

## PRESENTERS



### **Joanna Pidgeon, Director, Pidgeon Judd, Auckland**

Joanna is a property law specialist, past president of the ADLS, and current member of its Property Law Committee. She is also a member of the NZLS Land Titles Committee. Joanna often makes determinations under the Agreement for Sale and Purchase of Real Estate (ASPRE) when there are disputes, is a past chair of the Property Disputes Committee, and gives expert evidence in courts and tribunals on a wide range of property matters. She is experienced in fee simple, cross lease and unit title subdivisions, including those using incorporated societies.



### **Ben Thomson, Senior Associate, Pidgeon Judd, Auckland**

Ben is a property lawyer with particular expertise in subdivisions and developments including fee simple, unit title, cross lease, and developments using incorporated societies. He specialises in unit title advisory work and property disputes. Ben regularly appears in the Tenancy Tribunal on unit title matters as well as in cross lease arbitrations. He also carries out transactional property and leasing work.

*The statements and conclusions contained in this presentation are those of the author(s) only and not those of the New Zealand Law Society. This presentation has been prepared for the purpose of a Continuing Legal Education course. It is not intended to be a comprehensive statement of the law or practice, and should not be relied upon as such. If advice on the law is required, it should be sought on a formal, professional basis.*

# CONTENTS

<b>1. CROSS LEASES .....</b>	<b>1</b>
BACKGROUND AND HISTORY .....	1
EXAMINE THE TERMS OF EACH CROSS LEASE .....	1
BUYING AND SELLING PROPERTY .....	2
<i>When acting for a vendor</i> .....	2
WHEN ACTING FOR A PURCHASER.....	3
<i>Cross lease flats outline and title plans</i> .....	3
IS THERE A STRUCTURE ON COMMON PROPERTY INTENDED FOR PRIVATE USE?.....	4
IS THERE A STRUCTURE ON ANOTHER FLAT’S EXCLUSIVE USE AREA INTENDED FOR PRIVATE USE?.....	4
BUILDING WORKS .....	4
RESIDUE TITLES – STAGED DEVELOPMENTS .....	4
SITE COVERAGE .....	4
CROSS LEASE COVENANTS .....	5
NO EXCLUSIVE USE AREAS .....	5
ADDITIONAL STRUCTURES .....	5
FLAT ALTERATIONS .....	5
INSURANCE .....	6
SHARED AREAS .....	7
CONSENT TO STRUCTURAL ALTERATIONS AND ADDITIONS .....	7
WHEN MUST BE CONSENT GIVEN AND WHEN IS IT UNREASONABLY WITHHELD? .....	9
CONSEQUENCES OF NOT OBTAINING CONSENT .....	11
WHAT TO DO IF YOUR NEIGHBOUR WILL NOT CONSENT?.....	12
WHAT TO DO IF YOUR CLIENT HAS BEEN ASKED TO CONSENT TO SOMETHING WHICH THEY DON’T APPROVE .....	12
CAUGHT IN AN INTRACTABLE POSITION WITH CROSS LEASE NEIGHBOURS WHO WON’T CONSENT? PARTITION IS AN OPTION .....	13
CASE STUDIES ON APPLICATIONS FOR PARTITION UNDER THE PLA .....	14
VALUATION .....	21
FENCING .....	21
MAINTENANCE .....	21
SUBLETTING, RESIDENTIAL USE AND CHANGING NATURE OF AREAS .....	23
ANNOYANCE OR NUISANCE.....	24
BREACH OF A COVENANT .....	25
DECISION MAKING .....	25
DISPUTES .....	26
<i>Litigation</i> .....	27
<i>Alternative dispute resolution</i> .....	27
BUYING AND DEVELOPING THE RESIDUE DEVELOPMENT SITE .....	27
END OF NATURAL LIFE/DAMAGED DESTRUCTION .....	28
CONVERSION TO FREEHOLD OR TO UNIT TITLES .....	31
POTENTIAL LIABILITY FOR PROPERTY LAWYERS WHEN DEALING WITH CROSS LEASE PROPERTIES.....	31
<i>Advising a purchaser of a property with structures in the exclusive use area</i> .....	31
<i>Advice on freeholding and failing to deal with expiry date problems</i> .....	32
<b>2. CONCLUSION.....</b>	<b>33</b>
<b>3. POWERPOINTS.....</b>	<b>35</b>