

Separation and property division



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LEGAL MATTERS

When it comes to division of property between a separated couple, the general rule in New Zealand is that if you were in a "qualifying relationship" for three years or more, your "relationship property" is to be divided equally.

A qualifying relationship includes a marriage, civil union or de facto relationship.

It is possible to be in a de facto relationship while living at separate addresses. Sharing a common residence is only one factor when determining whether a couple were in a de facto relationship.

Relationship property includes the family home (the principal place of residence for the couple) and family chattels (furniture, appliances, vehicles, boats and even pets).

The family home and chattels will be relationship property regardless of when they were bought.

For example, if the family home was owned by one party before the relationship began, once they have been together for three years it becomes relationship property.

There are some exceptions to this general rule, but that is the starting point.

Other assets that will be relationship property usually need to be attributable to the relationship. They typically include Kiwisaver or superannuation contributions made during a relationship, savings accumulated during a relationship (income is usually relationship property), jointly acquired assets, a business, and property acquired for the common use or common benefit of the relationship.

Debts can be relationship debts, such as credit cards, tax liabilities in some situations, hire purchase agreements or personal loans. Even if a debt is in one party's name it could still be a relationship debt and therefore one that needs to be accounted for between the couple.

What if you do not want these rules to apply to you? It is possible to "contract out" of our law by entering into a formal agreement (a "Contracting Out Agreement" or "pre-nup").

Such an agreement can be entered into at any stage of a relationship - at the beginning, before the three-year period or beyond. If you are considering entering into such an agreement, it is advisable to do so before the three-year period, because after that point the 50/50 rule applies and they do not have to agree to alter its application.

For any such agreement to be binding, each party must receive advice from independent lawyers.



When partners split up, the division of their property usually becomes a focus.

Even if a debt is in one party's name it could still be a relationship debt.

That means each party must see lawyers from separate law firms. The agreement must be in writing, signed by both parties, witnessed by their independent lawyers and that same lawyer must certify that they have advised that person as to the effects and implications of the agreement.

The certification process is not a rubber stamping exercise and the lawyer is likely to require detailed information about the couple's assets and liabilities to advise them fully.

The same requirements apply to an agreement between a couple who have separated and want to divide their property.

■ Column courtesy of Raine Collins Lawyers, phone 0800 759 484 or raineycollins.co.nz. If you have a legal inquiry you would like discussed, email alan.snowley@raineycollins.co.nz. Our next free public seminar, on Health and Safety, will be on March 23, 12:15pm till 1:30pm. See our website.