

Court powers and jurisdiction

- That the court be given wider powers in its role of overseeing trusts and reviewing trustees' decisions.
- That the District Courts have the same jurisdiction as the High Court to deal with trusts, provided the amount involved is within the court's monetary limits. The report also recommends the Family Court have jurisdiction in certain cases.
- Promotion of Alternative Dispute Resolution in the new Act, as well as an increased role for the Public Trust to alleviate dependence on the courts.

General trust issues

- That the rule against perpetuities for new trusts be extended from 80 to 150 years.
- That the Property (Relationships) Act 1976 be amended to enable the Family Court to make orders compensating a partner by way of trust assets, where their claim would otherwise have been defeated.

While many of the recommendations simply clarify the existing law, the Commission recognises the new regime will widely impact the estimated 300,000 – 500,000 trusts currently in New Zealand.

Whether the Government approves the report remains to be seen. In the meantime, the Commission will continue with the final two stages of review, which relate to charitable trusts and corporate trustees. For a full list of the proposed changes refer to the Commission's website: www.lawcom.govt.nz/publications.

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Terrace
End



NEWSLETTER

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Terrace End Law has been under new management since 2 October, 2014 when Alison Green, LLB, purchased the business. The business continues to trade as 'Terrace End Law' with the same staff that you will be already familiar with, from our premises at 326 Broadway Avenue, Terrace End, Palmerston North.

Necia Parker, A.N.Z.I.L.E and JP, an experienced and Registered Legal Executive, specialises in residential conveyancing, wills, powers of attorney, trusts and estates. Necia is ably supported by her personal assistant, Tina Eames and by Christabel Burne. Terrace End Law is also available for separation, prenuptial agreements, along with small business and farming matters. We look forward to working with you in the near future.



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Neighbour law part 1 - love thy neighbour

Disputes with neighbours can arise over many things; noise, fences, trees and animals etc. Ideally, you and your neighbour should be able to resolve any problem by discussing it and acting reasonably. However, if this is not possible, the law may be able to help resolve the matter.



Encroachment

When you purchased your property, your lawyer should have shown you a copy of the Certificate of Title for the property. The Certificate of Title records the plan of the property and its boundaries with neighbouring properties that were determined by land transfer survey. It can be disastrous for a land owner to discover that they do not actually own all of the land they thought they did because they relied on fences and natural boundary markers, rather than the boundaries shown on the Certificate of Title.

Encroachment is where you or a previous owner of your property has erected a structure and part of the structure is on a neighbouring property. This is technically a trespass and the encroaching land owner is legally responsible, whether or not they erected the structure. The definition of structure includes any building, driveway, path, retaining wall, fence, plantation or any other improvement.

The Property Law Act 2007 enables a party to seek relief where such an encroachment exists. Whether or not relief should be granted is an exercise of judicial discretion and must be considered "just and equitable" in the circumstances. Relief can be provided by: directing that the structure be removed, granting an easement (or alternatively a right of possession for a specific time) over the land under the structure, or transferring that land to the person who owns the encroaching structure. If the wrongly placed structure is a fence, no relief may be granted if the dispute can be resolved under the Fencing Act 1978.

Boundary fences

The Fencing Act 1978 sets out the rights and responsibilities relating to fences between neighbouring properties. It provides a statutory framework to resolve disputes that may arise. This includes (but is not limited to) determining what constitutes an adequate fence, the cost of building or repairing a fence, who is responsible for those costs, and who is to do the work. Land owners can

enter into agreements or covenants concerning fencing matters that can be registered against the titles of the affected lands for a period of up to 12 years after registration.

Overgrown trees

The overhanging of branches of your neighbour's trees onto your property is also considered encroachment. You are allowed to cut the branches back to the point where the tree crosses the boundary; however it is a good idea to contact your local council to ensure the tree is not a protected tree or talk to your neighbour about it.

If your neighbour is not prepared to do anything, you are able to apply to the district court for an order requiring your neighbour to remove or trim any tree if it is causing damage or injury, obstructing your view or otherwise reducing the enjoyment of your property or if it is diminishing the value of your house.

If any of these circumstances apply to you, we suggest you seek legal advice regarding your rights and responsibilities. Seeing a lawyer before a problem escalates can save you anxiety and money.

Ensuring it's a first house and not a P house

As the use of illicit drugs, particularly methamphetamine ("meth") grows in popularity, so does the chance that you could purchase a property that was used as a clandestine meth laboratory.



When meth is manufactured or used, a wide range of poisonous, explosive, and extremely flammable chemicals are used. These chemicals, fumes and by-products can be spilt on surfaces, carpets, curtains and ventilation systems, and poured down drains contaminating the structure and fabric of the building.

Exposure to the chemicals found in meth labs can have various short-term and long-term effects on the health of the occupants. As a result this impacts on the value or marketability of a property to potential purchasers or tenants.

When a meth lab is discovered by police, a notification is usually provided to the local council who in turn raise a requisition on the council's Land Information Memorandum (LIM) database. Under the Health Act 1956, a Cleansing Order is issued by the council to the owner of the property and a

validation report plus other relevant information must be provided to the council before the Cleansing Order can be discharged.

It is estimated that the proportion of meth labs found by the police is 5 to 10% of the total amount in operation at one time and that in 2009, 75% of meth labs reported were located in rental properties. Therefore there is a strong chance that many home owners have given into temptation and replaced the carpet and repainted the walls in an attempt to hide the signs of meth use in order to preserve the property's value. This is a short-term fix and does not resolve the issue as the highly toxic residues remain.

Caution must be raised, particularly if the purchaser has a view to tenancing the property in the future, as it is a breach of a landlord's obligations to tenant a contaminated premises. Therefore if undetected the costs of remediating the property may fall on the purchaser.

As a prospective purchaser, there are a number of practical things that can be done to reduce the risk that the property you are about to purchase was a meth lab, which include:

- Find out whether the property has been used as a rental,
- Contact the local council and review the LIM report as part of pre-purchase due diligence (however there may be a chance that the local council records may not be up to date),
- Ask the vendor and real estate agent about the property's history; specifically asking whether they are aware of any meth related activity. Legal remedies may be available where misrepresentation is proven,
- Ask the vendor if the property has been monitored for meth manufacture by a third party agency (similar to an alarm system),
- Inspect the property for tell-tale marks. However, it is very hard to detect when the property has new carpet and a fresh coat of paint,
- Contact the neighbours to inquire about the property's history, and
- Get the property tested (prior to making an offer of purchase or as a condition).

If you are a prospective purchaser and have concerns about a potential property, it is our advice that you contact a property lawyer to discuss your concerns in detail.

Makeover for trust law proposed

The Law Commission feels a new framework is needed to provide a clear and robust approach for trusts in the 21st Century. They are undertaking a three part review of trust law in New Zealand and presented the first report to Parliament on 11 September 2013.



The Law Commission report focuses on the essential nature of trusts and recommends the introduction of a new Trusts Act ('new Act') to replace the Trustee Act 1956, which the Commission believes has become outdated. A selection of the recommendations in the report are summarised below:

Core trust concepts

- That the new Act provides a statutory definition of "trust", setting out the specific requirements necessary for a trust. It is hoped a clearer definition will assist the courts in addressing possible "sham" trusts.
- That the new Act clearly sets out the duties of trustees. While not creating new duties per se, the purpose is to make the law clear and accessible. The new Act would introduce six mandatory duties and 11 default duties, which will apply unless the trust deed indicates otherwise.
- That trustees be barred from limiting their liability or receiving an indemnity for gross negligence, which aligns with the current position in cases of dishonesty or wilful misconduct.

Trustees

- That provisions be enacted that broadly empower trustees. The Commission believes the current Act unduly restricts trustees' powers.
- That trustees be able to invest funds, with discretion to determine whether the return is "income" or "capital". The focus is on the overall return, meaning investment managers can also be appointed.
- That the rules relating to changing trustees be amended, as the current legal framework is difficult and often necessitates the court's involvement.