

Christchurch Earthquake IMPORTANT INFORMATION

Insurance Issues

The most common issue we have found as a result of the recent Christchurch earthquakes – although there are others – is where the owner of a damaged residential home is asked to sign a project management agreement with Hawkins Construction, Fletcher Construction, or similar, for the purpose of that company's role in a repair or rebuild of a home. These project management agreements add unnecessary obligations onto a homeowner, considering it is the insurer's obligation to complete the repair or rebuild.

Many issues arise, and we are finding direct communication, and a common interest to 'get on with it' is producing practical, quick results.

Please contact us for advice specific to your situation on this or any other insurance issue, arising as a result of the earthquake or otherwise.

A Guide to Commercial Leases and Issues for Landlord and Tenant

The primary obligation of a landlord is to provide exclusive occupation of premises to the tenant.

This right may have been compromised in one or more of the recent earthquakes, by causing total or partial destruction of business premises or rendering them inaccessible by dint of cordon restrictions and / or danger from neighbouring buildings.

Communication in good faith between landlord and tenant to see if a practical agreed outcome is possible is a paramount consideration in this unprecedented situation.

This is particularly so given the issues that arise which we set out below.

Whether or not communication between landlord and tenant is possible and regardless of the form of your lease, we recommend seeking legal advice to ensure your position is protected in your particular situation.

When Premises are 'Untenantable'

The rights of landlords and tenants hinge on whether the leased premises have become 'untenantable'.

If premises are 'untenantable', then the lease automatically terminates and all the obligations of landlord and tenant come to an end at the date of damage.

Untenantability will include an objective assessment of degree and damage or inaccessibility and its degree of permanence, even if ultimately capable of being restored by repair or rebuild. Of relevance is the length of period of non-occupation compared to the length of the term of the lease.

Uncertainty therefore prevails over the definition of untenantable; there is little case law on this point.

Untenantability is determined on a case by case basis so there is no doubt that there is scope for dispute between landlord and tenant, in particular as to whether a tenant's ongoing obligation to pay rent for the entire term of the lease remains, with or without rental reduction for any period during which the premises are totally or partially incapable of occupation.

Where Premises are Compromised but Tenantable

If the premises are compromised but 'tenantable' there are two options for the landlord:

If the landlord reasonably considers the premises require demolition or reconstruction, then the landlord can give 20 working days notice to terminate, in which case rental and outgoings will be reduced to reflect the damage as from the date of damage; or

The landlord will repair or reinstate the premises, and the tenant's rent will be reduced to reflect the extent of damage and any period of non-occupation. Importantly, the

tenant will be required to pay rental (subject to adjustment) and meet its other obligations for the entire lease term.

Where Premises are Undamaged but Inaccessible

If a building is undamaged, but inaccessible, meaning a tenant does not have its basic contractual right of exclusive occupation, then a tenant may be able to argue fundamental breach such that termination is justified, or frustration of contract has occurred; either would mean no further rental is payable. The legal thresholds are however extremely high.

Again, uncertainty surrounds what would be an objective case-by-case assessment as to whether a lease is validly cancelled by a tenant or legally frustrated.

The major difficulty in the current situation, particularly for tenants, is that right now uncertainty over how long they may be out of their premises means an assessment of whether the lease is capable of valid termination is virtually impossible, and at a time a decision needs to be made about alternative premises to preserve the viability of a business.

Employment Issues

The recent Christchurch earthquakes have raised immediate and serious issues for both employers and employees.

More than ever, it is a time for both to communicate in accordance with the requirement of good faith, and to each appreciate the unprecedented and unique circumstances consequent on the earthquake.

It would be wise for each party to recognise that each will have suffered adverse effects both at work and at home as a result of the earthquakes.

If any issues arise, as with most legal disputes, agreed outcomes through open and frank discussions, with minimum angst and cost, are preferable.

Inevitably some disputes will be incapable of resolution, in which case we recommend you approach us for advice specific to individual requirement.

Employers should remain mindful that proper process is required, despite the extreme situation, so should seek advice prior to taking any steps adverse to an employee such as redundancy, or a reduction of hours, conditions or pay.

There are useful resources available, and in particular a government subsidy is available for employees that employers are able to apply for. There is also a job loss subsidy for employees who have not been able to contact their employers, or whose employer's business is no longer operating. For further information in relation to this, in particular in relation to the government subsidies available, we recommend the following websites:

Department of Labour – www.dol.govt.nz

Ministry of Economic Development – www.med.govt.nz

This information is general by nature and is a brief guide only. It is not legal advice. Please contact us for advice tailored to your own particular situation.

Please see our Newsletter to be circulated soon, for further leasing information. In the meantime, if you need any other information contact:

Sue McCormack	343 8458
Prue Robertson	343 8459