

Relationship Property

What's mine is (maybe) yours?

Break ups are the worst. In the wake of a relationship breakdown, emotions are high, feelings are often hurt and, amidst this turmoil, there are a range of important practical matters that need to be taken care of.

As lawyers, we think it is important that you know about one practical matter of real significance, and that is the important task of dividing up all of your property. New Zealand has a whole legal regime dedicated to how property is divided between partners and it's worth knowing a little bit about how this works and how it might affect you. We've put together the following guide for this exact reason. However, even though we would like to cover a few basics here, we must stress that the world of relationship property is a tricky, complicated and nuanced area of the law. It is essential that you see your lawyer for specific advice that will be tailored to your particular circumstances.

Let's start by introducing The Property (Relationships) Act of 1976

That legal regime that we mentioned? The most important component of this is a piece of law called the Property (Relationships) Act of 1976 (let's call it the Act from now on to keep it simple). According to the words of the Act itself, it is:

Mainly about how the property of married couples and civil union couples and couple who have lived in a de facto relationship is to be divided up when they separate or one of them dies ...

In general, the couple's property is to be divided equally between the couple.

The concept of dividing property equally is the heart of the Act, which presumes that each partner contributes equally to a relationship, even though that contribution may look different. For example, one partner may contribute financially, and the other contributes to the relationship by running the family home and finances.

If you are a **married couple**, or a **civil union couple**, or a **couple who have lived in a de facto relationship**, listen up: The Act will be relevant to you if you separate from your partner or your partner dies. Just how it affects you depends on a few important factors.

- **Firstly**, in the case of a breakup, do you and your ex-partner disagree on how to divide up your property? It's really important to note that the Act and the whole relationship property legal system is applicable only if there is a dispute between the partners. If the partners can agree on how to divide property, they are entitled to come to any arrangement they like. (However, we would strongly recommend that, if you're in this

position, you talk to your lawyer and get advice on whatever agreement you're considering. See below when we talk about "**What if you don't want the Act to apply**".)

- **Secondly**, and assuming that there is a dispute about dividing up property, our next question is: Are you considered to be one of those types of couples we mentioned above in bold?
- **Thirdly**, how long have you been together?

Let's look at the second and third questions below.

Important factor: are you a qualifying couple?

In the absence of any unusual or complicating factors, you'll probably know if you're a married couple or civil union couple. There are a few tricky clauses in the Act that slightly expand the definition of these terms in some circumstances, so check with your lawyer if you're unsure whether you are a married couple or a civil union couple for the purposes of the Act.

What's less certain is the definition of a **couple who have lived in a de facto relationship**. According to the Act, there is a de facto relationship when two people (aged at least 18) are living together as a couple but are not married to each other or in a civil union.

What exactly does "living together as a couple" mean? Well, it really depends. The Act says that working out whether there's a de facto relationship requires looking at a range of different factors about the relationship including:

<ul style="list-style-type: none">• How long you've been together	<ul style="list-style-type: none">• Your living arrangements
<ul style="list-style-type: none">• Whether you have a sexual relationship	<ul style="list-style-type: none">• The care and support of any children
<ul style="list-style-type: none">• Your financial circumstances	<ul style="list-style-type: none">• Who does the household duties
<ul style="list-style-type: none">• The ownership and use of any property	<ul style="list-style-type: none">• Whether people see you as a couple
<ul style="list-style-type: none">• Whether you're mutually committed to sharing a life together	<ul style="list-style-type: none">• Any other information that is appropriate to consider

So, whether you're in a de facto relationship really depends on the overall picture of your relationship, rather than a yes/no box ticking exercise for each of these factors that the Act mentions. Also, no one factor is more important than the others. For example, some couples are found to be in de facto relationships when they don't live together, or they don't have a sexual relationship.

Important factor: how long was the relationship?

In general terms, the property sharing rules of the Act apply differently depending on the length of the relationship. You may think it's easy to work out how long a relationship is, but the rules of the Act make it a bit tricky.

For marriages and civil unions, the length of the marriage or civil union actually includes any time *before* the marriage or civil union that you were living together in a de facto relationship. For

example, if you were together as a de facto couple for two years before you were married, then you were married for two years, your marriage is counted as 4 years long for the purposes of the Act.

For de facto relationships, it can be hard to tell when you moved from being boyfriend/girlfriend (or boyfriend/boyfriend or girlfriend/girlfriend, as the case may be) to being in a de facto relationship. This will depend on the circumstances and often is up for debate.

The Act uses the time of three years as a bit of a line in the sand for working out how the rules apply. Here's an overview:

- **General Application - More than three years:** If a marriage, civil union or de facto relationship has lasted more than three years, the Act will be applied according to certain rules which we will call the "general application" of the Act.
- **Short Duration Application - Less than three years:** If a marriage, civil union or de facto relationship is less than three years long it will be classified as a "relationship of short duration" and treated differently under the Act. Relationships longer than three years can sometimes be classified as relationships of short duration if the specific circumstances mean that this would be fair. We'll call this the "short duration application" going forward.

How property is divided under the general application of the Act

As we mentioned above, if you separate from your partner, you may agree on how to divide up various property. However, if you can't agree or if disputes arise, you can apply to the Court for help. It is here that the provisions of the Act will apply to dictate how property will be divided.

Under the general application of the Act, each partner or spouse is entitled to equally share "Relationship Property" unless extraordinary circumstances mean that would be completely unfair. Generally, "Separate Property" will be retained by each party.

Understanding what constitutes Relationship Property is crucial to understanding what's at stake in the division of property. The Act has specific rules about just which property is going to be divided and which property isn't really included in any division. To clarify this distinction, the system uses two key definitions: "Relationship Property" and "Separate Property". We'll look a little closer at each of these:

Relationship Property	Relationship Property is essentially the property that will be divided up under the Act. This includes: <ul style="list-style-type: none">• Family Home: The family home is what you would generally think of as the family home - the main place where you live together. This will be part of Relationship Property even if one partner bought it before the relationship started or it was inherited by one party.
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	<ul style="list-style-type: none"> • Family Chattels: Family chattels include furniture, fittings, household equipment, cars and vehicles. • Any Other Relationship Property: Relationship Property also includes: <ul style="list-style-type: none"> ◦ Income earned during the relationship ◦ Property bought during the relationship ◦ Property owned jointly or in equal shares by the partners ◦ Property acquired before the relationship began if it was meant for the couple to use together ◦ The value added during the relationship to superannuation and life insurance policies ◦ Joint debts ◦ Gifts or inheritances that becomes mixed with other relationship property ◦ Property that both partners agree is relationship property ◦ Any increases in the value of the relationship property
<p>Separate Property</p>	<p>Separate property is property that will not be divided up under the Act. This includes:</p> <ul style="list-style-type: none"> • Inheritances and gifts • Heirlooms and taonga • Separate debts • Property acquired under a trust • Property that the partners declare is separate under an agreement contracting out of the Act • Property acquired before the relationship began • Property acquired with the proceeds of separate property and not intended for the use of both parties

Working out what is relationship property and separate property is a challenging and often complicated task. It becomes particularly complicated when business assets or assets held in trust are involved. It is a common myth that if you transfer property into a trust that it is safe from being considered as Relationship Property. Unfortunately, it isn't that simple. If one partner transfers assets into a trust with the purpose of getting around the Act, the Courts may be able to look at that property and account for its value as part of any division.

How property is divided under the short duration application of the Act

If you're in a relationship of short duration, the Act has various rules that apply to dividing up relationship property depending on your circumstances. For example, it's different if your relationship is a marriage or de facto relationship. It's also different, for example, if your marriage ended through death or through separation. Because this can get complicated, it's a good idea to get advice from your lawyer on how your situation falls within the Act if the short duration application of the Act is relevant to you.

What if you don't want the Act to apply?

There is a way that you can prevent the Act from applying if you would rather make up your own rules about how your property will be divided one day if you ever break up, or if one of you dies.

You can do this by entering into an agreement with your partner that effectively allows you to “contract out” of the Act. This must be done with the help of a lawyer as there are very specific requirements about how this agreement is constructed and signed to make sure that both parties know what they are signing up to and what the consequences of the agreement are. You can create this agreement at any time - before you begin the relationship, during it or while you’re splitting up.

Arrangements can be complicated and to avoid the serious consequences of the agreement being unenforceable, it’s good to get your lawyer’s advice on how to structure this agreement so that it has the effect that you’re wanting to achieve. FYI, it’s important to note that sometimes the Court can override any agreement you make if it decides that the agreement would result in a serious injustice to one of the parties, or if one of the partners was forced into it, or if a mistake was made in the agreement.

Give us a call

You may have noticed that this guide is riddled with gentle prompts to talk to your lawyer about your circumstances. There is a reason for this: Relationship property is a complicated area of the law. Every single situation is very different and requires expert attention based on the specific facts of the relationship and the circumstances. When things go wrong, it is true that relationship property disputes can be complicated and challenging. However, the good news is that we have over 30 years’ experience helping couples come to suitable arrangements - from signing up amicable (and legally valid) agreements, to taking action under the Act to resolve disputes.

Have a question about relationship property? Or perhaps you just fancy a chat about how this information applies to your situation? If so, we would love to help. You can give us a call or send us an email for more information.

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