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How does a Contracting Out Agreement impact your Estate?

Estate planning is often more complex than you think, as it is involves balancing multiple considerations such as family relationships, asset distribution, and overlapping laws. This complexity is further compounded by the need to aligning different legal instruments such as wills, contracting out agreements, and other estate documents, each of which serve distinct but interrelated purposes. A will should not be viewed in isolation and needs to work alongside other estate planning documents to ensure they achieve the outcome you intend.

A contracting out agreement, often referred to as a "s 21 agreement" under the Property (Relationships) Act 1976 (“PRA”) or “pre-nup”, allows couples in certain personal relationships the flexibility to reach their own agreement about the ownership, status, and division of their property, including future property, outside the standard framework of the PRA. Contracting out agreements can apply during a couple’s lifetime and/or in the event of the death of one or both of them.

The recent Court of Appeal decision of, *Rimmer v Wilton* [2025] NZCA 374 (“*Rimmer*”), serves as an important reminder that your estate planning is more than just your will. The case clarifies uncertainty as to how contacting out agreements apply on death and highlights the need to ensure that contracting out agreements contain clear and specific language when it comes to setting out your wishes in the event of your death.

To understand why the Court's decision in *Rimmer* matters, it helps to first understand what happens if one partner dies.

How property is dealt with after death

When a relationship ends because one partner dies, the PRA sets out a process for dealing with relationship property between a surviving partner and the deceased’s estate. Generally, the surviving spouse or partner must choose between two options:

- **Option A:** Apply for a division of relationship property under the PRA, or
- **Option B:** Elect not to make an application or a division of relationship property under the PRA and accept what they are entitled to under the deceased's will or, if there is no will, under the rules of intestacy.

The idea is that a surviving partner will usually receive either a relationship property entitlement or an inheritance from the estate, rather than both. But what happens when there's a contracting out agreement in the mix? That's the question the Court of Appeal had to consider in *Rimmer*.

What happened in Rimmer v Wilton?

David Rimmer and Caroline Wilton were in a long-term de facto relationship. They had entered into a contracting out agreement in June 2002, that identified what property was to be separate property and what property was relationship property, and gave the surviving partner the right to live in their shared home for life. Importantly, the contracting out agreement did not deal with inheritance after death.

Mr Rimmer died without a will in March 2016, and his estate distributed under the intestacy provision of the Administration Act 1969. Ms Wilton had to elect either option A or B under the PRA. She chose Option B. Mr Rimmer's children challenged her entitlement. They argued that by choosing Option B, Ms Wilton could no longer rely on the contracting out agreement. They later went a step further and argued that the contracting out agreement prevented her from inheriting from the estate at all, meaning she should be limited to her right to occupy the home for life.

The key issue was whether, having elected Option B, Ms Wilton was entitled to take *both* her entitlements under the contracting out agreement, and her entitlement on Mr Rimmer's intestacy, or whether she was only able to take her intestacy entitlement.

The Court's decision

The Court of Appeal found that the contracting out agreement and the intestacy rules dealt with different things and could operate alongside one another. The Court confirmed that where a surviving partner relies on a valid contracting out agreement to establish their existing property rights, they are not seeking a division of relationship property under the PRA.

In simple terms, choosing Option B did not cancel or override the contracting out agreement. The contracting out agreement continued to determine what property rights Ms Wilton already had, while the intestacy rules determined what she could inherit from Mr Rimmer's estate.

This meant that Ms Wilton was entitled to retain her separate property, receive her agreed share of the relationship property, keep her right to occupy the home for life, and also receive her entitlement under the intestacy rules.

Why this decision matters

The practical implications of *Rimmer* are significant. Many people have contracting out agreements that were signed years, or even decades, ago and have not been reviewed since. Following *Rimmer*, those agreements may now play a critical role in determining which assets form part of an estate and which pass directly to a surviving partner.

Problems can arise where an older contracting out agreement no longer aligns with a more recent will. In those circumstances, uncertainty may arise as to whether a particular asset passes under the terms of the will or under the contracting out agreement. This can create unintended outcomes, increase the likelihood of disputes between family members and beneficiaries, and complicate the administration of an estate.

What should you do?

If you have a contracting out agreement, particularly one that was signed many years ago, it is worth reviewing it alongside your will. Changes in your relationship, family circumstances, asset structure, or estate planning objectives may mean that your existing documents no longer achieve the outcome you intended.

It is important to make your lawyer aware of any existing contracting out agreement and to ensure that your will has been drafted with that agreement in mind. Careful coordination between the two can help ensure your wishes are carried out and reduce the risk of uncertainty, disputes, and unintended consequences after death.

If you would like advice on a contracting out agreement, your will, or your wider estate plan, the team at Brookfields can help.