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COLLINS & MAY | LAW

NEWSLETTER

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If you would like any of our previous newsletters or any of the our free booklets on Wills, Family Trusts, Relationship Property of Business Law please email us.

Valuation Date for Relationship Property

By Lloyd Collins

Upon separation of a marriage or relationship some common questions arise:

(a) Who pays the mortgage and rates from the separation date?

(b) What if the property increases in value after separation but before an agreement is signed settling relationship property. Is the property divided at the separation day value or at the later date?

(c) What happens in reverse if the property decreases in value as is happening in new Zealand throughout 2008?

The Property Relationships Act 1976 ("the Act") states:

(a) That all property is to be classified as either relationship or separate property as at separation date; but

(b) The appropriate valuation date for relationship property is *"hearing date"*.

The hearing date is defined as the date the matter would be heard in the Family Court. This often means some 2-3 years after the separation date. A consequence of this pre 2008 is that the property has probably increased in value somewhat yet only one party to the marriage relationship has been meeting the mortgage payments and other outgoings.

There is nothing in the Act which specifies who should meet the outgoings post separation. This is always a juggling exercise and more often than not causes a great deal of stress. The Bank will not be concerned that you have separated. As far as they are concerned you are both jointly liable for the mortgage and it has to be paid.

This is how it all works:

(a) The capital value of the house would be valued at the date you enter into an agreement or hearing date on the basis that you jointly own the property and therefore both parties should enjoy the benefit of any capital gains.

(b) Pursuant to s2 of the Act, the Family Court retains an over-riding discretion to depart from a hearing date valuation and does so in certain cases. A good example of this is a motor vehicle. If after separation, one party has had the benefit of the motor vehicle exclusively and in most cases motor vehicles decrease in value then the party who has had the benefit should bear the cost of the depreciated portion following separation.

(c) This may appear unfair that both parties enjoy the capital gain yet only one party has been paying the mortgage, rates and insurance. The Court then deals with this under s18B. Pursuant to this provision, the Court has an overriding discretion to compensate a party who has been meeting post separation expenses in order to maintain relationship property.

The next newsletter will cover the topic of residential tenancies.