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## NEWSLETTER

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### The Residential Tenancies Amendment Bill – A look at the changes for landlords and tenants

The Residential Tenancies Amendment Bill was introduced to Parliament on 3 December 2015, and with it came a number of interesting proposed changes to the Residential Tenancies Act 1986. Two of the main aims of the Bill are: to improve the safety of residential rental properties by requiring smoke alarms and insulation in all residential rental properties and to make the process around abandoned rental properties more efficient.

#### Smoke alarms and insulation requirements

The proposed Bill would require a landlord to ensure that their residential rental property has working smoke alarms while making the tenant responsible for changing the alarm batteries and notifying the landlord of any faulty alarms.

The proposed Bill would further require underfloor and ceiling insulation. The requirement in respect of insulation splits residential rental properties into two categories; income-related rent tenancies and all other tenancies. An income-related rent tenancy generally refers to a property where the rent is

based on the tenant's income under the Housing Restructuring and Tenancy Matters Act 1992, but excludes boarding houses. For these income-related rent tenancies, insulation is required from 1 July 2016, while all other rental properties require insulation from 1 July 2019.

Under the proposed amendments a landlord is also required to provide information about the insulation of the premises in the tenancy agreement for the property. This will include whether there is insulation and if so, the details of that insulation. The Bill proposes that a landlord commits an unlawful act if this information is omitted from the tenancy agreement or if the landlord knows the information is false or misleading.

Overall, the aim of these two requirements is to ensure the health and safety of the occupiers of a residential rental property without imposing excessive costs on a landlord.

#### The process around abandoned rental properties

A rental property is an "abandoned rental property" where the tenant is in arrears and has left the property with no obvious intention of returning to it.

The current process under the Residential Tenancies Act 1986 for abandoned rental property cases can take up to six weeks. The Bill proposes a process which will take ten working days after an application is filed with the Tenancy Tribunal. Reducing the time to confirm abandonment of a tenancy will enable a landlord to re-tenant their property, which reduces the loss of rental income.

The Bill also proposes giving a landlord the right to enter the rental premises where the rent is at least 14 days in arrears and where the landlord has reasonable cause to believe that the tenant has abandoned the property.

Furthermore, the Bill proposes that a landlord may enter the premises to confirm abandonment if notice has been given to the tenant no less than 24 hours prior to entry.

The Social Services Committee report on the Bill is due on 8 June 2016 which will take into account public submissions about the proposed changes.



## Buildings and warrants of fitness

Many commercial and multi-residential buildings require an annual building warrant of fitness (BWOFF) to prove that the building's safety systems have been maintained and inspected. The BWOFF is obtained by the building owner and provided to the Council, and must be displayed in the building in a visible place at all times.

### Building Warrant of Fitness

The name "Building Warrant of Fitness" can be misleading, because there is no obligation to inspect the building as a whole, and the document makes no statement as to the fitness of the building itself. Rather, it refers only to procedures listed in the compliance schedule that relate to specified systems in the building.

### Compliance Schedule

The Building Act 2004 ("the Act") provides that a building other than a single household unit requires a compliance schedule if it has one or more specified systems. This means most homes will be exempt, but any building that has more than one household (such as an apartment or townhouse) or any building that includes other non-residential uses must have a compliance schedule and annual BWOFF, if it contains a specified system. The compliance schedule will state and describe each of the specified systems, state the performance standards, and describe the inspection, maintenance and reporting procedures to be followed in respect of each of those specified systems.

### Specified System

A specified system is a system or feature contained in or attached to the building which contributes to the proper functioning of the building, and has been declared by the Governor General to be a specified system for the purposes of the Act. Specified systems



include (amongst other things): fire suppression systems (sprinklers); automatic or manual emergency warning systems for fire or other dangers (alarms); electromagnetic automatic doors or windows; emergency lights; riser mains for use by fire services; lifts, escalators and travellers; air conditioning systems; smoke control systems; cable cars; and in some circumstances that typically relate to fire escape, they include smoke separations; fire separations; final exits and communication signs.

### Independently Qualified Person

To complete the BWOFF an owner will need to obtain certificates of compliance from an independently qualified person who can certify that the inspection, maintenance, and reporting procedures stated in the compliance schedule have been fully complied with during the previous 12 months. Typically this will include certification that any remedial action that may have been needed has been completed. Larger buildings may require several certificates for different specified systems. In addition to these annual inspections, some owners may still be required to carry out minor inspections that are specified to occur daily, weekly or monthly.

### Penalties

For newer buildings, compliance schedules are typically issued as part of the building consent process, however all buildings must still comply. If a building requires a compliance schedule and does not have one, the owner could be liable for a fine up to \$20,000, and further fines of \$2,000 per day while that offence continues. If a building owner fails to obtain a required BWOFF they could be liable for a fine of up to \$20,000.

Finally, it is the building owner's continuing obligation to ensure that each of the specified systems is performing and will continue to perform.

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## Flat mate or de facto partner?

The Property (Relationships) Act 1976 ("The Act") provides an equal sharing presumption to relationship property for qualifying relationships. Qualifying relationships are marriages, civil unions or de facto relationships that are a minimum of three years in duration.

Section 2D of the Act defines a de facto relationship as a relationship between two persons who are both aged over 18 years, who "live together as a couple" (either heterosexual or same sex relationships) and are not married or in a civil union to one another.

If the parties are under the age of 18 years, the de facto relationship starts from the time the younger partner turns 18 years old.

In determining whether two persons are "living together

as a couple", all circumstances of the de facto relationship are to be taken into account including the matters recorded at section 2(D)(2), which are:

- The duration of the relationship.
- The nature and extent of the common residence of the relationship.
- Whether or not a sexual relationship exists.
- The degree of financial dependence or interdependence and any arrangements for financial support, between the parties.
- The ownership, use, and acquisition of property.
- The degree of mutual commitment to a shared life.
- The care and support of children (either from that relationship or from previous relationships).

- The performance of household duties.
- The reputation and public aspects of the relationship.

None of the above factors are essential to determine whether the parties are living together as a couple and the Court is entitled to attach such weight to any matter as is appropriate in the circumstances of that relationship.

Marriages and Civil Unions are legal processes, which require the parties to opt in from an agreed commencement date. However, there is no formal process that records the commencement date of de facto relationships. This usually leads to the parties unknowingly entering into a legally defined relationship well before they chose to declare their relationship (agree that their relationship is serious enough to commit to one another or tell friends and or family they are in a relationship) leading to the Act applying retrospectively, rather than from an agreed date.

This can be financially crippling to parties that may have amassed assets and property prior to the commencement of the de facto relationship as the

partner may be entitled to half the value of those assets and property.

The ending of a de facto relationship is a question of fact and occurs either when one partner regards the relationship as over and has communicated that intent to the other partner or one partner dies.

Parties are also able to enter into contemporaneous relationships (marriage and de facto at the same time).

A remedy available to parties is that they are able to contract out of the terms of the Act by way of s21A of the Act. This type of agreement is called a Contracting Out Agreement or otherwise known as “pre-nup”.

If you find yourself in the above situation, gaining legal advice from a lawyer that deals with relationship property law could save you a lot of money in the future.



## HOW WELL DO YOU KNOW YOUR LEASE?

The majority of lease arrangements are entered into using the Deed of Lease provided by the Auckland District Law Society. Whether you are a business owner and tenant, or a landlord, it is important that you understand your rights and obligations. How well do you know your lease?

### Tenants right to quiet enjoyment

As a tenant, you will typically hold a right to quiet use and enjoyment of the property. Contrary to the wording, this right does not mean you can pursue the landlord for noisy neighbours, rather, it means that the landlord will not interfere with your possession and use of the property. If the landlord were to breach this term, this could give rise to a claim for damages or you could apply for an injunction to stop the interference.



### Tenants' maintenance obligations

Tenants are often responsible for the maintenance and care of the property. Some of the responsibilities that you may not be aware of include:

- Replace and repair glass breakages;
- Re-paint and re-decorate the premises when reasonably required (some landlords will often require this near the end of the lease);
- Replace all worn or damaged floor coverings (carpet) with ones of equal or better quality;
- Maintain any garden and lawn areas to a tidy and cared for condition; and
- Make minor repairs to the roof where necessary.

### Liability on assignment of your lease

There are a number of different reasons that tenants assign their leases, for example on sale of a business. An important part of selling your business is ensuring that it is attractive as possible to a potential purchaser. This means making sure that a new tenant can continue to stay in the business premises long term, either by way of a long lease or by providing several rights of renewal.

What many people do not realise however, is that the original tenant's liability does not necessarily end when they assign the lease (and become an “assignor”) to a new tenant.

If you enter into a lease you will typically still be liable for the full current term of that lease regardless of whether you assign to a new tenant. If the new tenant breaches

any of the conditions of the lease, you could still be liable for that breach. For example: if the new tenant fails to pay rent, the landlord can often pursue you for the loss, as even after assignment of the lease you can still retain your original contractual obligation to the landlord.

### When liability ends

Your liability as assignor will typically end at the expiry of the current lease term in place at the time of assignment. If the purchaser exercises a right to renew after that term have expired, this would effectively be a new lease and you would not be liable for a breach by the new tenant during the new term. You can limit your risk when assigning your lease by asking the landlord to agree to



limit your liability (although they do not have to agree). You could also require the new tenant to provide you with an indemnity; however this does not prevent the landlord

recovering from you for any breach of the lease in the first instance.

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## SNIPPETS

### Property Purchase – Meth testing

Methamphetamine contamination has been described as being so prevalent that it could be worse than the leaky home crisis that affected New Zealand in the late 1990s and early 2000s. Ministry of Health guidelines do not identify any safe level of methamphetamine contamination, and guidelines around the world vary. In New Zealand, decontamination is recommended if 0.5 micrograms (0.0005g) are detected in one 10cm by 10cm area. If detected, your local Council has powers under the Health Act 1956 to order cleansing of the property and could place a permanent requisition on your property file.



The chemicals used to cook Methamphetamine and the residue from its use can be highly toxic and can linger for a long time after being absorbed into housing materials. Health risks include burns, respiratory and neurological damage. Decontamination can require complete redecoration to the affected area, including replacement of carpets, curtains, and wall linings.

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### Updated agreement for sale and purchase of real estate



Recent changes to the widely used Agreement for Sale and Purchase of Real Estate prepared by the Auckland District Law Society and the Real

Estate Institute of New Zealand include:

- When selling an apartment or other Unit Title property, the vendor warrants (promises) that the information provided in the pre-contract disclosure statement is correct.

### Buying a vehicle – is there money owing?

If you are in the process of purchasing a vehicle privately, it is very important to check that there is no money owing on it.

This can be done by conducting a search of the Personal Property Securities Register (“PPSR”), preferably on the day you are going to pay for the car. The PPSR will confirm whether a 'security interest' is registered against the vehicle.

If there is a security interest registered, another person or company could seize your vehicle to pay off any debt relating to that security interest. Even if this debt was incurred by a previous owner, you could still lose your vehicle if the previous owner has failed to repay the debt in full before selling to you.

If there is money owing on the vehicle, the PPSR will record the details of the creditor, and you should ensure the debt is cleared before you buy. That way you can be sure you are buying your vehicle outright.



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- The vendor also warrants that all plant, equipment, systems or devices which provide any services or amenities to the property (such as security, heating, cooling, or air conditioning) will be delivered to the purchaser in reasonable working order.
  - A breach of warranty can already give rise to compensation. The agreement now clarifies that a claim for compensation must be made on or before the last working day before settlement.
  - The definition of a working day has been extended to allow an additional 10 days for a purchaser to approve a Land Information Memorandum (LIM) if the LIM condition would otherwise have fallen due over the Christmas/New Year period.

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**Bruce Wyber**

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