

Relationship Property



A guide to how a couple's property is divided under the Property (Relationships) Act when they separate



INTRODUCTION

The Property (Relationships) Act 1976 sets out special property-sharing rules that apply when a couple in a marriage, civil union or de facto relationship split up, or when one of them dies.

If the couple have lived together for at least three years, usually the family home, car, furniture and appliances will be **shared equally** between them. Different rules apply if the couple have lived together for less than three years.

The rules in the Act will apply only if the couple can't agree on how to divide their property and one of them applies for a Family Court order. Going to Court should be a last resort.

WHO IS COVERED BY THE PROPERTY (RELATIONSHIPS) ACT?

Couples who have been together three years

The equal-sharing rules in the Act cover married, civil union and de facto couples who have lived together for at least three years.

Short-term marriages and civil unions

The Act also covers married and civil union couples who have lived together for less than three years, except that the Act's rules for these cases may sometimes be different. Instead of the family home, car and so on being shared equally, this property may be divided according to the different contributions (both financial and non-financial) that the two people made to the relationship.

Short-term de facto relationships usually not covered

De facto couples who have lived together for less than three years are usually not covered by the Property (Relationships) Act at all. But the Act may apply to these short-term relationships in special cases – for example, if the couple has a child. In those special cases the partners' shares depend on the different contributions they made to the relationship.

If the Act doesn't apply to the relationship, each partner's rights to a particular piece of property usually depend on the **ordinary rules of property ownership** – in other words, on whether that partner has legal title to it. For example, if the house is in your partner's name only, you would usually not be entitled to a share in it. But you may be entitled to a share of particular items of property if this was agreed between you, explicitly or implicitly (this is called an explicit or implied "trust"), or if you contributed to the property, financially or otherwise (a "constructive trust").

WHAT IS A "DE FACTO RELATIONSHIP"?

A de facto relationship is when two people who are 18 or older live together as a couple.

In deciding whether two people were living together as a couple, the Family Court will consider all the relevant factors, including –

- how long the relationship lasted
- the extent to which the couple shared a home
- whether the couple had a sexual relationship
- the couple's financial and property arrangements
- who cared for and supported the children
- who did the housework and other household tasks
- the reputation and public aspects of the relationship (for example, were the partners known to family and friends as "a couple"?).

These factors are only a guide. No single factor is decisive when the Court is deciding whether the two people lived together as a couple. The Court decides how important any one factor is in the particular case.

HOW PROPERTY IS DIVIDED WHEN YOU SEPARATE

RELATIONSHIP PROPERTY: EQUAL SHARING

Usually **relationship property** is shared equally.

Relationship property includes –

- the family home, car, household furniture and appliances, even if one of you owned this property before you were together, and
- all property acquired by either or both of you while you were together.

Relationship property is shared equally unless there are extraordinary circumstances that make equal sharing “**repugnant to justice**” (very unfair). In those cases, the relationship property is divided according to the different contributions the two people made to the relationship.

SEPARATE PROPERTY: STAYS SEPARATE

All other property is called **separate property**, and usually stays with the person who owns it.

Most property owned by one spouse or partner before the start of the marriage, civil union or de facto relationship is separate property, **except** the family home, car, household furniture and appliances.

Gifts and inheritances that either of you received while you were together are separate property, unless you mixed them with relationship property. An example of mixing might be where inherited money is used to pay off the mortgage on the family home.

WHAT ABOUT OUR DEBTS?

Debts owed by the spouses or partners are classified as either **relationship debts** or **personal debts**. Only relationship debts are taken into account when the couple’s property is divided under the Property (Relationships) Act.

The Act defines exactly what is a relationship debt – this includes, among other things, debts taken on jointly, and debts taken on to buy relationship property (for example, one person taking on a debt to buy a family car). All other debts are personal (separate) debts, and are not taken into account in dividing relationship property.

WHAT IF OUR FINANCIAL POSITIONS ARE DIFFERENT WHEN WE SEPARATE?

The Family Court can award a lump-sum payment or a transfer of property to one spouse or partner if it's likely that that spouse or partner will have significantly less income or lower living standards than the other after they split up, because of how the couple divided their responsibilities when they were together.

For example, one of them may have given up paid work to care for the children, while the other focused on their own career.

WILL THE FAMILY HOME HAVE TO BE SOLD?

Not necessarily. One option is for the Court to put off selling the home for a while. The Court can do this if dividing the couple's property immediately would cause "undue hardship" to the spouse or partner who is the main caregiver of the children.

WHAT IF MY MARRIAGE, CIVIL UNION OR DE FACTO RELATIONSHIP HAS LASTED ONLY A SHORT TIME?

Short-term marriages and civil unions

Sometimes the equal-sharing rules will not apply to marriages and civil unions of less than three years. Instead, some or all of the relationship property may be shared according to the contribution that each spouse made to the relationship.



Short-term de facto relationships

Usually the Property (Relationships) Act **will not apply at all** to de facto relationships of less than three years. This means that each partner's share will usually depend on the ordinary rules of property ownership – that is, on whether they have legal title to the property in question. But in these cases one partner may be entitled to a share in the other's property if this was agreed between them, explicitly or implicitly (an explicit or implied “trust”), or if that partner contributed to the property in some way (a “constructive trust”).

The Act may apply to short-term de facto relationships in special cases – for example, if there is a child of the relationship. If the Act does apply, the Court will divide the property according to each partner's contribution to the relationship.

WHAT KINDS OF CONTRIBUTIONS ARE TAKEN INTO ACCOUNT?

When the Court divides the property according to each person's contribution to the relationship, it takes into account both **financial** and **non-financial** contributions.

The Court **doesn't** assume that a financial contribution is more valuable than a non-financial contribution, such as caring for children.

DO WE NEED TO GO TO COURT TO SORT THINGS OUT?

You need to apply to the Family Court under the Property (Relationships) Act only if you and your spouse or partner can't agree between you on how to divide your property. Going to Court should be a last resort.

WHAT HAPPENS TO YOUR PROPERTY WHEN YOUR SPOUSE OR PARTNER DIES

SURVIVOR CAN CHOOSE THE ACT OR THE WILL

If your spouse or your civil union or de facto partner dies, you have the choice of either –

- having the relationship property divided under the rules in the Property (Relationships) Act, or
- taking whatever you are entitled to under your spouse's or partner's will (or, if there is no will, under your legal right to inherit as spouse or partner).

RECORDING THE CHOICE YOU MAKE

You must sign a special notice that records your choice. A lawyer must also certify that they have explained the effects and implications of this notice to you.

MAKING YOUR OWN ARRANGEMENTS

CAN WE DECIDE FOR OURSELVES HOW TO DIVIDE OUR PROPERTY?

Yes, the Property (Relationships) Act allows you to make your own arrangements for dividing property when you separate or when one of you dies, if that is what you both want. This is called **contracting out** of the Act.

You can make a contracting out agreement at any time – either before your marriage, civil union or de facto relationship begins, or during it, or after it ends.

The Family Court can set aside a contracting out agreement, but only if it is satisfied that letting the agreement stand would cause “**serious injustice**”.

SPECIAL RULES FOR MAKING CONTRACTING OUT AGREEMENTS

To be valid, your contracting out agreement must meet these special rules –

- the agreement must be in writing
- it must be signed by both of you
- each of you must have had independent advice from a lawyer before you signed
- the signature of each spouse or partner must be witnessed by a lawyer, who must certify that they explained the effect and implications of the agreement to that spouse or partner.

If your contracting out agreement doesn't meet these rules, it will be invalid. This means you will instead be covered by the property-sharing rules in the Act.

CONTRACTING OUT AGREEMENTS MADE BEFORE 1 AUGUST 2001

If a de facto couple made an agreement about their property before 1 August 2001, the agreement doesn't have to meet the special rules for making a contracting out agreement (see above).

So long as the agreement is valid under the ordinary rules for contracts and agreements, the agreement will stand and the Act will not apply. This means, for example, that the agreement doesn't have to be in writing.

This is also the case for agreements made before 1 August 2001 between married spouses, or couples planning to marry, about the division of their property if one of them dies.

NEED MORE INFORMATION OR ADVICE?

INFORMATION FROM THE FAMILY COURT

For more information about the Property (Relationships) Act 1976 and other Family Court matters, look on the Family Court website (www.justice.govt.nz/family) or contact the nearest Family Court office.

GETTING LEGAL ADVICE FROM A LAWYER

If you want to find out how the Act applies in your situation, you should get legal advice from a family lawyer (www.familylaw.org.nz) or from your local community law centre. Family Court staff cannot give you legal advice.

LEGAL AID

Anyone who needs a lawyer but can't afford one may be able to get **legal aid**. This is where the Government pays some or all of the lawyer's bills (sometimes you may have to pay some or all of it back).

You can get information on legal aid by –

- contacting the local Legal Services Agency office (see the blue Government pages at the front of the phonebook)
- visiting the Legal Services Agency website at www.lsa.govt.nz
- seeing a lawyer and discussing legal aid with them.

Legal aid is available for all Family Court cases, except dissolution of marriages and civil unions (divorce).



www.justice.govt.nz/family