The ties that bind, be you de facto or married

DO ALL DE FACTO COUPLES WANT THE CONSEQUENCES OF MARITAL FINANCIAL OBLIGATIONS IMPOSED ON THEM? HOW CAN YOUNG PEOPLE IN DE FACTO RELATIONSHIPS PROTECT THEIR ASSETS?

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On 1 March 2009, the *Family Law Amendment (De Facto Financial Matters and Other Measures) Act* 2008 took effect, resulting in the jurisdiction of the Family Courts being extensively broadened to deal with financial matters (property disputes and spousal maintenance applications) arising out of the breakdown of de facto relationships.

The effect of the reforms is that financial obligations that have until now been confined to married couples are now imposed on de facto couples once they have lived together for only two years and sometimes less than two years if the parties have a child together or one party can point to substantial contributions made during a short relationship.

Since the amendments took effect, a large proportion of young people are now living in de facto relationships that are recognised by the *Family Law Act* without considering the potential financial ramifications or obligations that may result should the relationship break down. Such a breakdown may result in an unintentional detrimental and long-lasting effect on those whose assets are not protected.

In the breakdown of de facto relationships the courts no longer focus solely on an assessment of the parties' contributions towards the acquisition, conservation and improvement of their assets (as was the case under the old state-based law), but also on the parties' income-earning capacities and the future needs and financial resources of each party.

So what does this mean for young people in de facto relationships?

Young couples who may view living together as a test of whether the relationship should progress to marriage may deliberately wish to keep their finances and assets isolated as part of that "trial run", or they may wish that all or some of the assets that they acquired before their relationship started be protected from a future claim by their partner.

However, in circumstances where asset protection measures are not undertaken, the new de facto laws may result in a party who is paid more than his or her partner or who, for example, receives a large inheritance during their relationship, having to give their partner a larger percentage of the property pool than might otherwise be the case. In fact, in some circumstances one party may even be required to pay the other spousal maintenance.

What can parties do to protect their financial position?

In light of the amendments to the *Family Law Act* parties to a de facto relationship should seek the security of a financial agreement.

The *Family Law Act* permits couples contemplating living in a de facto relationship or who are in a de facto relationship to enter into a Binding Financial Agreement ("BFA") to determine how their property would be divided in the event of their relationship subsequently breaking down.

Provided that the BFA has been entered into properly, which includes each party disclosing the assets in which they have an interest and obtaining independent legal advice, only in very rare cases will the Court set aside such an agreement.

BFAs can be prepared to include either all or only specific assets and resources in which the parties may have an interest. The agreement can deal with the division or protection of any real property (such as real estate), businesses, personal property (such as furniture, jewellery, shares and cash), the division of superannuation, the treatment of inheritances, gifts or windfalls and whether provision is to be made in the agreement for the maintenance of either spouse.

For those young couples in or contemplating entering a de facto relationship, it is vital that asset protection be properly considered. The question is one that is often asked, but usually after the event – by which time it is often too late. ●

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