

PRESENTERS



Jennie Hawker, Principal, Haigh Lyon, Auckland

Jennie is a principal at Haigh Lyon and leads the firm's thriving and specialist family law team together with Amanda Donovan. Jennie has experience in all family law matters but now focuses her practice on relationship property matters. She is a contributing author to the Westlaw commentaries on the Property (Relationships) Act 1976 and family law procedure.



Simon Jefferson KC, Barrister, Trinity Chambers, Auckland

Simon specialises almost exclusively in family law. After 20 years as a partner with Shieff Angland (where he led a family team renowned for its ability and from which emerged many leading family law practitioners), he left to practise at the independent bar in June 2006. He was elevated to the status of Queens's Counsel in 2013 (now King's Counsel). Simon has appeared in the Family Court, the High Court and the Court of Appeal.

The statements and conclusions contained in this presentation are those of the author(s) only and not those of the New Zealand Law Society. This presentation has been prepared for the purpose of a Continuing Legal Education course. It is not intended to be a comprehensive statement of the law or practice, and should not be relied upon as such. If advice on the law is required, it should be sought on a formal, professional basis.

CONTENTS

1. INTRODUCTION.....	1
TYPES OF S 21 AGREEMENTS – WHO, WHEN AND WHAT	1
2. SECTION 21F – WHAT DOES IT REQUIRE?	5
PROCEDURAL REQUIREMENTS.....	5
WITNESSING V CERTIFICATION	6
INDEPENDENT LEGAL ADVICE – S 21F(3)	6
<i>What is “independent”?</i>	6
<i>What is adequate advice?</i>	9
PROTECTING YOURSELF	12
3. DUTY OF CARE.....	13
DUTY OF CARE TO YOUR OWN CLIENT.....	13
DUTY OF CARE TO THE OTHER SPOUSE.....	13
LIMITATION PERIOD	15
AFTER ALL OF THIS SHOULD I CERTIFY?.....	16
SOLICITOR’S CHECK LIST OF TASKS – BEST PRACTICE	16
THINGS TO REMEMBER.....	17
4. SECTION 21H – VALIDATION.....	19
REQUIREMENTS OF THE SECTION	19
IS THERE AN AGREEMENT?.....	19
MATERIAL PREJUDICE.....	20
RESIDUAL DISCRETION.....	22
OVERLAP BETWEEN SS 21F, 21H AND 21J	22
PARTIAL VALIDATION	23
ORAL AGREEMENTS	23
SUMMARY.....	25
5. SETTING ASIDE AGREEMENTS – S 21J.....	27
STATUTORY CRITERIA.....	27
THE DISTINCTION BETWEEN SS 21 AND 21A.....	28
CASES POST <i>HARRISON</i>	30
CONTRACTUAL REMEDIES.....	36
KEY POINTS TO CONSIDER.....	38
6. DRAFTING	39
SEVERANCE CLAUSES	40
AGREEMENTS WHICH INCLUDE SPOUSAL MAINTENANCE AND CHILD SUPPORT	42
CLAUSES INDEMNIFYING SOLICITORS	43
THE INTERMINGLING CLAUSE	43
DISPUTE RESOLUTION CLAUSES	43
7. POWERPOINTS.....	45