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## MARRIAGE/DE FACTO RELATIONSHIPS OF SHORT DURATION

The introduction of the Property Relationships Act 1976 ("the Act") provided legislation to assist parties divide property upon the breakdown of a de facto relationship. Previously the former Matrimonial Property Act 1976 only applied to married people.

Clearly Parliament viewed a marriage to be different to de facto relationships. For those marriages or de facto relationships under the three year threshold, the Act provided a different set of rules:

- **Marriage of Short Duration (S14)** - this Section is applicable to all marriages of short duration. The family home, family chattels and other relationship property are to be divided equally unless you can show one of the provisos in Sub-Section 2 at which stage relationship property would be divided in accordance with the contribution to the marriage;
- **De facto Relationships (S14A)** - orders can only be made if the Court is satisfied there is a child of the de facto relationship or an applicant has made a "substantial contribution" to the de facto relationship and the failure to make an order would result in a "serious injustice".

### Intermittent Relationships

S2B of the Act states that a period of a de facto relationship immediately preceding the marriage is to be included in the period of the marriage. The difficulty arises where:

- You have a short de facto relationship; followed
- By a period of separation; followed
- By a subsequent marriage.

These situations are not uncommon, but pose difficulties because after the period of the de facto relationship there was a separation?

The Courts to date have taken two approaches:

- The marriage can only be severed by a dissolution (i.e. Court order). So you could

have a number of separations throughout a marriage so that added together they make the three year threshold;

- The approach taken by the Courts to a de facto relationship is different. It may be that a separation severs the de facto relationship and the reconciliation commences a second de facto relationship. The difficulty of this, of course, is that you may have two periods of a de facto relationship but not meet the three year threshold.

*See I v A Family Court, Greymouth FAM2004-018-000198, 28 July 2005, (Judge Bisphan) "A period of separation of 13 months between 2 periods severed the connection between the first and second relationships, rendering the relationship one of short duration".*

However, this two tier approach may be about to change as a result of a recent Court of Appeal decision in *B v B [2009] NZFLR Arnold J at para 21*

*"That said, we do see some force in Ms H's submission that there is a danger that the question of when a relationship ends may be analysed rather differently in respect of married and de facto couples. The Courts may be less likely to regard periods of separation between married couples as involving the end of one relationship and the start of another, than they are in relation to de facto couples, simply because of the nature of a marriage. There is a question whether such an approach is correct, given the evident purpose of the Act to place married and de facto couples on the same footing and the application of the same "end of relationship" tests to married and de facto couples (compare, for example, ss2A(2) and 2D(4). But this is not an issue that can be resolved at the present case".*

The dicta comment of Arnold J suggests that an intermittent de facto relationship should be treated in the same way as a marriage.