



## CONTRACTING OUT AGREEMENTS

Many couples today chose to use Contracting Out Agreements (once commonly called Pre Nuptial Agreements) to clearly record how property is to be owned now or in the future and to keep certain assets from falling into the joint relationship property pool.

When a relationship breaks down, the provisions of the Property (Relationships) Act 1976 determine the division of relationship property. Where a couple have been in a relationship (either married or de facto and including same sex) for three years or longer, unless strong grounds for an exception to equal sharing can be established, each party is entitled to share equally in the relationship property pool. Any monies provided by you as a parent to help your child (and their partner) establish themselves financially can, without safeguards being put in place, disappear into the relationship property pool and be shared equally in the event of separation or death.

A Contracting Out Agreement can be used to contract out of these equal sharing provisions. It allows the couple to form their own agreement as to the ownership, status and division of their property. Certain assets can be preserved as separate property and kept safe from any later sharing.

Since February 2002 de facto relationships have been included in the "three year sharing". Unlike a marriage, where the date of marriage is officially recorded, the commencement date of a de facto relationship can be murky. Disputes over the commencement date of a relationship are not uncommon. Although the Act provides guidelines to take into account it is important to note that a de facto relationship does not necessarily commence when the parties start co-habiting. Depending on the circumstances, it can be successfully argued that in fact the relationship started at an earlier date and that the 3-year equal sharing clause has already come into effect.

Contracting Out Agreements may be particularly appropriate where one party has a child or children from a previous relationship to provide for or where, at the beginning of the new relationship, there is a significant difference in the property each party owns. To find out that, regardless of registered ownership, a new partner can move into and live in the home and be entitled, after the requisite period of time, to half the equity in the event of separation or death may well be a bitter pill to swallow. Completing a Contracting Out Agreement can prevent this from happening and also give the parties to a relationship the opportunity to consider how they wish to own future acquired property.

Typically, a Contracting Out Agreement will record;

- the parties circumstances at the time the agreement is signed
- property owned by each party at the date of the agreement
- confirmation that the couple wish to contract out of the Act
- details of what property is to be kept as separate property
- details of agreed joint ownership (particularly of the family home)
- the rules applying to ownership of separate property and other property
- ownership of property to be acquired in the future
- intermingling of property
- whether the agreement is to apply only on separation or on the death of one or both parties

To be legally binding, agreements must be in writing and signed by both parties. Each party must first receive independent legal advice and must sign the agreement in the presence of a solicitor.

A properly completed Contracting out Agreement is treated with respect by the Courts and will generally only be overturned on the grounds of 'serious injustice'. The agreement is a relatively straightforward and cost effective way to ensure that, where it is appropriate to do so, specified property remains protected for the individual.

If you would like more information, please phone a member of our family law team.

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For more information, please contact one of our offices.

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