



Division of Relationship Property

Contents

1. Introduction	2
2. Who is covered by the Property (Relationships) Act	2
Couple must live together for three years for Act to apply	2
What is a “de facto relationship”?	2
3. How property is divided under the Act	3
What is “relationship property” and how is it dealt with?	3
What is separate property and how is it dealt with?	3
How are contributions to the relationship assessed?	4
How does the court give effect to the division of property?	4
4. Relationships of short duration	4
Marriages and civil unions of short duration	4
De facto relationships of short duration	5
Court can treat relationship as one of short duration in some cases	5
5. How the Act applies when a spouse or partner dies	5
How is property divided if one of the couple dies?	5
6. Agreements for the division of property	5
Contracting out of the Property (Relationships) Act	5
Special requirements for an agreement to be valid	5
The court’s power to cancel a valid agreement	6

1. Introduction

When a married, civil union or de facto couple split up, their property is divided according to the equal-sharing rules in the Property (Relationships) Act 1976.

If the couple have lived together for at least three years, usually the family home, car, furniture and appliances will be shared equally between them. If they have lived together for less than three years, different rules apply.

De facto couples have been covered by these equal-sharing rules since 1 February 2002. Civil unions have been a legally recognised type of relationship since 26 April 2005, and civil union partners who split up have, since that date, been on the same footing as married couples under the Property (Relationships) Act.

Hearings held under the Property (Relationships) Act are heard by the Family Court. A judge can transfer the case to the High Court if the case is particularly complex.

2. Who is covered by the Property (Relationships) Act

Couple must live together for three years for Act to apply

A married, civil union or de facto couple is covered by the equal-sharing rules in the Property (Relationships) Act only if they have lived together for at least three years. Couples who have lived together for less than three years are covered by different rules – see below, “Relationships of short duration”.

If a married or civil union couple first lived together in a de facto relationship, then the length of the de facto relationship is counted in determining whether or not the marriage or civil union satisfies the three-year threshold. For example, if a couple have been married for two years but also lived together as a de facto couple for two years immediately before that, they are treated as if they have been married for four years. Their marriage is therefore covered by the equal-sharing rules.

What is a “de facto relationship”?

Under the Property (Relationships) Act, a “de facto relationship” means a relationship between two people, whether heterosexual or same-sex, who –

- live together as a couple, but are not married to or in a de facto relationship with each other, and
- are both 18 or older

The Act sets out a number of factors that the court should consider, along with any other relevant factors, in deciding whether two people live together as a couple –

- how long the couple have been together
- the extent to which they share a home
- whether they have a sexual relationship
- their financial and property arrangements
- how committed they both are to a shared life

- who has cared for and supported the children
- who does the housework and other household duties
- the reputation and public aspects of the relationship (for example, whether their families and friends see them as a “couple”)

3. How property is divided under the Act

The Property (Relationships) Act classifies property as either “relationship property” or “separate property”.

What is “relationship property” and how is it dealt with?

Relationship property includes –

- the family home
- the family chattels (such as furniture, household equipment and appliances, vehicles)
- any common or jointly owned property
- property acquired before the relationship began, if it was intended for the couple's common use or benefit
- income earned or property bought after the relationship began
- the value added during the relationship to superannuation and life insurance policies

All relationship property is divided equally, unless there are extraordinary circumstances that make equal sharing “repugnant to justice”, in which case the relationship property is divided according to the contribution each person made to the relationship.

What is separate property and how is it dealt with?

In general, separate property (that is, all property not classed as relationship property) remains the property of the person who owns it and is not divided.

Separate property includes –

- property that one person owned before the marriage, civil union or de facto relationship, and kept separate during it
- any gifts, taonga or inheritances that one person received while they were together, and kept separate

Separate property also includes –

- all property acquired out of separate property, and
- the proceeds of selling any separate property

However, if your spouse or partner’s separate property increased in value because of work that you did, or if some kind of income or gain was derived from that property because of work that you did, then the increase in value or the income or gain is classified as relationship property. In this case, the relationship property is divided according to each person’s contribution to the increase in value or to the income or gain.

The same applies if relationship property was used to increase the value of your spouse or partner’s separate property, or was the cause of some kind of income or gain being derived from



the separate property. In that case, the increase in value or the income or gain is classified as relationship property.

Separate property also becomes relationship property if it is used to acquire, improve or increase the value of relationship property.

How are contributions to the relationship assessed?

The Property (Relationships) Act lists a number of types of contribution that the courts take into account in assessing the contribution each person made to the relationship. These include, among others –

- caring for children, and caring for elderly or sick relatives or dependants of either spouse or partner
- managing the household and performing domestic tasks
- earning an income or otherwise providing money for the relationship
- acquiring or creating relationship property
- giving the other spouse or partner support or assistance (financial or otherwise) to enable that other spouse or partner to gain qualifications or get into a job or business

Financial contributions do not rate any more highly than contributions of other kinds, such as caring for children.

How does the court give effect to the division of property?

The court can make a variety of orders to give effect to the division of the property. It can do this in relation to the property generally or to a specific item. For example, it can order property to be sold or, in the case of the home, order that one party has the right to live in it.

The court also has the power to address situations such as where one spouse or partner has advanced his or her career while the other stayed home to look after children. Here, the court can off-set significant likely differences in income and living standards by ordering one party to make a lump-sum payment to the other or to transfer relationship or separate property to the other.

4. Relationships of short duration

The rule that the family home, car, furniture and so on should be divided equally doesn't apply if the marriage, civil union or de facto relationship existed for less than three years. These are called "relationships of short duration".

Marriages and civil unions of short duration

With marriages and civil unions of short duration, the Property (Relationships) Act applies differently so that your share in the home, car, furniture and appliances is determined by your contribution to the relationship.

Other relationship property is divided equally unless the contributions to the relationship were clearly unequal, in which case this property is divided according to the different contributions.

De facto relationships of short duration

With de facto relationships of short duration, the Act usually doesn't apply at all, which means that each partner's rights to a particular item of property will depend on the ordinary rules of property ownership – that is, on whether that partner has legal title to that property.

But a de facto relationship of short duration **will** be covered by the Act if –

- there is a child of the relationship, or the partner applying for the property to be divided under the Act made a substantial contribution to the relationship, and
- it would create serious injustice if the court didn't make an order under the Act

In those cases each partner's share is determined by the different contributions to the relationship.

Court can treat relationship as one of short duration in some cases

Even if the couple have in fact lived together for the minimum three years, the court can decide to treat the marriage, civil union or de facto relationship as if it were a relationship of short duration, if the court thinks this is fair in all the circumstances.

5. How the Act applies when a spouse or partner dies

How is property divided if one of the couple dies?

The equal-sharing rules in the Property (Relationships) Act apply not just when a couple split up, but also when one of the couple dies.

If one of the couple dies, the surviving spouse or partner has an option: he or she can either have a half-share of relationship property under the Act, or take whatever he or she is entitled to under the will or (if there is no will) under the "rules of intestacy". (For more information on wills and the rules of intestacy, see the information sheet "Wills", sections 5 and 7.)

A surviving spouse or partner who chooses to have property divided under the equal-sharing rules cannot also take what has been left to him or her in the will. The exception to this is if the will makes it clear that the survivor can do this, or if the court allows it to avoid injustice.

6. Agreements for the division of property

Contracting out of the Property (Relationships) Act

A married, civil union or de facto couple, or two people intending to marry or enter into a civil union or de facto relationship, may contract out of the Property (Relationships) Act by entering into their own agreement to decide the status and ownership of their property and how it should be divided.

The agreement can be expressed to apply while both people are alive, or when one of them dies, or in both situations.

Special requirements for an agreement to be valid

As well as satisfying the standard requirements of contract law, a valid property agreement must also satisfy a number of special procedural requirements contained in the Property (Relationships) Act. If the agreement doesn't satisfy the requirements, then the Act will apply, despite what the couple intended.



Those requirements are as follows –

- the agreement must be in writing
- it must be signed by both parties
- each party must have had independent legal advice before they signed
- each party's signature must be witnessed by a lawyer, who must certify that he or she explained the effect and the implications of the agreement to that party

In some cases the court can validate an agreement that would otherwise be invalid because these requirements weren't complied with. The court can do this if the failure to comply with the requirements hasn't materially prejudiced either party's interests.

The court's power to cancel a valid agreement

In certain cases the court can cancel an agreement even if it has complied with the special requirements. The court can do this if it believes that the agreement would cause "serious injustice". In making a decision the court considers these factors –

- the terms of the agreement
- how long ago the agreement was entered into
- whether the agreement was unfair or unreasonable when it was entered into
- whether the agreement has become unfair or unreasonable because the situation has changed since it was entered into
- the fact that the parties wanted to create certainty about the status, ownership and division of property by entering into the agreement
- any other relevant matters

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