COLLINS & MAY | LAW

NEWSLETTER

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PROTECTING YOUR ASSETS FROM YOUR CHILDREN'S PARTNERS

There is increasing concern among many clients regarding protecting their estate from potential claims that could be made by their children's partners under the Property Relationships Act 1976 ("the Act"). Invariably the risk is that after many years of hard work that a portion of your assets could end up in the hands of people that you have not yet met. To qualify for an equal share of relationship property under the Act all you need do is live with someone in the nature of a marriage for a period of 3 years.

Take the situation of David and Sally who were married for some 52 years. David passed away at the age of 72 leaving all his assets to Sally. Sally lived for another 5 years and upon her death she left all the assets to her 2 children Craig and Rosie.

Once all the testamentary debts had been repaid the Estate was worth a little over $1M which was divided equally between Craig and Rose.

Craig chose to use his inheritance moneys in acquiring a rental property in Auckland to try and take advantage of the heated property market. Rosie on the other hand didn't own her own home but lived with her latest boyfriend Steve who was a recovering P addict. Both Rosie and Steve were over the moon to receive Rosie's inheritance because it enabled them to leave the expensive rental market in Wellington and purchase their own home in Tawa. However poor old Steve could never get on top of his addiction and stared using P again. After a period of 6 months Rosie couldn't put up with the situation any more and asked him to leave the Tawa property. The only problem for Rosie of course is that she and Steve had been in a de facto relationship for over 3 years and therefore half the Tawa property became Steve's under the Act.

You don't have to live in the property for 3 years. You only have to be in a de facto relationship for 3 years. At the time of Rosie and Steve's separation all relationship property was to be divided equally because the relationship had met the 3 year threshold. Poor David and Sally "if they had known how part of their hard earned earnings ended up in the hands of the P addict they would be turning in their graves".

You can avoid this situation by some careful Estate planning and this is what we suggest:

- Instead of leaving your Estate to children you would leave all assets to a discretionary Family Trust;
- The Trustees of the Trust would include an independent person to ensure that your wishes after your death are adhered to rather than being controlled by your children who may not have the same prudence that you have in terms of managing assets;
- Upon your death the Trust would offer the children interest free loans as opposed to distributions. Should any of the children's relationships come to an end then the Trust would simply make demand for the loan to be repaid rather than the capital being shared equally as a deposit;
- For all intents and purposes your children still receive the benefit of their inheritance interest free however if the relationship comes to an end then it is a debt that needs to be repaid back rather than given away to partners / spouses of children.

Should you wish to avoid the possibility of the above scenario then please contact one of our solicitors who would be more than happy to meet with you in order to implement an avoidance plan.

20 MINUTE FREE

WANT to review your Family Trust structure?
THEN call us and take advantage of our 20 Minute Free interview