

## Legal update - Going separate ways: an update on personal property

24 September 2014

In the not too distant past a joint purchase of a home was often only undertaken by a couple once they were married or settled in a long term de facto relationship. In recent times however such purchases are being undertaken by couples who have been in relationships for a relatively short time and where financial contributions to the purchase are considerably different. With considerable increases in the value of property, there has also been an increase in parents providing money to their children to assist in a house purchase, as young couples struggle to save the amount required for a deposit.

Both these situations can produce unwanted results, if a relationship ends, arising from the provisions of the Property (Relationships) Act 1976 (PRA). There are however several ways to avoid these consequences.

When parents make gifts to children or a child otherwise receives an inheritance, such gifts are not ordinarily relationship property as long as they remain separate. However, it often happens that a child receiving such gift immediately reduces the mortgage on the primary residence of the relationship. In this case, if the relationship ends after continuing for more than three years, the gift is then considered relationship property and shared equally under the provisions of the PRA relating to the family home.

One way to avoid this situation is to treat the payment to the child as a loan, which then becomes a relationship debt and dealt with as such in the event of separation.

The other way is to have the amount of the payment classified as separate property in a contracting out agreement pursuant to the PRA. The agreement may be limited to classifying this payment as separate property and leaving other property to be determined in accordance with the PRA. The parties can also agree that, in the event of separation, the party who has contributed this sum will have the amount repaid either at the original figure or as a percentage of the original purchase price.

This second option then links the contribution to the rise or fall of the value of the property. The same applies to the simpler situation where one party is contributing a larger share of the purchase price than the other.

Care should also be given when an inheritance is received later in a relationship as that too becomes relationship property as soon as it is used in reduction of the mortgage of a family home. Inheritances or gifts can become relationship property also if mingled with relationship assets in other ways.

These issues will also be important for people entering into new relationships following one that produced children. In this situation, determining the status of property will be crucial to enable that property to be passed to children of the earlier relationship, in due course.

### Auckland

188 Quay Street  
Auckland 1010

PO Box 1433  
Auckland 1140  
New Zealand

P: +64 9 358 2555  
F: +64 9 358 2055

### Wellington

Aon Centre  
1 Willis Street  
Wellington 6011

PO Box 2694  
Wellington 6140  
New Zealand

P: +64 4 499 4242  
F: +64 4 499 4141

### Christchurch

83 Victoria Street  
Christchurch 8013

PO Box 322  
Christchurch 8140  
New Zealand

P: +64 3 379 1747  
F: +64 3 379 5659