

OWNERS OF "ON SOLD" PROPERTIES WITH IAG ASSIGNED CLAIMS

This information is important for homeowners who have unresolved earthquake claims (either under cap and with EQC, or over cap and with your insurer) and who:

1. Purchased their property after the Canterbury earthquakes;
2. Have a property that was insured with one of the IAG brands (IAG, Lumley, NZI, State) at the time of the Canterbury earthquakes;
3. Have a deed of assignment from the original property owners of their earthquake claims; and
4. Have not received confirmation from IAG that it will defer reliance on a limitation period defence for any outstanding claim for earthquake damage to the property.

Background

In December 2015, the Insurance Council of NZ issued a media release which stated that "ICNZ members [which include the IAG brands] have agreed not to plead a defence under the Limitation Act 1950 or the Limitation Act 2010 for any residential claim relating to the Canterbury Earthquakes where proceedings are filed in the Courts before 4 September 2017".

After the ICNZ media release, some insurers, such as Tower, Southern Response and IAG issued their own statements, agreeing to further defer reliance on a limitation period defence. In IAG's case the deferral was until 30 June 2018.

On 31 August 2017, IAG issued a media release which purported to exclude assignees from its deferral, on the basis that they are not customers of IAG. In IAG's view the limitation period has already expired for any assignment of the September 2010 and February 2011 claims.

What does IAG's statement mean?

It is not clear when the six year limitation period starts. We consider that it most likely starts when IAG accepts or declines the claim, but this has yet to be considered by the Courts.

If IAG's position is correct (we do not agree it is), any claim you file in Court could be defended by IAG on the basis that the limitation period has expired.

Until 31 August 2017, IAG had not stated that its deferral of a limitation period defence until 30 June 2018 did not apply to assigned claims. In fact, IAG has expressly confirmed its intention not to rely on the limitation period until 30 June 2018, to some home owners with assigned claims.

Many home owners have relied on the ICNZ media release, and the subsequent representations by insurers, including IAG. IAG must have intended people to rely on that statement and it cannot now change its position without giving reasonable notice of its intention to do so. In our view, reasonable notice is no less than 3 months.

What do I need to do?

If IAG's position is correct (we do not agree it is), and you cannot resolve your claim with IAG and you want to commence proceedings, IAG can plead a defence under the Limitation Act 1950 or 2010. That defence could be fatal to your claim.

If IAG's position is not correct:

1. You have until 30 June 2018 to commence proceedings if necessary to resolve your claim; or
2. IAG has to give reasonable notice, of no less than 3 months, that its extension to 30 June 2018, will not apply to assigned claims.

This will only be a problem if you cannot resolve your claim with IAG and it is necessary for you to commence proceedings. If you consider this is likely to affect you, please contact us to discuss this further.

For further information, please contact:



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