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Relationships of Short Duration

By Lloyd Collins



When the Property Relationships Act 1976 ("the Act") was passed into law on 1 February 2002, it was the view of most legal practitioners in New Zealand that the Act would not apply to de facto relationships unless the parties had been in such a relationship for over three years.

However, there is an exception to the three year requirement as set out in s14A of the Act. The Court can award a portion of relationship property to a non-owning party who has been in a relationship for under three years if it can be shown that the non-owning party has made a substantial contribution to the de facto relationship, and the Court is of a view that the failure to make an award will result in serious injustice.

Two recent High Court decisions show that the

initial legal view that awards would be rare unless a non-owning party could meet the three year threshold has proved to be incorrect. A recent decision in the High Court at Auckland has awarded a non-owning partner in a relationship of 2½ years 30% of the sale proceeds of a property because that partner attended the domestic duties throughout the relationship. Such duties included cooking, washing and ironing, decorating and maintenance of the gardens. The High Court was of a view that to deny the non-owning partner a portion of the property would amount to a serious injustice and therefore the legal test in s14A was met.

This means therefore that clients prior to entering into a de facto relationship should:

1. Ensure that all their assets are owned by a family trust before the relationship commences; and/or
2. Enter into a Contracting Out Agreement pursuant to s21 of the Act whereby a non-owning partner waives any right to pre-relationship property.

The High Court has now made it clear that there are remedies available in the Act, even where the de facto relationship has not met the three year threshold.

Our next newsletter is by Eugene Collins and covers the topic of resolving a dispute without involving the Courts.