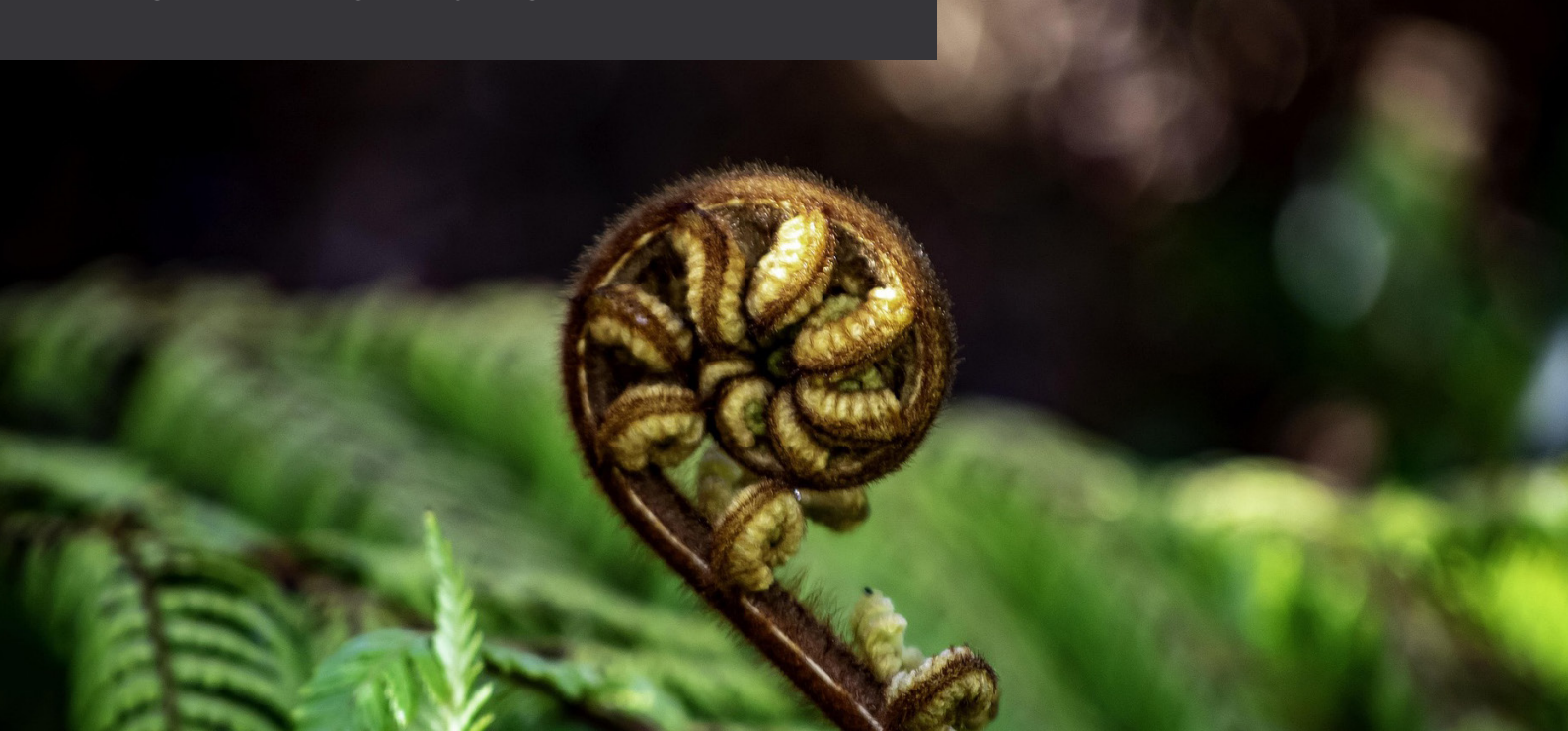


THE LAW

LOWDOWN

SPRING 2025

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SPRING 2025

Welcome to the Spring 2025 edition of the Law Lowdown.

We have an article on Easements, explain the difference between ordinary Easements and Easements in Gross, and provide some insights into matters of maintenance.

Enduring Powers of Attorney are often required before Retirement Village Occupation licences are granted. We look into the reasons.

Lastly, we note recent changes to AML/CFT Rules have eased compliance requirements for many Family Trusts when properties need to be sold.

TOP NEWS INSIDE

- Understanding Easements

Why Retirement Villages Require

- Enduring Powers of Attorney

Trust Property Sales: Simplified Rules

- but Ongoing Responsibilities

UNDERSTANDING EASEMENTS

When you buy or own property in New Zealand, you may come across the term easement. Easements are a common legal feature of land ownership, and while they can sound technical, they play an important role in allowing landowners to use their property effectively.

WHAT IS AN EASEMENT?

An easement is a legal right to use someone else's land for a specific purpose. It does not give ownership, but it allows the owner of one property (the "dominant tenement" (land)) to benefit from the owner of an adjoining property (the "servient tenement"). Common examples include:

- A right-of-way to use a driveway across a neighbour's property.
- Rights to run services such as power, water, or drainage across adjoining land.
- Access to shared facilities, like a private roadway.

Because easements are registered on the land title, they "run with the land." This means they usually remain in place when the property is sold or transferred to a new owner.

EASEMENTS IN GROSS

Not all easements are tied to a neighbouring property. Some benefit a person, company, or public authority directly, rather than another property. These are called easements in gross.

For example:

- A power company holding an easement in gross allowing it to maintain electricity lines across private land.

- A council holding an easement in gross for drainage or stormwater infrastructure.

Unlike other easements, an easement in gross benefits the named individual or entity, and it remains in place regardless of who owns the surrounding properties.

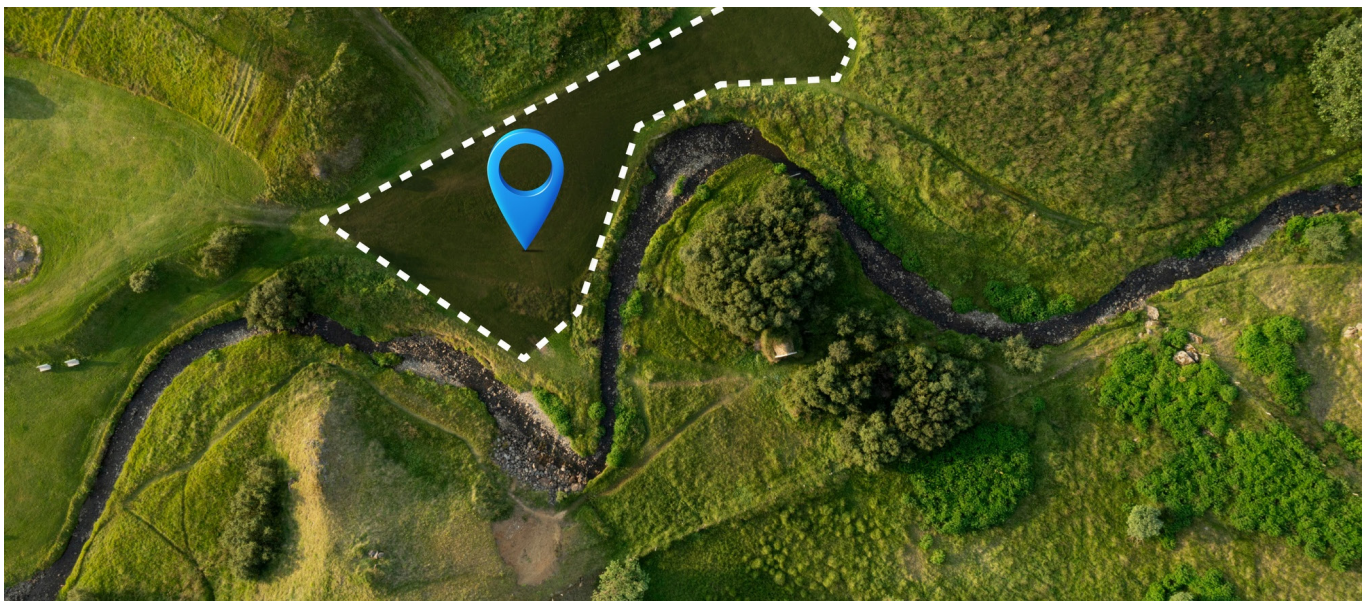
MAINTENANCE AND RESPONSIBILITIES

Easements, particularly those involving shared driveways, bring with them questions of responsibility for maintenance and repair. Generally, the parties who benefit from the easement must also contribute to these. This can include day-to-day upkeep, fixing potholes or drainage issues, and, where necessary, more significant works such as resurfacing. The specific obligations are usually set out in the easement instrument, and disputes often arise if expectations are unclear.

CHECKING BEFORE YOU BUY AND PREPARATIONS FOR SELLING

Easements are an important part of property ownership in New Zealand. Most give rights that benefit one piece of land over another, while easements in gross benefit a specific person or organisation.

They also carry responsibilities. If you share a driveway, you may be required to help pay for both minor repairs and more intensive works. Checking the title and understanding these obligations are essential when buying. If you have issues with your current property and neighbours then you should ensure those matters are addressed and resolved before selling as they could otherwise create significant difficulties, delays and costs.



WHY RETIREMENT VILLAGES REQUIRE ENDURING POWERS OF ATTORNEY

When moving into a retirement village in New Zealand, new residents are usually asked to have an Enduring Power of Attorney (EPA) in place. This may feel like another bit of administration to add to the paperwork, but it is an important safeguard for both residents and their families.

WHY AN EPA IS REQUIRED

An EPA allows you to appoint someone you trust to make decisions on your behalf if you lose the ability to do so yourself. There are two types:

Property EPA – covering financial and property matters.

Personal Care and Welfare EPA – covering decisions about your health and personal needs.

Retirement villages typically require residents to have valid EPAs in place because they deal with long-term occupation agreements and significant assets. If a resident later becomes unable to sign documents, manage property, or make decisions, the village needs certainty about who is legally authorised to act. Without an EPA, families may face the lengthy and costly process of applying to the Family Court for orders.

Many villages will ask to see copies of the EPA documents before confirming an Occupation Right Agreement (ORA). Some even require confirmation from the resident's lawyer that the EPAs are current and valid.

RIGHTS OF THE OCCUPANT

Requiring an EPA does not take away the rights of the resident. In fact, the Retirement Villages Act 2003 and the Code of Residents' Rights ensure strong protections, which include:

- Independent legal advice – every ORA must be explained and signed off by a lawyer, who also witnesses the resident's signature.
- Cooling-off period – residents have 15 working days to change their mind after signing an ORA.
- Full disclosure – villages must provide disclosure statements and the Code of Practice, so residents understand their obligations and rights.

Further, an attorney acting under an EPA must always act in the resident's best interests and can be challenged if they do not.

SUMMARY

For retirement villages, requiring an EPA is about ensuring smooth management if a resident becomes unable to make decisions. For residents, it is an important tool to protect personal wishes and reduce stress for family members. Alongside the rights guaranteed under the Retirement Villages Act, an EPA gives both the resident and the village certainty that important decisions can always be made.





TRUST PROPERTY SALES: SIMPLIFIED RULES BUT ONGOING RESPONSIBILITIES

Recent changes to New Zealand's Anti-Money Laundering and Countering Financing of Terrorism Act (AML/CFT) have eased compliance requirements for family trusts, particularly when selling property. The reforms, in force from June 2025, respond to long-standing criticism that the old rules placed too much burden on low-risk transactions.

WHAT HAS CHANGED

Previously, whenever a trust was involved in a property sale, lawyers and other reporting entities were required to complete full due diligence. This meant identifying not only trustees but also all beneficiaries, settlors and sometimes protectors, as well as providing information on the trust's source of wealth. For a straightforward family trust selling a family home, the process could be disproportionate.

The new framework allows for a risk-based approach. Where a trust transaction is clearly low risk, simplified checks are now permitted. In such cases, it may be enough to:

- Confirm the identity of trustees,
- Verify ownership of the property being sold, and
- Hold a copy of the trust deed.

This streamlines the process, saving trustees time and cost, while still meeting the objectives of AML/CFT.

IMPLEMENTATION ISSUES

Although the reforms are welcome, not all questions are settled. The threshold for what qualifies as "clearly low risk" remains uncertain. Complex trust structures or offshore connections may still require full due diligence. Further, reporting entities must keep clear records explaining why simplified checks were used, so they can demonstrate compliance if reviewed. Guidance from regulators is expected, but gaps remain.

IMPORTANCE OF GOOD RECORDS

One message remains loud and clear: trustees must keep thorough and accurate records. This includes maintaining up-to-date trust deeds, trustee and beneficiary details, and an audit trail of decisions. Even with simplified checks, poor records can expose trustees and advisers to risk. As trust law continues to evolve, careful record-keeping remains the best protection against both regulatory challenge and disputes within families.

SUMMARY

The 2025 reforms make life easier for trustees involved in routine property sales, reducing unnecessary duplication and paperwork. But the responsibility to apply the rules carefully, document decisions, and maintain sound records is as important as ever. If you are a trustee considering a property transaction, professional advice remains essential to ensure the right balance between efficiency and compliance.

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