

The information in this newsletter is merely a guide and is not a full explanation of the law. This firm cannot take responsibility for any action readers take based on this information. When making decisions that could affect your legal rights, please contact us for professional advice.

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The Art of Advice

Welcome to the June edition of the Porta Lawyers Newsletter. We hope that all of your business needs are on track before the usual end of financial year rush.

Solicitors often represent clients who make decisions contrary to the advice given to them. Solicitors can only shrug their shoulders and say, "We can only give advice and then take instructions". The final decision lies always with the client.

The role of a solicitor is as follows:

1. To listen to the client's problem
2. To clarify the issues
3. To provide advice for a solution

It is only through the first two steps that we can arrive at the third and give value to our client via our advice. Sometimes that advice, after having considered all of the above, is simple. Do nothing! This is often the advice that clients find most difficult to accept, even if it is the best advice at the time. They see no value in the advice, "Do nothing", if the

perceived issues raised by the client are not yet real (for example the Claim has not been filed or the other party is still at the "talk stage"). Sometimes it is best to, "Keep your powder dry for the real battle" or, "Circle the wagons and wait for the Indians to come over the hill" or, "Don't give it oxygen". This helps to conserve costs and energies which may or may not be used at a later date. However, on many occasions the client may be "barking at shadows" and no real issue exists. However, it is often our advice to do nothing which provides that peace of mind which clients seek.

See a letter to the right from a grateful client to whom our advice was simply, "Do nothing". It is worthwhile being appreciated occasionally.

Best wishes for the rest of the 2012 – 13 financial year from all here at Porta Lawyers.

Giovanni Porta
Principal
Porta Lawyers

THANKS

To say thanks sometimes doesn't seem quite adequate.
When our life was plunged into a very unfair and dark place you showed us the way and helped us tremendously to understand what was happening and how to deal with it.
Your advice was invaluable and correct, quite the opposite of what we probably would have done. Whether it is all over or not, the damage has been done and will always remain in the background.
Thanks for all your help Giovanni. It has been sincerely appreciated.

Tenant's Maintenance v Landlord's Capital Works

One definition you rarely find in a Lease is one for "Capital Works". This can be problematic because it is a leading issue in disputes between Landlords and Tenants. The question is, "is it the Tenant's responsibility or the Landlord?"

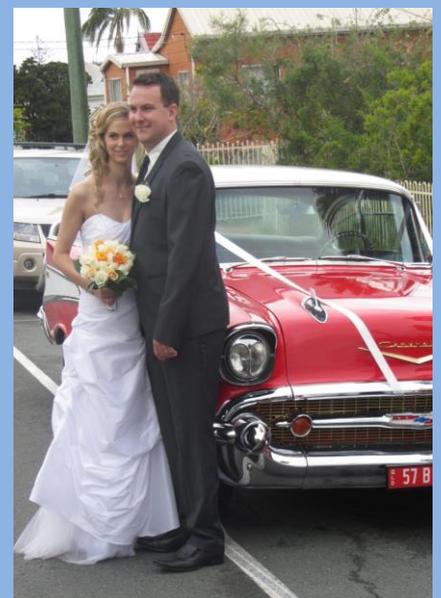
If the definitions are silent in relation to determining what exactly is of a "Capital Nature" then, as a guide, a summary of Australian case law would suggest that the covenant to repair is mitigated where a Premises has an inherent defect or the need for the Tenant's repair is caused by the lack of the structural integrity in the Premises.

The ultimate question in relation to the Tenant's covenant to repair is; whether the works were rendered necessary by ordinary wear and tear? Moreover, inherent defects in a leased Premises or ongoing structural deficiencies merely provide that the Tenant must repair. It does not impose an obligation to remove the defect. Accordingly, a Tenant cannot practically repair items that are in need of replacement.

As the abovementioned repairs can be costly and if a Landlord continues to interpret works of a capital nature to the Tenant's detriment, then an Application to the Court for a determination of the Clauses should be undertaken by the Tenant.

For further information, please feel free to contact Daniel Armfield at daniel@portallawyers.com.au

PORTA LAWYERS wishes to congratulate Allyson Lees on her wedding to Clayton Steele on 11 May 2013.
We wish them all the best for the future.



Litigation in a Nutshell

Suppose you are owed an amount of money for an outstanding debt. What is involved in the legal process to recover that debt? Many people are puzzled by the litigation process and unsure of the legal costs involved in recovering this money. Generally the public is reluctant to engage the services of a lawyer to recover these debts as they feel the costs will often outweigh the possible benefits. However, a lot of the time utilising the services of your solicitor to recover the debt can be very effective and can be done for as little as \$700.

The litigation process is broken down into a number of steps. *Generally* the process will proceed as follows:

1. Claim

In this step the Plaintiff (*you*, the person owed the debt) pleads your case based on the facts. This is done in written documents called the Claim and Statement of Claim. There is no application of the law until later in the process. This stage is merely the argument of the facts that led to the dispute. The Claim and Statement of Claim are then filed in the court and served on the Defendant by having a process server hand the documents to the Defendant (or by post if the Defendant is a company).

2. Defence

In this step the Defendant (person who owes the debt) has an opportunity to plead their side of the case directly in response to the allegations made in the Statement of Claim. The Defence is then filed in the Court and served on the Plaintiff. If the Defendant fails to file the Defence within 28 days the Plaintiff usually wins by default. Default Judgment is affected by completing the relevant paperwork and filing it in the Court to obtain Judgment.

3. Reply

If a Defence is served, the Plaintiff also gets an opportunity to rebut the pleadings in the Defence. This is done in much the same way as the Defence is done. It is then filed and served on the Defendant again.

4. Disclosure

After the exchange of the pleadings in steps 1-3 above, the parties must exchange between them all of the documentary evidence that is material to the case and that will be relied on in the trial. There are penalties for withholding documents. Usually each of the parties begins to see how well their case is likely to stack up against the other party's case at this stage.

5. Directions Conference

In most Courts these days it is compulsory to attend a Directions Conference before proceeding to trial. This conference is led by a registrar of the Court. The registrar usually attempts to have the parties agree to settle the matter on the day to avoid congesting the Court. Parties frequently settle at this point or close to the Directions Conference as they have normally spent a bit of money on legal fees by this stage and the uncertainty of trial is especially daunting.

6. Trial

This is the final stage of the process (subject to appeals and enforcement) where each of the parties has their legal representatives argue their case. The legal representatives will tender evidence and ask questions of the witnesses to outline their case. After each party has had an opportunity to argue their case the Judge or Magistrate will make a binding decision resolving the outcome of the dispute.

When the process is broken down into these steps it is easier to understand as a whole. You can also see that even though the process may appear long and complex there are many opportunities for an early resolution or an opportunity to settle.

For further information, please contact Nathan Rose at nathan@portallawyers.com.au

Budget 2013/2014 – Increase for Subclass 457 Visa Application Fees from 1 July 2013

On 14 May 2013 the Federal Government has announced its Budget for 2013/2014 which included some measures relating to Immigration and Visas. The Budget includes an increase of nearly 100% in fees for the subclass 457 visa applications. That increase is expected to raise the Government's revenue by approximately \$198 million over a period of four years.

The Budget indicates that the visa application charge for 457 visa applications will increase from \$455 to \$900 from 1 July 2013. That significant increase is combined with the proposed introduction of fees for each dependant (spouse, children or other family members included in the main applicant's visa application) expected to commence later in the year. The visa application charge for dependants is yet to be published. Application fees for each dependant will apply across all visa subclasses and not only to the subclass 457 visa.

As usual from 1 July other visa categories will also be subject to an increase in both temporary and permanent visa programs. Porta Lawyers is attending to reviewing those possible increases and attempting to avoid higher costs for our clients by lodging applications before that date.

VISA QUOTAS FOR 2013/2014

Australia's migration program is maintained at 190,000 places for permanent migrants in the next financial year, however 700 places were shifted from the skilled program to the family visa program.

The content of this article is provided for information purposes only. If you have any questions, please do not hesitate to contact Fabio Orlando (MARN 0962594) at fabio@portallawyers.com.au.