

PRESENTERS

Geoff Harrison, Barrister, Auckland

Geoff has specialised in family law since 1992. He is a contributing writer for *Fisher on Matrimonial and Relationship Property (3rd Ed)*. He has presented a number of NZLS seminars on s 21 agreements as well as on related topics particularly following the passing of the Property (Relationships) Act 2001.

Jacinda Rennie, Wellington Family Law, Wellington

Jacinda graduated with LLB First Class Honours from the University of Waikato in 1996. She has practised in New Plymouth and in Wellington. She initially practised as a general litigator, but now specialises in family law.

The statements and conclusions contained in this booklet are those of the author(s) only and not those of the New Zealand Law Society. This booklet 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
2. BASIC RULES OF DRAFTING	5
PLAIN ENGLISH	5
VERBOSITY	5
REFERENCES TO THE LAW	6
CERTAINTY	6
3. CONTRACTING OUT AGREEMENTS	7
SECTION 21 BASICS	7
<i>Who can enter into an agreement?</i>	8
PART 1 – CONTENT	8
<i>The model form</i>	8
<i>Different types of agreements</i>	9
<i>What can be included in the agreement?</i>	9
<i>What can't be included?</i>	10
<i>Making a contracting out agreement a "living document"</i>	10
<i>Reflecting entitlement</i>	12
PART 2 – THE PROCESS	12
<i>Disclosure</i>	12
<i>Formalities – s 21F</i>	14
<i>How independent is independent advice?</i>	14
<i>Is your advice good enough?</i>	14
<i>Under pressure</i>	15
<i>Looking after yourself</i>	16
<i>Getting agreements signed overseas</i>	17
4. SETTLEMENT AGREEMENTS	19
INTRODUCTION	19
EXTENT AND VALUE	19
UNEQUAL DIVISION?	20
MEANINGFUL CERTIFICATE	20
TIME TO CONSIDER	21
REALISTIC OBLIGATIONS	21
CONFLICTS OF INTEREST	21
CONFIRMATION IN WRITING	21
DISCLAIMERS/INDEMNITIES	21
USING THE FAMILY COURT	22
5. SETTLEMENT AGREEMENTS – TRUSTS	25
6. SETTLEMENT AGREEMENTS – OVERSEAS ASSETS	27
APPENDIX A: SECTIONS 21-21O OF THE PROPERTY (RELATIONSHIPS) ACT 1976	29
21 <i>Spouses or [partners] may contract out of this Act</i>	29
21A <i>Spouses or [partners] may settle differences by agreement</i>	29
21B <i>Surviving spouse or [partner] and personal representative may agree on division of property</i>	29
[21C <i>Court may be asked to approve agreement between surviving spouse or [[partner]] and personal representative</i>	30
[21D <i>Subject matter of agreement</i>	30
[21E <i>Regulations prescribing model forms of agreement</i>	30
[21F <i>Agreement void unless complies with certain requirements</i>	31
[21G <i>Other grounds of invalidity not affected</i>	31
[21H <i>Court may give effect to agreement in certain circumstances</i>	31
[21I <i>Agreements entered into by minors</i>	31

[21J	<i>Court may set agreement aside if would cause serious injustice</i>	32
[21K	<i>Agreements made for valuable consideration</i>	32
[21L	<i>Enforcement of agreements</i>	32
[21M	<i>Consequences of invalidity of agreement</i>	33
[21N	<i>Other powers and capacities not affected</i>	33
[21O	<i>Application of Act to relationship property not subject to agreement</i>	33
APPENDIX B: CONTRACTING OUT AGREEMENT		35
	TIFFANY PARKER AND JOHN JEREMY	35
APPENDIX C: CONTRACTING OUT AGREEMENT		43
	LYDIA ROSE AND JORDAN GEORGE	43
APPENDIX D: CONTRACTING OUT AGREEMENT		53
	DAVID BLAKE AND MELISSA SMITH	53
APPENDIX E: SETTLEMENT AGREEMENT		61
	WENDY BENSON AND JAMES BENSON	61
APPENDIX F: SETTLEMENT AGREEMENT		71
	MICHAEL EDWARDS AND CARMEN EDWARDS	71
APPENDIX G: MEMORANDUM OF CONSENT RELATIONSHIP PROPERTY ORDERS		79
	MARY MATTHEWS AND MICHAEL MATTHEWS	79
APPENDIX H: COUNSEL’S EXPLANATORY MEMORANDUM FOR THE COURT		87
	MARY MATTHEWS AND MICHAEL MATTHEWS	87