

### DE FACTO PROPERTY SETTLEMENT

The *Property Law Act 1999* regulates the division of property between couples in a de facto relationship, contemplating living in a de facto relationship or separating from a de facto relationship.

A couple is in a de facto relationship if they have been living together as a couple for two years or have a child together. If the couple is living together, the arrangement must be on a genuine domestic basis and be in a relationship based on intimacy, trust and personal commitment to each other. The couple may be of the same or opposite sex.

The *Property Law Act 1999* makes provision for parties who wish to enter into a binding agreement about the distribution of their property in the event of their separation. The agreements are called Cohabitation Agreements or Separation Agreements.

A Cohabitation Agreement is an agreement made by de facto couples either in contemplation of starting a de facto relationship or during their de facto relationship.

A Separation Agreement is an agreement made by de facto couples in contemplation of ending their de facto relationship or after their de facto relationship has ended.

To be enforceable by a Court, they must be "recognised" under the *Property Law Act 1999*.

A Recognised Agreement must:

- Be a written agreement.
- Be signed by both parties and witnessed by a Justice of the Peace or Solicitor.
- Contain a statement of all significant property, financial resources and liabilities of the parties.

An agreement which is not a Recognised Agreement is unenforceable by a Court.

In the absence of a Recognised Agreement (whether a Cohabitation Agreement or Separation Agreement), a Court will determine the distribution of property in accordance with the *Property Law Act 1999* and the contributions and future needs of the parties will be considered.

We strongly recommend that couples contemplating entering into a Cohabitation Agreement or Separation Agreement seek legal advice so that their agreements are properly drafted to reflect the agreement and comply with the requirements of the *Property Law Act 1999*.

From 1 March 2009, the situation in respect to de facto property settlements will change and all issues in respect to de facto property will be governed by the *Family Law Act 1975*.

Ferguson Cannon Lawyers have extensive experience in this field. If you have any queries, please do not hesitate to contact Louise Ward.