

# What Every New Zealander Should Know About Relationship Property

## ARE YOU IN A RELATIONSHIP COVERED BY THE LAW OF RELATIONSHIP PROPERTY?

The Property (Relationships) Act 1976 affects the lives of almost all New Zealand adults.

The Act applies to you if you are:

- married
- in a civil union
- in a de facto relationship
- have been in one or more of these types of relationship.

**De facto relationships** of over 3 years are treated the same as marriages and civil unions but if the relationship is under three years the Act does not apply. There are two exceptions in which a de facto relationship of under 3 years will result in orders for division of property by the Court:

- If there is a child of the relationship
- If the partner applying to the Court has made a substantial contribution to the relationship and failure to make an order would result in a serious injustice.

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## WHAT IS RELATIONSHIP PROPERTY AND WHAT IS SEPARATE PROPERTY?

The law assumes that relationships are equal partnerships and relationship property should be shared equally. It also presumes that each party contributes equally and that these contributions may be monetary or non-monetary. The property to be shared equally is what existed at the end of a relationship with value assessed at the date of hearing.

In a relationship there will be property that is **separate property** and not shared, and property that is **relationship property** which will be shared.

Under the law all relationship property needs to be divided. If the property is defined as separate property it is not included in the division between the parties. A simple example of separate property is a sum of money that comes to one partner in the will of a relative. If that money sits in the bank and is never used or mingled with other property it is separate. If you think that some of the property is separate discuss the specific circumstances with me.

## WHAT IS RELATIONSHIP DEBT AND WHAT IS PERSONAL DEBT?

Some debts are **relationship debts**, e.g., debt incurred for the purpose of purchasing, maintaining or improving the relationship home. Some debts are **personal debt**, e.g., a gambling debt incurred by a partner or the unpaid balance of a student loan. If the debt was incurred entirely before the relationship it would be a personal debt. Each debt has its own facts and the precise facts have to be established to determine whether a debt is personal debt or relationship debt.

Relationship debts go into the calculation of the value of the relationship property to be divided and personal debts don't.

When you are deciding whether or not to argue over whether an asset or liability goes into the relationship division always remember that you are arguing over half the value of the asset or debt.

Example: The picture in the lounge is worth \$1000. If it is your separate property you do not share it and keep an asset worth \$1000. If it is relationship property and divided 50/50 you are losing half its value; \$500 not \$1000.

## TRUSTS

A trust is a legal entity in which the **trust property**, assets or income, is no longer the property of the person who gave it to the trust. Trusts are used for a variety of purposes, including protecting assets from creditors or from partners in the event of a separation. Many trusts are structured so that the person who gifted the property retains effective control over the property and expects to benefit from it eventually. If property is owned by a trust it is neither separate property nor relationship property and is normally disregarded when it comes to dividing up the property. However, there are exceptions to this rule. If you have a trust, be sure to discuss this with me.

## CONTRACTING OUT OF THE RELATIONSHIP PROPERTY ACT

Parties can settle relationship property issues any way they wish. The settlement of issues can happen before, during, or after the relationship. In New Zealand we call this contracting out of the Act. You may have heard of the American expression 'pre-nuptial' agreements. The New Zealand equivalent is a Section 21 agreement.

There are strict rules on what must be done before the agreement is enforceable. Verbal agreements are not binding. For an agreement to be binding it must:

- Be in writing
- Signed by both parties
- Each person must have independent legal advice before signing.

Each person's lawyer must:

- Witness his or her client's signature
- Certify that they have explained the meaning and effect of the agreement before that person signed the agreement.

A court has the power to set aside part or all of a Section 21 agreement.

## UNEQUAL SHARING

There may be unequal sharing in 60 plus situations. These are some of them.

## RELATIONSHIP OF SHORT DURATION

If a relationship is less than 3 years it is defined as a relationship of short duration. If the relationship is longer than 3 years and is of poor quality it may also be deemed a relationship of short duration. In these cases the two parties in the relationship share according to contributions made during the relationship and not equally. Always remember that contributions may be monetary or non-monetary, and non-monetary contributions are considered of equal value to monetary contributions.

## EXTRAORDINARY CIRCUMSTANCES

The Court may find extraordinary circumstances making equal sharing repugnant to justice. This requirement is a difficult one to satisfy and seldom applied. If these requirements are met the Court assesses the contributions and orders the property divided according to the value of the contributions. Moral wrong-doing (such as having an affair during the relationship) does not constitute extraordinary circumstances. An exception is if the conduct is gross and palpable and significantly affected the extent or value of relationship property it will affect the division of property, e.g., if partner A cuts the steel fishing boat he has almost finished building in half to spite partner B, partner B will receive an amount to compensate for the value of the property destroyed.

If you think that your particular situation may reflect extraordinary circumstances discuss this with me.

## OTHER EXCEPTIONS TO EQUAL SHARING

Ask me about other exceptions to equal sharing.

## VALUATIONS

### Value

The value of each item of property is the price that a willing but not desperate seller would accept from a willing but not desperate buyer (i.e., what you could get for the item if you sold it). It is not the replacement price, the insured value, or what you paid for it. Valuers do their work by figuring out what you could get for the asset even though you are not actually going to sell it.

The value of the property and the date at which it should be valued are often of great importance in a division of property.

### Contributions made after the separation

If a party makes a contribution, after the separation, which would have been a contribution to the relationship they may be compensated for it by order of the court. This is important as this will have the effect of increasing the share payable to that party.

If one partner intends to buy the other partner out of an asset, such as a house, which is probably increasing in value, it is in that person's interests to complete the buyout at the earliest date.

## AFTER THE DEATH OF A PARTNER

If the property has not been divided at the date of death of a partner, the surviving partner may make an application to the court for a division of property. If partner A dies, partner B has the choice of accepting the property he/she has been left in the will or making a claim under the Act. He/she has 6 months to decide what to do. This part of the Act is most important where the amount partner A receives under the will appears to be significantly less than his or her entitlement under the Act.

## IF THERE IS AN AGREEMENT TO MARRY AND THE MARRIAGE DOES NOT TAKE PLACE

The law provides a little used statutory provision that applies if there has been agreement to marry and the marriage does not take place. If there has been an agreement to marry, no marriage has taken place and there are property issues, ask me for advice about whether or not this section applies to your situation.

## THE COSTS OF SOLVING THE PROBLEM

The cost of solving the problem can be both monetary and non-monetary.

The monetary cost of resolving a relationship property problem will include some or all of the following:

- Loss of income for time off work
- Accountant's fees
- Valuer's fees
- Court filing and hearing fees
- Commission paid to land agents for sale of real property
- Auctioneers fees for auctioning off chattels
- Lawyers' fees including conveyancing fees for transfer of land and buildings
- Loss of a percentage of assets and income.

It is a mistake to think that the cost of resolving a relationship property issue is measurable only in dollars. The other costs include:

- Stress
- Low quality of life
- Wasted time.

## **WHY YOU SHOULD NOT BE YOUR OWN LAWYER OR RELY ON THE ADVICE OF YOUR FRIENDS**

You have the right to act as your own lawyer at all times or some of the time but you should ask yourself if that is a good idea. I advise against it for the following reasons:

- You cannot be truly objective about your own affairs
- Your emotional involvement in your own affairs clouds your judgement
- A limited knowledge of law means you cannot accurately know what your entitlement is and therefore you cannot work towards an appropriate and achievable result
- Your activities will delay resolution and inflame the situation, making prompt settlement unlikely.

It is not only knowledge and skill you get from me. The additional objectivity and independence is very importance.

- I urge you to consult me at an early stage of property division dispute. It is important to talk to a lawyer when you are determining what outcome you want.
- Independent advice is useful when considering settlement offers.
- Independent advice is mandatory at the time of a resolution by written agreement. The agreement is not binding without the input of a lawyer for each party.
- Drafting a clear and effective written agreement (as well as any other legal documents, such as affidavits) requires training and skill.

Never rely on a friend for legal advice because they will tell you what you want to hear. If they have had a case similar to yours it is unlikely that it was identical. Worse still, you may feel emotionally obliged to follow a friend's advice, even once it becomes increasingly obvious that it is suspect

## **WHAT I CAN DO FOR YOU**

- Give clear and useful initial advice.
- Identify relevant facts, apply the law to them, and advise you.
- Explain what you are entitled to.
- Advise at each stage of the resolution process.
- Explain your options in how to go about getting what you are entitled to.
- Identify the information that needs to be gathered to negotiate or litigate to a resolution.
- Instruct other professionals such as accountants and valuers to investigate and report in a timely and focused way.
- Assemble and make sense of all the information.
- Formulate settlement proposal(s).
- Negotiate with the other party's lawyers.
- Prepare all documents required to implement an agreed settlement or achieve resolution through the court system.

## **OBTAINING COST EFFECTIVE SERVICES AND KEEPING YOUR LEGAL FEES UNDER CONTROL**

The most important point is to always help me to help you.

Ask what the fee for first consultation is and determine when it is to be paid. If you want me to read over some papers in preparation ask what additional fees will be.

Decide what you want to achieve at the first meeting. This will usually be to determine if you can work with me, obtain general advice on the likely outcome of the resolution process, and find out the steps necessary for resolution. Also discuss how lawyer's fees will be paid.

Before coming to the first consultation prepare a one page memo of the relevant facts.

## ONE-PAGE MEMO OF RELEVANT FACTS

- Your name, date of birth and full contact details (phone, mobile, email, and postal address).
- The same details for your partner.
- Dates the relationship started and finished, and the date of marriage or civil union.
- Information on any children from the relationship or any children from previous relationships living with you.
- Monetary and non-monetary contributions to the relationship.
- Assets that will need dividing (asset, when purchased, valuation).
- List of chattels that can be divided without the help of a lawyer.

Decide what outcome you want, e.g., you might want to buy your partner out of the house, and resolve all issues as soon as possible, or you might want to force the sale of an asset. Communicate these goals to me.

Ensure that you are consulted before major disbursements are made, e.g., a valuer's fee.

Review the fees and progress from time to time. If the fees being accumulated are out of proportion to the value of the property, consider compromising part of your claim to settle quicker, save fees and get on with your life.

Recognise that the lawyer/client relationship is a partnership. We have to work together.

Provide information promptly when requested.

Listen carefully to advice and think about it before making major decisions. Don't get put off by what friends and family say.

Settle small stuff by agreement and concentrate on the high value items.

## RULES FOR GETTING COST-EFFECTIVE LEGAL SERVICES

1. Seek legal advice as soon as you recognise that there is a problem.
2. Before the first consultation.
  - a. Arrange all papers in chronological order and read them over.
  - b. Define your problem and be able to explain it.
  - c. Decide what you expect from the first consultation.
3. Ask me for a quote for the first consultation. If you want me to prepare for the meeting by reading over the papers ask for a quote that covers preparation and the consultation.
4. When you discuss your options ask for a quote or an estimate of the cost of each option.
5. Review your options at each stage and decide which is the most cost effective.
6. Recognise that there is nearly always more than one way to bring your case to an end.
7. Understand that circumstances often change as your case develops and that changed circumstances may need a change in tactics.

### Avoid the following mistakes when obtaining legal services

1. Providing the wrong information.
2. Providing incomplete information.
3. Relying on advice from friends or from the ex.
4. Regularly changing your mind. If you keep moving the goal posts you will never get the ball over them.
5. Being unavailable for appointments.
6. Not returning calls or being difficult to contact.
7. Ringing or dropping in about little issues and then complaining about the cost.

## HOW PROBLEMS ARE SOLVED

Problem solving is a process involving complex interactions:

1. Client and lawyer with the client supplying facts, the lawyer providing advice and the client providing instructions. This process repeats until final resolution.
2. The lawyers communicating with the other side and obtaining agreement on as many issues as possible. Sometimes this results in a complete settlement. If it does not the parties go to the court for a decision or use mediation.
3. Each party provides evidence and submissions to the court until disputed points are decided on by that court.

Key concepts:

1. There is always more than one way forward at each stage, e.g., accept or reject an offer, appeal or don't appeal a court decision, accept or reject a valuation.
2. Any party can end the process at any point if they accept the other parties offer.
3. Compromise is the essence of early resolution. It is not compulsory but it may be the most cost-effective thing to do.

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Relationship property law is complex and you need expert assistance to ensure you get your full share.

For more information about relationship property, my book *Solving Relationship Property in New Zealand, A Practical Guide* is available at \$14.95 for the hard copy and \$7.95 for the PDF. Email me at: [garth@garthcameronlaw.co.nz](mailto:garth@garthcameronlaw.co.nz) to order a copy.

For an initial consultation, please contact me at the details below.

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