WebbFarry Lawyers

Newsletter - Spring 2020

Latest Webb Farry News

We are pleased to announce a new senior appointment

Bill Munro LL.B, B.Com
Associate

- Corporate and commercial structure and development
- Property transaction and development
- Banking, finance and asset protection
- Trust and estate planning

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Bill is a valued member of the Webb Farry team and we are very pleased to announce his promotion to Associate. His practical and friendly approach is complemented by his legal expertise across a range of property and commercial law areas and we are proud to recognise his achievements.

David Ehlers, Partner

We also welcome Rachel Stedman to the team. Rachel has joined us as a graduate and is involved in both our Commercial/Property and Litigation teams under the guidance of David Ehlers and Kimberly Jarvis.

Rachel was born in Germany and was raised bilingual. She has previously worked in law enforcement, investigations and animal welfare. She graduated from the University of Otago in 2020 with a Bachelor of Laws and sits on the executive of the New Zealand Animal Law Association. Rachel is scheduled to be admitted to the Bar in September 2020.

AS Gallery

We are pleased to announce that the next exhibition on display in the AS Gallery is 'Colours I Met' by Emily Crossen and runs until 21 October 2020. Please see the insert for further information.

Could Loan to Value Ratio changes be your pathway into the property market?

By Bill Munro and Simon Eton

While this turbulent year has come with its fair share of wildcards, there has been some welcome news for those looking for a loan to finance their property purchase. Not only are interest rates at an all-time low for borrowers, there has also been a removal of the Loan to Value Ratio (LVR) restrictions. In April 2020, the Reserve Bank announced the LVR restrictions would be removed for 12 months, ending May 2021. So, what could this mean for your ability to borrow going forward?

What is a Loan to Value Ratio?

A LVR is the amount of your loan in comparison to the value of your property (your debt to equity ratio in your property). Your LVR is calculated by dividing your loan amount by the value of the property you are purchasing. For example, if you are purchasing a property worth $400,000, you have a deposit of $80,000 and need to borrow $320,000, the LVR would be 80% ($320,000 ÷ $400,000 = 80%). LVR's were brought in to strengthen the banking system in New Zealand so that in the event of a reduction in house prices the banks were not caught out. They were also used to slow down house price increases by reducing the pool of buyers.

Restrictions removed

Previously having a LVR of greater than 80% would limit your chances of gaining an approved new home loan. The Reserve Bank restricted banks to only allowing 20% of their new home loans issued to have an LVR of more than 80% (deposit of 20% or less). Since 1 May these restrictions have been removed meaning banks are able to approve more loans for those who do not meet the 20% deposit threshold. This has been a boost for prospective purchasers in their ability to enter the property market along with the record-low interest rates currently being offered by the major banks.

Consequences of the removal of restrictions

While the removal of these restrictions has been seen as a positive for many buyers, particularly first home buyers who were struggling to reach that 20% deposit mark, there are some consequences for having a high LVR. Having to borrow more comes with the fact that your loan payments will be larger. Further low interest rates currently being advertised by banks are usually their "special" rates which require an LVR of under 80%. Those with an LVR of above 80% will have to settle for banks "standard" rates which, while low comparatively to where they were at the start of year, are not at the same level as the special rates. A further consequence is that it is common for banks to add on a low equity premium to interest rates for borrowers who have a deposit of less than 20%, resulting in higher loan payments for the borrower.

What the LVR changes mean for you

While the removal of the LVR restriction is good news for first home buyers who previously were not able to borrow due to their high LVR, any borrower will still have to meet the banks income and credit criteria. These changes are unlikely to assist investment property buyers. Due to the current uncertainty around where the property market is heading in the post-Covid world, banks are unlikely to lend to an investment buyer with a high LVR. Once banks are content the property market has stabilised, they may then be more comfortable with lending to investment buyers with higher LVRs.

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Important Changes for Landlords and Tenants

by David Ehlers and Simon Eton

Change is something we are getting used to in 2020 with our ever evolving residential tenancy laws being no exception. On the 12th of August 2020 the first of these changes to the Residential Tenancies Act 1986, that both landlords and tenants need to be aware of, took effect with further changes scheduled for next year.

August 2020 changes

From 12 August 2020 rent increases from landlords are now limited to once every 12 months. This is a doubling of the previous rent increase limit of 6 months. It is also worth noting that the Covid-19 rent freeze issued by the Government on 26 March 2020 will continue until 25 September 2020.

Changes from February 2021

A string of changes affecting both landlords and tenants come into play on 11 February 2021. Firstly landlords will not be able to end a periodic tenancy, without cause, by providing 90 days' notice. This means landlords will have to let their tenants know why their tenancy is ending. The reasoning behind this change being, tenants are justified in knowing why they are being evicted and it also prevents landlords from evicting their tenants with no reason.

A major change in the legislation is in relation to the treatment of fixed-term tenancies. From 11 February 2021, all fixed-term tenancy agreements will convert to periodic tenancies at the end of the fixed-term, unless:

- the parties agree otherwise;
- the tenant provides the landlord with 28 days' notice of termination; or
- the landlord provides notice of termination for cause as set out in the grounds for termination of periodic tenancies.

Tenants can ask to make changes to the property which landlords cannot decline if the change is minor. The landlord must also respond to this request for change within 21 days. A 'minor change' is defined under the Act and is a change that would allow the premises to be easily returned to substantially the same condition it was before the change. Tenants should note that they are required to reinstate the property before the end of the tenancy

Rental properties cannot be advertised without a rental price being listed by the landlord. In addition the landlord cannot encourage or invite tenants to bid on the rental for the property.

If Fibre broadband is available, tenants can request this be installed. The landlord must agree to this request if it can be installed at no cost to the landlord. There are exemptions that apply for landlords to allow them to refuse this request under the Act such as if the installation would materially compromise the weathertightness or character of the building.

Any request by tenants to assign their tenancy must be considered by the landlord and cannot be declined unreasonably. Clauses that prohibit assignment under the residential tenancy agreement will have no effect.

Any tenancy agreement, and any subsequent change to the agreement, must also be recorded in writing which must be retained by the landlord.

August 2021 changes

Any tenant experiencing family violence will be able to terminate their tenancy without any financial penalty. Further, if police lay a charge against a tenant that relates to an alleged assault against the landlord, the landlord's family or an agent for the landlord, then the landlord will be able to terminate the tenancy with 14 days' notice.

In this article we have only been able to outline the general principles of the changes. As you would expect there are a number of exceptions and conditions. If you have any questions regarding the Residential Tenancies Act then give our friendly team a call today.

Overview of the COVID-19 Public Health Response Act

The rapid spread of the COVID-19 pandemic is an unprecedented global disaster. Entire nations have been forced to go into lockdown, requiring residents to stay at home for an undefined amount of time. The New Zealand Government responded promptly to the pandemic with the first confirmed case of COVID-19 in New Zealand being 28 February 2020 and the implementation of the Level 4 Alert Lockdown by 25 March 2020.

The enforced lockdown raised legal questions around human rights including freedom of movement, right to refuse to undergo medical treatment and the right to be free from unreasonable search and seizure. The Government's response to this was the urgent passing of the COVID-19 Public Health Response Act 2020 ("the Act"), with a purpose to create a bespoke legal framework for managing the public health risks posed by COVID-19. The backdrop to the Act is an unprecedented public health emergency that required a number of exceptional powers that would be unlikely to be justified in ordinary circumstances. Therefore, the Act is a temporary measure and is repealed on the earlier date of either two years after the date of commencement, or on the expiry of a period of 90 days if no resolution is passed to continue the Act by the House of Representatives. This demonstrates the extraordinary circumstances of COVID-19 and justification of the exception powers that are extended in the Act.

The Act is broadly based on the powers set out in the Health Act 1956 and allows the Minister of Health, and the Director-General of Health in some circumstances, to make enforceable orders relating to people, business and activities. It enables the Government to take a precautionary approach in an effort to prevent and limit the risks of potential outbreaks of COVID-19 in New Zealand. The Act further recognises the highly contagious nature of COVID-19 and allows for continued applicability of necessary public health measures.

Section 11 is arguably the most important section of the Act as it details the orders which can be made by the Minister or Director-General of Health. Some of these orders include requiring persons to: stay in a specified place or refrain from going to any specified place; refrain from travelling to or from any area; be isolated or quarantined in any specified place and to report for medical examination or testing.

Further, s20 allows for the enforcement of any s11 order by granting an enforcement officer the power to enter, without a warrant, any land, building, craft, vehicle, place or thing if they have reasonable grounds to believe that a person is failing to comply with any aspect of a s11 order. Any person who commits a serious offence relating to non-compliance of s11 orders is liable on conviction for a fine of up to $4,000 or imprisonment of up to six months. Minor offences of non-compliance can cost an individual a fine of $300 or a business can be ordered to close for up to 24 hours.

As the COVID-19 situation continues to develop and we attempt to adapt to the unprecedented times ahead, questions remain unanswered and the COVID-19 Public Response Act is likely to be in the firing line with additions and amendments required.

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The Difference between Contracting Out and Relationship Property Agreements

The primary and distinctive difference between contracting out and relationship property agreements relates to the timing and status of a relationship between two parties. The definition and status of a relationship as a marriage, de-facto relationship or civil union, under the Property (Relationships) Act 1976 ("the Act") is important in assessing a contracting out agreement ("COA") or relationship property agreement's ("RPA") influence.

Essentially, a COA commonly known as a "pre-nup", is often (but not always) entered into at the start of a relationship, prior to the relationship being defined under the Act as marriage, de-facto relationship or civil union and before the couple is subject to greater legal requirements around relationship property division. Couples enter into the COA to define each party's separate property, defining what would happen to that property if the relationship were to end.

On the other hand, a RPA, commonly known as a settlement agreement or separation agreement, is entered into once a relationship has ended, whereby the parties wish to distribute the relationship property assets.

Contracting Out Agreement

A COA is used to contract out of the general relationship property division principles under the Act; with those principles providing for an equal 50/50 split of the relationship property between the parties. It provides couples with the autonomy to decide how to split their assets if the relationship ends. Even if in the eyes of the law such a split may not be deemed as 'equal', the couples can subsequently waive those rights under a COA.

A COA is often seen in the case where one party enters the relationship holding significantly greater assets/wealth earned as their separate property or by an inheritance, which they wish to protect and keep separate in the event of separation. The COA is essentially a type of 'insurance policy' for either party to protect their assets or inheritance, despite every intention for the relationship to progress.

COA's can be binding and important documents to review with your solicitor, hence Part 6 of the Act requires that your signature be witnessed by a solicitor who has certified that they have explained the contents and implications of the COA to you before signing. The court can declare a COA void if they view the COA lacks the fundamental principles of independent legal advice, disclosure or there is evidence of some kind of undue influence from one party to the other.

Relationship Property Agreement

In the case of a relationship separation, the Act establishes principles which govern the split of those assets, as mentioned above.

When couples separate from each other they may wish to have some autonomy and choice in how the relationship property is split. An RPA (also known as a separation agreement) allows the parties to do this. Similar to a COA, the couple is able to contract out of the Act's general principles of equal division and negotiate the distribution of assets.

Commonly, parties wish to enter into an RPA to define specific separate property, i.e. businesses, trusts, houses, shares and/or investments. Sometimes the parties wish to customise distribution as the process of equally dividing an asset/liability can be labour-some and disruptive or may cause unnecessary burdens for one party, for example, trying to sell an established business to split the equity.

Similar to the COA, the requirements on both parties to receive full disclosure of all assets and legal advice as to the implications of the RPA is vital.

It is recommended that you contact a legal professional to discuss either agreement in detail.

Paper roads explained

An unformed legal road, more commonly known as a paper road, is a parcel of land that is legally recognised as a road but has never been formed into a road. Many paper roads cannot be identified by physically looking at the land, as it could just be a paddock, but paper roads will be evident on survey plans. Although paper roads have never been formed, the Court has found that paper roads have the same legal status as a formed road.

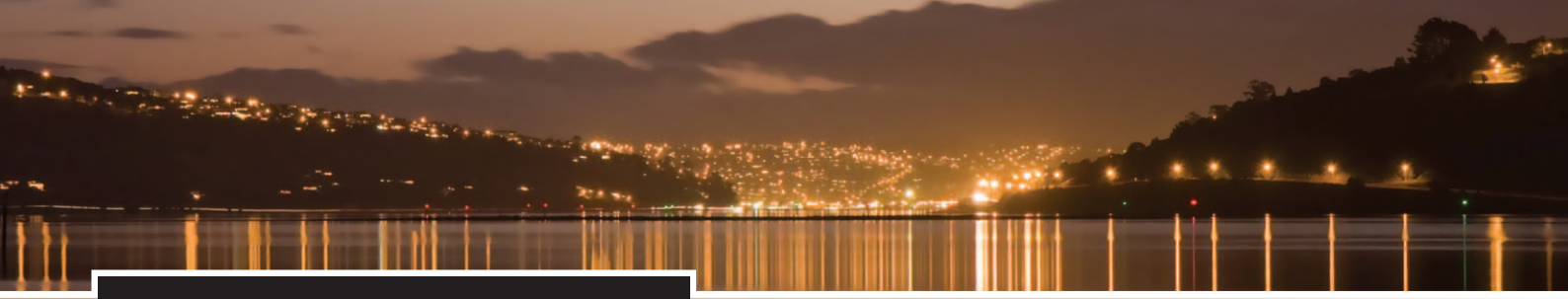
As paper roads hold the same status as formed roads, this means that the public has the right to drive their vehicles, walk on foot, etc. without having to ask for permission from a landowner as the paper road is owned by the local council. Council owns the paper road, but has no responsibility to form, maintain or repair paper roads. It is very important to remember that even though these roads are not formed at the moment, they can be developed in the future. With that said, it is very important to consider the use of the land to which a paper road flows through.

Paper roads were initially created in the late 19th century to make sure that in the future, blocks of land, especially land alongside waterways, would remain accessible for public use. However, many paper roads were created over landscape which make it impossible to drive or even walk where the paper road is. This is because people did not have the surveying equipment and knowledge of the terrain like we do today.

If you own property where a paper road runs through it, you must remember that the public has a right to use that paper road. As it is difficult to find the exact location of many paper roads, landowners can fence or mark where the paper road is, in an attempt to minimalise the impact to the surrounding land. Landowners are permitted to install an unlocked gate and anyone using the road must not damage the gate and must leave the gate as they have found it; as not following these simple rules could be considered an offense under the Trespass Act 1980. Livestock must not prevent the use of a paper road and Landowners must not obstruct a paper road with vegetation, trees, scrubs, buildings etc.

Landowners can apply to Council for exemptions, which could ban access to the paper road. It is also possible to ask Council to close the paper road, this means that the road will no longer have the status of a road, and will not be public land. The closure and exemptions are at Council's sole discretion.

The Walking Access Act 2008 ("Act") at section 3 describes the purpose of the Act, which summarized, is to provide the public with free, practical walking access to the outdoors so that the public can enjoy the outdoors and to establish the New Zealand Walking Access Commission ("Commission"). The Commission has created the Walking Access Mapping System, which informs the public of the location of public places including paper roads. Further information and Access Maps can be found at http://maps.walkingaccess.govt.nz/ourmaps.



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Snippets

Importance of a Pre-Settlement Inspection

The excited purchasers have found the property and the deed is done – the agreement is signed. They know they are signing up for the property as it is on that date. Not everything is able to be seen or known at that date. However, they know what they have seen, and what has been represented to them.

Their initial questions can be clarified through conditions in the agreement. The Agreement says what chattels are to remain and those chattels must be (where relevant) in working order, fair wear and tear excepted. A settlement date looms. The last opportunity presents itself to check that what you signed up for is consistent with what you shall pay for. It is called the pre-settlement inspection.

You cannot revisit matters that you had not covered prior to signing the agreement, but you can check everything is the same and in order. Either the vendor or their agent arrives with a key and stays with the purchasers during the inspection. It happens in the last few days before settlement date. Any queries must be with the vendor's solicitors prior to the actual settlement date.

Aspects that have changed, or not been rectified as agreed, or are now not in working order, may be queried. Settlement is not able to be held up, but compensation or the retention of funds on the day to cover rectification is possible.

The pre-settlement inspection is very important, so continue to keep your lawyer in the picture at that time of the transaction.

Can an activated EPA vote in the General Election for the Donor?

You hold an activated Enduring Power of Attorney ("EPA") for property on behalf of a much loved one (known under the document as the Donor). Can you (the Attorney) vote on election day for and on behalf of the Donor?

Attorneys do have an obligation as part of their decision making process to think about what the Donor would have wanted to be done. Sometimes though you would not know their thoughts or where their thinking would be. However, if you wish to you can vote on their behalf (except in certain circumstances if the Donor is in a mental health facility under a Court order).

There is an enrolment form that can be obtained from the Electoral Commission. If the Donor is enrolled to vote, and you are enrolled to vote, and the Donor has an activated EPA in your favour (or the Court has appointed you as the Donor's welfare guardian) you can complete that enrolment form. Then you must complete another form enabling the Electoral Commission to contact you as the accepted representative and attorney of the Donor.

It is best to give yourself plenty of time to complete the process with the Commission. A good idea would be to discuss the issues with your lawyer as you progress.

Webb Farry's solutions are always pragmatic, reflecting our awareness that strategies must be cost efficient if they are to successfully meet your objectives.

"The various teams within Webb Farry work together seamlessly to facilitate transactions and ensure your interests are always protected."

Megan Bartlett LL.B, B.A
Partner

Who's Who at Webb Farry...

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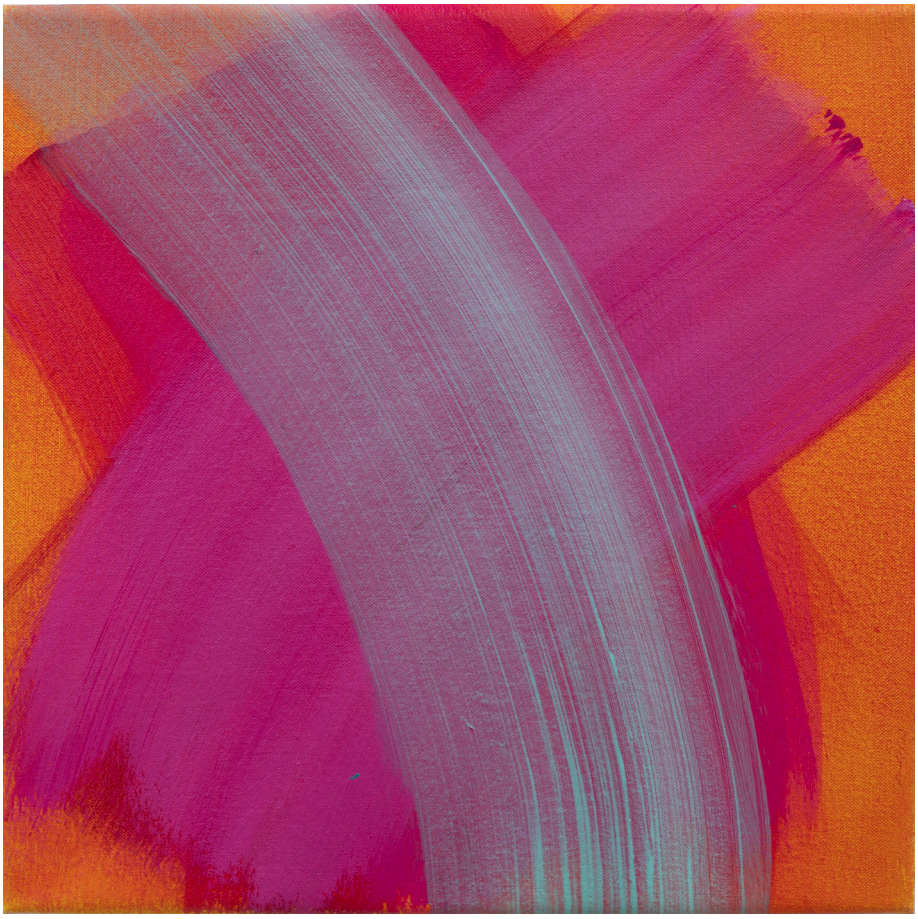

Colours I Met 24, 2019, 350x350mm, acrylic on canvas

EMILY CROSSEN

Colours I Met 24.07.20 - 21.10.20

I have painted forty-four squares on the walls of my studio. For days I have been adding colour to them. Layers of colours glazed over each other. I like this repetitive action, this daily ritual. I become fascinated by the layers of colour that appear on the masking taped edges. Small traces left behind of each layer of the process. Colours I Met, is a series of abstract paintings interrogating a spectrum of vibrant colours and iterations of gesture.

Colour and gesture are explored through a systematic method generated by three main ideas, layers of colour in square frames, a grid arrangement and a repeated gestural mark, an arc, that mirrors the motion of the arm. I am interested in the dual nature of colour, that we can be we both "attracted to and made uneasy by bold colour" (Taussig, 2009).

Research focuses on challenging what might be considered binary viewpoints within the history of abstract painting, "feeling and fact, intuition and inference, delight and deliberation" (Goodman, 1982). Within abstract painting, a loose, brushy mark might express a more 'romantic' human element, as a legacy of Abstract Expressionism, whilst sharp, defined lines are more mechanical or clinical, as a residue of Hard Edge Abstraction. I am looking at the history and use of masking tape as an 'edge' condition within abstract painting. In my own work I am using tape as another expressive tool, in a similar way as the gestural marks, utilizing possibilities of the 'bleed' and of the nuances that it offers.

I am working towards my Master of Fine Arts (Painting), with a final exhibition in 2021