

# What's Happening at Halliwells



▲ Jenna with her new son, Nyjah

*We all wish you a safe  
and happy festive season!*

## Busy time for Halliwells staff

- Lucy, Alaire and Shannon have just completed legal executive exams. Alaire and Shannon sat Litigation Law and Practice plus Business Law and Practice. Lucy – Law Office Practice plus Estates Law and Practice.
- Amanda Withers and partner Micheal Garvey have a new son Mason – wonderful brother for Teagan. We are looking forward to their wedding next February. Amanda is able to do some office work from home.
- Jenna Dombroski and partner Shane Reid have a new son, Nyjah, both doing really well.
- A week before Labour weekend Beth Low suffered a long severe headache. She is now recovering from an operation to remove a brain tumour – luckily it was removed fully and was not malignant. Beth has started back at work part time – recovery from a head injury takes time. She has been heartened by all the support, thank you. We are glad the news is so positive.
- Halliwells has been well supported by many relief staff – Vivien Taylor, Ann O'Connor, Roslyn Bosson, Karen Murch and Sandy Ellison. Thank you all who have helped as it has been a stressful busy time.

## Snippets



### What is a certificate of acceptance?

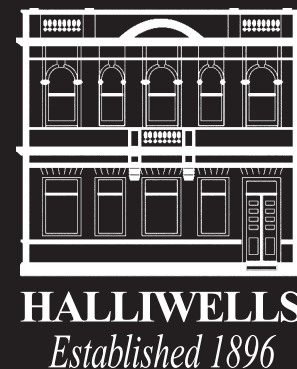
In some circumstances a certificate of acceptance may be issued by your local Council for unconsented works that have been completed on your property if the Council is satisfied that those works comply with the building code.

This certificate is issued only if the works comply with the building code at the time the application is made. So, if you were to apply today, the works would need to comply with the current building code to receive the certificate, not the building code as it was at the time they were completed.

A certificate of acceptance is only available for works done after 1 July 1992, and it is important to note the existence of the certificate of acceptance regime does not alter the requirement for you to obtain a building consent for building works you wish to have done in future.

### Trust Busting – Case update

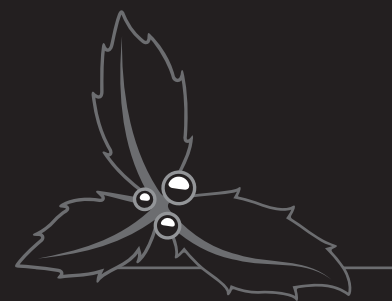
New Zealand Courts have been reluctant (although not unwilling) to dismiss a Trust as a sham. Recent case law has affirmed this position with the High Court refusing to find that a Trust was a sham (and therefore invalid), even when the Settlor of that Trust insisted it was a sham and that it was only established to delay triggering payment of GST in a commercial transaction.



## Reminder...

The New Plymouth office is at 117 Powderham Street – in the one way system travelling east just before the Police Station and Court House, opposite the Salvation Army Store.

Clients are welcome to call Shannon 0800 425 549 or 06 278 5114 for an appointment to see Preston or Ken who alternate in New Plymouth on Thursday afternoons. The office is through the Heartland AMP entrance.

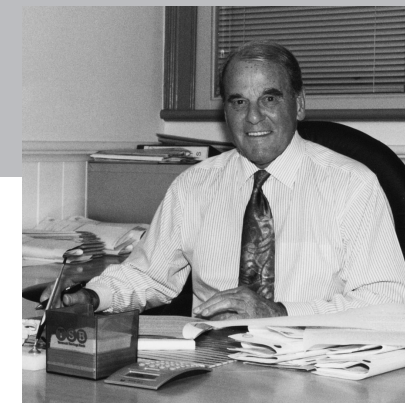


## Inside This Issue:

- Neighbourhood Law Part 1..... 2
- Attorneys Under Enduring Powers of Attorney..... 2
- Changes to the Fencing of Swimming Pools Act 1987..... 3
- What's Happening at Halliwells ..... 4
- Snippets ..... 4

# *InBrief* Over 100 Years of Integrity

## Alan Douglas Horner 1921-2014



Alan began fifty two years of law practice at Horner and Burns in 1949 after a law degree which was part time and finally full time, but interrupted by four years of WW11 active army service in the Pacific and Italy. He later joined his father Fred Horner and Tim Burns in partnership for almost thirty years.

Law office practice in the 1950's had changed little for several decades- typewriters, fountain pens, paper, carbon copies and the telephone, (number 5114). The growing economy, low inflation and the mandatory application of the scale of fees, were the foundations of the steady security of the times.

A nominee mortgage company Regent Investments Limited established by Fred Horner in the 1930's, was the successor to the management of client funds for mortgage investment begun in 1896 by Herbert Halliwell. What ultimately became Halliwells Securities Ltd (now Midlands Mortgage Trust) was very successfully promoted and managed by Alan during his time.

Many, many, clients recall Alan's warmth and charm and the help he gave them to "get a start". He was held in high regard within the office and the wider community.

'The Office' meant so much to Alan. It was busy, but also congenial and calm. The wise and experienced staff, Harriet Burgess, Kathleen Biggs, Gwen Johnston, Beth Catrin and Joyce Peters spent most of their working lives at Horner and Burns. The culture of client, community and capable and caring staff initiated by Herbert Halliwell, and maintained by Fred and Alan in particular, continues to this day.

Oil price driven inflation, car less days, boom and bust cycles symptomatic of global linking and the increasing pace of change, characterized the last half of Alan's career. Never slow to identify (and acquire) a useful gadget, he acknowledged the value of the electronic age. But conversation and the pen were never really going to be superseded by the computer terminal on his desk.

Like us all, he was a man of his age. He was a steady, wise and experienced colleague, and an affable and undemanding partner.

He was very proud of his 'office' and is remembered fondly.

– Ken Horner November 2014

**PRINCIPAL**  
Ken Horner LLB

**CONSULTANT**  
Preston Bulfin LL.M F. Fin

**ASSOCIATE**  
Andrew Ritson BCom(Fors), BCom(Hons), LLB



## Neighbour Law Part 1 – *love thy neighbour*

Disputes with neighbours can arise over many things; noise, fences, trees and animals etc. Ideally, you and your neighbour should be able to resolve any problem by discussing it and acting reasonably. However, if this is not possible, the law may be able to help resolve the matter.

### Encroachment

When you purchased your property, your lawyer should have shown you a copy of the Certificate of Title for the property. The Certificate of Title records the plan of the property and its boundaries with neighbouring properties that were determined by land transfer survey. It can be disastrous for a land owner to discover that they do not actually own all of the land they thought they did because they relied on fences and natural boundary markers, rather than the boundaries shown on the Certificate of Title.

Encroachment is where you or a previous owner of your property has erected a structure and part of the structure is on a neighbouring property. This is technically a trespass and the encroaching land owner is legally responsible, whether or not they erected the structure. The definition of structure includes any building, driveway, path, retaining wall, fence, plantation or any other improvement.

The Property Law Act 2007 enables a party to seek relief where such an encroachment exists. Whether or not relief should be granted is an exercise of judicial discretion and must be considered “just and equitable” in the circumstances. Relief can be provided by: directing that the structure be removed, granting an easement (or alternatively a right of possession for a specific time) over the land under the structure, or transferring that land to the person who owns the encroaching structure. If the wrongly placed structure is a



fence, no relief may be granted if the dispute can be resolved under the Fencing Act 1978.

### Boundary fences

The Fencing Act 1978 sets out the rights and responsibilities relating to fences between neighbouring properties. It provides a statutory framework to resolve disputes that may arise. This includes (but is not limited to) determining what constitutes an adequate fence, the cost of building or repairing a fence, who is responsible for those costs, and who is to do the work. Land owners can enter into agreements or covenants concerning fencing matters that can be registered against the titles of the affected lands for a period of up to 12 years after registration.

### Overgrown trees

The overhanging of branches of your neighbour's trees onto your property is also considered encroachment. You are allowed to cut the branches back to the point where the tree crosses the boundary; however it is a good idea to contact your local council to ensure the tree is not a protected tree or talk to your neighbour about it.

If your neighbour is not prepared to do anything, you are able to apply to the district court for an order requiring your neighbour to remove or trim any tree if it is causing damage or injury, obstructing your view or otherwise reducing the enjoyment of your property or if it is diminishing the value of your house.

If any of these circumstances apply to you, we suggest you seek legal advice regarding your rights and responsibilities. Seeing a lawyer before a problem escalates can save you anxiety and money.

## Attorneys under enduring powers of attorney – *what is your role?*

As an attorney appointed under an enduring power of attorney (EPA), you have important obligations to the person who appointed you ('the donor'). Some obligations are imposed at law, and some are imposed only if they are included in the EPA itself. These obligations include (but are not limited to) a duty to act to the benefit of the donor, a duty to consult and a duty to provide information on the exercise of your powers as attorney. Sometimes you will only be able to act as attorney in certain situations or will have conditions and restrictions placed on your authority to act.

Property attorneys must keep records of financial transactions entered into while the donor is mentally incapable, failing which, you may be liable for a fine of up to \$1,000.

Each EPA is different, so it is important to carefully review each document to ensure you are able to comply with your obligations as attorney.

## Changes to the Fencing of Swimming Pools Act 1987



Proposed changes to the Fencing of Swimming Pools Act 1987 ('the Act'), if passed, will give owners more choice about how they restrict access to their pools, but rules will be tightened generally and the inspection process unified.

### Problems with existing rules

The existing rules have been criticised as inconsistent and cumbersome. The Act is implemented by local councils, and there are no strict guidelines for how those councils should act. Some councils consider garden ponds and other water hazards as a 'pool' to be fenced, while others do not. Only some councils will provide a (costly) fencing exemption to spas that are otherwise child-resistant, and some councils carry out regular compliance inspections while others not at all.

The Act allows part of your house to form part of the pool fence; however, it can be difficult for your council to consent to a door opening directly into the pool area. Existing rules only allow this where your council is satisfied that to do otherwise is impossible or unreasonable – leaving inconsistent results with different councils and leaving owners with fewer choices on how they can best restrict access to their pools.

The Ministry of Building and Construction has released consultation documents and taken submissions on proposed changes to the Act, and has indicated that existing laws will soon be updated. No clear timeframe has been provided for the implementation of the proposed changes.

### Proposed changes

- All pools must be inspected by your council every five years. This ensures all areas of the country are regularly inspecting pool fencing, and that each council is working with the same standards and timeframes.

- Access to portable pools must be restricted if they contain more than 30 centimetres of water (reduced from the current 40 centimetres).
- Spas do not need to be fenced off if they are child-resistant (e.g. have locked lids), and will not need regular inspection from your council. This will mean spa owners will no longer need to apply for a costly exemption if their spa has a full lockable child-resistant lid and they do not want a fence.
- Rules around house doors opening directly into the pool area to be relaxed. Doors must still be self-closing and be fitted with an adequate locking device, but the proposed changes should allow more flexibility where the house is intended to form part of the fence.
- Obligations to be placed on retailers to inform customers who purchase swimming pools and spa pools of their obligations.
- Your council can inspect properties where it believes pools (including spa pools) may be non-compliant and issue warning and infringement notices.

### What do the proposed changes mean for you?

For most pool owners - not a lot. Existing fences that meet the current rules will still meet the new proposed rules. Regular council inspections will however become compulsory to ensure continued compliance with the Act.

For new pool owners, there will be more flexibility around how access to pools can be restricted.

Finally, more portable pools than ever will need to be adequately fenced. Portable pool owners will need to ensure that they comply with the proposed changes, as councils will be able to issue infringement notices if they do not.

## Season's Greetings!

We wish you and your families a safe and happy festive season!

Halliwells will be closed for the Christmas break from Tuesday the 23rd of December, and will be reopening Monday the 19th of January 2015.

Any urgent issues please contact Ken 029 278 3081 or Preston 029 278 7621.

