



# Commercial Leases seminar

Auckland Branch held a very well attended seminar on Commercial Leases by Jane Holland of Bell Gully. This was a condensed version of the seminar that Jane had previously co-presented for the Law Society.

Jane was recently involved in drafting the 4th edition ADLS lease and BOMA lease. Members found the seminar extremely informative.

In an overview of leases Jane touched on many issues such as:

- Premises, common areas and access should be defined by attaching a surveyor's plan. The dates for renewals and rent reviews should be checked.
- It is important to document fixtures and fittings that are owned by the landlord and the tenant. This is very relevant at the time of a rent review so that the tenant's fittings are not taken into account by the landlord's valuer. At the termination of the lease the tenant is responsible for

removing the fitout and reinstating the premises. There can be problems if it is not clear who owns the fixtures and fittings.

- A tenant will want the business use to be as wide as possible. The landlord will want to narrow the use. The landlord needs to be aware that if the tenant changes the use the landlord might be liable under the Building Act to make alterations.
- If the lease or annual rental is significant the tenant should request the landlord obtain any mortgagee's consent otherwise the mortgagee is not bound by the lease and could exercise a mortgagee sale not subject to the lease.
- The lease should specify who bears the cost of preparing the lease and whether this covers the negotiation and/or preparation of the lease.
- The tenant should insist on the landlord having full replacement insurance cover.

Some specific additions to the 4th edition of the ADLS Deed of Lease are:

**Clause 2.1** provides for either the landlord or the tenant to instigate a rent review. Each party should be aware of the time limits.

**Clause 44.1** allows for service of notices by email. Jane recommends that this provision be deleted because the acknowledgement is deemed a receipt of notice and this could be easily overlooked, for instance if the named recipient is on holiday.

**Clause 21.2** - if acting for the tenant, request deletion of the landlord's termination rights.

Also, if acting for the tenant, exclude yard resealing from the outgoing payable by the tenant as it could be argued that this is a structural repair.

We thoroughly recommend legal executives acting for tenants or landlords buy a copy of Jane's Law Society seminar paper from the NZLS Continuing Legal Education website: [www.lawyerseducation.org.nz](http://www.lawyerseducation.org.nz).

## Assets in South Australia?

By Andrew Johnstone of APEARS, Sydney, Australia

If you have any clients with any assets in South Australia (besides shares in a public company), please ask them to consider divesting themselves of the asset or if possible moving it to another state.

At present I am going through the process of having a United Kingdom Grant of Representation resealed in South Australia. The only asset is a bank account worth A\$68,000. The Bank in question, Adelaide Bank, has insisted on a reseat in South Australia, which is against the practices of several of the major Australian banks, who are normally happy for a reseat to be obtained in any state.

The requirements to reseat in South Australia are quite onerous to say the least. Besides requiring a full itemised account of all worldwide assets and liabilities and details of all beneficiaries including their exact entitlements, the court requires an administration bond and two sureties to the value of the South Australian Estate. The bond has to be obtained by the applicant, in this case myself, with two other individuals

required to execute a surety in my favour. Provided these are accepted by the registrar, this is still yet to be seen, then further work is still required.

After the Grant is resealed and the assets dealt with a full account is to be provided, with another affidavit, to the Public Trustee in South Australia. The beneficiaries of the estate must then appoint an agent in South Australia with whom the Public Trustee can confirm receipt of the same account and benefit that they are entitled to. This might not be too onerous where there is only one or two beneficiaries, but what will be needed should there be quite a few who may be spread all over the world!

Readers who know me probably won't be surprised that I have taken up the issue with the Attorney General in South Australia, but to date I have not been privileged to have a reply.

As a general rule I always try to reseat overseas Grants in New South Wales or Queensland, where the requirements are less onerous and costs are certainly cheaper, in the

current case the probate application costs will exceed A\$2,000. When considering where to lodge the reseat application details of all of the Australian assets must be considered, from which the cheapest and quickest state is chosen. This is despite what may be advised by the relevant institution with whom the assets were held. They usually just send their standard letter requesting a reseat in their state.

Please take this opportunity to review your clients' assets in Australia, in particular South Australia, and contact me should you have any questions on what that client's future requirements may be.

**Regards from Australia,  
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**For assistance please contact Andrew Johnstone**

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