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THE IMPORTANCE OF HAVING A CONTRACTING OUT AGREEMENT FOR DE FACTO RELATIONSHIPS

Often people are not aware of what constitutes a de facto relationship under the Property (Relationships) Act 1976 ("the Act") and that upon separation, relationship property will generally be divided 50/50 between the parties.

What is a de facto relationship?

The Act defines a de facto relationship as a relationship between two people who are both aged 18 years or older, who live together as a couple and who are not married or in a civil union with one another. In certain circumstances, a couple may be in a de facto relationship even though they are not living at the same residence.

In determining whether two people live together as a couple, all the circumstances of the relationship will be taken into account to determine whether it is a de facto relationship.

These circumstances include for example, the duration of the relationship, whether the couple share a common residence, financial dependence or interdependence, the care and support of children, the ownership and use of property and the reputation and public aspects of the relationship.

A relationship of 3 years or less will be considered a relationship of short duration.

In the circumstances of a relationship of short duration the parties will generally take out what they have contributed to the relationship upon separation.

What happens to your property if you are in a de facto relationship and you separate?

In the absence of a contracting out agreement relationship property is generally divided 50/50 upon separation.

Relationship property is defined under section 8 of the Act and includes for example, the family home (whenever acquired) and generally speaking, all property acquired by either party during the course of the relationship for the use or benefit of both parties.

What is a contracting out agreement?

A contracting out agreement (also known as a prenuptial agreement) is an agreement between a couple which sets out what is to happen to each party's assets in the event of separation or death.

This means that property which would ordinarily fall into the category of relationship property can be kept separate by one party from the other.

Often people will want to keep assets which they acquired before the relationship began separate, such as real estate.

Example scenario

Jordan and Charlie are in a de facto relationship. Before they met Charlie purchased a beach house using Kiwisaver and inheritance funds.

After six months of dating Jordan and Charlie decided to move into Charlie's beach house together.

They lived a relaxed coastal life together in the house for just over 3 years.

Things then started to change. Charlie discovered Jordan had financial difficulties which were causing a huge strain on the relationship and eventually Charlie decided to break it off.

Because the parties did not have a contracting out agreement Jordan, despite never contributing a cent toward the property, has a claim for 50% of the house as it was the main family home.

If you have any questions about contracting out agreements or if you would like advice in relation to your particular circumstances get in touch with one of the team at Collins & May.

20 MINUTE FREE

**WANT to review your Family Trust structure?
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