

# MURDOCH PRICE

Barristers & Solicitors

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## NEWSLETTER

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#### MURDOCH PRICE REALTORS - LAWYERS SELLING REAL ESTATE [please add picture here or best fit]

We at Murdoch Price have been successfully selling Real Estate for clients for the last three years.

We have a real estate Salesperson with over 20 years selling experience in the Auckland property market.

We are able to offer this service at a much lower cost than other agents but using the same marketing tools.

How: No listing agents fee, Managers' fee, Franchise holders fee,

Why: You know and trust your Lawyer  
We have integrity, honesty and charge a fair fee  
We address legal issues at the outset

What you pay: Pre agreed marketing costs  
Selling fee (payable only if property sells)  
Usual conveyancing costs from the date a sale agreement is signed

To see a selection of properties sold by us, and more information about the selling process go to [www.murdochprice.co.nz](http://www.murdochprice.co.nz)  
Or contact our salesperson Kim Hemus (021) 838 411 OR Barbara Vouk our in house consultant (021) 2151 099

### Love thy neighbour? What are your rights?

Disputes with neighbours can arise over many things; noise, fences, trees and animals etc. Ideally, you and your neighbour should be able to resolve any problem by discussing it and acting reasonably. However, if this is not possible, the law may be able to help resolve the matter.



#### Encroachment

When you purchased your property, your lawyer should have shown you a copy of the Certificate of Title for the property. The Certificate of Title records the plan of the property and its boundaries with neighbouring properties that were determined by land transfer survey. It can be disastrous for a land owner to discover that they do not actually own all of the land they thought they did because they relied on fences and natural boundary markers, rather than the boundaries shown on the Certificate of Title.

Encroachment is where you or a previous owner of your property has erected a structure and part of the structure is on a neighbouring property. This is technically a trespass and the encroaching land owner is legally responsible, whether or not they erected the structure. The definition of structure includes any building, driveway, path, retaining wall, fence, plantation or any other improvement.

The Property Law Act 2007 enables a party to seek relief where such an encroachment exists. Whether

or not relief should be granted is an exercise of judicial discretion and must be considered “just and equitable” in the circumstances. Relief can be provided by: directing that the structure be removed, granting an easement (or alternatively a right of possession for a specific time) over the land under the structure, or transferring that land to the person who owns the encroaching structure. If the wrongly placed structure is a fence, no relief may be granted if the dispute can be resolved under the Fencing Act 1978.

### Boundary fences

The Fencing Act 1978 sets out the rights and responsibilities relating to fences between neighbouring properties. It provides a statutory framework to resolve disputes that may arise. This includes (but is not limited to) determining what constitutes an adequate fence, the cost of building or repairing a fence, who is responsible for those costs, and who is to do the work. Land owners can enter into agreements or covenants concerning fencing matters that can be registered against the titles of the affected lands for a period of up to 12 years after registration.

### Overgrown trees

The overhanging of branches of your neighbour’s trees onto your property is also considered encroachment. You are allowed to cut the branches back to the point where the tree crosses the boundary; however it is a good idea to contact your local council to ensure the tree is not a protected tree or talk to your neighbour about it.

If your neighbour is not prepared to do anything, you are able to apply to the district court for an order requiring your neighbour to remove or trim any tree if it is causing damage or injury, obstructing your view or otherwise reducing the enjoyment of your property or if it is diminishing the value of your house.

Please contact Mike Hall or Rob Voulk our experienced Directors to discuss further.

Email Mike Hall on [MPH@murdochprice.co.nz](mailto:MPH@murdochprice.co.nz) or phone (09) 271 5880 ext.204.

Email Rob Voulk on [Rob@murdochprice.co.nz](mailto:Rob@murdochprice.co.nz) or phone (09) 271 5880 ext.213.

## Protecting the vulnerable – can they sign?

### Enduring Power of Attorney (EPA)



A Power of Attorney is a document in which you ask someone you trust to act on your behalf as regards your personal affairs.

The difference between an “enduring” power of attorney and an ordinary one is that the former continues even after you become mentally unable to deal with your affairs.

We regard the Enduring Power of Attorney (‘EPA’) as one of the most important and cost effective legal steps you can take to help yourself and those you care about. Nobody can know what’s around the corner. An accident or sudden illness may arise at any time. By then it may be too late to make one. It is wrong to think that EPA’s are just for older people.

Without an EPA, relatives of a person who cannot manage their own affairs will find looking after you much more difficult. They will not be able to give consent to medical treatment on your behalf, or manage your finances for you. At best this can be extremely frustrating, but often the consequence of not having an EPA is that an application must be made to the Court on your behalf to appoint a manager. This is time consuming and more expensive than the cost of making an EPA.

We often see people try to make an EPA too late, after they have lost the ability to deal with their affairs. By then we cannot give the necessary certification for a person to make one. We think it fairer on you and on your loved ones to prioritise making an EPA now to save expense and heartache later.

If you require advice on this please contact Richard Brown. E-mail: [richard@murdochprice.co.nz](mailto:richard@murdochprice.co.nz), phone: (09) 271-5880 ext. 205.

### When is a Court Order needed?

The Protection of Personal and Property Rights Act provides for the protection and promotion of the personal and property rights of persons who are not fully able to manage their own affairs.

If a person affected does not have an Enduring Power of Attorney (EPA) in place and lacks competence to give proper instructions or sign a document then a Court order is required that provides a means of guardianship for adult persons and for

management of property where people are unable to manage their own affairs.

**Medical Evidence**

The first step is to obtain a medical report from a doctor or other medical professional such as a psychologist or psychiatrist.

There are a variety of circumstances rendering a person incompetent to handle their own affairs and the reasons for the incapacity and the circumstances when it arises will mean differing approaches.

**Personal Order**

If a person has capacity in some areas but not in others, then the appropriate order is a personal order.

Personal Orders can be made for all purposes set out including living arrangements, medical treatment, education, rehabilitative therapy etc.

**Welfare Guardian**

A welfare guardian may make and implement decisions in relation to the affected person’s personal

care and welfare including where they live and their medical treatment.

The Court will only appoint a welfare guardian where the person wholly lacks the capacity to make or communicate decisions relating to any aspects of their personal care and welfare.

**Property Manager**

A property manager is required where the affected person has assets over \$5,000 in value or an annual income of over \$20,000.

The property manager is required to file a statement of assets and liabilities within 3 months of appointment and then an annual statement with the Court.

Please contact Raajan Sami our Senior Solicitor who is experienced in this area of law. Email [Raajan@murdochprice.co.nz](mailto:Raajan@murdochprice.co.nz) or phone (09) 271 5880 ext.209.

**Debt Collection – fastrack your claim!**

On 1 July 2014 the new District Court Rules 2014 came into effect replacing the District Court Rules 2009.

The Notice of claim procedure with its generic *Forms* and time consuming *Information capsules* are gone.

A *Statement of claim* must now be filed and served on the other party(s) to begin the claim process. The process is similar to the older rules that existed prior to the District Court Rules 2009.

The much sought after *Summary judgment* application is now available from the start of the claim process and/ or 10 working days after a statement of defence has been filed and served.

*Summary judgment* is a fast track option available to a party as opposed to the standard track (*Statement of claim*) that follows the normal process via a case management conference before a short, simplified or full trial is allocated.

The major advantage of *Summary judgment* is the ability of a party to get before a judge early and to seek judgment after a hearing.

Evidence is usually given by affidavit (sworn statement) only and witnesses are not required to appear at the hearing unless there are special circumstances.

Debt collection and recovery for a claim up to \$200,000 (claims over \$200,000 are heard in the High Court) now becomes more attractive for creditors in the District Court.

It will be interesting to see how the court system copes with the expected increase of *Summary judgment applications*.

Please contact Raajan Sami our Senior Solicitor who is experienced in debt collection and all recovery matters in the District Court; Email [Raajan@murdochprice.co.nz](mailto:Raajan@murdochprice.co.nz) or phone (09) 271 5880 ext.209.



“...Stop wasting time and take action now to turn that bad debt into cash for your business...”

## Shareholders agreement – an overview

A Shareholders' Agreement is a contract between the shareholders of a company. Without one, you risk a dispute at some point down the track when each shareholder has a different idea of who can do what, when they can do it, how it is done, and what was agreed at the outset. Like a pre-nuptial agreement – you do not really need one, until you need one (at which time it is too late).

Typically a Shareholders' Agreement is signed at the outset of a business arrangement, but it is never too late – they can be entered into at any time with the agreement of the shareholders. It will usually record (amongst other things):

- The nature of the business,
- How it will be run,
- Decision making mechanisms,
- How many directors there will be and how they are appointed,
- The role, rights and responsibilities each shareholder has,
- How capital contributions or financing will be arranged and secured, and
- Exit strategy – what happens if one shareholder wants to sell (or if some other change or event affects a shareholder).

### Are You Compatible With The Other Shareholders?

Perhaps the most important role of a Shareholders' Agreement is to ensure the parties are on the same page from the outset. If nothing else discussing the agreement at the outset can highlight differences in understanding that may otherwise go unnoticed.

### What Are My Shares Worth?

The Companies Act does not prescribe how shares should be valued if one party wants out. Many Shareholders' Agreements record the agreed process for when one party wants to sell their shares, reducing uncertainty and the risk of dispute. This can save a lot of money.

### Removing A Shareholder/Director

Your Shareholders' Agreement might record different circumstances in which a shareholder or director can be removed. For example, if a shareholder or director has breached an essential term of the Shareholders' Agreement, acted dishonestly or in a way that is detrimental to the business, they can be removed. This can be easier than relying on the provisions of the Companies Act, which can be limited.

If you require advice on this or any other business related matters please contact Richard Brown at Murdoch Price, E-mail: [richard@murdochprice.co.nz](mailto:richard@murdochprice.co.nz), Ph: (09) 271-5880 ext. 205.

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