

In touch with the law

The law is constantly changing and this newsletter describes developments which may be relevant to you. If you are in any doubt about these or any other aspects of the law, please make an appointment to see your solicitor.

RISING SEAS

Protecting the beachhouse

New laws from January 2011 may help resolve some of the problems arising from property damage due to rising seas, but the strict conditions applying to protection works will make it very difficult for landholders in emergency conditions.

Coastal erosion has been a longstanding problem for many beachfront properties right across the NSW coastline. It is even more of a concern now that climate change is predicted to result in rising sea levels and increased frequency and ferocity of storms.

The emphasis in the new coastal management laws in NSW is on planning, and local councils will now have to develop plans which deal with the impacts of rising seas, the maintenance of any protection works, and their impact – such as increased beach erosion elsewhere.

Consent will only be given for coastal protection works that do not unreasonably limit public access to a beach or headland and when adequate funding is in place to ensure the works can be restored and maintained.

Previously, most protection works, even in an emergency, required development consent. Under the new laws, emergency

protection works will now only require a certificate from the local council for protection such as sand bags – but not rocks or concrete – to be used to lessen the effects of wave erosion.

The works can only be carried out to protect a building used for residential, commercial or community purposes, and the distance between the building and the erosion escarpment must be less than 10 metres, as certified by a surveyor or authorised officer.

Dune restoration areas must not be disturbed unless written approval is obtained from the relevant authority, and there are other very detailed requirements for protection of vegetation and specifying the materials that are permitted.

In summary, not only must the detailed technical and locational criteria be met and a certificate obtained, but a property owner may also need



to obtain written approval from relevant public authorities, engage a surveyor to prepare a survey, and an engineer to prepare a certificate.

If you have legal concerns about the security of your coastal property, consult your solicitor about how best to go about protecting it. □

WILLS Can I change my mind?

You are free to alter your will at any time. If your circumstances change, you can and should consider changing your will. If you marry it is very important that you make a new will.

However, you cannot simply make an alteration by, for instance, crossing something out in the original will and writing in your new wishes.

If the alterations are minor, your can help you make a codicil (a separate document in

which you change a provision in your will), but it is usually better to make an entirely new will unless the change is very simple. A codicil must be signed in the presence of two witnesses, in the same way as the original will. □

LANDLORD AND TENANT

Renting laws have been rewritten

New laws to deal with issues in the rental market and reduce the level of disputes started on 31 January 2011. Among other things, the new laws recognise longer-term tenancies, the rights of cotenants, water conservation practices and the impact of domestic violence on rental agreements.

Tenants who have been in premises beyond the term of the original lease will now have more time to move out, with the notice period increased to 90 days in cases where the landlord wants them to move out without specific reasons. The notice period has increased to 30 days in cases where notice is given just before the end of a lease.

Landlords in turn have more certainty because, unless the notice is retaliatory in nature, the NSW tenancy tribunal must end the lease and return the property to the landlord if the tenant does not move out after being given a 'no grounds' notice to vacate. However, tenants should not be evicted simply for asserting their rights.

Landlords will be able to reduce the eviction process by two weeks if they apply for orders from the tenancy tribunal at the same time as giving notice to the tenant.

Cotenants now have room to move in the new laws, with some types of dispute in shared households able to be taken to the tenancy tribunal. By giving 21 days notice to end their contract with the landlord once a fixed-term lease ends, a cotenant can end their liability for future rent or damage. This will help avoid the situation where cotenants remained on a lease even long after leaving.

Written permission from the landlord is now required if a tenant wants to bring in an extra cotenant, but landlords cannot be unreasonable in making their decisions. A refusal based

on potential overcrowding of the premises or the new person's name being on a tenancy database would not be considered unreasonable.

Victims of domestic violence living in rented property now have a right to change the locks and seek to take over a lease, even if they are not officially a tenant or cotenant.

If water usage of the property is separately metered for payment by the tenant, the law now requires that the premises be water efficient.

Tenants who want to make a minor change to premises will still need written approval, but there is now an obligation for landlords to be reasonable, which may be important in cases such as the installation of child safety locks on windows.

Every tenant in NSW must now be given at least one way to pay their rent that does not involve a fee being charged, but if a cheque bounces or a direct debit is dishonoured, the tenant will have to pay any costs involved for the landlord.

A termination based on failure to pay rent will now be cancelled if a tenant catches up on overdue rent or follows



an agreed repayment plan, but not if they are shown to have frequently failed to pay their rent on time.

A landlord can apply directly to the tenancy tribunal for possession of the premises without giving notice, if a tenant or a guest deliberately or recklessly causes serious damage to the premises, or if they have injured or are likely to injure the landlord, agent or neighbours.

Tenants now have a right to know, before they sign a lease, if a contract to sell the property has been drawn up, or if a bank has taken legal steps to foreclose on the landlord.

When rented premises are put up for sale, only two inspection periods each week will be allowed, and agents have to make reasonable efforts to agree with tenants on inspection times, but can negotiate if more access is required. □

BREAKING THE CONTRACT

When employee can't just walk away

An employee can't automatically terminate an employment contract by simply rejecting it and walking away from the job – and there can be costly consequences for them if they do.

In a recent case, a highly successful finance broker entered an employment contract for a two-year term. Some months later, in breach of the contract, he began working for a competing company.

His employer successfully obtained a court order to stop

him from working for the opposition and then placed him on paid leave while they tried to sort things out. In doing so, the employer elected to continue the finance broker's employment in accordance with the terms of his contract.

Shortly before the court order expired, the employer directed the employee to return to work. When he didn't do so, the employer treated this as a final failure to observe the terms of the employment contract and took the case to court seeking compensation. The employer's claim was

based on a clause in the contract which provided a way the amount of compensation could be calculated if the contract was terminated by the employee's repudiation of it.

In finding that the employment contract was still in place, and the employer was ready, willing and able to perform its part of the bargain, the court upheld the employer's claim and ordered the former employee to pay a sum of over \$500,000 in addition to the legal costs which had been incurred by the employer in pursuing the case. □