



## SAVING THE FAMILY HOME

Despite a reasonable amount of publicity, significant numbers of people are still blissfully unaware that when a couple enters into a de facto relationship of 3 years or more, the home they live in automatically becomes relationship property by virtue of the Property (Relationships) Act 1976 ("The Act").

What this frequently means in practice is that a person who may have inherited a family home, or kept the family home after a prior separation, stands to lose at least half of it in the event of a future separation.

A typical scenario involves someone who has retained the family home after a lengthy relationship (often a marriage) has ended. They enter into a new relationship. They may have no idea that their new relationship is capable of being defined as a de facto relationship, and have therefore not considered that their cherished family home might be claimed by their new partner.

Time is against them once the new relationship is three years old. The new de facto partner can then claim half the family home, which may have been intended for children or grandchildren.

The only way out of this problem is to use Section 13 of the Act and claim that there should be an exception to the equal sharing provisions of the Act, because there are extraordinary circumstances that make equal sharing repugnant to justice. However, the Courts have made it increasingly clear that the circumstances do indeed need to be *extraordinary* for this section to apply. If the circumstances are common, run of the mill, or even where they are unusual but still not extraordinary, the Court is unlikely to direct unequal sharing.

What this all means, is that someone contemplating entering into any sort of relationship with another person who doesn't wish their family home to fall into the "common pot", should take steps to avoid this.

One option is to put the home into a **family trust**, but the trust would need to have been formed prior to the relationship beginning to avoid any claims a partner may have for compensation under the Act. If a partner can show that the transfer of the home to the trust was made "*in order to defeat the claim or rights*" they would have had if it was not for the transfer, the Court can order compensation to be paid.

Further, if a partner is able to show that the transfer of property was done after the relationship began, and that the transfer has had the effect of "*defeating the claim or rights*" that they would have had, then the Court is able to order that the party who owned the property must pay compensation to the non-owning partner.

Another option is to enter into a **contracting out agreement** in the early stages of the relationship (usually before reaching the crucial 3 year point), and preserve the home as your separate property in that agreement. This course of action, combined with the transfer of property to a trust, offers the best protection against future claims by a partner. In these agreements, you are able to specify exactly what entitlement, if any, a partner may have to the family home in the event of a separation or death. Each party must obtain independent legal advice regarding such an agreement and the process includes a detailed and thorough analysis of each party's assets and what is intended to occur should the relationship end. It may be awkward to raise the subject at the time, but it is more difficult to attempt to convince a Court that you should retain the family home in the event of a separation.

Perhaps the best advice we can give is to do something, be it a family trust, a contracting out agreement or another option. Sit back and do nothing and you could find yourself sharing the home you have worked hard for all your life with that "not so special" someone else.

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