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DO I NEED A CONTRACTING OUT AGREEMENT ?

Section 21 of the Property (Relationships) Act 1976 (“the Act”) allows parties to a relationship to make their own rules applicable to the division of property in the event of separation or death. The Agreement can only be set aside by the Family Court if it is satisfied that giving effect to the Agreement would cause “serious injustice” to one party.

Subject to certain exceptions, the Act provides that on separation or death all relationship property is to be divided equally. This is to recognise each party’s equal contribution to the marriage or partnership.

With a s21 Contracting Out Agreement the parties are free to enter into a binding contract which provides their own rules as to the division of property in the event of separation or death rather than rely on the provisions of the Act.

Such an Agreement must satisfy the following formalities:

- (a) Must be in writing;
- (b) Must be signed by both parties;
- (c) That before signing each party must have received independent legal advice about the implications and effects of the Agreement;
- (d) Each signature must be witnessed by a lawyer;
- (e) That the witnessing lawyer must certify that they have explained the implications and effects of the

Agreement to the party before the document was signed.

An example where a Contracting Out Agreement would be useful is in the event where one party owned a mortgage free home prior to a marriage and then after the marriage, began living in the home with the new partner.

If there is no Contracting Out Agreement then the Act would apply in the event of separation and the relationship property would be split equally between the parties. If there was a Contracting Out Agreement protecting the house as separate property, then the house would not be able to be divided equally in the event of separation.

If you wish to protect pre-relationship property, then it is important that you enter into a Contracting Out Agreement either before or during the relationship to obtain this protection.

If you have any queries, or require any assistance in this matter, do not hesitate to contact us.

- *The next newsletter covers the topic of the use of the Statutory Demand Procedure for Outstanding Debts—by Eugene Collins.*