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RELATIONSHIP PROPERTY — DEFINITION

Welcome to 2015

A warm welcome to all clients for 2015. What a fantastic summer it has been, but like all good things, they come to an end and as we enter February one reverts to work mode. Since the general election in September, the economic news throughout New Zealand has been excellent so we wish you all the best for a prosperous 2015.

Relationship Property - Definition

The first newsletter topic this year is the definition of "Relationship Property". The Property (Relationships) Act 1976 ("the Act") allows for the classification of two property sorts:

- *Relationship Property - which is divided prima facie 50/50 subject to any adjustments allowable under the Act; and*
- *Separate property - which would be retained by one party as their separate property and not available for equal division.*

Relationship Property

In a nutshell, relationship property is defined as the family home, the family chattels and any other item of property acquired by either party during the marriage and/or de facto relationship.

Separate Property

This is all other property owned by a party to a de facto relationship and/or marriage, together with any inheritance or distributions from a Trust which have not been intermingled with relationship property.

How Does All This Work?

Q. Ben owns a property which he purchased in 2001. In 2009 Ben met Sue. After a whirlwind romance, Ben invited Sue to move into the property with him. Unfortunately after three and a half years the relationship ended.

A. Because the de facto relationship was in excess of three years and because Sue moved into Ben's property, then the property is to be divided equally. The moment Sue moved into Ben's home, the property changed classification from Ben's separate property to relationship property.

Q. Ben owned another property which had been tenanted throughout his relationship with

Sue. This property had been acquired in 1999.

A. Because Ben acquired this property before the relationship and because it wasn't used as the family home, the classification remains "Ben's separate property". Sue receives zero.

Q. During the relationship, Sue's father passed away and she received an inheritance of approximately \$200,000.00. Sue obtained legal advice and elected to place the inheritance on term deposit with her bank. What happens to this asset on separation?

A. The Act specifically provides that inheritance remains a party's separate property unless intermingled with relationship property. Because Sue has retained the asset in its original status by placing it on interest bearing deposit, it is to be retained by her as her separate property and Ben receives zero.

Q. When Sue moved in, Ben still had a mortgage with Westpac of \$200,000.00. Sue being madly in love with Ben elected to use her inheritance moneys to pay off Ben's mortgage. What happens in this situation when Ben and Sue separate?

A. The moment Sue elected to pay off Ben's mortgage loan, then inheritance moneys became intermingled with relationship property. In essence, the debt has been wiped and the equity in the family home would be divided equally upon sale. In effect, by intermingling, Sue has given away half her inheritance to Ben. The same rule would apply should you receive funds as a beneficiary from your parents' Family Trust. It is imperative that you don't intermingle if you wish to retain the distribution from the Trust as your separate property. The moment you intermingle, it changes classification to "relationship property" and is divided equally.

The above scenarios will give you a basic understanding as to how relationship property and separate property are dealt with under the Act. Claims can be made against ones separate property where contributions are made, so there are always exceptions.