

The whys and wherefores of property agreements

If you are living together in a marriage, civil union or de facto relationship, or you are intending to enter into such a relationship, you need to be aware of the laws that cover your property rights.

The Property (Relationships) Act 1976 ("the Act") is the piece of legislation in New Zealand that covers the division of property between couples.

For the Act to apply, the relationship usually needs to be three years or more (although there are some exceptions).

The length of a de facto relationship before a marriage is counted as part of the three years and a person can also be in two relationships at the same time that both qualify under the Act.

In the event a couple separate, the general rule is that if you have been married, in a civil union or lived together in a de facto relationship for three years or more, any relationship property will be divided equally.

Again, there are some exceptions to this rule. For example, if one partner has put his or her career on hold to care for the children or look after the home, that person may be entitled to more than 50 per cent of the relationship property pool.

It should be noted that "relationship property" includes not only assets, but debts as well.

Relationship property can also include property that was owned by one partner before the relationship began.

For example, J and B began living together in a de facto relationship six years ago.

When they started living together they lived in the house B had owned for two years before their relationship.

B continued to pay the mortgage on the home during their relationship, and J helped out with the household bills, also contributing to some maintenance and improvements on the home.

When they recently separated, B was pretty sure that the house would still be his, because it was in his name and he owned it before their relationship.

He also paid the mortgage and early on in their relationship J had agreed it was "his house".

However, because they had been in a de facto relationship for more than three years, without any measures in place to protect B's interest in the home, the property they lived in had become relationship property and therefore was to be shared equally.

J was entitled to a half-share in the home.

If you and your partner separate and if your relationship is one that



LEGAL MATTERS

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the relationship property laws apply to, the property that you each own will be classified as either your separate property or your relationship property.

Any "separate property" is retained by the partner who owns it, and any relationship property will usually be divided 50/50 (although there are some exceptions).

Relationship property laws can sometimes apply to relationships of less than three years - for example, if there is a child of the relationship.

A de facto relationship is defined as "living together as a couple". However, that can in some circumstances apply even if you haven't packed bags and boxes and physically moved in together.

Several other factors are taken into account, including how you and your partner arrange your finances, whether there is a mutual commitment to a shared life and whether a sexual relationship exists.

It is possible to live at different addresses but still be deemed to be in a de facto relationship for the purpose of the Act.

Relationship property laws can apply to assets such as your home, your business, your superannuation, any investments you may have, your vehicle(s), household chattels, student loans and other debts.

Putting property into a trust or a company does not necessarily protect the property from forming part of "relationship property" pool.

Any inheritance you receive can also become relationship property if you do not know how to protect it as separate property.

To have the best protection for your property from any relationship property claims, you may need to enter into a Contracting Out Agreement.

That is a written agreement between you and your partner that can record who owns what property.

For such an agreement to be valid, it must be signed by each of you and your independent solicitors. There are strict formal requirements that need to be complied with for such an agreement to be valid.

Column courtesy of Rainey Collins Lawyers phone 0800 733484. If you have a legal inquiry you would like discussed, email Alan on aknowsley@raineycollins.co.nz.

AQUA BEATZ
H²O Xtream Open Weekend
FRIDAY 28 FEBRUARY
7-10PM
FREE SLIDES
LIVE DJ
SLIP 'N SLIDE
CORN TOSS
MINI GOLF
GET A CARTOON OF YOURSELF
www.h2oxtream.com
BRING MONEY FOR EXTRA ACTIVITIES
NO TICKET NEEDED. ALL AGES.
NORMAL POOL ENTRY FEE
Facebook | Twitter | McDonald's | KFC

Family Day at H²O Xtream
Saturday 1 March, 11am - 7pm
Emergency Vehicles and Army, 12 - 2pm
Come and join Classic Hits, 1 - 3pm
Plantroom tours - view the new UV system
Slip 'N Slide | Games
Giveaways
CLASSIC HITS 90.1

Childrens Day at H²O Xtream
Sunday 2 March, 11am - 6pm
Emergency Vehicles and Army, 12 - 2pm
Have-a-Go sessions: Kayaking | Snorkelling
Relays | Slip 'N Slide | Face Painting
Activation Games | Bouncy Castle