Property Speaking

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BMC LAWYERS

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Welcome to the Summer 2026 edition of our property focused e-newsletter.

We hope you enjoy reading *Property Speaking*, and that you find the articles to be both interesting and useful.

To talk further about any of the topics covered in this edition, or indeed any property law matter, please don't hesitate to contact us – our details are on the top right of this page.

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Commercial leases

Make good obligations at lease termination

If you are a landlord who owns a commercial property, or a tenant who occupies one, you may not be clear what a tenant's obligations are at the end of the lease.

The first step is always to refer to your specific deed of lease, as different leases have different requirements.

In this article, we discuss the requirements under the seventh edition of The Law Association form of Deed of Lease. Your specific lease, however, may have different requirements.

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Selling your home, but you're still living in it

Can be advantageous, but there are fishhooks

For many people, the thought of selling their home subject to an agreement that they will be able to live in it for the rest of their lives can seem like the best of both worlds. It may be an attractive option for those looking to keep the property within the family, unlock some of the value tied up in their home or pass responsibility for maintenance and upkeep to someone else without having to move.

At a time where housing costs continue to rise, arrangements like these are gaining popularity – particularly between family members.

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End of tenancy inspection issues

Moving out of a rental property can be stressful, and disputes over cleaning, damage and bond refunds can add to the pressure.

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Reinstatement

At the end of a lease, a tenant has an obligation to return the premises in the same order, repair and condition as they were at the commencement date of the initial term of the lease. This obligation does not extend to repairing fair wear and tear arising from reasonable use. A tenant must also remove any signage they have installed and make good any damage caused.

Often a tenant will install fixtures, fittings or chattels into the premises; these remain the property of the tenant. At the end of a lease, a tenant may choose to remove all of their fixtures, fittings and chattels, and make good any resulting damage.

If a tenant does not remove the fixtures, fittings and chattels before the end of the lease, the landlord may elect for ownership of these to pass to themselves. A landlord may also require their tenant to remove its fixtures, fittings and chattels, and make good any damage.

Assignment of the lease

If a lease is assigned during the term of the lease, the assignee takes assignment of the original lease. This includes all of a tenant's rights and obligations under the lease, including the obligation to reinstate the premises to the same repair and condition as they were at the commencement of the lease.

If you are considering taking on an assignment of a lease, it is very important that you are fully aware of the condition of the premises at the commencement date of the initial term of the lease, as you may be required to remove chattels and make good damage caused by a previous tenant.

Occasionally, instead of assigning the existing lease, a landlord and a new tenant will elect to enter into a new lease and the old tenant will surrender the existing lease. Often, the new tenant will buy assets (including the premises fit out) from the old tenant and the existing fit out will remain in place.

If a new lease is entered into, unless you modify the standard terms of the lease, the make good obligations will re-set to the condition of the premises as at the date of the new lease, and the new tenant will not need to reinstate the premises to the condition as at the date of the original lease.

As a landlord, you must consider the current condition of the premises and the fitout at the time a new lease is entered into. If there are particular items you require removed at the end of the lease, or if you require the premises to be returned to you in a similar condition to the condition as at the commencement of the original lease, this should be clearly documented in the new lease. This can be either done by incorporating photos of the original condition or by specifying actions the new tenant will need to take (such as painting walls or reinstating flooring).

Reducing disagreement

One of the most common disputes with make good obligations is a disagreement around the condition of the premises at the commencement of the lease. The key way to reduce the chances of disagreement is a well-documented premises condition report. The landlord and the tenant should inspect the premises together (or instruct an independent third party to inspect it) and document the condition of every part of the premises, preferably alongside high-quality photos. While this may take time and money, it is likely to be significantly cheaper and less time-consuming than a dispute at the end of the lease.

If the landlord and tenant reach agreement regarding fitout during the term of the lease (for example, that a particular item will be the landlord's property, or that an item can remain in place at the end of the lease), that agreement should be clearly documented in writing between the parties.

We can help

Make good obligations at the end of a lease are a common point of contention in a landlord/tenant relationship. We can work with both landlords and tenants in understanding these obligations, and with negotiations at the end of a lease. +

Selling your home, but you're still living in it



Can be advantageous, but there are fishhooks

For many people, the thought of selling their home subject to an agreement that they will be able to live in it for the rest of their lives can seem like the best of both worlds. It may be an attractive option for those looking to keep the property within the family, unlock some of the value tied up in their home or pass responsibility for maintenance and upkeep to someone else without having to move.

At a time where housing costs continue to rise, arrangements like these are gaining popularity - particularly between family members.

In such arrangements, parents may sell their property to their child(ren) on the basis that they can remain in the property for however long they wish. However, while a lease for life arrangement may appear straightforward, it can give rise to a range of legal and practical issues.

Before entering into such an arrangement, it is important to carefully consider the potential risks and ensure the arrangement is properly documented and understood by everyone involved.

What is a lease for life?

Lease for life arrangements can go by a number of different names such as a licence to occupy or life tenancy but, regardless of the name, the purpose is generally the same: to give someone the right to live in their property for as long as they wish without the shackles of actually owning it.

There should most definitely be a legal agreement about the arrangement. It will usually set out the circumstances in which that right comes to an end – most commonly if the 'former' owners are no longer permanently living at the property, if they need to move into residential care or on the occupant's death.

In some cases, the parties may agree that the lease will be registered against the property's title. Registration provides the occupant with greater protection. This, however, may not be acceptable to all lenders and will involve additional legal costs to prepare and register the documentation.

So, is it a good idea?

Under the right circumstances and if the parties get independent legal advice before entering into such arrangements, a lease for life can be a good idea. It can, however, create a number of risks for both parties if a dispute arises, including relationship breakdowns.

For the future property owner: It is important to be aware that New Zealand tenancy laws may apply to this arrangement under the Residential Tenancies Act 1986; these cannot be simply contracted out of - even if all parties agree to the arrangement.

Additionally, there is the need to consider what costs and maintenance would be shared and in which proportions (if any).

For the seller/future occupant: Occupants must consider what protections they have if the 'new' owner fails to meet their obligations under the agreement. This is particularly important where the lease has not been registered against the property's title as enforcing the occupant's rights may become more difficult if a dispute arises.

There are also considerations to be made in terms of:

- Rest home care and how this is to be funded in future, if it is required
- Whether the buyer can borrow money secured against the property
- The implications for other children in the family. This can become a major problem, particularly if the property increases significantly in value but this was the parents' primary asset which then can result in depriving children of their inheritance and enriching others
- What happens if the 'new' owner's circumstances change such as with a relationship breakdown, serious illness, bankruptcy or they die? The property may need to be sold or someone else in the family may end up owning an interest in the property, and
- Tax: particularly when taking into consideration the sale price of the property.

A long-term view should be taken

These arrangements involve both family relationships and significant family assets, so it is important for both parties to think beyond the immediate benefits and consider how changing circumstances may affect the arrangement over time.

While everyone may begin with the best of intentions, life is unpredictable. Taking the time to clearly document the arrangement and ensure that all parties understand their rights and obligations from the outset can help minimise future uncertainty and support positive family relationships for years to come.

If you're contemplating such an arrangement, please contact us. It's vital to have independent legal advice. +

Property briefs

Earthquake-prone buildings: the new reforms



In our Summer 2025 edition (Issue 50), we discussed the government's proposed changes to the earthquake-prone building (EPB) regime. A year on and the Building (Earthquake-prone Buildings) Amendment Act 2026 is now in force; it introduces a more targeted approach to managing earthquake risk.

Some of the changes took effect from 26 September 2026; these removed buildings in Auckland, the Chatham Islands and the upper North Island low seismic zone from the regime.

The remainder of the new framework will come into force on 1 July 2027; this focuses on specified buildings in medium and high seismic zones. Remediation requirements will depend on a building's construction and risk profile, with some buildings requiring no strengthening work at all.

For property owners, these changes may reduce the cost of complying with earthquake-strengthening requirements. If you own a commercial building, are considering purchasing one, or lease premises where strengthening work has been proposed, it is worth checking whether the building's status or obligations have or will change under the new rules.

Importantly, removal from the EPB regime does not necessarily mean a building is structurally safe. Before relying on the reforms when buying, selling or leasing a property, you should check the relevant council records and seek engineering advice where appropriate. Existing leases and sale agreements should also be reviewed to establish who remains responsible for any strengthening work and associated costs.

Pre-settlement inspection: when a property is sold with a tenant

Buying a tenanted property raises practical questions about access, condition and vacant possession on settlement day. The buyer's ability to inspect before settlement depends on the terms of the agreement for sale and purchase and the existing tenancy arrangements.

Under the standard TLANZ/REINZ agreement, the pre-settlement inspection clause provides a mechanism for checking the property's condition and confirming that the seller has complied with their contractual obligations.

Where a tenant remains in occupation, however, access must be arranged in negotiation with the tenant and in compliance with the Residential Tenancies Act 1986.[1] A sale does not give the seller or buyer an unrestricted right to enter the property.

For buyers, the agreement should clearly record whether the property is sold with vacant possession or subject to the existing tenancy. If an inspection is required, lawyers for each side should ensure appropriate access arrangements are made in advance. Sellers should likewise avoid promising vacant possession without first establishing that the tenancy can lawfully be terminated.

The practical lesson is to address possession and inspection rights when the agreement is negotiated, rather than leave them to become a settlement day dispute.

End of tenancy inspection issues

Moving out of a rental property can be stressful, and disputes over cleaning, damage and bond refunds can add to the pressure. Knowing what is expected of you as a tenant, or what you can reasonably require as a landlord, can help avoid unnecessary costs, time and surprises.

Under the Residential Tenancies Act 1986, tenants must leave the property reasonably clean and tidy, remove their belongings and rubbish, and return the keys.[2] It's wise to take photographs of the property's condition. Tenants are not responsible for fair wear and tear from ordinary use. Landlords cannot automatically charge tenants for routine deterioration or insist on professional carpet cleaning in every case.

Landlords should compare the final condition with the original inspection report and document any damage with photographs and supporting evidence.

If you disagree about a proposed bond deduction, you do not have to accept an unsupported claim. Try to resolve the issue directly first; if agreement cannot be reached, either party can seek a determination through the Tenancy Tribunal.

If a dispute arises or you are unsure about your rights and obligations under a tenancy agreement, please do not hesitate to get in touch and we can discuss your situation with you. +

1 Section 48 of the Residential Tenancies Act 1986.
2 Section 40.

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