

# Relationship property

## Separation or divorce: How your property is divided when you don't agree

The information in this factsheet is mainly for people who can't agree and are going through the Family Court.

### Divide relationship property

If you separate or divorce, you'll need to divide your relationship property. There are three ways to do this:

- you can agree between yourselves how to share your property and the Court doesn't have to be involved. If you want to be able to enforce the agreement through the Court, your agreement must be in writing and both of you must have had independent legal advice
- the Family Court can become involved if you can't agree, your agreement is unfair or doesn't work. The Court will identify the relationship property, value it and decide how it will be divided between you and the other person. The Court will put this in a Relationship Property Order
- if you're going to Family Dispute Resolution, you can talk about how you'll divide relationship property if it helps you agree on your plan for your children. Write down what you've agreed and make sure you both get independent legal advice.

### Relationships covered by law

The Family Court can make orders dividing relationship property when you're married, in a civil union or, in some cases, a de facto relationship.

#### MARRIAGES AND CIVIL UNIONS

Different rules apply for dividing property, depending on whether you've been married or in a civil union for less than three years or more than three years.

If you were living as a de facto couple before your marriage or civil union, that time will be treated as if it were part of the marriage or civil union.

#### DE FACTO RELATIONSHIPS

In most cases, only people who have lived together in a de facto relationship for at least three years are covered, unless there's a child involved or one partner has made a significant contribution to the relationship.

#### DEFINING A DE FACTO RELATIONSHIP

The Court will look at many things when deciding whether two people are in a de facto relationship. These include:

- how long the relationship lasted
- the extent to which the couple share a home
- whether they have a sexual relationship
- their financial and property arrangements and how much they depend on each other
- their ownership, use and purchase of property
- how committed they've both been to a shared life
- their care and support of children
- who does the housework and other household duties
- if the partners are known to family and friends or other people as a couple.

#### What relationship property covers

Relationship property covers things of financial value that you gained during the relationship. It can include:

- the family home and contents (but not taonga or heirlooms), other land or buildings and vehicles
- salary or wages earned during the relationship, insurance payouts, superannuation you received, rents and other income from joint property
- any property gained when you were in the relationship or had the relationship in mind and intended for both of you to use
- non-personal debts (your personal debts are your own responsibility)
- gifts or inheritances that have become mixed with relationship property
- property you both agree is relationship property
- increases in the value of relationship property, income from it or the proceeds from the sale of it.

#### Apply to divide relationship property

The Family Court can help divide your relationship property if you and your former partner can't agree or if the agreement is unfair or breaks down.

**You need to apply within one year of your divorce or within three years from the end of your de facto relationship.** You can ask the Court for permission to file after this deadline.

It costs \$700 to apply. You can download the application forms from [justice.govt.nz/family/separation-divorce/divide-relationship-property](https://justice.govt.nz/family/separation-divorce/divide-relationship-property). Or call us on 0800 268 787 and ask us to send the forms to you. Or you can visit your local court and ask for the forms.

## What happens after you file your application

The Court will give the other person a copy of the application and instructions on what they need to do. To respond, the other person will file a narrative affidavit and an asset and liability affidavit.

### JUDICIAL CONFERENCE

The judge will read the documents and then call a short meeting that you need to go to (called a judicial conference). The judge will tell you what will happen next and they'll set out a timetable for filing further evidence. The judge might direct a settlement conference be held.

If both people agree on some matters, the judge can also make some Orders by consent.

### SETTLEMENT CONFERENCE

In a settlement conference, the judge will lead a discussion between you and your former partner to see if you can agree. Lawyers can take part.

### HEARING

A hearing takes place when you and your former partner can't agree. Before the hearing, the judge will tell you:

- if more affidavits or other documents should be filed
- if witnesses can be called and if any expert reports are needed
- how long the hearing is going to be (it could take between an hour and several days).

You'll need to pay a hearing fee of \$906 (including GST) for each half day that the hearing takes. You have to pay this fee even if the hearing doesn't fill up all of the half day. You can ask the court to waive (cancel) the fee.

You may want to get legal advice to help you. You may be able to get legal aid or free community legal help.

To find out more about waiving the fee or getting legal aid or free community legal help, see the links below.

## How the Court divides relationship property

### GENERAL PRINCIPLES

The judge will be guided by some general principles when they divide your relationship property:

- men and women have equal status
- each partner has made an equal contribution to the relationship so relationship property should usually be shared equally (50:50)
- it usually doesn't matter if one person is more responsible than the other for the break-up of the relationship
- unpaid work, such as caring for children and running the home, is equal in value to paid work.

There's more information on our website, including about fees and forms:

**[justice.govt.nz/family/separation-divorce/divide-relationship-property](https://justice.govt.nz/family/separation-divorce/divide-relationship-property)**

Apply for help paying legal costs:

**[justice.govt.nz/courts/going-to-court/legal-aid](https://justice.govt.nz/courts/going-to-court/legal-aid)**

Apply to the court to waive a fee:

**[justice.govt.nz/courts/going-to-court](https://justice.govt.nz/courts/going-to-court)**

Find your local court:

**[justice.govt.nz/contact-us/find-us](https://justice.govt.nz/contact-us/find-us)**