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Land Issues

“What property rights are being valued?”



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Requirements for any insurance valuation of property improvements ...

- Detail of what is covered (cross lease example)
- “Full disclosure” to ensure policy is not voided
- Issue of “insurable risk” - ownership may not be key for effective insurance to be taken out

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Areas covered (in limited time available) ...



- A. Looking at a title
- B. Looking at the Council information (Property File, LIM, zoning implications ...)
- C. Freehold titles (including building schemes)
- D. Cross lease titles
- E. Unit Titles

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A. Looking at a title

**COMPUTER FREEHOLD REGISTER
UNDER LAND TRANSFER ACT 1952**

Identifier WN169177
Land Registration District Wellington
Date Issued 25 October 1984

Prior References
 WN360108

Estate Fee Simple
Area 344 square metres more or less
Legal Description Part Lot 26-11 Deposited Plan 302

Proprietors
 Robert James Andrell

Interests
 Order in Council No 825 exempts Gloucester Street from Section 117 of the Public Works Act 1908
 B418893 Mortgage to (new) Waipae New Zealand Limited - 15.2.1995 at 2.55 pm
 TENANT'S CERTIFICATE PURSUANT TO SECTION 77 BUILDING ACT 2004 THAT THIS COMPUTER REGISTER IS SUBJECT TO THE CONDITIONS IMPOSED UNDER SECTION 75(2) - 21.6.2007 at 9:00 am
 75561231 Variation of Mortgage B418893 - 27.9.2007 at 9:00 am

Transmitted At
 Clear Reference read

Date 25/10/18 11:14 am, Page 1 of 1
 Register Only

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Key points ...

You can not go by the encumbrance name noted by the Registry on the title (*Re Goldstone's Mortgage Case*)...

You have to read the document to see what it says
...

The Register is “everything” – you are deemed to have constructive notice of matters that may be omitted by accident from the current issued title.

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“Title encumbrances”
can consist of two sorts

“First sort”

Notices and notifications. These can usually be read at face value. Some interesting ones like a right of resumption for Treaty claims. *Opua Ferries Case*

Minerals reservations may or may not be on the face of the title (but they are still effective)

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“Second sort”

Registered interests such as transfers, leases, encumbrance instruments, easements, covenants

These usually originate as a contract. Thus the Court implies principles of interpretation of contracts to ascertain what the documents mean. *Big River Power v Congreve Case*

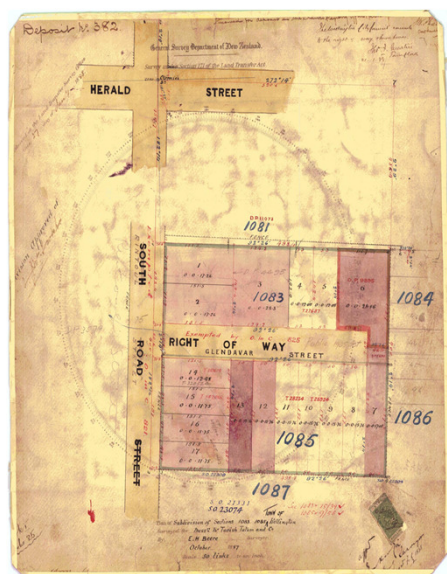
Note of caution. The meaning of words used may include “terms of art” known between the contracting parties, even if not known to third parties.

Example would be a right of way (same words different location) ...

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Example concerning a right of way ...



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Special note on “encumbrance instruments”

...

Can create personal liabilities which go on **in perpetuity ...**

These can be a real detriment on the title in valuation terms ...

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Obligations under rights of way/access ways and party wall easements

Are maintenance and repair obligations for vehicular rights of ways and access ways given under the Property Law Act 2007 (ss 297, 298).

Can not take repair obligations exists as a “given” for party wall easements. You have to look at the grant.

What if there is a party wall in existence, but no easement to support it (?). **May be a right of action in court for nuisance ...**

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B. Council Property file



Can not overrate the importance of this being searched.

Earthquakes, leaky buildings, hazards notices, unauthorised structures, swimming pool fencing etc, etc

LIMs

- Importance of a LIM being obtained
- LIM only have to deal with discrete issues stated required by law (see Local Government Official Information and Meetings Act 1987).
- Council legal liability for a negligently issued LIM - *Marlborough District Council v Altmarloch Joint Venture Ltd*

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C. Freehold titles (including building schemes)



Building schemes

- Is a unique title interest. May or may not be valid.
- Relies on “legal construct” of there being a contract between the owners (which there is not)
- Scheme is given effect where the court finds there is an intended reciprocity of obligation in contract – even though the document is defective. *Yong v Stolten Case*
- Effectiveness depends on what a Court of Equity will do to enforce obligations
- Not much case law on schemes in NZ (yet).

○ 10/09/2013 Watch this space ...

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D. Cross lease titles



NZ Law Commission finding in 1999. Cross leases are “irremediably flawed”

...

The New Zealand Herald

6 August 2013

“Cross lease titles a ticking time bomb, warns lawyer”

“An Auckland lawyer is warning about dangers with 216,000 cross lease property titles and has called for people's horror stories about the issue ...”

[How do cross leases work?](#)

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History of cross leases is important ...



We end up with three (or two) title interests

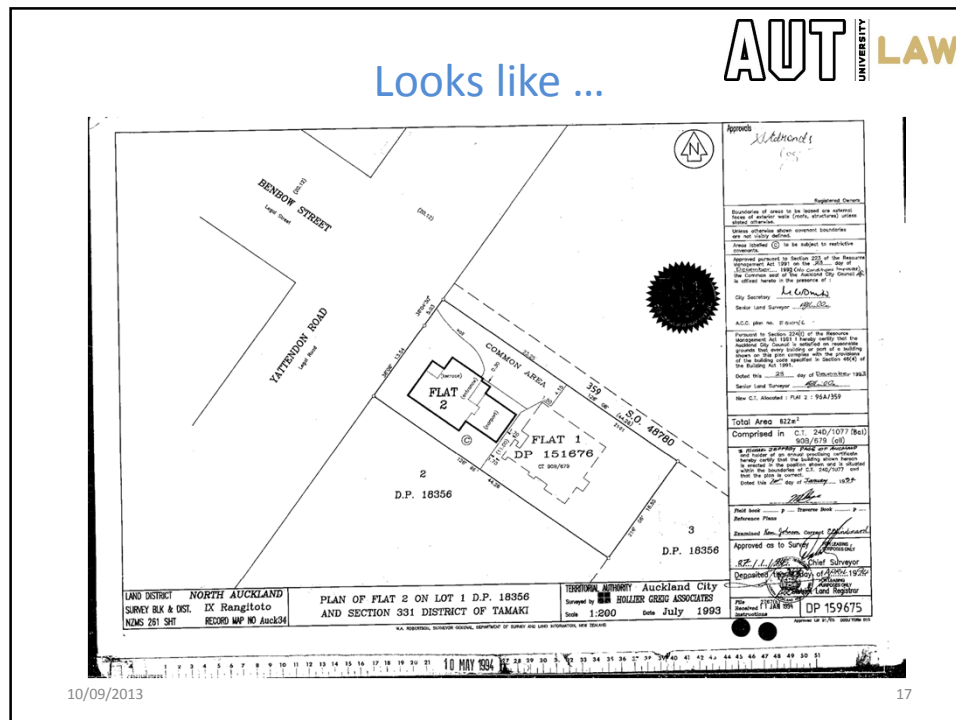
1. Lease of flat (as originally leased)
2. Share in whole land as tenants in common (as lessors)

and (may be)...

3. Restricted covenants between the owners (as lessors)

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Consequences of this ...

- Rights regarding the building (look to lease)
- Rights regarding the use and occupation of the surrounding land (look to general law)
- Rights related to restricted covenant areas (look to covenant)

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Problems with cross leases ... **AUT** UNIVERSITY **LAW**

1. Alterations and additions to leased structure (you must find out what was there in the first place). [How do you establish this?](#)
2. Improvements “added” on to the leased structure (alterations and additions)
3. Improvements on the common area/restricted covenant area
4. “Services” located on site
5. Consequences if you remove a flat from the site or demolish it
6. To what extent the lease obligations will be enforced by a court
7. [Effect of all this on insurance cover](#) 

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E. Unit Titles

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Issues

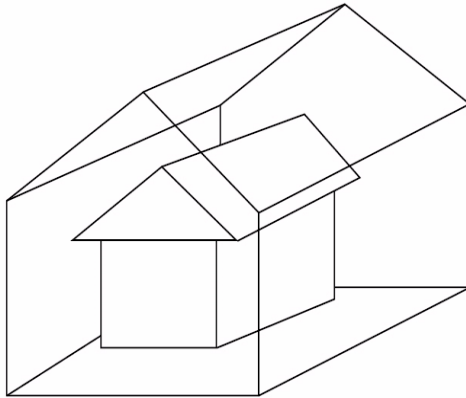
1. Disclosure of leaks. Compulsory disclosure statements on sale do not cover “mediation”
2. No issues regarding “double insurance”
3. Insurance issues are different under the new Act. The concept of “full insurable value” instead of replacement insurance under the new Unit Titles Act 2011 (see s 135(1). **What does this mean?**
4. Alterations out of the title space –

“Polyhedronist” view as opposed to “building based” [See the following diagrams ...](#)

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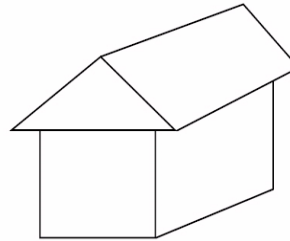
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Looks like ...



Sketch 1A

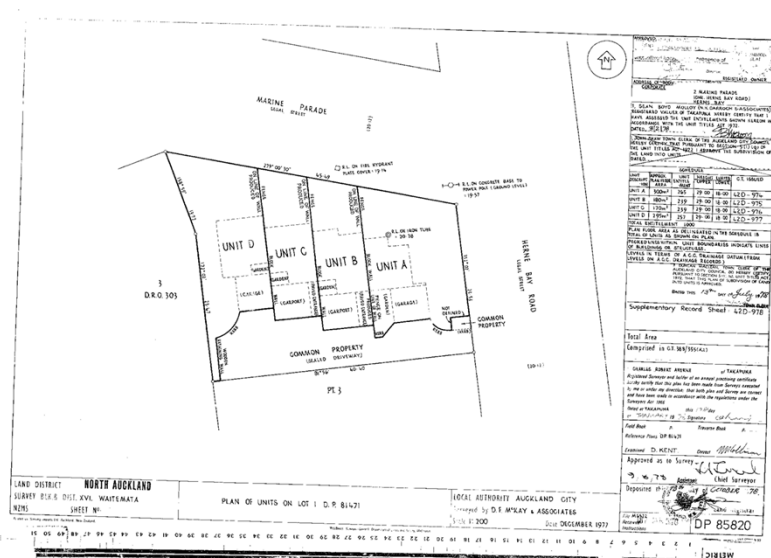
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Sketch 1B

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“Polyhedronist” approach



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“Buildings based” approach

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CONCLUSION FOR PRESENTATION

Question:

Can you effectively assess the value of improvements without addressing such issues?

Issues can be tricky. Where necessary, get legal advice (and make your fee look reasonable) ...

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