Rimmer v Wilton: Contracting out agreements can affect inheritance rights

The Supreme Court's recent decision in Rimmer v Wilton [2026] NZSC 122 addresses an important question many couples may never have considered: can a contracting out agreement determine what a surviving partner receives if their partner dies without a will?

The judgment confirms that a contracting out agreement (COA) (sometimes known as a "pre-nup") under the Property (Relationships) Act 1976 (PRA) can, depending on its terms, prevent a surviving partner from claiming an entitlement under intestacy provisions that would otherwise apply when a person dies without a will. In Rimmer, the Supreme Court held that the surviving partner was entitled to rely only on the benefits provided under the COA and could not also receive a share of the deceased's estate under the intestacy regime.

Rimmer highlights the importance of considering relationship property planning, wills, trusts, and broader succession planning together and not in isolation.

What is a contracting out agreement?

A COA is an agreement entered into under the PRA that allows couples to make their own arrangements regarding the ownership and division of their property, rather than relying on the default relationship property rules contained in the legislation.

COAs are commonly used to protect assets brought into a relationship, preserve family wealth, protect inheritances, and provide certainty when one or both partners have children from previous relationships. Although they are often associated with separation, Rimmer demonstrates that they can also have important consequences when a partner dies.

What happened in Rimmer v Wilton?

David Rimmer and Carolyn Wilton began a de facto relationship in 2000. In 2002, they purchased a property together as tenants in common in equal shares and entered into a COA.

The COA set out how their property would be divided and gave the surviving partner a life interest in the deceased's share of the property they owned together. Crucially, the COA also provided that it was a “full and final settlement of all claims” between them.

Mr Rimmer died without a will in 2016. As a result, the intestacy provisions under the Administration Act 1969 applied. Ms Wilton argued that she was entitled to rely both on the COA and to a further entitlement under the intestacy rules. Mr Rimmer's children argued that the COA had already determined what she was entitled to receive and that she should receive no further entitlement under the intestacy rules.

What did the Supreme Court decide?

The Supreme Court unanimously found in favour of Mr Rimmer's children.

The Supreme Court considered the COA as a whole and concluded that it comprehensively addressed the parties' rights on death. The Court found that Ms Wilton's entitlement was limited to the benefits the COA provided, being the life interest granted in Mr Rimmer's share of the property. She was not entitled to claim an additional share of Mr Rimmer's estate under the intestacy provisions of the Administration Act 1969.

Importantly, the Court confirmed that parties can contract out of rights that would otherwise arise under the intestacy rules.

The Court also emphasised that the outcome depended on the wording of the particular COA before it, and different wording may produce a different result.

Why is Rimmer v Wilton important?

The decision is significant because it confirms that a COA can affect what happens if a person dies without a

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Rimmer v Wilton: Contracting Out Agreements Can Affect Inheritance Rights (Continued)

will, and that rights arising under the intestacy provisions of the Administration Act 1969 may be contracted out of through a properly drafted COA.

Rimmer is a reminder that a COA may be relevant not only when a relationship ends through separation, but also when it ends through death.

Key Takeaways

The key takeaways from Rimmer are that COAs should not be considered in isolation, and that relying on the intestacy rules rarely produces the best succession outcome.

We recommend that anyone entering into a COA review it alongside their will, any family trust arrangements including trust deeds and statements of wishes, and the ownership structure of their assets, to ensure that all documents operate consistently and achieve the intended outcome.

Particular attention should be paid to blended family situations, farming and business succession plans, and arrangements where one partner expects to have a continuing right to occupy or use property after the other's death.

A COA should also be regularly reviewed over time and whenever circumstances change (such as where the parties have children, acquire significant assets, establish trusts, or change the way their assets are owned) to ensure the provisions remain appropriate.

Want to know more?

If you have any questions please contact our specialist Private client and trusts team.

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