



**By Amy Haste**

amy@collinsmay.co.nz  
DD: 576 1412

**Lloyd Collins**

lloyd@collinsmay.co.nz  
DD: 576 1403

**Paul May**

paulm@collinsmay.co.nz  
DD: 576 1400

**Eugene Collins**

eugene@collinsmay.co.nz  
DD: 576 1407

**Nicola Goss**

nicola@collinsmay.co.nz  
DD: 576 1404

**Paul Whitmarsh**

paulw@collinsmay.co.nz  
DD: 576 1409

**Davina Rowan**

davina@collinsmay.co.nz  
DD: 576 1411

**Michael Moohan**

michael@collinsmay.co.nz  
DD: 576 1417

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## EASEMENTS—RIGHTS AND OBLIGATIONS

It is quite common for properties to be subject to easements. These are registered over a title for a property.

An easement grants one person the right to use another person's land in a particular way. Two common examples are a right of way and a water and drainage easement.

A right of way grants an occupier a right to walk or drive through an area of their neighbour's land to access their property. A water and drainage easement allows an occupier to pipe water through an area of their neighbour's property.

Easements can be in favour of a neighbouring property, i.e. granting a neighbour access to their property through a right of way, or in favour of a utility company, i.e. granting Telecom New Zealand Limited a right to convey telecommunications through an area of someone's property.

No owner can interfere with the easement or somebody else's right under the easement. The general rule is that the owners who benefit from the easement are responsible for the maintenance and repair of the facility.

If a property is subject to an easement, the owner must allow their neighbour to enter their property from time to time for the purpose of repair and maintenance and upon completion, restore the surface of the land as close as possible to its original condition.

If a land owner does not comply with their obligations imposed by an easement, the neighbour may:

- (a) Serve them written notice requiring them to comply within 7 working days;

- (b) If they fail to comply within 7 working days, carry out the work and pass the costs on to the landowner (including the cost of serving the notice).

If the landowner refuses to do either they can attempt to resolve any impasse by negotiation or mediation, or failing that, through binding arbitration.

A recent example of a dispute occurred when a client, Susan, bought her first house. Her property was subject to a water and drainage easement in favour of the property next door which was owned by Nancy. The easement granted Nancy the right to convey water through a pipe at the back of Susan's section which provided water to both Susan and Nancy's properties.

Not long after Susan bought the property, she woke up one morning to find the back of her section flooded from a burst pipe. She then wrote to Nancy requiring her to pay half of the cost of the repair. Nancy refused to pay for her half share within the 7 working days. Unable to wait any longer Susan paid for the entire cost of repairs herself.

Once the repairs were completed, she wrote to Nancy again requiring payment for her half share of the repairs. She refused and the matter was resolved through binding arbitration where Nancy was ordered to pay, including legal costs.

If you have any further queries in relation to easements, please do not hesitate to contact the Collins & May Law team.

- **The next issue covers the topic of Buying a Business—Commercial Leases—by Davina Rowan**