THE LAW

# LOWDOWN

WINTER 2026

paul gallagher legal

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Welcome to the Winter 2026 edition of The Law Lowdown, where we focus on practical, real-world issues arising across property, trusts and employment laws, and regulatory change.

We begin with the importance of having an Enduring Power of Attorney in addition to a Will.

We discuss the significance of having hard conversations first when you are contemplating buying property together. It can avoid major issues in the future.

Social media is a major part of many people's lives. We touch on the risks from an employment perspective.

Lastly, we address a recent case which changes the rules relating to Cross-Lease alterations.

If any of these issues are relevant to you, or if you would like to discuss your situation further, please feel free to get in touch — we are always happy to help.

Regards,
The team at Paul Gallagher Legal

## TOP NEWS INSIDE

# WHY A WILL IS NOT ENOUGH — THE IMPORTANCE OF AN ENDURING POWER OF ATTORNEY

Many people assume that once they have signed a Will, their affairs are fully in order.

That is not so.  Your Will only takes effect after death. It does not help if you are still alive but unable to make decisions for yourself.

That is where an **Enduring Power of Attorney (EPA)** becomes one of the most important legal documents you can have.

There are two types of EPA:

- *Property EPA* – allowing someone to manage your financial and property affairs.
- *Personal Care and Welfare EPA* – allowing someone to make decisions about your health, living arrangements and personal welfare if you lose the capacity to make those decisions yourself.

For many families, the Personal Care and Welfare EPA is the document that becomes critical when an unexpected health event occurs.

**CONSIDER THE FOLLOWING EXAMPLES.**

Margaret, aged 72, suffered a severe stroke and could no longer communicate her wishes. Although her husband had been married to her for more than 40 years, he discovered that he did not automatically have the legal authority to make all decisions on her behalf. Important decisions regarding her long-term care and welfare became more complicated because no Personal Care and Welfare EPA had been signed.

In another case, a middle-aged father suffered a traumatic brain injury following a motor vehicle accident. His adult children disagreed about the type of care he should receive and where he should live during rehabilitation. A Personal Care and Welfare EPA could have clearly identified who was authorised to make those decisions.

**Without an EPA, family members may need to apply to the Family Court for orders appointing a welfare guardian. This process can involve legal costs, medical evidence, delays and significant stress at a time when families are already dealing with difficult circumstances.**

Depending on the complexity of the situation, the costs of obtaining Family Court orders can easily run into several thousand dollars and may be considerably more where there is disagreement between family members.

**Loss of capacity is not limited to old age.** It can result from dementia, stroke, serious illness, surgery complications, accidents or other unexpected events. In some situations, the incapacity may be temporary, while in others it may be permanent.

Having a Personal Care and Welfare EPA in place allows you to choose in advance who will speak for you if you cannot speak for yourself. It can provide certainty for family members, reduce the likelihood of disputes and ensure decisions are made by someone you trust.

An EPA is often just as important as a Will. While a Will protects your wishes after death, an EPA helps protect your interests while you are still alive.

If you have a Will but do not have an Enduring Power of Attorney, or if your EPA has not been reviewed for many years, now will be a good time to seek legal advice.

# BUYING PROPERTY TOGETHER? HAVE THE HARD CONVERSATIONS FIRST

With property prices remaining challenging for many New Zealanders, more people are choosing to purchase property with friends, siblings, parents or other family members.

While sharing ownership can help people get onto the property ladder sooner, it can also create significant problems if expectations are not discussed from the outset.

Many co-owners focus on the excitement of buying a property and assume they will simply work things out later. Unfortunately, disputes often arise when circumstances change.

What if;

- one owner wants to sell and the other does not?
- one person contributes more towards mortgage payments or renovations?
- one owner loses their job, enters a relationship, separates from a partner, or wishes to move overseas?

These issues can quickly become complicated and expensive if there is no clear agreement in place.

**CONSIDER THE FOLLOWING EXAMPLES.**

Two friends purchased a home together. Several years later, one is relocating for work and wants to sell. The other wishes to remain in the property. Without a prior agreement, the dispute may require negotiation, mediation or even court proceedings to resolve.

Well-meaning parents wanted to help a child to purchase property and gave them a substantial amount. The arrangement wasn't documented and there was a subsequent falling out within the family as to whether the parent's contribution was intended to be a loan, a gift, or to create an ownership interest.

Failing to address these types of situations carefully can create difficulties later, particularly if relationships change or an estate administration becomes necessary.

A well-prepared Property Sharing Agreement can usually deal with ownership shares, contributions, expenses, decision-making, dispute resolution processes and exit arrangements.

Having these discussions at the beginning may feel uncomfortable, but it is often far easier than trying to resolve disagreements after significant money has changed hands and emotions have become involved.

If you are considering purchasing property with another person, obtaining legal advice before signing an agreement may help protect both the relationship and the investment.

# THINK BEFORE YOU POST — SOCIAL MEDIA AND EMPLOYMENT RISKS

Social media has become part of everyday life, but many employees are surprised to learn that what they post online can sometimes have consequences in the workplace.

Comments made outside working hours and on personal accounts are not always private. Posts can be copied, shared and viewed by colleagues, clients and employers, often far beyond the audience originally intended.

Employment disputes have increasingly involved social media activity, including offensive comments, workplace criticism, bullying, harassment and conduct that damages an employer's reputation.

In some situations, employers have been justified in taking disciplinary action where online behaviour has undermined trust and confidence in the employment relationship. In *Turner v Te Whatu Ora* [2023] NZEmpC 158, the Employment Court upheld the dismissal of a nurse whose Facebook posts were found to be inconsistent with her professional obligations and her employer's policies. The Court confirmed that social media activity outside work can still have workplace consequences where it damages trust and confidence or harms an employer's reputation.

That does not mean employers can monitor every aspect of an employee's private life. However, where social media activity has a genuine connection to the workplace, employers may have legitimate concerns.

For example, problems can arise where an employee publicly criticises customers, discloses confidential information, makes discriminatory comments, or identifies themselves as an employee while engaging in inappropriate conduct online.

The risks are not limited to employees. Business owners should also ensure they have clear workplace policies covering social media use, confidentiality, bullying and harassment. A well-drafted policy can help employees understand expectations and reduce the risk of disputes.

Before posting online, it is worth remembering that even content intended for a small audience can quickly become public.

A useful rule of thumb is to ask yourself whether you would be comfortable seeing the post discussed at work, shown to a client, or reported in the media. If the answer is no, it may be better not to post it at all.

# COURT CHANGES THE RULES FOR CROSS-LEASE ALTERATIONS

A recent Court of Appeal decision has clarified the rights of cross-lease property owners when one owner wants to alter or extend their home.

The case, *Liow v Martelli* [2026] NZCA 101, involved two neighbouring properties in Remuera held under the same cross-lease title. The owners of one property wanted to substantially alter their home by increasing the floor area from about 114.5m² to 169m², bringing part of the house much closer to the boundary with the neighbouring cross-lease property. The proposal also included a new in-ground swimming pool, new decking connecting the house to the pool, and removal of a separate garage.

The neighbouring owners refused consent. Their concerns included the increased bulk of the building, the change in how the outdoor area would be used, possible loss of privacy, noise, visual impact, effect on property value, and the impact on their own future development options.

The dispute went to arbitration. Applying the older legal test in the 1991 High Court case, *Smallfield v Brown*, the arbitrator found that the refusal was not unreasonable because the detriment to the neighbours could not be dismissed as merely "trifling".

The Court of Appeal has now confirmed that this was the wrong legal test.

**A neighbour does not have an automatic veto simply because a proposed alteration may have some more than minor impact. Instead, the proper question is whether a reasonable cross-lease owner, having regard to the interests of all owners and the context of the cross-lease, could withhold consent.**

**That does not mean consent can be ignored. The Court recognised that genuine concerns may still justify refusal, including effects on light, privacy, noise, visual intrusion, amenity, value, or future development. However, those concerns must be assessed reasonably and in context.**

For homeowners, the decision is important because cross-lease properties are common throughout New Zealand. Many owners wish to modernise older homes by extending living areas, adding decks, enclosing outdoor spaces, converting garages or reworking layouts. Those changes can still require consent under the cross-lease, but a neighbour's refusal must now be assessed on a more balanced basis.

The risks of getting it wrong remain significant. Carrying out alterations without proper consent or without updating the flats plan can create a defective title, causing problems when the property is sold, refinanced or insured. Rectifying title defects can involve lawyers, surveyors, council and Land Information New Zealand, often at considerable cost.

The practical message is simple. If you own a cross-lease property and are planning alterations, get advice before starting work. If you are asked to consent to a neighbour's proposed alterations, you should also take advice before refusing. The law now requires cooperation, reasonableness and a proper assessment of everyone's interests — not simply a blanket "no".

## GET IN TOUCH

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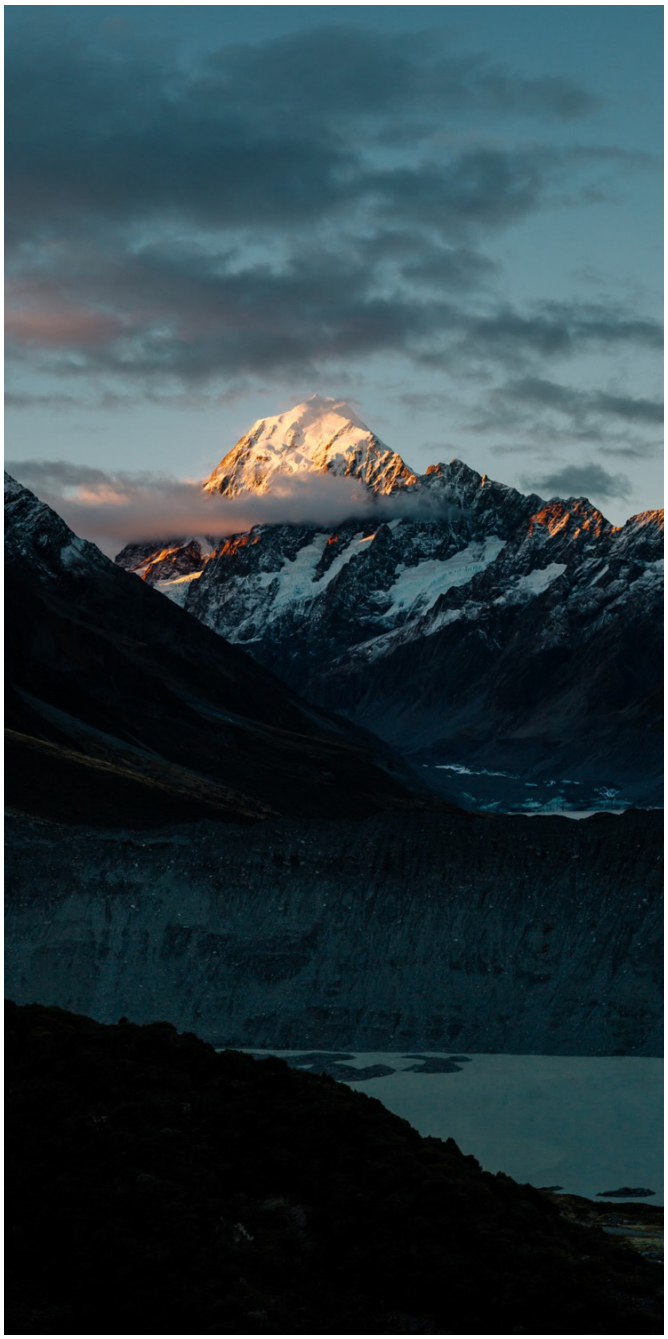

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