THE LAW

LOWDOWN

AUTUMN 2025

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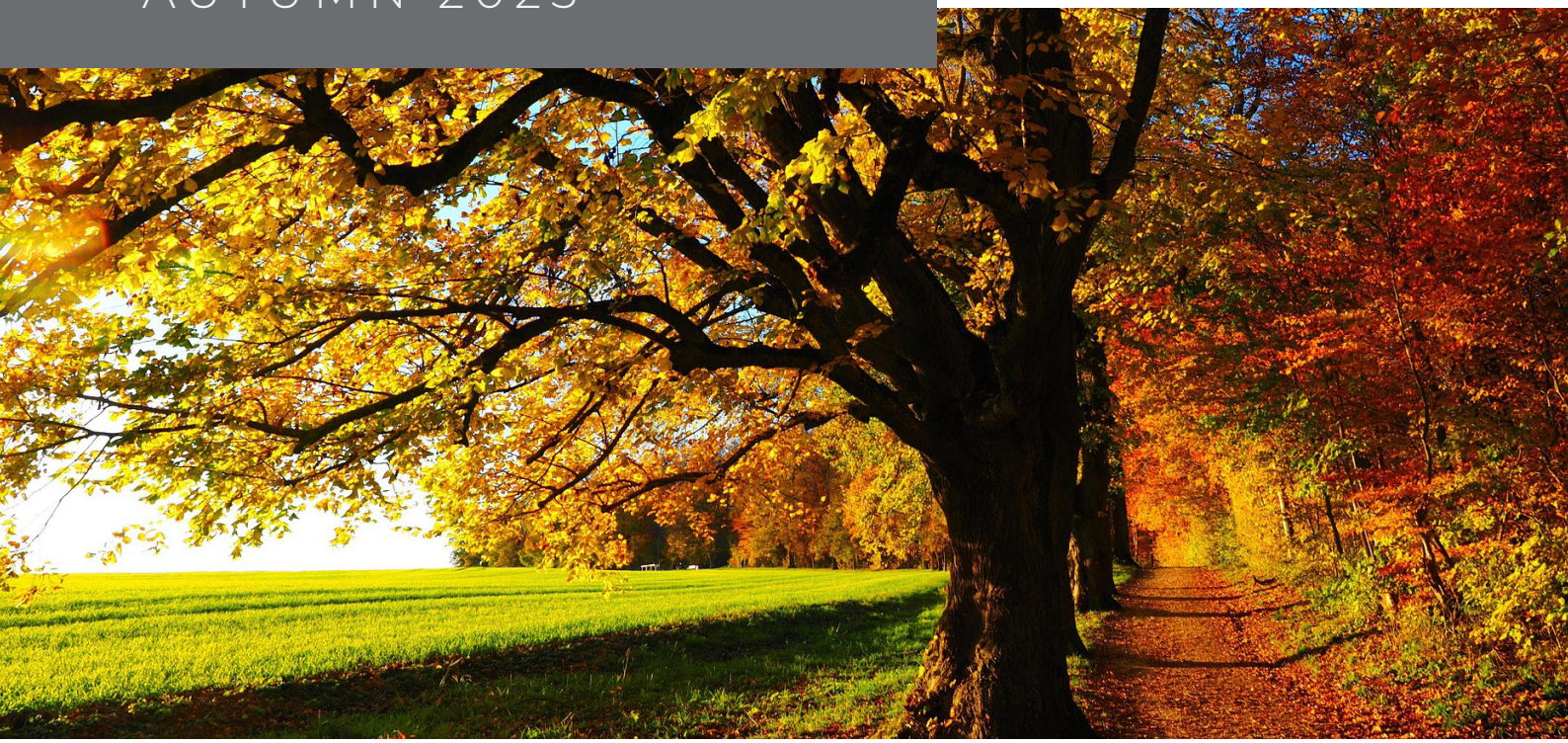

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Welcome to the latest edition of the Law Lowdown. our first for 2025.

- We comment on a recent case which has clarified Trust law as it relates to Relationship Property.
- We identify many of the life changing things that could trigger a need to create a new Will or update your existing one.
- Entering into an agreement for the purchaser of property can be an exciting time but it's so important to always consult your lawyer before signing anything, even if the transaction uses the standard agreement.
- There are changes coming regarding the compulsory acquisition of land under the Public Works Act. Read about them.
- And lastly, we note the possibility of a change to the length of the Parliamentary term and encourage you to have your say in the process.

We hope you find the information here useful. Please contact us if anything here or elsewhere is causing you concern.

TOP NEWS INSIDE

CLARIFICATION OF TRUST POWERS AND RELATIONSHIP PROPERTY

The Supreme Court's recent decision in Cooper v Pinney [2024] NZSC 181 ("Cooper") has clarified the extent to which trust powers may be considered ***relationship property*** under the Property (Relationships) Act 1976 (PRA), refining the scope of its earlier landmark ruling in Clayton v Clayton [2016] NZSC 29 ("Clayton").

THE DIFFERENCES BETWEEN CLAYTON AND COOPER

In Clayton, the Supreme Court found that a spouse's control over a family trust was so extensive as to be tantamount to ownership, and the trust property therefore should be considered relationship property, and subject to division under the Property (Relationships) Act. In contrast, the facts of Cooper allowed the Court to distinguish the position. The Court found that not all trust powers will be treated in this way.

In Cooper, Raewyn Cooper argued that her former de facto partner, Marcus Pinney, had similar control over a trust (the MRW Pinney Trust), and that his trust-related powers should be classified as relationship property. Unlike Clayton however, Pinney's powers were constrained by fiduciary duties and trust deed provisions.

The Court ruled that because Pinney was ***not a sole trustee, could not act unilaterally, and remained bound by fiduciary obligations to other beneficiaries***, his powers did ***not*** equate to ownership of the trust assets. As a result, his rights under the trust were not classified as relationship property, and Raewyn Cooper had no claim to them.

WHAT THIS MEANS FOR YOU

- Not all trust powers are property. A person's rights in relation to a trust may only be considered relationship property if they effectively have unfettered powers.
- Trust structure matters. If a trust has multiple trustees, requires unanimous decisions, and the trustees retain fiduciary obligations, the assets should fall outside any relationship property dispute.
- Legal advice is essential. Individuals involved in trusts—whether seeking to protect assets or claim a share—should seek legal advice early to clarify their rights.
- Prevention is better than litigation. A well-drafted relationship property agreement can help avoid costly disputes. Proper trust structuring and careful drafting of trust deeds remain crucial.

If you have concerns about how a trust may be treated in a relationship property dispute, or if you are considering structuring a trust for asset protection, we recommend seeking specialist legal advice as early as possible.

REGULARLY CHECK YOUR WILL – WHY IT'S SO IMPORTANT

We often hear a sigh of relief when a client signs their Will. The assumption of course is "Ok great – that's over and done with". No need to think about it again.

Unfortunately, that is just not the case. A Will is not something to write and forget. It should be reviewed ***regularly***, especially after key life events, to ensure it still reflects your wishes.

An outdated Will can lead to unintended consequences, disputes, and unnecessary stress for your loved ones.

What are the most common milestones that may call for a change to your Will?

1. MARRIAGE, SEPARATION, OR DIVORCE

- Marriage or civil union revokes an existing will unless it was explicitly made in contemplation of the marriage.
- Separation or divorce does not revoke a will, but your ex-spouse is treated as having died before you, meaning gifts to them become void. However, simply ending a relationship is not enough. Without a formal separation or divorce order, your ex could still inherit.

2. BIRTH OR ADOPTION OF CHILDREN

Your Will should name the ***guardians*** for your children and ensure their financial security. If you have children from different relationships or a child with special needs, your Will may require careful planning to provide for them appropriately.

3. DEATH OF AN EXECUTOR, GUARDIAN OR BENEFICIARY

Your ***executor*** is responsible for managing and distributing your estate. If they pass away, or if a ***guardian*** or ***beneficiary*** dies, your Will may need updating to prevent confusion or unintended outcomes.

4. BUYING A PROPERTY

Many people make their first Will when purchasing a property. If you own a home, particularly ***with*** someone else, your Will should reflect your intentions. The ***ownership structure*** is also crucial, with the most common being:

- Joint ownership, where the property passes ***automatically*** to the surviving owner.
- Tenancy in common, where your share is distributed through your Will.

If you're unsure of your ownership type or your circumstances change, reviewing your Will is essential.

5. BIG FINANCIAL CHANGES

A ***large inheritance or windfall,*** or a ***business sale*** could significantly impact your estate planning decisions. For example, you may wish to add, or change entitlements for, beneficiaries and charities.

6. OTHER LIFE EVENTS

While this isn't exhaustive of every possible change in circumstances, other significant events that should prompt a Will review include:

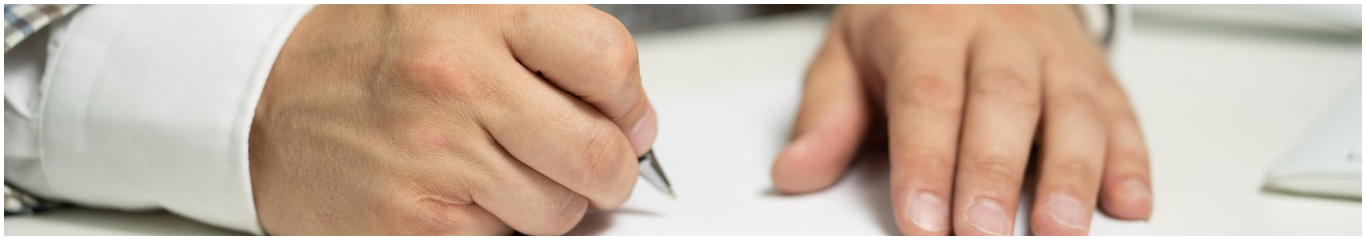
- Changes in your health or new medical needs.
- Relocating overseas.
- Buying foreign property.
- Starting a business.

No Will at all?

If you die without a Will (***intestate***), your assets will be distributed according to the default legal rules established by the Administration Act 1969—which may ***not*** align with your wishes. Even estranged family members could inherit. A Will ensures your estate is distributed as you ***intend***, avoiding unnecessary legal hurdles.

Time to Revisit Your Will

Hopefully this article gives you enough information to identify if you need to get a Will in place or review your current Will. Talk to us to ensure your nearet and dearest are protected, and your intentions are clear.



WHY YOU SHOULD ALWAYS CONSULT A LAWYER BEFORE SIGNING A PROPERTY AGREEMENT

Buying a property is one of the biggest financial commitments most people will make. In New Zealand, many buyers assume that if they are using the standard ADLS/ Real Estate Institute of New Zealand (REINZ) approved Agreement for Sale and Purchase of Real Estate, they do not need legal advice before signing. However, failing to consult a lawyer before signing can lead to costly mistakes and legal complications.

Please note that although the ADLS has changed its name to "The Law Association", the standard agreement continues to be referred to as the *ADLS/REINZ Agreement for Sale and Purchase of Real Estate*.

Understanding Your Legal Obligations

Even though the ADLS/REINZ agreement is widely used and designed to be fair, it is still a legally binding contract. Once signed, you are committed to the terms unless the agreement includes conditions allowing you to withdraw. A lawyer can help ensure the agreement protects your interests, rather than just being a standard document that may not consider your specific needs.

Ensuring Key Conditions Are Included

Many property transactions require conditions to protect the buyer, such as:

• Finance Condition – If you need a mortgage to complete the purchase, you must ensure the agreement is conditional on finance approval. Without this, you may be legally required to complete the purchase even if the bank declines your loan.

• Building Inspection – A lawyer can help ensure that a satisfactory building report is a condition of the purchase, protecting you from buying a property with hidden defects.

• Title Checks and LIM reports – A lawyer will review the title, to identify potential issues, such as easements or restrictive covenants affecting the property, and will commonly review the property's Land Information Memorandum (LIM) especially regarding unconsented work and zoning restrictions.

Obligations with respect to conditions

Even with conditions, there may be obligations regarding their satisfaction that you may not otherwise expect, and it's important to have your lawyer check over the wording and explain the obligations you are incurring.

Understanding the Fine Print

Even standard agreements may contain clauses that can have significant consequences. For example, sunset clauses for properties in development, deposit requirements and penalty clauses for delayed settlement can create unexpected financial risks. A lawyer can explain these clauses and negotiate changes if needed.

Avoiding Costly Mistakes

Real estate agents act in the interest of the seller and are not legally responsible for ensuring a contract protects the buyer. Misunderstanding your obligations could result in financial loss or legal disputes. A lawyer will ensure the agreement aligns with your needs and that you fully understand what you are committing to.

Protecting Your Investment

Property transactions are complex, and no two deals are the same. Legal oversight can prevent costly mistakes and give you confidence that your rights are protected. By consulting a lawyer before signing, you can enter the purchase with certainty, knowing that you are making an informed decision.

Before signing any property agreement, even a standard ADLS/REINZ form, always seek legal advice to safeguard your investment and avoid unnecessary costly risks.

PUBLIC WORKS ACT REFORMS: WHAT IT MEANS FOR LANDOWNERS

The Government has announced fast-tracked reforms to the Public Works Act (PWA), aiming to speed up compulsory land acquisitions for major infrastructure projects. These changes will significantly impact individual landowners, particularly those affected by Fast-Track approvals projects and Roads of National Significance.

KEY CHANGES AFFECTING LANDOWNERS

1. NO MORE OBJECTIONS TO THE ENVIRONMENT COURT

Currently, landowners can object to a compulsory acquisition in the Environment Court, which assesses whether the acquisition is ***fair, sound, and reasonably necessary***. Under the reforms:

- This right to object will be removed for Fast-Track projects and Roads of National Significance.
- Objections will be considered by the Minister or Local Authority, who will decide whether the acquisition proceeds.
- The decision can still be challenged through a judicial review in the High Court, but this will be limited to reviewing the lawfulness of the Minister's decision, not whether the acquisition itself is fair.

2. FASTER, MORE EFFICIENT LAND ACQUISITION

By removing court challenges, the Government aims to reduce delays and speed up infrastructure projects. However, this means landowners will have less ability to challenge compulsory acquisition decisions.

3. CHANGES TO COMPENSATION – INCENTIVES FOR EARLY SETTLEMENT

While landowners are still entitled to fair compensation, the Government is introducing financial incentives to encourage early settlements:

- 15% premium (up to NZ$150,000) for landowners who ***voluntarily sell*** before a Notice of Intention to Acquire is issued.
- 5% "recognition premium" (up to NZ$92,000) for landowners whose land is acquired through the accelerated process.
- Up to NZ$50,000 additional premium for homes that serve as the landowner's ***primary residence***.

For many landowners—especially those with properties valued under NZ$1 million—these incentives may be financially compelling.

4. COMPENSATION PROCESS UNCHANGED

The right to have compensation disputes resolved by the Land Valuation Tribunal remains intact. However, this process occurs after the land is acquired, meaning landowners must cede their land first and settle disputes later.

WHAT THIS MEANS FOR LANDOWNERS

- Less power to resist compulsory acquisition – The removal of Environment Court objections means landowners have fewer legal avenues to challenge a forced sale.
- Faster acquisitions – The Government will be able to take land more quickly, particularly for priority projects.
- Stronger financial incentives to settle early – The 15% premium could make early voluntary sales financially attractive, particularly for properties valued under NZ$1 million.
- Judicial review remains an option – While the Environment Court process is gone, legal challenges can still be made in the High Court, though on narrower legal grounds.

NEXT STEPS FOR LANDOWNERS

The full details of the reforms will be in the upcoming legislation, which will go through a public consultation process in the Select Committee. Landowners concerned about their rights should consider making a submission and seek legal advice on their options. If your property may be affected, it's crucial to understand your rights and consider early negotiation strategies to maximise compensation.

CHANGE TO PARLIAMENTARY TERM?

Among the world's liberal democracies, Australia and New Zealand are notable for retaining three-year parliamentary terms. This term length is now uncommon, as the majority of countries with active legislatures have four-or five-year terms. It's important to note that while other countries, such as El Salvador, Mexico, Nauru, and the Philippines, also have three-year terms for certain legislative bodies, they may not all be classified strictly as liberal democracies.

In Australia, the federal House of Representatives operates on a maximum three-year term. However, elections can be called earlier if the Prime Minister requests and the GovernorGeneral approves.

New Zealand also maintains a three-year term for its Parliament. Discussions and debate about extending this term have occurred periodically over the years. However, the Government has recently announced it will introduce legislation allowing extended parliamentary terms of four years. The legislation, part of the ACT-National Party coalition agreement, will be subject to the same limitations as ACT's Treaty Principles Bill. That means National has agreed only to take the legislation to Select Committee, with no commitment to pass it. Also if it does pass, it will be subject to a referendum before it comes law.

WHY IS THIS IMPORTANT?

There has been so much debate in recent times about the effectiveness of a three-year term. Many people argue that a Government doesn't really have time to introduce its policies in such a timeframe. Others contend that the time limitation prevents bad policy from being implemented.

With things in such turmoil internationally and with strong debate in New Zealand on several political and constitutional matters, we believe it's important to think about these bigger issues and we encourage you to participate in the upcoming review process.

GET IN TOUCH

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