



NO PROPERTY SPLIT AFTER 12 YEAR DEFACTO RELATIONSHIP

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14 July 2015



It may sound strange but couples who separate do not have an automatic entitlement to a property settlement.

Recent cases have emphasised that before the Court will consider making adjustments to a couples existing legal ownership of assets (by taking into account their respective contributions and future needs), the Court must separately decide that it is "just and equitable" to even make a property adjustment order.

In many cases involving applications for property settlement the "just and equitable" requirement will be easily satisfied by virtue of the voluntary ending of the relationship where there will no longer be the common use of property by the parties.

The rationale being that any assumptions that the couple may have made that the existing legal ownership of property was appropriate during the relationship is brought to an end with the ending of the relationship.

In a recent case, the Judge decided that it was not "just and equitable" to make any adjustment to the couples' existing property ownership, even after a 12 year de facto relationship, essentially determining that there were no assumptions of the parties about the ownership of property which were brought to an end by the termination of their relationship.

Ms N was aged 66 and Mr F was aged 74. They were both retired but each received occasional income from the sale of their artwork.

They lived together for 12 years in a home owned by the Ms N. Mr F owned a block of land and they each had minimal other assets. The combined asset pool was worth \$465,254.

Mr F was seeking an equal division of the combined assets, whereas Ms N said there should be no adjustment and the parties should just retain their own property.

The factors which influenced the Judge's decision not to make a property adjustment order were, as follows:

- Mr Fs insistence (and Ms Ns agreement) throughout the relationship that their respective financial affairs should be kept entirely separate, with the intention that each would continue to hold their property separately, in circumstances where each party was mature, intelligent, and not in any way overborne by the other;
- the fact that the assets were kept entirely separate and the great bulk of them now existed in precisely the same form in which they were held at the commencement of the relationship;



- the absence of any evidence to suggest Mr F refrained from accumulating other assets, or otherwise changed his position, as a result of having the benefit of using Ms Ns home during their relationship and having assumed they would live out their days together;
- the fact that neither party made any provision for the other to receive an interest in their property in the event of their death;
- the extent of the work done by Mr F around Ms Ns property was not such as to lead to a conclusion that it would be "just and equitable" to adjust existing property interests, especially given that Mr F (and, for part of the time, his son) lived in the property rent free; and
- the ages and state of health of both parties, and the fact that although Ms N had property of greater value than Mr Fs, each party nevertheless had a significant asset which could be realised to meet needs that could not be met from current income.

It is essential that anyone going through separation get Specialist Family Law advice. This is especially the case for older couples and in cases where one spouse may have moved into care. For a fixed cost (\$330, incl GST) initial consultation appointment call us on 3221 4300.

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