

# MURDOCH PRICE

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## NEWSLETTER

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### Murdoch Price – Same People, New Name, New Location

The merger of Price Voulk McCarthy and Murdoch Hall & Co (incorporating Wallace & Co) under the name Murdoch Price is now in its third year.

We chose the name Murdoch Price in honour of the deceased founders of the principal firms, namely Lee Murdoch (former Auckland Regional Authority - now called ARC - Chairman) and Ray Price, both long standing residents and personalities of Manukau City.

We moved to new premises to accommodate all our people in November 2007, and now have only a few things to complete.



Thanks to our staff, the move was relatively seamless.

We boast modern, relaxed offices, a lift, air-conditioning and more than ample free parking.

We share the complex at Botany Junction with a range of shops and services, including ethnic restaurants and bars, coffee shops, Banks, a medical centre and convenience stores.

We are at the gateway to the new Sir Barry Curtis Park and the proposed Flat Bush Town Centre across the iconic state of the art bridge at Ormiston Road.

#### Directions

See the sketch map to the left. Botany Junction is strategically sited at the crossroads of Ormiston Road and Te Irirangi Drive in Manukau City. It is a short step to Chapel Road. Our office is on the first floor at the southern (Manukau City) end of Botany Junction above the Westpac Bank.

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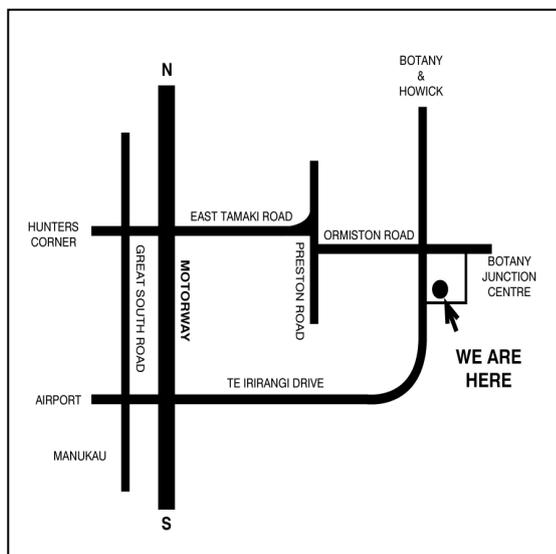
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### Client Information – Do You Have Email?

On the merger of the client databases inevitably some glitches occurred. Please let us know if there are mistakes in your postal name or address.

Future communications may be more efficiently carried out by email for those who have access to

computers. Could you please send us an email so that we can be sure we have your current email address on our database? Even better, you can request us to send to you a copy of the current details we have about you on our database so you can make any appropriate corrections and advise us by return.

## These Boots are made for Walking - The Walking Access Act 2008

If you are a farm owner this Act won't walk all over you!

On 25 September 2008 the Walking Access Bill was passed in Parliament. The origins of the Bill hail back to 2004 when the Government floated the idea of creating marginal public strips across privately owned land to allow all New Zealanders access to important recreational waterways.



Property owners were concerned law may be passed to compulsorily acquire privately owned land for public walkways and farmers raised various concerns related to disruption of stock, damage to private property near the walkways and public safety. One major concern was their own potential liability for accidents on their property.

In answer to these concerns a Walking Access Consultation Panel was established that received almost 1400 submissions in response to its consultation document. The Panel made various recommendations that have now been enshrined in the new Act.

The Walking Access Act 2008 ("the Act") establishes a New Zealand Walking Access Commission ("the Commission") to enhance and extend walking access to our great outdoors. The Commission will form national strategy and provide national leadership to co-ordinate access among key stakeholders. The Commission will also provide advice and information on walking access routes, determine the nature of the access (i.e. walking, bicycles, access with motor vehicles, dogs and use by hunters) negotiate new walking access across private land and facilitate the handling of any disputes.

The Commission will develop, promote and maintain a code of responsible conduct for users of walkways that will include such matters as

- Standards of behaviour to be observed.
- Information about Maori customs values and practices.

- Maori relationships with the land and waterways.
- A summary of benefits conferred and obligations imposed by the Act, and
- Any such other matters that the Commission feels would be beneficial to users of walkways and relevant landowners. A draft code is to be prepared as soon as practicable.

The Act preserves private property rights and provides that public access to private land should be achieved through negotiation and agreement with landholders rather than compulsory acquisition. It sets out the process that must be followed to declare a walkway over public land and to negotiate a walkway over private land and Maori freehold land.

Section 54 of the Act sets out a number of strict liability offences that may be incurred while using walkways. Strict liability offences include:

- Discharging a firearm
- Setting a net, trap or snare
- Placing poison or explosives
- Lighting a fire
- Taking plants
- Using a vehicle
- Taking a horse or dog on a walkway without authority

Section 56 sets out offences that require knowledge, intent or recklessness, such as interfering or disturbing livestock or wildlife, damaging or destroying structures and attempting to intimidate persons using a walkway.

The Act provides for the appointment of enforcement officers, for a term not exceeding 3 years, who have powers to prevent or stop offenders. A fine not exceeding \$5,000 may be imposed for offences under section 54 of the Act and a fine not exceeding \$10,000 for offences under section 56 of the Act.

Within 11 years from the commencement of the Act the Minister must report on a review into the Act and any recommendations for changes to the Act.

You can find out more about the commission at its website, [www.walkingaccess.org.nz](http://www.walkingaccess.org.nz).

## Family Trusts – Taking Care of the Children’s Inheritance

### Why a Family Trust?

Family Trusts can serve a useful purpose in protection of your home and other assets in a number of situations including:

- Claims by a future spouse or relationship partner
- Claims by family members against your estate following your death
- Payments for rest home care
- Claims by creditors of a business
- Protecting your children’s inheritance against claims by their spouse or relationship partner or creditors of a failed business venture.

### How does it work?

Your home is transferred to the Trust at market value which remains a debt owing by the Trust to you.

You can forgive this debt by way of gift at the rate of \$27,000.00 per 12 months (\$54,000.00 for a couple) without incurring gift duty.

Any increase in value of the property belongs to the Trust.



### Other Property

Not every asset is suitable for transfer to a Trust. We can advise you on this.

### What else

To complete the process you need a new Will and we recommend an Enduring Power of Attorney in case of physical or mental incapacity arising from illness or accident.

### Where do I go for more information?

Your lawyer has the knowledge and experience and is bound by professional ethics to provide you with the best and most effective advice.

## The Early Bird Catches the Worm – Time Limits in Civil Claims

Imagine that 2008 was just not your year. It began with the discovery that your home, bought four years ago, is a leaky home and needs major repairs that will cost over \$200,000.

A short time later your widowed mother died, leaving her entire estate, worth several million dollars, to your siblings because of a recent falling out with you – and that after years of living with you and your family. Then, two months ago, you lost your job because you stood up to your manager, who is a workplace bully. The final straw came when your plasma TV died last night during a test match, after having intermittent problems since you bought it 18 months ago.

You decide it is time to right some wrongs and go to see your lawyer. One of the issues that will be raised with you is limitation periods, which are time limits within which certain claims must be brought.

Some of the limitation periods that might apply in the Present scenario includes the following.

You believe that the real estate agent who sold you the house misled you and you would like to bring a claim under the Fair Trading Act 1986. However,



your claim under that Act might be barred because applications under the Fair Trading Act must ordinarily be made within three years of the date of the event.

You then consider bringing a claim through the Weathertight Homes Resolution Service against the architect, the developer, the builder, the roofing company and the council that issued the code compliance certificate.

Unfortunately, the house is 11 years old and section 393 of the Building Act 2004 prevents claims being brought 10 years or more after the date the work was carried out.

You may have better luck bringing a claim against your mother’s estate pursuant to the Family Protection Act 1955 (or on the basis of a testamentary promise, if you had been led to believe that you would inherit some of the estate). The general rule for bringing such claims is that they must be filed within 12 months of the date that administration or probate is granted. However, in certain circumstances you need to be even quicker, because the estate may be distributed after six months.

What about your case for unfair job dismissal? If you wish to bring a personal grievance pursuant to the Employment Relations Act 2000 against your employer, it must be submitted to the employer within 90 days from the date you were dismissed.

Surely the Consumer Guarantees Act 1993 won't let you down. However the Act provides that you must reject goods "within a reasonable time" and what is reasonable will depend upon the type of goods and how they were used. You might not be entitled to compensation if it turns

## Snippets

### **Building Act Update - Kiwi DIY Tradition Improved**

Hon. Shane Jones, the Building and Construction Minister, has taken steps to cut back on DIY building regulations enacted as a result of the leaky building crisis.

The Government has realised that the response to the crisis was too extreme and has reduced the scope of work that requires building consent. Schedule 1 (Exempt Building Work) of the Building Act 2004 was amended by Order in Council on 16 October 2008. The work that does not require consent now includes such things as:



- Changing existing household plumbing
- Removing or changing non-load bearing walls
- Installing or replacing windows or exterior doors
- Making a home more accessible by widening doorways and building access ramps
- Construction of retaining walls that retain not more than 1.5 metres depth of ground
- The construction, alteration or removal of a pergola

These changes will allow Kiwis to once again take up their tools and go about what they have always done in that long standing tradition of DIY.

### **Enduring Powers of Attorney – A Helping Hand When You Need It**

Powers of attorney enable an individual to appoint another to act on his/her behalf. Traditional powers of attorney are simply prepared and signed but have the disadvantage that they are not able to be used if the donor (the person giving the power of attorney) loses full mental capacity.

The Protection of Personal and Property Rights Act was enacted in 1988 to provide for enduring powers of attorney to overcome the restriction imposed on the traditional form. Enduring powers of attorney – which can come in two forms: Care and Welfare or Property – continue

out that the minor problems you have been having for 18 months should have been fixed and would have prevented the TV from stopping altogether.

These are only a handful of examples of the limitation periods that apply to a vast array of legal situations. While some of the limitation periods can be extended by a court, the examples highlight that it may be crucial to seek legal advice as soon as possible. Most claims must be brought within a certain time, or the opportunity to obtain a remedy will be lost.

notwithstanding that the donor ceases to have mental capacity.

Enduring forms of power of attorney were also relatively inexpensively completed.

However, by recent legislation, Parliament has imposed considerably more stringent requirements for the preparation and execution of enduring powers of attorney.

It is now necessary that both the donor and the person being appointed the attorney must be advised and have their signatures witnessed by separate lawyers. In each case the lawyer must make searching enquiries of the client and of course explain the effects of the document.

Regrettably, the involvement of separate firms of solicitors including at least one solicitor who is unlikely to be familiar with the client's circumstances will significantly increase the time taken and the cost of completing enduring powers of attorney.

Notwithstanding the changes, the enduring power of attorney remains a useful document in assisting clients in conducting their legal affairs, and can save considerable time and difficulty in the event of incapacity.

You should discuss enduring powers of attorney when consulting your legal advisor about your will or other personal legal documents.

*If you have any questions about the newsletter items, please contact us, we are here to help.*



## **CHRISTMAS GREETING**

*The partners & staff wish you and your families all the best for the festive season and the coming year.*

*Our offices will close on 23 December 2008  
and reopen on 12 January 2009.*