

The breakup basics

B asks what equal division is when you breakup and what property it applies to.

In New Zealand, when a couple separate after a de facto relationship/civil union/marriage of three years or more, our law says that all their "relationship property" is to be divided equally.

What is "relationship property"?

It includes:

■ The family home which is the principal residence of the couple. It does not matter if that home was owned by one party before the relationship, it is up for equal division.

■ Family chattels whenever they were acquired, whether pre-relationship or during. They include household furniture, appliances, household tools, gardening effects and equipment, as well as motor vehicles, caravans, trailers or boats used for family purposes. Family chattels also includes pets.

■ Property owned jointly or in common in equal shares between the spouses/partners.

■ All property owned by either spouse or partner immediately before the relationship if it was bought in contemplation of the relationship and for the common use or common benefit of the relationship.

■ All property acquired by either partner after the relationship began.

■ The proportion of any life insurance policy of superannuation fund that is attributable to the relationship.

These are the general categories of property that will be up for equal division if a relationship ends.

Some exceptions apply, such as property bought with inherited funds (so long as that property is kept separate), so if you are in doubt, advice should be sought.



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A home or other property in trust may also be dealt with differently.

S asks what the status is of inheritance funds and how should those funds be divided on separation.

The general rules are:

■ Relationship property ought to be shared equally between the parties.

■ Property inherited is usually separate property.

Separate property is just that – separate.

It will not form part of the relationship property pool to be divided equally in the event of separation.

A tension arises as to whether inheritance funds held in a joint account are relationship property or separate property.

Relationship property includes all property owned "jointly".

Because the funds are held in a joint account, does that make those funds relationship property or is that money separate property because the funds held in the joint account are inheritance money?

Inheritance money is unlikely to automatically lose its status as separate property simply because it has been placed in a joint account.

Whether the funds will lose their

status will depend on whether the inheritance moneys have been so intermingled with other relationship property that it is unreasonable or impractical to now regard that property as separate property.

An example of where that money is likely to retain its separate property status is where the sums in the term deposits have remained relatively constant, with neither of the parties drawing upon the funds or adding additional funds to the account.

Because it remains separately identifiable, it is likely to retain its separate property status.

An example of where this money would lose its separate property status is where the money had been deposited into an all-purpose bank account which was used over an extended period and where various deposits were made and drawn upon to pay living expenses etc.

In that situation it would be impractical to separate out what portion of the balance of the account was represented by inherited funds and what portion was relationship funds, and as such the inheritance funds would likely lose its status as separate property.

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