

# COLLINS & MAY } LAW

NEWSLETTER

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## • Contacts

### Lloyd Collins

[lloyd@collinsmay.co.nz](mailto:lloyd@collinsmay.co.nz)

DD: 576 1403

### Paul May

[paulm@collinsmay.co.nz](mailto:paulm@collinsmay.co.nz)

DD: 576 1400

### Eugene Collins

[eugene@collinsmay.co.nz](mailto:eugene@collinsmay.co.nz)

DD: 576 1407

### Nicola Goss

[nicola@collinsmay.co.nz](mailto:nicola@collinsmay.co.nz)

DD: 576 1404

### Paul Whitmarsh

[paulw@collinsmay.co.nz](mailto:paulw@collinsmay.co.nz)

DD: 576 1409

### Davina Rowan

[davina@collinsmay.co.nz](mailto:davina@collinsmay.co.nz)

DD: 576 1411

### Camille Bell

[camille@collinsmay.co.nz](mailto:camille@collinsmay.co.nz)

DD: 576 1406

### Amy McLennan

[amy@collinsmay.co.nz](mailto:amy@collinsmay.co.nz)

DD: 576 1405

### Michael Moohan

[mike@collinsmay.co.nz](mailto:mike@collinsmay.co.nz)

DD: 576 1417

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## Moving in for a while? - it could be a costly exercise

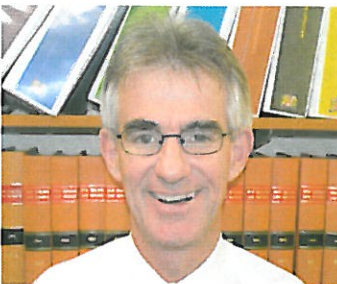
By Lloyd Collins

When the Property Relationships Act 1976 ("the Act") came into effect on 1 February 2002 it extended the jurisdiction of the Family Court to make property orders on separation of people who have been in de facto relationships. Up until that time, of course, the Act only applied to people who were legally married.

One of the areas in the Act where de facto couples are treated differently to married couples is when there is a relationship of short duration. A relationship of short duration is defined in the Act as being in a relationship under three years. In the married couple situation, a party receives a proportion of assets in accordance with the contribution to the marriage partnership where the marriage has been one of short duration. However, in the case of de facto couples the Act was drafted on the basis that no property orders should be made during the first three years to enable those people who had chosen not to become legally married a period of time in order to decide whether the relationship was going to be permanent or not.

The only exception to this is S14A of the Act which states the Court may make orders where a de facto relationship was one of short duration if it is satisfied:

- That there is a child of the de facto relationship; or
- That the applicant has made



a *substantial contribution* to the de facto relationship; and

- The Court is satisfied that failure to make the order would result in "*serious injustice*".

Back in 2002, of course, there were no decisions from any Court of jurisdiction in New Zealand defining the terms "*substantial contribution*" and "*serious injustice*". Up until recently we have been advising clients in de facto relationships of a short duration that it would be virtually impossible to obtain a property order because the terms "*substantial contribution*" and "*serious injustice*" would be a very difficult legal threshold to satisfy.

We have now had to review our advice in this regard as a result of the recent decision of L v P, a decision of Asher J in the Auckland High Court. The Court held that the de facto relationship as a matter of fact was one of short duration. At the end of the relationship the parties had recently sold a property which they had lived in and there was a sum of money of \$420,000.00 that was at issue. The source of those moneys and the original purchase of the property have been provided 100% by L. P argued that as a result of other factors

she had made a substantial contribution to the de facto relationship and failure to award her a portion of the sum of \$420,000.00 would amount to a serious injustice. This is what the High Court held:

- That during the relationship P was responsible for managing the household, performing household duties, providing income for the purposes of living expenses, attending to cleaning and painting of the property, creating a garden at the property, and had contributed her furniture and a BMW car at the commencement of the relationship, all of which added up to a substantial contribution to the de facto relationship; and

- That where a party does not receive a just return for contributions to the de facto relationship, then this would constitute a "*serious injustice*".

The Court then carried out a balancing exercise in terms of apportioning each party's contribution to the de facto relationship and awarded L 70% and P 30%.

This decision, therefore, highlights the importance of putting in place a Contracting Out Agreement before you enter a relationship. Even in a de facto relationship of under three years, this decision shows that a non-owning party to the de facto relationship can satisfy the "*substantial contribution*" and "*serious injustice*" tests laid down by the High Court.