the maintenance headaches and hassles that can be associated with home ownership.

CLARITY IN ARBITRATION CLAUSES

A recent Supreme Court case emphasised the importance of clarity in arbitration clauses to avoid lengthy litigation over minor points.

Casata v General Distributors Ltd began with arbitration over a rent dispute. On resolving this, the arbitrators made a second award of costs in favour of GDL. On appeal the issue became whether the arbitrator could make a second costs award, when the arbitration agreement was silent on the matter.

The three-two Supreme Court majority held the arbitrators were entitled to award legal costs. The

Arbitration Act 1996 required arbitrators to consider costs, unless the parties agreed otherwise. The Court found the parties had implicitly agreed costs would be awarded under their arbitration agreement.

The minority felt the fact that neither party had claimed costs until after the arbitration weighed against any allocation of costs.

CHARITIES ACT DELAY

The Charities Commission has pushed back the date by which charitable organisations need to register under the Charities Act in order to maintain their income tax and gift duty exemptions.

Registration will now be open between 1 February 2007, and 1 July 2008. It had originally been anticipated that registration would begin in July 2006.

The date upon which tax laws will change to come into line with the new legislation has also changed to be 1 July 2008.

This gives charities 17 months in which to register before their tax exemption status is affected.

The Charities Commission is encouraging charities to use this additional lead-in time to ensure their rules are legally compliant and establish who their officers are.

EXPLAINING POWERS OF ATTORNEY

Any individual may give another a power of attorney to manage his or her affairs pursuant to the Personal Protection of Property Rights Act 1988 ("the Act").

The Act provides for two types of powers of attorney:

1. An Enduring Power Of Attorney As To Property

This confers upon the person who is appointed ("the donee") the right to act in respect of all the property affairs of the person he or she is appointed by ("the donor"). Alternatively, it can be restricted to certain types of property. For example, a person who is intending to be absent from the country may wish to appoint an attorney to negotiate the sale of a specific asset such as a house or company shares and the power of attorney would therefore be restricted to those assets only.

2. An Enduring Power Of Attorney In Relation To Personal Care and Welfare

This confers upon the donee the right to make decisions concerning the personal care and welfare of the donor of the power of attorney. It can be particularly useful in the case of elderly people who wish to appoint family members to make decisions concerning the sort of care they should receive.

However, there are certain matters which are specifically excluded. For example, the donee cannot refuse consent on behalf of the donor to any standard medical treatment or procedure intended to save life or prevent serious damage to health.

In both instances, the donor may stipulate that the power of attorney is not to be revoked even if the donor becomes mentally incapable.

Who Should You Appoint?

Given the wide powers that the donee of a power of attorney can exercise on behalf of the donor, it is most important that if you are considering appointing an attorney that the proposed person be someone whom you implicitly trust. You should know them well enough to be confident they will carry out your wishes and generally deal with your property and personal affairs in a manner that you desire.

Only one person can be appointed at any given time as an attorney for personal care and welfare but two or more can be appointed to deal with property. In that

instance, you should consider whether they should be appointed jointly (which means both attorneys must act together) or jointly and severally (which means they can act either together or separately).

A power of attorney may be revoked at any time by the donor giving written notice to the donee. However, if you wish to do this it is prudent to inform any third parties who may have dealt with your attorney. A power of attorney is revoked on the death of the donor.

A power of attorney can only be used for a property owned by the donor in their personal capacity. It cannot be used to deal with property in which the donor has an interest in another capacity, for example as a trustee of a trust. Furthermore, it can not be used to authorise the donee to act on the donor's behalf in his or her capacity as a director of a company.

Do You Need A Power Of Attorney?

A power of attorney is useful if you are overseas or to protect your interests in case of illness or mental incapacity.

However, careful consideration should be given as to whether it is appropriate to give the donee general power to act on your behalf or restrict it to specific matters only.

The appointment of an attorney is an important step and you should always seek advice from your solicitor.

BRIEFLY...

Unjustified Dismissal

Hudson v Air New Zealand

Hudson was employed by Air New Zealand as a Customer Service Agent. She was dismissed in 2004 after receiving two written warnings for allegedly pushing another employee and complaints received about her treatment of customers.

Ms Hudson brought her case before the Employment Relations Authority on the basis that she had not committed "gross misconduct", and that her dismissal was therefore unjustified.

The Employment Relations Act 2000 required the Judge to consider what a fair and reasonable employer would have done in the circumstances.

The Court held that Air New Zealand had failed to properly weigh all the circumstances in which the alleged misconduct occurred, and that their investigation was not one that a fair and reasonable employer would have carried out. As such, the conclusions reached by the employer about serious misconduct could not be justified.

This case highlights the importance of following due process when dismissing an employee on the basis of gross misconduct.

BRIEFLY...

Compulsory Insurance for Flatmates

The Residential Tenancies (Damage Insurance) Bill aims to protect flatmates from liability for the actions or omissions of those they are living with.

The Bill comes as a result of a Dunedin house-fire, caused by the negligence of one (uninsured) flatmate. The landlord's insurance company were successful in recovering the loss from the insurance companies of the other (insured) flatmates, who were held to be both jointly and severally liable for damage to the rental property.

The Bill requires landlords to have insurance in place covering their tenants in situations where damage is unintentionally caused. Tenants will still be liable for intentionally caused damage.

The Bill is currently before the Social Services Select Committee. Submissions close on 14 July 2006.

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STAFF SOLICITOR JOINS BURROWES AND COMPANY



Burrowes and Company welcomes Matt Anderson on board as our new Staff Solicitor

Burrowes and Company has been joined by Matt Anderson, a recent law graduate from Victoria University, as Staff Solicitor.

Matt will be working closely with Michael on a number of legal issues, and taking over some conveyancing files.

His legal interests include employment and media law.

Matt hails from Silverstream, and enjoys rugby and politics in his spare time.

NOTHING SUCCEEDS LIKE SUCCESSION PLANNING

So you are bullet proof. You are a self-made man or woman and your business is flourishing. You put in the many necessary hours to build your business and may have family involved to assist you. You have used your own skills and expertise to be a leader in your field of endeavour. You control your own destiny – or so you think...

Thinking Ahead

Consider where you wish to be in the next ten to twenty years. For example, when do you want to retire? Will you be able to realise sufficient capital from your business to generate an income, which will in turn enable you to spend the later years of your life doing the things you were not able to whilst running your business? Succession planning is all about addressing these issues and putting things in place to avoid problems in the future. It will pay dividends later if you take the time to plan ahead now.

The Elements Of A Succession Plan

You need to consider how to structure your business so that it offers the greatest protection to you, your family and any others you may wish to provide for. This may involve the formation of companies and/or trusts as vehicles to own and operate the business and its assets. Your lawyer and accountant will be able to provide advice on the most appropriate structure for your business and how to achieve your goals while assisting with the implementation of your succession plan.

Your health is an important factor to consider. You need to plan for the eventuality of illness, which may prevent you from working full or even part time. If your

business cannot function without you then you will need insurance to bridge the gap.

In the event you are overseas or otherwise unable to make important strategic and operative decisions for the business, someone will need to be appointed to make these decisions on your behalf. In the event of your death, you will need to consider the most appropriate person to assume control of your business. Both of these eventualities may be covered by a business plan, power of attorney and/or a will.

If you have family members involved in your business, the tricky question then arises as to how best the interests of those family members can be balanced against those who are not. Once decisions have been made then they should be recorded in your will. If you have a family trust, then a memorandum recording your wishes should be prepared.

Remember, it is never too early to begin planning succession issues.