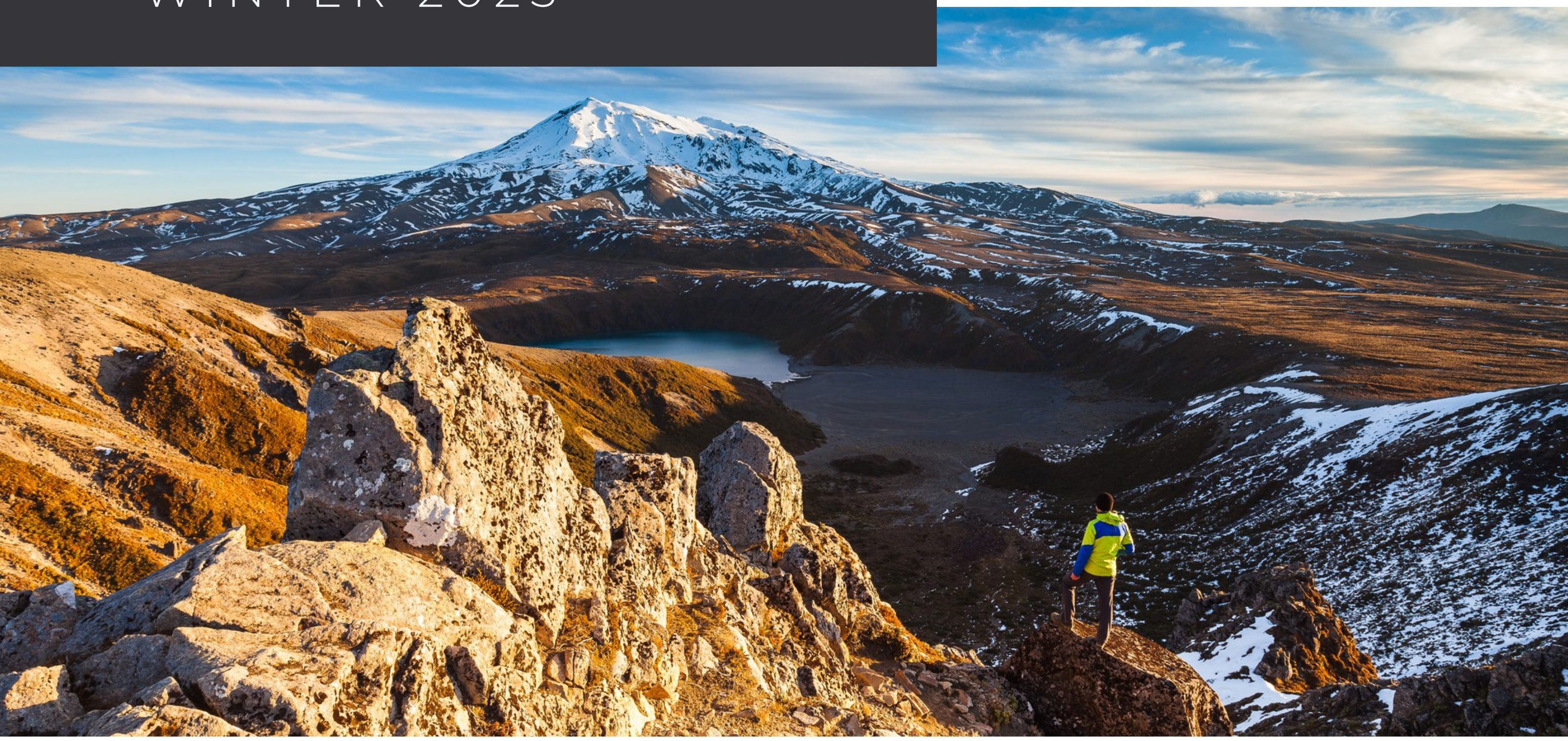
THE LAW

LOWDOWN

WINTER 2025



WINTER 2025

Welcome to the Winter 2025 edition of the Law Lowdown.

What is Relationship property and what is Separate property? We explain some key differences.

With our current difficult trading conditions, we outline the process and implications of a Statutory demand under the Companies Act.

We touch on Enduring Powers of Attorney. Why do you need them?

Lastly, the Government has proposed changes to the tax treatment of Charities. Although on hold for now they may resurface. What you need to know for now.

Regards

The team at Paul Gallagher Legal

TOP NEWS INSIDE

UNDERSTANDING SEPARATE VS RELATIONSHIP PROPERTY

Under the Property (Relationships) Act 1976 (PRA), everything a couple owns is sorted into two baskets when they separate or when one partner dies: relationship property and separate property. Knowing which basket an asset falls into can prevent costly arguments later.

RELATIONSHIP PROPERTY

Most things acquired during a marriage, civil union or qualifying de-facto relationship (usually three years or more) are presumed to belong to both partners equally. Typical examples include:

- the family home and its furniture
- earnings, savings and investments made while together
- KiwiSaver or superannuation contributions earned during the relationship
- vehicles, boats and household appliances
- goods or improvements bought with relationship money.

SEPARATE PROPERTY

Separate property normally stays with the person who owns it. It covers:

- assets a partner already owned before the relationship, unless they later become the family home
- inheritances or personal gifts received during the relationship
- compensation for personal injuries
- genuinely personal items, such as heirloom jewellery not used by both partners.

WHEN TROUBLE APPEARS

Problems arise when separate property becomes mixed with relationship property, or when people assume a windfall "must be mine". A clear example is the case of Rabson v Gallagher. Mr Rabson won a significant Lotto prize during his relationship with Ms Gallagher and deposited the winnings into his personal account, later transferring the funds to a Trust and using them to buy property.

He argued the money was the property of the Trust, but the Court disagreed. Evidence showed the couple regularly bought Lotto tickets together, sometimes jointly, sometimes separately, but always as part of their shared routine. Even though Mr Rabson bought the winning ticket himself, the Court held it was purchased on behalf of both parties and was jointly owned from the outset. The prize money was therefore declared to be relationship property and subject to equal division.

OTHER COMMON FLASH-POINTS INCLUDE:

- using an inheritance to pay down the family mortgage (the inheritance effectively becomes relationship property), and
- a house owned before the relationship that later becomes the family home.

CONCLUSION AND PROTECTING WHAT IS YOURS

The PRA lets partners sign a Contracting-Out Agreement (often called a "pre-nup"). Done correctly, it records which assets will stay separate and how everything else will be shared if you split up or one of you dies. To be valid, the agreement must be in writing, each partner must have independent legal advice, and both signatures must be witnessed by the advising lawyers.

Plain records also help. Keep bank statements showing an inheritance was banked separately, or note who paid for a big purchase. Most of all, take advice early, ideally when a relationship becomes serious, or straight after a windfall.

Understanding the line between separate and relationship property, and planning for it, can prevent surprises and safeguard the assets you care about most.

STATUTORY DEMANDS: WHAT CREDITORS AND COMPANIES NEED TO KNOW

If a company owes a debt and hasn't paid, creditors in New Zealand have a legal tool known as a statutory demand to help recover what's owed. Under section 289 of the Companies Act 1993, a statutory demand is a formal written notice that requires the company to pay the debt, come to an arrangement, or dispute it within a strict timeframe. If not dealt with, serious consequences can follow—including the risk of liquidation.

WHAT IS A STATUTORY DEMAND?

A statutory demand is a notice given by a creditor to a company requiring payment of a debt over $1,000. It's used when a company has failed to pay a debt that is due and undisputed. The demand must:

- Be in writing and in the prescribed form (Form 9 of the High Court Rules),
- Specify the amount owed and how it arose,
- Be signed by the creditor (or their lawyer),
- Give the company 15 working days to comply.

WHAT HAPPENS AFTER IT'S SERVED?

Once served, the company has three options within the 15 working days:

- Pay the debt in full;
- Enter into a compromise or other satisfactory arrangement with the creditor;
- Apply to the High Court to set the demand aside.

If the company does none of these, the law assumes the company is unable to pay its debts and is therefore insolvent.

WHAT CAN THE CREDITOR DO NEXT?

If the company doesn't respond or comply with the statutory demand, the creditor may then apply to the High Court to liquidate the company (commonly referred to as "winding up").

This is a serious step. If successful, the Court will appoint a liquidator who takes control of the company's assets, investigates its affairs, and attempts to pay creditors from the proceeds.

CAN THE DEMAND BE CHALLENGED AND ON WHAT GROUNDS?

Yes. The company can apply to the Court to set aside the statutory demand within the 15 working day period. Common reasons include:

- The debt is genuinely disputed;
- The company has a counterclaim;
- There's a substantial injustice in allowing the demand to stand.

If successful, the Court will cancel the demand, and the creditor cannot rely on it for liquidation purposes.

IMPORTANT THINGS TO NOTE FOR CREDITORS

A statutory demand should only be used where the debt is clearly owed and not disputed.

It's a preliminary step toward liquidation—so it must be used carefully.

A poorly prepared or wrongly issued demand can be struck out, wasting time and costs.

IMPORTANT THINGS TO NOTE FOR COMPANIES RECEIVING A STATUTORY DEMAND

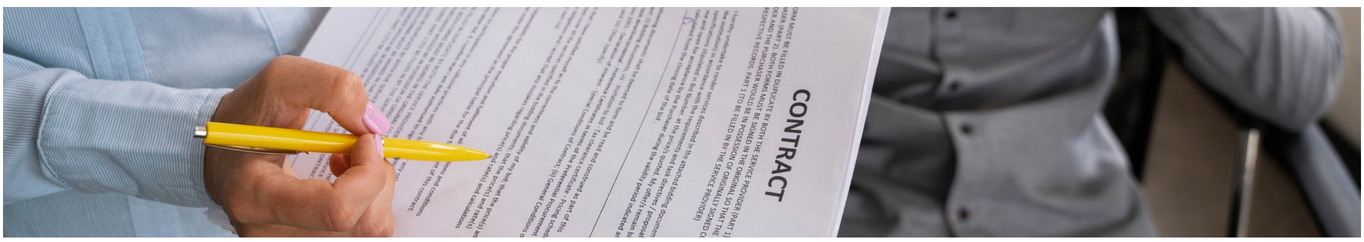
Failing to respond can lead to the company being presumed insolvent. So never ignore a statutory demand.

If the debt is disputed, get legal advice urgently and apply to have the demand set aside before the deadline.

If the company is in difficulty, consider entering into payment negotiations early.

CONCLUSION

A statutory demand under section 289 of the Companies Act is a powerful tool for creditors but comes with strict formalities. For companies, ignoring it can result in liquidation. Whether you're owed money or on the receiving end of a demand, legal advice is critical. Prompt action is often the key to preserving your rights.



WHY YOU SHOULD HAVE ENDURING POWERS OF ATTORNEY IN PLACE

Planning ahead isn't just about writing a will – it also involves ensuring that trusted people can make decisions for you if you are no longer able to do so. In New Zealand, this is done through Enduring Powers of Attorney (EPAs), and every adult should consider having these in place.

There are two types of EPAs:

Personal Care and Welfare EPA

This allows someone you trust (your attorney) to make decisions about your health, medical treatment, and general welfare if you become mentally incapable of making those decisions yourself.

Property EPA

This lets your attorney manage your financial matters, such as paying bills, managing bank accounts, or dealing with property. You can choose to have this come into effect immediately or only if you become mentally incapable.

Having EPAs in place ensures that your affairs can be managed without delay or court involvement. Without them, your family or loved ones may need to apply to the Family Court for the appointment of a welfare guardian or property manager – a process that is often stressful, time-consuming, and costly.

Your attorney must always act in your best interests and follow specific legal duties, including keeping proper financial records and involving you in decisions where possible.

You can choose one or more attorneys and set conditions or limits around what they can do. For example, you might require them to consult with another person before making significant decisions.

It's important to choose your attorney carefully. This should be someone you trust to respect your values and wishes. Often people appoint a spouse, adult child, or close friend. If needed, you can also appoint a lawyer or professional trustee.

You must be mentally capable at the time you sign an EPA. Once you lose capacity, it is too late to put these arrangements in place – which is why it is vital to plan ahead.

At our practice, we guide you through the process and ensure your EPAs are tailored to your personal circumstances. Having properly prepared EPAs provides peace of mind for you and your loved ones, knowing that the right people are legally able to act on your behalf when needed most.

Talk to us today about setting up your Enduring Powers of Attorney – it's a simple step that can make a big difference.

CHARITY TAX REFORMS PAUSED – FOR NOW …

The Government's proposed changes to the tax treatment of charities have sparked significant concern across the charitable sector. While the reforms have now been put on hold, they have not been withdrawn—and are expected to resurface in revised form.

BACKGROUND TO THE PROPOSED CHANGES

The proposals sought to tighten rules around business income earned by charitable entities, particularly where that income is retained or used overseas. Under the proposed changes, income would only remain tax-exempt if it was applied for charitable purposes within New Zealand.

The intent behind the reforms was to ensure that the tax benefits provided to charities deliver clear public benefit to New Zealanders. However, many in the sector raised concerns that the approach was too broad and did not account for legitimate overseas aid, long-term planning, or group structures involving charitable business arms.

Strong Sector Response

The proposed amendments attracted approximately 900 submissions, many from registered charities, legal professionals, and sector experts. Common themes included concerns over:

- The complexity of the proposed changes;
- The potential to discourage charitable giving;
- Increased compliance costs and governance burdens;
- The risk of unintended impacts on charities engaged in international development or long-term investment.

GOVERNMENT RESPONSE

In light of this strong response, the Government announced in May 2025 that it would pause the proposed reforms to allow further review. However, this is not the end of the matter. Officials have signalled that the underlying policy objectives remain a focus, and revised proposals are likely to follow.

IMPLICATIONS AND NEXT STEPS

Charities should use this pause as an opportunity to:

- Review governance structures and operational models—particularly where business income or overseas expenditure is involved;
- Stay engaged with upcoming policy developments and consultation processes;
- Seek legal advice on how future changes may affect tax status and compliance obligations.

If you are involved with a Charity and are unsure how these potential reforms could affect your organisation, please contact our team.

GET IN TOUCH

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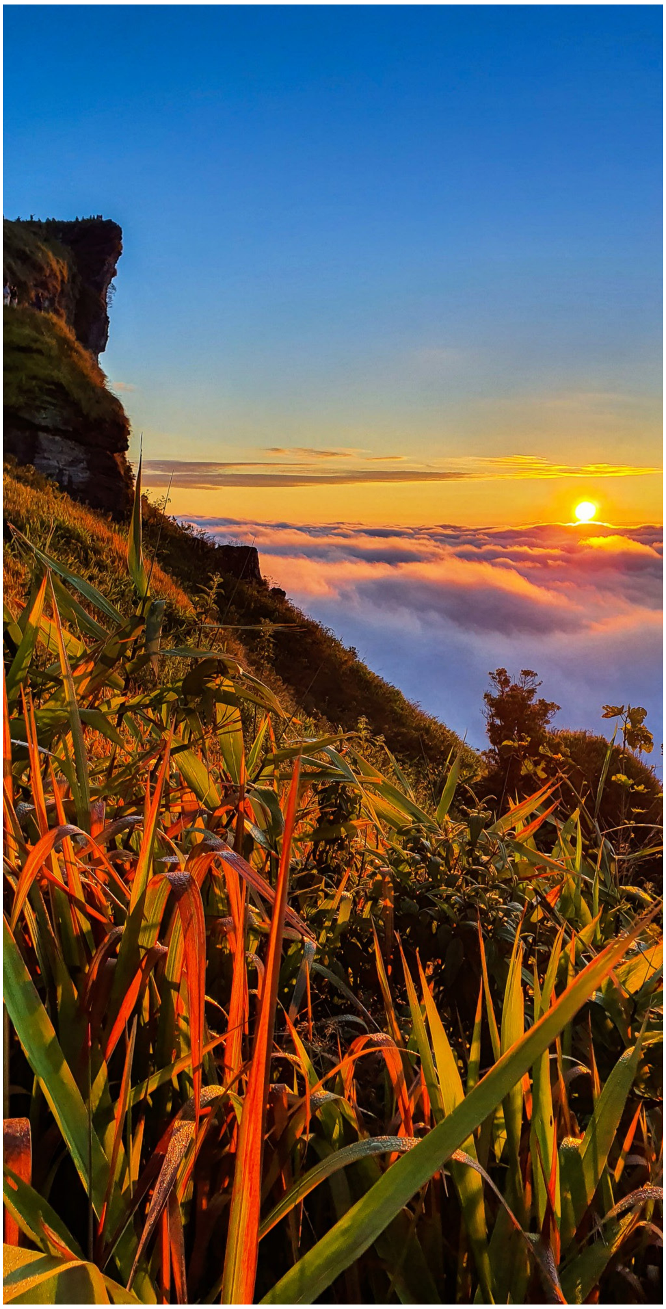

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