



PROPERTY MATTERS DURING THE COVID-19 LOCKDOWN – Q & A with Duncan Terris and Robbie Muir

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1

Introducing



Robbie Muir



Duncan Terris



2

Background Context

Timing and Impact

- Reality
 - Unique worldwide impact
 - Unprecedented on this scale
 - No 'how to' available
 - Affects everyone to some degree
 - Fiscal impacts for lawyers and clients
 - Evolving solutions and recommendations



3

Background Context

No easy template or real answers here ...



4

Key Facts

Only One Week in Alert Level 4 Lockdown

- Action already taken
 - NZLS communications with Government
 - LINZ relaxed requirements for witnessing
 - DIA concessions on CDD
 - NZLS Guidance on administering oaths and declarations
 - Discussions regarding EPOAs, POAs and wills
 - Interim guidance on settlements from PLS



5

Property Settlements

Where are we one week on?

- Deferred settlements
 - Many parties agreed or adopted PLS deferral
 - Tenanted properties still settling (no moving required)
 - Some vendors (and purchasers) demanding settlement
 - Default Settlement Notices issued in some instances



6

Matters to Consider

Contractual – let's look at the Agreement:

- 'Settlement'
 - Clause 3.3 '*Possession shall be given **and taken** on the settlement date.*'
 - Effect of not being able to '*take possession*'
 - Effect of not being able to '*give possession*'
 - Clause 3.15 '*... neither party is ready, willing and **able** to settle ... deferred to the third working day ...*'
 - Differing views – Property Law Section will be seeking a barrister's opinion.



7

Common Dispute

Vendor says: *Property is vacant – purchaser must settle:*

- Considerations:
 - Issues around pre-settlement inspection
 - Issues around handover of keys
 - Legal impediment to movement of people. National State of Emergency issued on 25 March states:
 - '*Where you stay tonight is where YOU MUST stay from now on*'

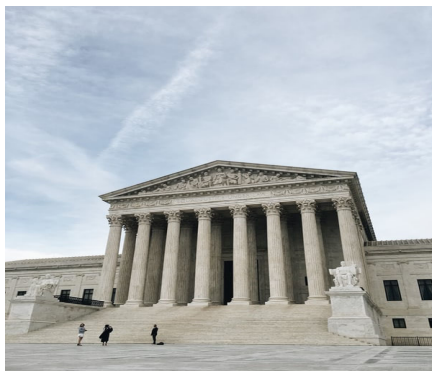
That is in addition to the restrictions of movement imposed by Alert Level 4, Police Statements and Ministry of Health guidance.



8

Common Dispute

Does your client really want to end up here ...?



9

Common Dispute (Cont'd)

Is the Vendor detrimentally affected?

- Factors:
 - Vendors may wish to consider likely resale and price going forward
 - Vendors with a mortgage could get payment holidays
 - Fiscal impact minimal compared with alternative
 - Arguable that any day in Level 4 is not a *'working day'* for settlement or Settlement Notices

10

Commercial Leases

Do these circumstances invoke Clause 27.5?

- Factors:
 - Intention of the provision – arising from Christchurch quakes
 - Can the tenant 'legally' access the premises?
 - If a pharmacy or medical supplier – probably yes
 - Café, restaurant, retail and other non-essentials - no
 - Varying legal opinions. Key words '*a fair proportion*'
 - Negotiate, Negotiate, Negotiate!



11

Be a lawyer – not a Puppet

This is the time for utilising skills learned in our training. **Prudent advisor, not client puppet.** See the bigger picture. **Be courteous and respectful** to fellow practitioners, support staff and clients.



12

LINZ guidance

Interim RGL guidance and process changes

- Use of remote A/V arrangements for client ID verification and witnessing
 - Now wider scope for remote methods (Skype, Zoom etc)
 - Particular focus on 'High Risk' transactions (e.g. new client)
 - Further inquiry essential (evidence of connection to property, other forms of ID, independent checks)
 - Professional judgement required
 - ***Proceed only if satisfied as to the authenticity and bona fides of your client and the transaction***



13

LINZ guidance

Interim RGL guidance and process changes

- Use of digital signatures for A&I forms
 - S228(1) Contract and Commercial Law Act 2017
 - Secure audit logs and records of signatory and witness required for audit purposes
 - Must have sufficient integrity to enable a practitioner to make certifications on this basis
 - So... just having an image of a signature cut and pasted into a document is not sufficient



14

LINZ guidance

Interim RGL guidance and process changes

- Statutory declarations taken as per NZLS guidance will be accepted
- s143 LTA: applications for caveat lapsing on hold
- s42 LTA: applications for withholding landowner details may be accepted without a statutory declaration
- LINZ compliance review & audit process on hold



15

LINZ guidance

Landonline services

- Available with current hours of access and support
- AutoReg dealings continue as usual (85% of transactions)
- Digital Certificate renewals are continuing with some constraints
- Guidance on Citrix upgrade (apologies for bad timing!)
- Conversion of images to 'TIFF'



16

LINZ guidance

Other points to note on LINZ services

- LINZ offices are closed (no receipt of post or paper dealings)
- LINZ staff are working remotely from home
- Complex subdivision and new title work is continuing
- Constraints on our ability to serve notices (will delay processing of some dealings)
- LINZ contact centre is operating:
customersupport@linz.govt.nz



17

Q & A Time



18

Thank you



Robbie Muir



Duncan Terris



19



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20