



## ARE YOU IN A DE FACTO RELATIONSHIP?



The inclusion of de facto relationships, (which encompasses same sex relationships) within the Property (Relationships) Act 1976 ("the Act") effectively means de facto couples will receive similar treatment, concerning disputes about property, to those who are married.

### De facto relationships and the Act

De facto relationships will ordinarily be covered by the Act only if the partners have lived together as a couple for three or more years. After three years, the principle of equal sharing applies.

There are exceptions to the three year rule. These include situations where there is a child of the de facto relationship or where one party has made a "substantial contribution" to the de facto relationship. Before it makes an order, when considering exceptions to the rule, the Court must be satisfied that failure to make an order would result in a serious injustice.

### Definition of a de facto relationship

Section 2D (1) of the Act defines a de facto relationship as a relationship between two persons whether they be a man and a woman or same sex partners; provided both are aged 18 or older, live together as a couple and are not married to or in a civil union with each other.

### What constitutes living together as a couple?

Section 2D (2) of the Act states that when determining whether two persons live together as a couple, all the circumstances of the relationship are to be taken into account, including any of the following matters that are relevant in a particular case:

- the duration of the relationship
- the nature and extent of common residence

- whether or not a sexual relationship exists
- the degree of financial dependence or interdependence, and any arrangements for financial support between the parties
- the ownership, use and acquisition of property
- the degree of mutual commitment to a shared life
- the care and support of children
- the performance of household duties
- the reputation and public aspects of the relationship

The overall question for the Court is whether the two people concerned live together as a couple. The above list is not intended to be exhaustive, and any other relevant factors may be taken into account. Similarly, none of the factors is either independently, or in combination, a necessary ingredient of a de facto relationship. The factors set out above simply assist the Court in determining whether a de facto relationship exists.

It appears the Court is looking for a mutual commitment to a single lifestyle, with or without a common residence or sexual relationship. The Court will also be giving active consideration to the intention of the parties at 'relevant times', ('relevant times' will vary from case to case, but essentially encompass the series of events being considered by the judge) to enter into and to remain in a committed de facto relationship.



## Children's Participation increased by changes to Family Courts

**Counselling and Mediation**  
Children now have the opportunity to participate in counselling when decisions are being made about parenting matters, due to the passing of the Family Matters Bill on 2 September 2008.

Provided the parents agree, children will be able to attend part of the counselling, or speak with the counsellor directly. Up until now, children's involvement in counselling was not specifically provided for by legislation.

In many cases, the benefits to both the children involved and their parents will be significant, as from an early stage in the process the child's view on what is important can be expressed and considered.

As well as counselling, parties involved in parenting matters (and other matters such as relationship issues) will be able to request family mediation to help them identify issues and to resolve matters by agreement. The mediation will not be overseen by a Family Court Judge but by a specialist mediator. The purpose of the mediation is to divert less complex family disputes away from formal court proceedings and to resolve them quickly and inexpensively. Children can also be involved in the mediation and will be able to attend the counselling, as mentioned above, to help them formulate their views.

Following the mediation, the mediator will be required to provide a report to the Court detailing the resolution reached between the parties, the issues still to be resolved and non-binding recommendations as to the next steps to be taken by the parties.

If parties (now including grandparents and other family members) are considering entering into a parenting agreement, they can request mediation or counselling.

These can also both be accessed to help resolve a dispute arising from an existing agreement.

Other changes resulting from the passing of the Family Matters Bill include

- Extending the duties of the Family Court Registrars.
- New positions of Senior Family Court Registrars, with the intention that they will be able to relieve the pressure on Judges and reduce delays by dealing with, for example, routine procedural matters.
- New provisions for openness in Family Court proceedings have also been included with support persons and accredited media allowed to attend proceedings. Reports on the proceedings can be published by the media, but it is an offence to publish a report without leave of the Court where the report includes identifying information and a child or vulnerable person is involved. Support people will also be able to attend proceedings provided the judge agrees, and
- The restriction preventing Family Court Judges wearing gowns in court has been removed.

### Implementation

The above changes are intended to increase the openness of Family Court proceedings and to improve the efficiency and effectiveness of the Family Court. The Bill was divided into 12 amendment Acts and will be implemented in stages. It is intended that most provisions will be in place by early 2009, although new services like the counselling for children, and family mediation, will take longer and the exact commencement dates are yet to be announced.

## Building Act Update - Kiwi DIY Tradition Improved

Hon. Shane Jones, the Building and Construction Minister, has taken steps to cut back on DIY building regulations enacted as a result of the leaky building crisis.

The Government has realised that the response to the crisis was too extreme and has reduced the scope of work that requires building consent. Schedule 1 (Exempt Building Work) of the Building Act 2004 was amended by Order in Council on 16 October 2008. The work that does not require consent now includes such things as:

- Changing existing household plumbing
- Removing or changing non-load bearing walls
- Making a home more accessible by widening doorways and building access ramps
- Installing or replacing windows or exterior doors
- Construction of retaining walls that retain not more than 1.5 metres depth of ground
- The construction, alteration or removal of a pergola

These changes will allow Kiwis to once again take up their tools and go about what they have always done in that long standing tradition of DIY.

# Employment Relations

(Flexible Working Arrangements)

## Amendment Act 2007

*The Employment Relations (Flexible Working Arrangements) Amendment Act 2007 was given Royal Assent on 26 November 2007 and came into force on 1 July 2008.*

*The Bill was introduced by Green Party MP Sue Kedgley and was designed to address the perceived need of employees with young families who were simply dropping out of the work force rather than obtaining more flexible working arrangements to meet the needs of their family.*

*A Department of Labour survey found that most employees felt unable to broach the need for more flexible working arrangements with their employers because they felt they would be penalised for doing so. By providing a statutory framework this Act seeks to protect those employees who wish to choose how to balance work and family life.*

### Who may apply?

Any employee who is responsible for the care of any person and who has been working for their employer for not less than 6 months may make an application under the Act. There are no requirements that the employee be related to the person they are caring for and there is no definition of what the care may involve.

### What are flexible working arrangements?

The employee may apply to vary their conditions of employment related to their hours of work, days of work, and/or place of work and this request must be in writing. The request made will entirely depend on the needs of the employee in caring for another person.

### What information must be supplied?

The employee must specify:

- how they wish to vary their conditions of employment
- whether the request is to permanently vary their conditions of employment or for a specified period of time
- how the variation will allow them to provide better care for the person they are caring for,
- what changes the employer may need to make if the employee request is approved.

### Can more than 1 request be made?

If a request is made the employee is not entitled to make another request under this part of the Act for another 12 months.

### What the employer must do

The employer does not have to accept the request. The employer must notify the employee within 3 months

whether their request has been approved or refused and, if refused, notify the grounds for refusal and provide an explanation of the reasons for their decision. If the employee is dissatisfied, he or she may refer the matter to mediation. If that does not resolve matters, the problem can be referred to the Employment Relations Authority for a determination.

### What are the grounds for refusal?

The Act sets out the following broad grounds for refusal:

- a detrimental impact on the quality or performance of work
- additional cost
- inability to reorganise work
- inability to recruit additional staff
- insufficiency of work
- planned structural changes
- detrimental effect on ability to meet customer demand
- the potential to undermine the terms of a collective agreement where the request relates to working arrangements to which the collective agreement applies

### What if the employer does not respond?

If the employer has not complied with their obligations under the Act the employee may refer the matter to a Labour Inspector for assistance in resolving the matter. The employer may be fined up to \$2000 by the Employment Relations Authority.

A review of the operation of these amendments must be carried out by the Minister of Labour as soon as is practicable after 1 July 2010.

## Enduring Powers of Attorney

On 26 September 2008, the Act governing powers of attorney was amended. In brief, the Act has made powers of attorney documents more secure meaning they are less able to be abused by attorneys to whom power to act on a donor's behalf is given.

Among other things, the signature of the donor must be witnessed by a lawyer, qualifying legal executive, or an officer of a trustee corporation. The witness to the donor's signature must certify that he/she is independent of the Attorney.

Therefore, in the common situation where a husband and wife wish to appoint each other as attorneys, advice from two qualifying witnesses such as a lawyer/qualifying legal executive/officer of a trustee corporation is a necessity. Both parties should see their witness independently of the other.

The independent advice requirement will be the major effect of this amendment and is one of the measures that aim to ensure powers of attorney achieve what they set out to achieve.

# PROTECT YOUR BUSINESS FROM BAD DEBTORS

Owners or managers of small to medium sized businesses will be increasingly aware of how the global credit squeeze is affecting New Zealand. As finance companies collapse, fuel costs escalate and interest rates rise (amongst other things) the pressure grows for everyone to cut costs and make savings. One common response from debtors to these pressures is to delay paying creditors including you. Effectively they are using you as a low cost source of extended funding.

Planning how best to protect your business from bad debtors involves both practical and legal issues, as set out in the following paragraphs.

Take time at the outset to ensure the customer can and will pay. Sometimes the promise of a new order for work overrides common sense enquiries at the time about the customer's circumstances and their ability and willingness to pay the price you require.

Ensure that you have full details of your customers before you commit to the work. This includes all of their contact details but also the legal name and type of entity. All too often creditors go to take enforcement action only to find they are missing details that compromise debt recovery. For example, you might assume your customer is John Brown trading as John's Timber Supplies only to find out that he was representing John Brown Limited trading as John's Timber Supplies. This can result in you having no action against John Brown personally, only his limited liability company, which might be insolvent.

If your customer is a small company, obtain a guarantee from the directors. It is often more effective to pursue a director personally, rather than a company.

Have written terms of trade that the customer signs before you supply the product or service. This makes it very difficult for the customer to dispute your terms at a later stage, which often happens if the terms are posted with an invoice, after supply, or not recorded in writing at all.

Include terms that:

- state when payment is due
- set a default interest rate for late payment, and
- provide for recovery of full legal costs, should you have to take enforcement action.

If appropriate, include specific reference to creating a security interest pursuant to the Personal Properties Securities Act 1999. This will enable you to become a secured creditor. If you do this, you will also need to be aware of the process for registering a financing statement on the Personal Properties Securities Register at [www.ppsr.govt.nz/cms](http://www.ppsr.govt.nz/cms), without which your security won't be complete and is likely to be ineffective.

Take steps as soon as a customer is late. Speak with them if possible. If not, write to them. Too often debtors are not contacted early enough and a problem that could have been a minor one becomes a major one.

The overall key is to take care with your procedures and documentation at the outset of the transactions. It may require time and money to put everything in place but it will more than pay for itself over time.

Lawyers often deal with creditors who fail to recover some or all of their debt, despite having provided an excellent product or service, because they haven't taken enough care or obtained adequate advice when setting up their paperwork and procedures.



The partners are delighted to confirm that as from 1 December 2008, *Chris Fogarty, Angeline Boniface, Rebecca Jenkins and Tim Holton* have become partners of the firm. As many clients will be aware, each of them has previously been part of our team as a senior Associate of the firm.

Chris Fogarty and Angeline Boniface will continue to be based at our Barrington and Upper Riccarton branch offices respectively, while Rebecca Jenkins and Tim Holton continue serving our clients' needs principally from the city office.

We are very pleased that these new partners are joining the firm's management team heading into 2009.

**CAMERON & COMPANY**  
BARRISTERS & SOLICITORS

#### City Office

Fourth Floor URS House  
(formerly Landsborough House)  
287 Durham Street  
(Corner Durham and Gloucester Sts)  
Christchurch. PO Box 1985  
Tel: 03-379 3110, Fax: 03-379 1911

#### Branch Offices:

Barrington Law Office,  
20 Athelstan Street, Christchurch.  
Tel: 03-337 0218, Fax: 03-331 8135

Upper Riccarton Law Office  
Cnr Yaldhurst Road & Peer Street  
Christchurch  
Tel: 03-348 8061, Fax: 03-348 8079

FINDIS