

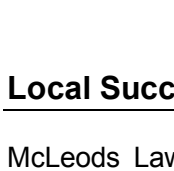
May 2008

CRUNCH TIME: Reviewing Your Mortgage



If your fixed rate mortgage is due to roll over, now is a good time to review your options. Significant savings can be made by consolidating debt to reduce unsecured, high interest loans, and it is possible to restructure your loan arrangements to give you more flexibility. For those clients whose borrowings include business loans, we can review your security and also advise on asset protection. For more information call **Sarah Jury**

09 407 0176 or **Irma Egenes 09 407 0170**.



GREEN: The colour of the future



The pace of change is accelerating for all of us on environmental issues. Sustainability, energy efficiency and resource use are hot topics. In our day to day lives, the Resource Management Act 1991 is the legislation which governs the allocation of most resources, whether water, clean air or land use. If you have a business or development proposal to which the RMA relates, **Katharine Taurau** is available for specialist legal advice on all RMA topics – from subdivisions to developments to water use rights. Call **Katharine** on **09 407 0173**

Local Successes

McLeods Lawyers are long-time supporters of the **Puketi Forest Trust**, which recently held a successful open day at the forest to celebrate five years of the restoration programme.

It is important to celebrate other successes, especially when it involves local production and the use of Northland Resources. **Mahoe Cheese** at Oromahoe was awarded 2 gold, 1 silver and 1 bronze awards from 6 entries at the National Cheese Awards. Congratulations to Jacob & Jesse Rosevear, young cheesemakers, and semi retired Tony van Stokkum, who are achieving at National level.

Snippets

Education Update – Violent Students

A school principal has successfully defended a judicial review of her decision to stand down a seven year old student with ADHD for five days after a violent incident in the classroom. The Education Act 1989 provides that a principal may stand down a student if there has been gross misconduct that is a harmful or dangerous example to others, or, the

We were recently asked to support the **Kerikeri Basin Weedbusters** group in their efforts to conquer the invasive weeds in and around the historic precinct. The group was delighted to be presented with some serious hardware to help them in the battle.



behaviour is likely to cause serious harm to the student or other students. Upon standing down a student, the principal must immediately notify the Ministry of Education and the parents, and give reasons for the decision. The High Court reviewed the decision and found that the principal acted within the law.

Consumer Guarantees Update

A recent High Court decision has finally answered a long-standing question arising from the Consumer Guarantees Act 1993: can a consumer take it upon themselves to arrange for the repair of a defective good and then claim the full cost back from the supplier; or, must the consumer first give the supplier the opportunity to provide a remedy?

The decision is unequivocally clear – the consumer must first afford the supplier the opportunity to remedy the defect. This is in line with the general policy of the Act that the suppliers of goods are liable to provide remedies as they, and not the consumers, should bear the risk of defective goods.

Claims against a Deceased Estate

The Family Protection Act 1955 (“the Act”) enables persons to make a claim against the estate of a family member whom they believe should have made provision for them in their Will by virtue of the family connection, but have not done so.

Who can claim?

The persons who may bring a claim under the Act are as follows:

- The spouse or civil union partner of the deceased.
- A defacto partner provided he or she was living in a defacto relationship with the deceased at the date of his or her death.
- The children of the deceased.
- The grandchildren of the deceased.
- The stepchildren of the deceased who were being maintained either partly or wholly by the deceased immediately prior to his or her death.
- The parents of the deceased.

When can a claim be made?

A claim can be brought under the Act within 12 months from the date of the grant in New Zealand of administration in the estate. The only exception to this is where an application is brought on behalf of a child or person who does not have mental capacity in which case the application may be brought two years from the date of grant of administration.

Claims are most commonly brought by children who for one reason or another, have not been provided for under their parent’s Will. In some instances, provision may have been made for them but the share which they receive is disproportionate to the shares received by other beneficiaries.

Frequently, an application will be brought because of economic need. However, there have been instances where adult children have brought a claim even though they were wealthy in their own right. The basis of the claim is that their parent had a moral duty to provide for them by virtue of their filial relationship.

How do the Courts treat claims?

In considering claims under the Act, the Court will consider not just the economic needs of the applicant but the overall merits of the claim having regard to the applicant’s circumstances at the date of death of the deceased, relations between the deceased and the applicant as well as the size of the deceased’s estate.

In considering applications under the Act, the Court must have regard to the moral duty of the deceased toward the applicant.

Family protection claims are essentially a balancing act between the wishes of the deceased and the needs of the applicant coupled with the consideration of the deceased’s moral duty towards her or his family.

Conclusion

Family protection claims can be very costly and usually the costs are borne by the estate. If you make a Will and decide to exclude children or other family members who would otherwise be entitled to, or would expect to benefit from your estate, you should state the reason clearly, in your Will. This can be of considerable help to the Court in determining how best to settle a claim under the Act and could also help to minimise the associated legal costs. If you do wish to exclude one or more family members from your Will, we strongly advise you to contact your lawyer first.