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PRIVATE DRAINS – ARE YOUR RIGHTS PROTECTED?

In New Zealand most properties are connected to the local council's stormwater and sewage system via private drains. Sometimes these private drains can run through and service multiple properties.

Generally, the rights and obligations of property owners who have the right to use the drains are contained in an easement which is registered against the certificate of titles of the properties which have the right to use the drains. The easement generally includes:

- (a) which properties have the right to use the drains;
- (b) which properties the drains run through;
- (c) which property owners have responsibility for maintenance and repair of the drains;
- (d) how the cost of maintenance and repair is to be shared between the property owners; and
- (e) what is to happen if the maintenance and repair is the result of one property owner's actions.

If there is an issue over the maintenance, repair or use of the drains, then you should check the easement which is registered against the certificate of title for your property. The easement instrument would have been sent to you by your solicitor at the time you purchased the property. However, if you do not have a copy of the easement instrument, then we will be more than happy to obtain a copy of the certificate of title and easement instrument for you.

However, with older subdivisions/properties there may be no easement registered against the certificate of title. What happens if no easement is registered? Are the rights to use the private drains protected?

Yes, the rights of property owners to use the private drains that run through the neighbouring properties are protected by S461 of the Local Government Act 1974. S461 gives property owners who use the drains the following rights:

- (a) right to free and uninterrupted use of the drains;
- (b) right to enter the neighbouring property to attend to maintenance and repair of the drains;
- (c) right to contribution towards the cost of repair, maintenance, relaying etc of the drains from the other property owners who use the drains; and
- (d) right to recover the cost of repair, maintenance etc from any particular landowner if the repair or maintenance was the result of the owner's negligence.

If maintenance or repair of the drains is required then, regardless of whether there is an easement registered or not, you should obtain a report from a suitable qualified drainage engineer or other expert setting out the rectification work required for the drain and the cost. Once the report is prepared you should provide this to the other property owners who use the drain advising them of their share of the cost and recommendation of how payment should be made. If any property owner refuses to contribute towards the cost, then you can apply under S313 of the Property Law Act 2007 for an order that the cost of repair and maintenance of the drains be shared amongst the owners who have the right to use the drains.

20 MINUTE FREE

**WANT to review your Family Trust structure?
 THEN call us and take advantage of our 20 Minute Free interview**