WebbFarry Lawyers

Spring/Summer 2022 Newsletter

There have been exciting changes at Webb Farry over the past few months

The most significant is our move into our custom-designed premises as anchor tenant in the prime location on the corner of Stuart and Cumberland Streets.

We are the keystone tenant on the top floor with views from our light and airy space to the iconic Star ODT Spire, the Dunedin Courthouse and the picturesque Railway Station from one angle, and a prime seat to watch the new Dunedin Hospital construction on the other side. We share the first floor of the building with RCP, winner in 2021 of the Real Estate Advisory Team of the Year who are Project Managers for the Dunedin Hospital build and the new ACC building and who share our passion for Dunedin property. The street level will house the industry leading electric bike retailer Specialised, to complete the vibrant commercial hub that is the "Webb Farry Building".

After the challenge of "camping" in temporary offices and staying connected while working from multiple sites, we are all feeling invigorated to be together again in our new premises. Like any of you involved in a building project in these times will know, the development of the building from the Torpedo 7 sports retailer with a unique loft warehouse, to a designer office and meeting space, has been a labour of love with challenges.

The team involved from the building owner, architect and interior designer, to the construction team and tenants have prioritised restoring and enhancing the heritage and architectural features and respecting the character of the building, while also transforming it into a modern and contemporary workspace.

We thank you for your patience during this development and thank our talented and valued staff for keeping the faith that the end result would be worth it. Once our final unique design touches are in place, we look forward to showing our valued clients and connections the finished space in the near future. Feel free to drop in and ask for a tour!

We have refreshed our branding, logo and website to showcase the firm we are. One thing that hasn't changed is the genuine enjoyment we gain from working with our clients and we will continue to provide the legal advice and better solutions our clients rely on.

Recent changes to First Home products

On 19 May 2022 the Minister of Finance, Hon. Grant Robertson delivered New Zealand's 2022 Budget that included changes to the following First Home products: the First Home Grant, First Home Loan and the Kāinga Whenua Loan scheme. The changes to the First Home Grant took effect from 19 May 2022 and the changes to the First Home Loan and Kāinga Whenua Loan took effect from 1 June 2022.

Housing Minister Dr Megan Woods ("Dr Woods") stated that: "We are increasing the house price caps for the First Home Grant to align with lower quartile market values for new and existing properties. This recognises the changes in house prices over the past year". The Government has also removed house price caps from the First Home Loan, this provides eligible applicants with a greater choice of properties, however income caps and lender requirements will still apply to ensure that the First Home Loan is being used by buyers who need support for a first home. House price and income caps are to be reviewed every six months to ensure that they to stay up to date.

Changes to First Home Grant in summary:

- House price caps increased, to align with lower quartile estimated values for new and existing properties.
- KiwiSaver contribution requirements adjusted, to reduce the threshold amount of regular savings to access the grant.
- New income cap category introduced for 'individual buyers with dependents', with an income cap of $150,000.
- Relocatable homes that have received a Code Compliance Certificate in the last 12 months can qualify as new properties.

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- Members of eligible Progressive Home Ownership rent-to-buy schemes can access the grant amount for new builds.

The changes to the eligibility criteria include the introduction of a new income cap category for individual buyers with dependents, and adjusting the KiwiSaver contribution requirements for the First Home Grant. Dr Woods stated that, "We estimate that these changes, along with other changes to the eligibility criteria, will help thousands more first home buyers, with funding available for approximately 7,000 extra First Home Grants and 2,500 extra First Home Loans available every year."

Changes to First Home Loan in summary:

- House price caps removed altogether (income caps and lender requirements still apply), to provide applicants with a greater choice of properties.
- New income cap category introduced for 'individual buyers with dependents', with an income cap of $150,000.

The Government also announced a change to the Kāinga Whenua Loan scheme increasing the loan cap. Associate Housing Minister (Māori Housing) Peeni Henare said this change will make a real difference for whanau; "Unlocking funding support to help people into homes will reconnect them with their whenua." Further that "We made a promise as a government to change the status quo when it comes to Māori housing, and providing more funding options for whānau looking to utilise whenua Māori as effectively as possible is a vital part of that work". Kāinga Ora's Jason Lovell, Manager of Home Ownership Products, says the announcement supports Kāinga Ora to continue helping more whānau into their first home.

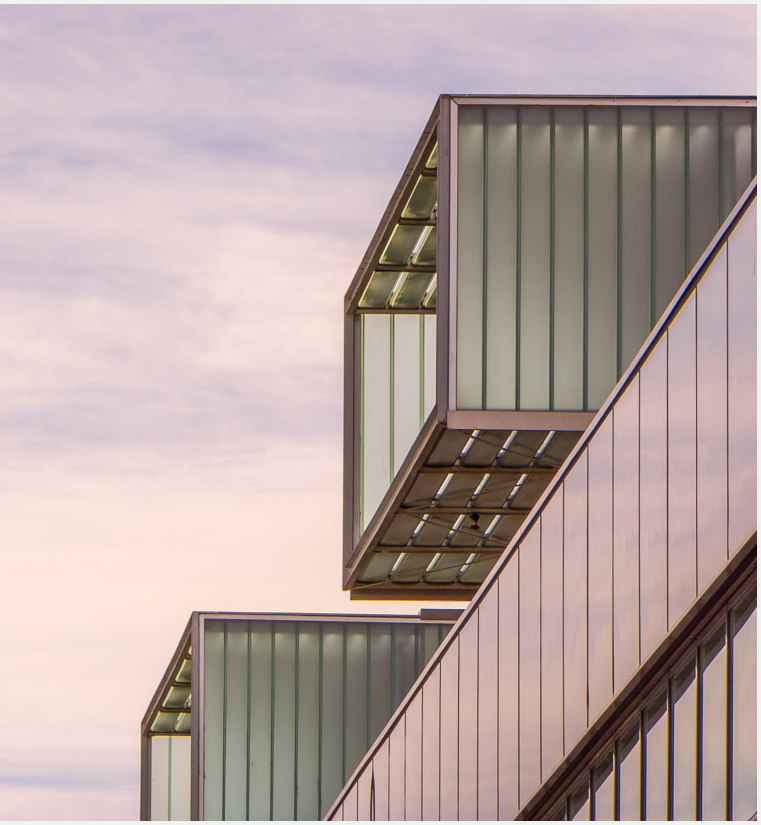
Change to the Kāinga Whenua Loan scheme in summary:

- Loan cap has increased from $200,000 to $500,000, to provide more choice and opportunities for people building, relocating, or purchasing a home on whenua Māori. A deposit of 15% of every dollar borrowed over $200,000 is required.

Epidemic Preparedness Notice still in place for commercial leases and mortgages

In May 2020 temporary law changes were made to the Property Law Act 2007 ("the Act") as part of the COVID-19 Response (Further Management Measures) Legislation Act 2020. These changes related to leases of commercial properties and all residential and commercial mortgages; including mortgages related to goods (e.g. business assets other than land and buildings). These temporary changes are outlined below.

Commercial Leases: the applicable period in the Act, which was 10 working days, was extended to 30 working days. This means that a landlord cannot exercise their right to cancel a lease due to unpaid rent of the tenant which has been in arrears for no less than 30 working days - and if a landlord does give notice to exercise their rights, the tenant has 30 working days after the date of service to remedy their breach. The best approach is for all parties affected to work together productively to find a solution that is feasible and will meet all parties needs and interests.



Mortgages: the notice period under the Act, which was 20 working days, was extended to 40 working days. This means that if a lender intends to give notice to the borrower that they are in default and outlines the action required to remedy the default, the timeframe to remedy the default is currently not less than 40 working days after the date of service of the notice.

To give a brief background to these temporary changes: the Prime Minister, with the agreement of the Ministry of Health, utilised the special powers provided under section 5 of the Epidemic Preparedness Act 2006 to declare that the effects of the COVID-19 outbreak were likely to disrupt or continue to disrupt essential governmental and business activity in New Zealand. The result of this was The Epidemic Preparedness (COVID-19) Notice 2020. An Epidemic Preparedness Notice is something governmental agencies can use to assist them to respond swiftly, and in this instance, to the continually evolving COVID-19 pandemic.

Since the Epidemic Preparedness (COVID-19) Notice 2020 was first issued, it has been reviewed every 3 months by government resulting in it being renewed each time. It was last reviewed on 12th September 2022 and is effective from 15th September 2022 through to 20th October 2022, when it will be reviewed again. The next renewal review is due mid-October and will be notified to the public by way of an official notice on www.gazette.govt.nz.

Therefore, any temporary law changes made under the Epidemic Preparedness Notice, whilst temporary, are still in effect. If you are a landlord, you do need to comply with the current 30 working day period until such time as the Epidemic Preparedness Notice is not renewed and comes to an end. The same goes for lenders having to comply with the current 40 working day period.

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Trees under the Emissions Trading Scheme (Pre and post 1990)

As climate change issues come more clearly into focus, so do the relevance and effects of the Emissions Trading Scheme.

If you are in the Scheme, or are buying or currently own a property that has trees that are affected by the rules and regulations surrounding the same, then you definitely need to be vigilant. There is no doubt that combined assistance is required from your lawyer and accountant alongside the consultants that are at the coalface implementing and administering the Scheme.

1990 is a key year with regard to this. Forests planted before 1st January 1990 cannot be counted as additional carbon storage under the Scheme, they are part of the baseline emissions and removals, and cannot be registered to earn units for carbon storage. This means that should an owner of such trees cut them down and change the land use (i.e. not replant the relevant area with new trees) without being granted an exemption or offset, the owner would then advise the Ministry for Primary Industries and pay for any emissions that are created from the deforestation. The effect is a line drawn which can hugely discourage excess deforestation. Realistically, only forestry use is appropriate for those lands.

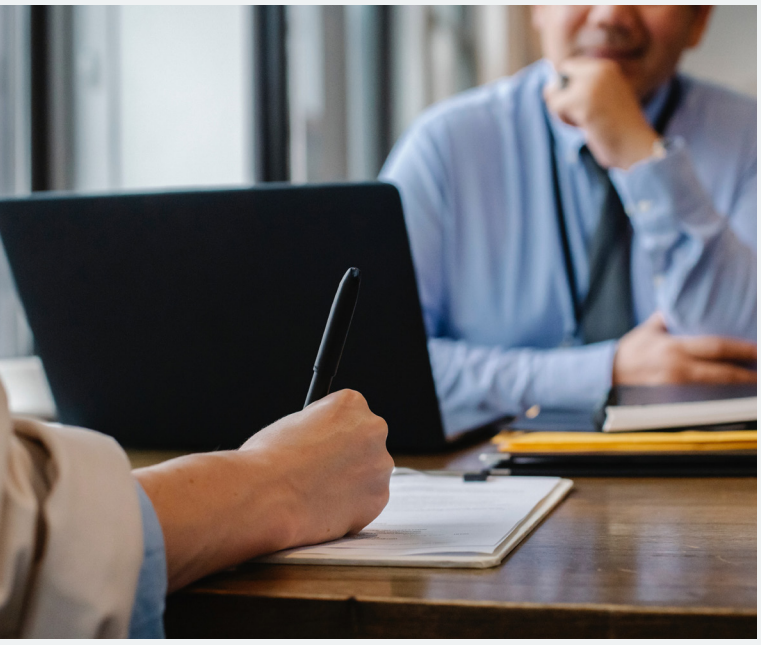
On the other side of the coin, trees planted after the 31st December 1989 are entitled to be in the Scheme with the pluses and minuses it has to offer.

There are offsets and flexibility. The rights of the pre and post 1990 landowners are starkly different. Caution is paramount. Understanding of long-term plans within the area and their implications are crucial. In many instances, the same rural land being sold may house trees whose planting dates straddle the 1989-1990 guideline.

The Kyoto Protocol of 2002 has obligations which are well known and are politically observed. The Scheme has become more entrenched, with 1st January 1990 being the unbending default position.

Slip Ups between marketing brochures and signing of agreement

One of the clearly defined and longstanding requirements regarding the sale and purchase of land in New Zealand is that the agreement must be in writing and signed by both the accurate seller and purchaser.



When the seller of the land uses a real estate agent to assist with the sale, that agent is the seller's agent. Under the law of agency, any representation made by the agent is deemed to be on behalf of their seller. However, within the parameters of the selling of land process outlined above there are opportunities for slip ups to occur.

If a misrepresentation, made by the seller or their agent, occurs between the commencement of the marketing program and the signing of an agreement for sale and purchase document, then an issue may arise. This issue links in where what is purported to be on sale, is not totally reflected in the written agreement that is required.

The facts are very important here. The misrepresentation made must directly affect the purchaser's decision to buy the land. If the chain of causation is broken between the making of any misrepresentation (either verbally or in writing) and the signing of the written agreement, then the claim would fail. The test is that the purchaser made the decision to buy, with the misrepresented facts being part of the marketing facts presented - with those facts not having been amended, clarified or rectified along the way.

If any issues arise in this area, it is advised to obtain legal advice as soon as possible; whether you are a seller or a buyer. Time frames apply and everyone involved needs to be put on notice.

Family Protection Act claims

The Family Protection Act ("the Act") is utilised by certain classes of family members who have an issue with the extent of their inheritance; either due to being left out entirely or where they perceive the share received is less than what is reasonable and fair because the deceased has breached their moral duty to that person to adequately provide for their maintenance and support.

An application is made to either the Family Court or the High Court. That said, there are only a limited class of people that can make a claim under the Act; being:

1. a spouse or civil union partner;
2. a de facto partner who was living with the deceased at the time of death;
3. children of the deceased (including children of de facto);
4. grandchildren of the deceased;
5. stepchildren; and
6. parents of the deceased (in some circumstances).

Claims can be settled informally with the help of lawyers via negotiation, however, some claims will end up in the Family Court. The Courts will consider whether there has been a breach by the deceased of their moral duty towards the class of person/persons making the claim and then what, if any, monetary award will be made from the estate to repair such breach. Of course, each case will vary greatly and any awards will be based on the facts of the case; and the Courts have a fairly wide discretion given the variety of case law in this area.

Focusing only on the category of persons 1 to 3 there is a requirement for the applicant to establish that there has been a failure to provide for their maintenance and support under the deceased's Will (which in the case of adult children may simply be a moral duty to be recognised). It will then be assessed whether the claim is for both maintenance and support or just support.

If you wish to make a claim, it must be filed in the courts within 12 months of the grant of administration. There are a number of forms to be completed, and a lawyer will assist you with drafting these in accordance with the specific High Court rules.

Whilst we can never fully protect an estate from having a claim made against it; we can try to limit the fallout from any claim made. As a Will maker it is best to remember your moral duty to provide for your family members. Careful consideration should be given to the circumstances of a situation where you may wish to leave someone out of your Will; remembering that they could bring a claim against your estate under this Act. Some Will makers consider leaving something, rather than nothing, which could be considered as fulfilling your moral duty and rebuking a claim against your estate. You can also make a written explanation of why your estate has been left to certain people (and not others) and keep this with your Will.

For more information on the class of people 4 through to 6, please contact us directly as each category has specific rules and restrictions relating to them.

Services Profile

Each newsletter we will profile one of the services we offer at Webb Farry

Trust and Estate Planning

Webb Farry is a trusted advisor to our clients for sound legal and practical advice for each individual's circumstances. Our extensive experience includes:

- establishing and administrating Family Trusts and Charitable Trusts
- preparing and advising on Wills and Enduring Powers of Attorney
- succession planning
- matrimonial, relationship property or partnership property structuring
- estate administration

Discussions around assets, wealth and individual's wishes can be stressful for families and we are experienced at guiding and managing situations sensitively and diplomatically.

Estate administrations are carefully managed and supervised by experienced practitioners who are specialists in this field. This ensures a thorough approach in a timely and cost-effective manner.

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