

Property Speaking

MACTODD

LAWYERS

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Also in Wanaka and Cromwell

ISSUE 50 | Summer 2025

Welcome to the Summer
(and final) edition of
Property Speaking for 2025.

We hope you enjoy reading this e-newsletter, and that you find the articles to be both interesting and useful.

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



Rent reviews in commercial leases

Methods of review

Two of the most important considerations for parties to a commercial lease are, 'What is the annual rent?' and 'How and when can the rental amount be reviewed?' The answers are always found in the deed of lease for the premises.

The first schedule of The Law Association Deed of Lease sets out the methodology relating to rent reviews, including the review dates and the review types.

We give an overview on the three main methods of rent review.

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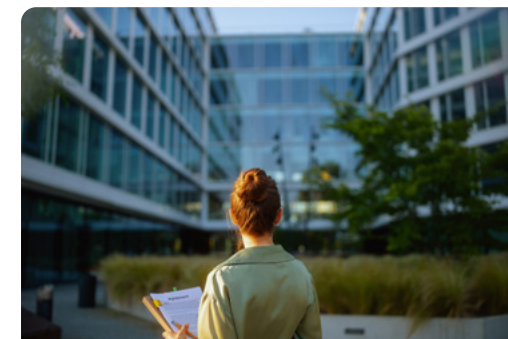
Vendor supplied reports/disclosures

Can you rely on them?

The general rule of thumb when you buy a property is that the more information you can find out about the property, the better. Sometimes, the information you are interested in will be offered by the seller or their real estate agent.

Can you rely as much on information obtained from these parties as you could using a third party? And how does the information provided by the seller or their agent affect your rights under the contract for sale and purchase?

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Rent reviews in commercial leases

Methods of review

Two of the most important considerations for parties to a commercial lease are, 'What is the annual rent?' and 'How and when can the rental amount be reviewed?' The answers are always found in the deed of lease for the premises.

The first schedule of The Law Association Deed of Lease (the most common format for commercial leases) sets out the methodology relating to rent reviews, including the review dates and the review types. There are three main methods of rent review:

1. Market rent review
2. CPI (Consumer Price Index) rent adjustment, and
3. Fixed rent adjustment.

Most leases include a combination of two of the three rent review/adjustment methods, with a common pattern being fixed with market rent reviews on renewal dates. The Law Association's Deed of Lease standard terms are discussed below. Care, however, should be taken to ensure the clauses have not been modified in your lease.

Market rent review

When conducting a market rent review, either party may give the other party written notice of what the new market rent amount will be from the rent review date.

Notice cannot be given earlier than three months before the relevant rent review date, and it can be given at any time before the

next rent review date (regardless of the method of the next rent review). If it is given more than three months after the rent review date, however, the new annual rent amount will only apply from the date of service of the notice rather than the rent review date.

Typically, the rent review process is initiated by the landlord obtaining a market rent valuation to use as the basis for the new rent figure. The other party then has 20 working days to agree, or dispute, the market rent value.

If the new rent value is disputed, the matter will either be decided by an arbitrator or, more commonly, by each party appointing a registered valuer to act as an expert, with the valuers to agree on the market rent value. If the valuers cannot agree on the market rent, a third party appointed jointly by the valuers will decide.

CPI rent adjustments

The second method of rent review is a CPI rent adjustment; this follows a formula set out in the deed of lease. CPI rent adjustments can only increase the rent payable, if the CPI rent adjustment results in a lower amount, the rent will remain the same.

CPI adjustments can be popular with landlords as they are less costly and time consuming to complete when compared with market rent reviews.

A drawback, however, is that in high inflation environments, CPI adjustments can result in significantly larger than anticipated rent

increases, and the new rent payable may not be reflective of the general market.

It is open to landlords and tenants to agree to a different rent adjusted amount, even if the lease provides for a CPI adjustment, but agreement on rent reviews is not always easy to reach.

Fixed rent adjustment

In a fixed rent adjustment situation, the rent will increase by a fixed amount at specified intervals, regardless of changes in the market rent amount or CPI. This method of rent adjustment can provide both the landlord and tenant with certainty on rent amounts moving forward.

Limits for a rent review/adjustment

The lease may also provide for a limit for the rent review. Most leases specify that the reviewed/adjusted rent will not be less than the rent payable immediately before the relevant review or adjustment date, which

means that the rental amount will either increase or stay the same. It won't decrease!

Some leases specify that the rent will not be less than the annual rent payable at the commencement of the current lease term. Other leases specify that the rent will not be less than the rent payable at the commencement of the lease, though this is not common. The landlord and tenant are free to agree to an alternative method of limiting rent reviews if it suits their circumstances.

Important to understand the process

It is very important for both the landlord and the tenant to understand the rent review processes in the lease, as it can have significant implications for both parties. We can assist if you have any questions on your lease rent review process. +

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Vendor supplied reports/ disclosures

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Real estate agent disclosures

Disclosures brought to your attention by real estate agents are usually presented in a form of acknowledgement that you may be asked to sign as part of submitting an offer to buy a property. These include defects that the seller is aware of and that they have a legal obligation to tell you about.

It is important to check carefully whether any defects in respect of a property you are buying are disclosed to you before you make your offer; known defects could limit your right to claim compensation or cancel the agreement.

You should be mindful of any disclosures that are made to you and where you think further investigation is required. You should investigate the full extent of that defect or how a defect could affect your ownership or your ability to complete the agreement. Make sure you get advice on including terms and conditions specific to those defects.

A common example of a pre-contract disclosure might be of a conservatory built without the relevant consents or permits. Important things to consider are whether you can get insurance that your lender is satisfied with considering what is now a known defect. The way clauses are drafted is important to reserve your right to cancel the agreement if the defect impacts on your ability to get insurance or bank lending.

When your buyer informs you of defects

If you are selling a property, and your buyer cancels due to defects that they have discovered due to their own due diligence investigation and disclose these to you, you have an obligation to all subsequent prospective buyers to disclose that defect. You should consider the risk of this carefully in deciding whether to obtain a copy of the building report from your buyer if they cancel.

If the defects are minor, it may be useful to get these fixed; this is likely to assist you with any subsequent attempts to sell your property.

Other disclosures

Other disclosures from an agent can include advising that they are related to the seller or making you aware of some other connection (a work or business connection or interest) that they may have.

Vendor-supplied reports

Sometimes, to assist in the sale of their property, the seller will already have specialist reports and make these available to prospective purchasers to expedite the due diligence process.

In some cases, these may be reports that they have obtained from a prior purchaser who cancelled the agreement. You should check the date on any reports that are provided as sellers who have been marketing their properties for extended periods may be providing outdated data. Small or minor defects picked up six months ago may have worsened since the report was prepared.

You should also check the disclaimers in the reports as any reliance on the report or the right to go back to the relevant inspector is reserved for the people who commission the report. Where this is the case, you will not

have any contractual right of compensation against an inspector who overlooked something that would have meant you may not have bought the property or that you incurred significant costs to fix.

If it's important that you rely on a report, you should obtain your own report or ask that the inspector re-addresses the report to you; there may be a fee for this.

When you are looking to buy a property, satisfying yourself in all aspects of your due diligence is crucial to ensure you don't wind up with a lemon.

To best use and account for information that you obtain before you make an offer, talk with us about ways you can incorporate these into the agreement for sale and purchase. This will help protect your interests and guard against any unknown surprises that might be lurking beneath the surface. +



Property briefs



Proposed reform to the Overseas Investment Act – the ability for overseas buyers to purchase or build property in New Zealand

The government recently announced a reform to the Overseas Investment Act 2005 that would allow overseas residents with a New Zealand investor residence visa to buy or build a property to the value of \$5 million-plus. Applicants must satisfy the national interest test and pass the risk assessment required by the proposed legislation. After passing its first reading in June, the reform bill is currently before the select committee to receive submissions.

Currently, overseas residents and investors are largely restricted from purchasing or building property in New Zealand.

Granny flat legislation just passed

The Building and Construction (Small Stand-alone Dwellings) Amendment Bill was passed into law on 23 October 2025. This law change will allow small stand-alone dwellings or 'granny flats' of up to 70m² to be built without a council building consent provided that certain conditions are met. These changes will roll out in the first quarter of 2026 (1 January to 31 March).

The conditions are:

- + The building must be of a simple design and comply with the Building Code
- + The work must be undertaken or supervised by a licensed building professional, and
- + The local council must be notified before the build begins and at its completion.

It will be interesting to see how this law change plays out and whether any issues arise in the future. There are also penalties for those who do not satisfy the above conditions required by the legislation.

Please do not hesitate to talk with us for advice if you are interested in building a granny flat and you want to ensure you are complying with the new requirements.

No further restrictions on sunset clauses in sale and purchase agreements

In our last edition (Winter 2025), we discussed the Property Law (Sunset Clauses) Amendment Bill which was introduced into Parliament in April 2025. The bill was aimed at restricting sellers developing vacant plots of land from using 'sunset clauses' to cancel sale and purchase agreements and to add an extra layer of protection for buyers.

To recap, a 'sunset clause' is a provision in an agreement enabling the seller or buyer to cancel the agreement if the development is not completed by the specified or intended date. The bill was debated at its first reading in Parliament before being voted down by a majority of 68 to 54.

The majority argued that the passage of the bill would ultimately deter developers from entering into these sale and purchase agreements, and therefore reduce the availability of off-the-plan housing when there is already a shortage of housing in New Zealand.

It was also pointed out that there are already some existing protections afforded to buyers in legislation, specifically in section 225(2b) of the Resource Management Act 1991. This clause enables buyers to give notice to the seller to cancel an agreement if, two years after the granting of a resource consent or one

year after the date of the agreement, the seller has not made reasonable progress in obtaining or depositing a survey plan.

Changes to the assessment of earthquake-prone buildings

The government recently announced its intention to introduce the Building (Earthquake-prone Building System Reform) Amendment Bill into Parliament soon. The proposed reform focuses on increasing the threshold and implementing strict criteria that must be met to condemn a building as earthquake-prone and uninhabitable.

The proposed new regime will only capture buildings that pose a genuine risk to human life in medium to high-risk zones. Consequently, the government believes that around 55% of earthquake-prone buildings (about 2,900 buildings) will be removed from the system.

We look forward to reading the draft bill once it is introduced into Parliament; it has implications for many building owners. +

