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GRANNY FLATS BUILDING CONSENT EXEMPTION ON TRACK

Article: www.mbie.govt.nz

A proposed building consent exemption for small standalone dwellings, commonly known as ‘granny flats’, of up to 60 square metres in size will now cover small standalone dwellings of up to 70 square metres.

The Government is on track to introduce legislation towards the middle of the year to make it easier to build small standalone dwellings without a building consent...
Read more on LinkedIn.

GLAISTER KEEGAN LEGAL UPDATE FOR OUR CLIENTS

inbrief

3RD QUARTER 2025



SHORT-TERM RENTALS AND LAND COVENANTS: WHAT DOES “COMMERCIAL USE” REALLY MEAN?

A recent High Court decision has clarified whether owners can rent out their homes via Airbnb in subdivisions that restrict “commercial activity”. The outcome may surprise some.

In *Cameron Drive Management Company Ltd v Jo-Ann Real Estate Ltd* [2025] NZHC 721, a homeowner occasionally rented their holiday home on Airbnb. Other owners in the 14-lot subdivision believed this breached a land covenant, which stated no commercial activity could be carried out on or from a property except for “private homestays”. This exception applied so long as the homestays didn’t affect the neighbourhood’s character or others’ privacy.

The Court was asked to decide whether short-term Airbnb rentals, where the owner is not present, counted as prohibited commercial activity.

Interestingly, the Court found that, while Airbnb hosting is in fact a commercial activity, it did not breach this particular covenant.

CONTINUED ON PG 3

GLAISTER KEEGAN PROMOTES FOUR TO ASSOCIATE

We are delighted to announce the promotion of four high-performing staff to Associate; Jessica Perrett, Hope Horrocks and William van Roosmalen, and Danielle Moore to Associate - Registered Conveyancing Practitioner. All four are highly experienced legal practitioners who provide thoughtful, tailored advice and outstanding client service. The appointment is effective from 1 July 2025.



JESSICA PERRETT

Jessica is a solicitor in our Trusts, Estate Planning and Asset Protection team. With over 15 years of legal experience, as firstly a legal executive, then as a solicitor, she has an invaluable understanding of client needs. She delivers excellent outcomes for her clients and has a proactive and efficient approach.



HOPE HORROCKS

Hope is a solicitor in our Commercial Property team. She has several years of commercial experience prior to working in the law. She prides herself on undertaking the highest-quality work for her clients in a supportive, efficient and commercially minded-manner.



WILLIAM VAN ROOSMALEN

William is an experienced litigator with a proven track record in resolving disputes of all shapes and sizes. He has worked in criminal prosecution, specialised in insolvency litigation, and more recently worked with a broad range of civil and commercial litigation. Clients appreciate William's advocacy, highly responsive, relatable, and pragmatic approach.



DANIELLE MOORE

Danielle is a Registered Conveyancing Practitioner in our Property team. She has extensive experience with residential conveyancing and a passion for property law. Her clients value her highly responsive, friendly and professional manner.



SHORT TERM RENTALS CONTINUED

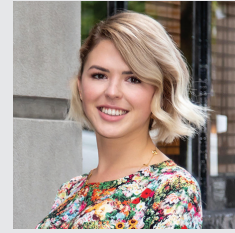
The key reason being that the business side of the transaction happened online; that is, off-site. The booking and payment were made via the Airbnb platform, not on the property itself. Once guests arrived, they simply stayed at the house like any other occupant.

In contrast, a “private homestay” (which the covenant allowed) typically involves the owner being present and actively hosting.

The Court explained that “private homestays” were known in 1999 (when the covenant was drafted) as situations where the owner stays in the house with guests. Airbnb-style renting, where the owner is absent, didn’t fit that model. But because the owner wasn’t actively running a business from the property during the rental period, there was no breach.

This decision serves as a reminder that land covenants must be interpreted in light of their wording, intent, and context at the time they were created. If you’re buying in a subdivision with covenants, it’s important to seek legal advice early on so you understand exactly what they mean and how they could limit what you can do with the property.

If you have any questions or seek advice or assistance, please do not hesitate to contact us.



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NEIGHBOUR DISPUTES SERIES (PART 1): BOUNDARY FENCES – KNOW YOUR RIGHTS AND RESPONSIBILITIES

Few things can sour a neighbourly relationship like a dispute over a fence. What begins as a simple question of who pays, who builds, and where exactly does the boundary lie, can quickly escalate into a frustrating, and often expensive, legal conflict.

Generally, an owner is not required to fence off his or her land from the adjoining land of a neighbour. If intending to do so, however, consent of the neighbour or a court order is a prerequisite.

At first glance, fences may seem straightforward. Most are built with mutual agreement and shared cost because both neighbours benefit from a well-constructed, properly placed fence. But when opinions differ or communication breaks down, disagreements can arise —sometimes over the smallest details.

COMMON FENCE DISPUTES BETWEEN NEIGHBOURS

Fence disputes typically occur when:

- one neighbour erects, repairs, or replaces a fence without the other's consent
- there is disagreement about who should pay; and
- the fence does not align with the actual legal boundary.

WHAT THE LAW SAYS

Under New Zealand's Fencing Act 1978, neighbours share

equal responsibility for the cost of building or maintaining a boundary fence, provided the proper legal process is followed.

Here's how it works:

Fencing Notice: To start the process, you must issue a fencing notice to your neighbour. This formal document outlines:

- where the fence will be built
- the type of work and materials proposed
- the estimated costs and how they will be shared; and
- what happens if the neighbour does not respond.

Objections and Time Limits: Your neighbour has 21 days to issue a cross-notice if they disagree with any aspect of your proposal.

Legal Requirements: Strict compliance with the required process is important. That means, a flawed fencing notice means your neighbour is not legally obliged to contribute. Conversely, if your neighbour doesn't respond in time, the proposed work is considered agreed upon.



Unresolved Disputes: If agreement cannot be reached, you can apply to the Disputes Tribunal or District Court to determine:

- where the fence should go
- what kind of fence is appropriate
- who pays for what; and
- who carries out the work.

Unapproved Fences: If you build or alter a fence without consent or if your fence crosses into your neighbour's land, they can apply to the Tribunal or Court to have it removed or altered; even if, you were not seeking financial contribution.

WHAT SHOULD YOU DO IF A DISPUTE ARISES?

Should you have a disagreement with your neighbour concerning a fence, we recommend you discuss the problem with your neighbour in the first instance and attempt to reach agreement directly. Often, misunderstandings can be resolved through clear and respectful communication.

However, where a neighbourly relationship has broken down and the parties cannot agree, resort to the courts may be the only way forward. Whether you are planning to build a new fence, facing an unexpected fencing notice, or already caught in a dispute with your neighbour, we can help you understand your rights and options.

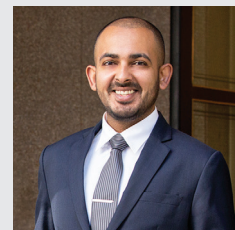
Contact our litigation team for clear, practical legal advice tailored to your situation. We are here to protect your interests and help you resolve the issue, quickly and cost-effectively.



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NEIGHBOUR DISPUTES SERIES (PART 2): GETTING TO THE ROOT OF THE (TREE) PROBLEM

Trees offer a wide range of benefits. They improve air quality, offer cooling and shade, reduce soil erosion, beautify the land, and can increase the value of your property. Unfortunately, not everyone sees trees the same way. What is a peaceful garden feature to one neighbour, can be a nuisance (or even a threat) to another. Overhanging branches, invading roots, blocked sunlight, or leaf-clogged gutters can all spark tension, and lead to potentially bitter and costly legal disputes between otherwise friendly neighbours.

At Glaister Keegan, we have seen first-hand when something as natural as a tree can become the “root” of a bitter, costly legal dispute. Here’s what you need to know before taking action, and how we can assist you in protecting your rights.

YOUR RIGHTS AS A PROPERTY OWNER

Every property owner has the right to enjoy and use their land, and that includes planting trees. But that right has limits. When a tree on your neighbour’s property starts affecting your land, the law steps in. Common problems include:

- overhanging branches crossing the boundary line
- roots damaging driveways, foundations, or pipes
- trees blocking access to sunlight or scenic views; and

- fallen leaves or branches clogging gutters and drains.

CAN YOU JUST CUT IT BACK? YES—BUT CAREFULLY

You are generally allowed to trim back any branches or roots that cross onto your property, but only up to the boundary line. This is known as “abatement.” However, there are a few important rules:

- you must not trespass onto your neighbour’s land
- you must not cause unnecessary harm to the tree or surrounding property; and
- because the cuttings still belong to your neighbour, you may be required to return the cuttings.

Importantly, some trees are protected by local council regulations, resource consent conditions, or covenants

on the title. Cutting or damaging a protected tree without permission could result in significant penalties. We strongly recommend getting legal advice before doing any trimming (even if the branches are clearly on your side).

WHEN TREES CAUSE DAMAGE OR SAFETY HAZARDS

If a tree is damaging your property, you may be able to:

- remove the offending roots or branches (within legal limits); and
- recover the cost of repairs and removal through the Disputes Tribunal (for claims under \$30,000) or District Court (for larger claims).

If the tree poses a safety risk, or unreasonably interferes with your view, sunlight, or enjoyment of your land, you can apply to the Court for an order under the Property Law Act 2007. The Court can order your neighbour to trim or remove the tree if it is deemed fair and reasonable to do so. The Court will consider:

- what the risk to people, property, or health is
- whether your view or sunlight is being unduly obstructed
- whether the tree is interfering with crops, drains, or everyday enjoyment of your land
- what the tree's public, historical, or cultural value is; and
- whether the tree existed before you bought your property.

To succeed, you will need to show you will suffer more hardship if the tree stays than your neighbour would if it were removed.

TIMING AND COSTS

If the Court orders the tree to be trimmed or removed, your neighbour usually has 20 working days to comply. While the Court can order them to contribute to the cost, the expense usually falls to the person making the application.

NEED LEGAL ADVICE? WE ARE HERE TO HELP

If a tree is causing conflict between you and your neighbour or you are unsure of your legal position, talk to us first. We can guide you through your options, help you protect your rights, and, where needed, represent you in the Disputes Tribunal or Court.

Contact our litigation team for practical, reliable advice before a small dispute takes root and grows into something much bigger.



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MEET THE TEAM!

Glaister Keegan had its biennial firm photo this month, it was great to get the team together for this shot to celebrate the people behind the work!

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Inbrief is available online if you prefer to receive it electronically.
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LAWYERS