

Review of the Property (Relationships) Act 1976

1. The Property (Relationships) Act 1976 (PRA) governs how people divide property when their relationship ends.
2. The PRA was enacted over 40 years ago. Since then, the way New Zealanders enter, conduct and leave relationships has changed significantly.
3. The Law Commission is considering whether the PRA's rules are working well in modern New Zealand. Is the PRA dividing property fairly?
4. The Law Commission is looking at many aspects of the PRA. Two areas of particular importance are:
 - a. Does the PRA apply to the right relationships?
 - b. Does the PRA require people to divide the right property?

Does the PRA apply to the right relationships?

5. The PRA applies to three types of relationships: marriages, civil unions and de facto relationships.
6. The PRA requires people who have left these relationships to divide their property in the same way, regardless of what type of relationship they were in. The Law Commission thinks that the PRA should continue to apply equally to all relationship types.
7. But a key question is whether the PRA's definition of de facto relationships actually also captures non-married couples for whom equal sharing of property is inappropriate.
8. The PRA defines a de facto relationship as two people who live together as a couple. In order to determine whether the partners live together as a couple, the PRA says we should take all the circumstances of the relationship into account. But the

PRA also lists several specific factors which indicate whether the relationship is a de facto relationship. The factors include things like whether the partners had a sexual relationship, whether they were financially interdependent, and whether they had a mutual commitment to a shared life.

9. If the partners are in a de facto relationship, the PRA's main rules about dividing property will only apply if the couple had been together for three years or more.
10. The Law Commission is considering whether these rules are appropriate, including:
 - a. Does the PRA's definition of de facto relationship and the indicating factors it lists reflect relationships that are the same as marriages and civil unions? Should some indicating factors carry more weight than others, like whether the partners live together or whether they are financially interdependent?
 - b. Is three years the right length of time for when the rule of equal sharing should apply to a de facto relationship?

Aria and Joel

Aria and Joel were in a relationship for four years. During the relationship, they lived together in Joel's house with Aria's daughter and Joel's son. Aria and Joel had both been married before. They kept their money completely separate. They had no joint bank account. They split all living costs down the middle, including groceries, power bills and the mortgage on Joel's house.

At the start of the relationship Joel's house was dilapidated. Both Aria and Joel did significant work on the property, including building a garden and deck, painting the bedrooms and refurbishing the kitchen. Aria, Joel and their children go on holidays together regularly.

When the relationship ends Aria claims she was in a de facto relationship with Joel and is entitled to half the house.

Do you think Aria and Joel's relationship reached the level where they should be required to divide their relationship property, like Joel's house, equally?



Does the PRA require people to divide the right property?

11. The PRA requires couples who separate to divide their relationship property equally. The way the PRA defines relationship property is, therefore, very important.
12. The PRA's definition of relationship property includes:
 - a. property the family uses, like the family home, furniture and cars; and
 - b. property either partner acquires during the relationship, like income and superannuation entitlements.
13. The Law Commission is asking whether the PRA's definition of relationship property focuses on the property the partners ought to share.
14. The research data collated in the Law Commission's Study Paper *Relationships and Families in Contemporary New Zealand – He Hononga Tangata, He Hononga Whānau I Aotearoa a Nāianeī* shows that people in New Zealand are more likely to find a new partner after leaving relationships than when the PRA was first enacted.
15. These social changes mean that more people are entering new relationships later in life, and are therefore more likely to have already accumulated some property, possibly during the course of previous relationships. Situations where one partner brings significantly more property into a relationship (such as a house) might be more common.
16. The Law Commission is asking whether it would be better to move to an approach where the partners share only the property that they acquire during the relationship. That would mean if partners bring property into a relationship, they get to keep that property if they separate.
17. There are, however, many good reasons to keep the current approach. Important assets like the family home are integral to family life and should arguably be the property of the relationship and jointly owned by the partners. Dividing the family home equally has been law for a long time. To change the rule would be a big change. An approach where the partners share only the property they acquired during their relationship raises difficult questions. For example, what should happen to assets they bought with savings that each partner acquired before the relationship?

Penny and Ken

Penny and Ken are both in their late 70s. Penny's former husband died eight years ago. Penny has four adult children. Ken has never been married and has no children.

Penny and Ken developed a close relationship shortly after Penny's husband died. Six years ago, Ken moved into Penny's house. Both admit they are in a de facto relationship. Ken has never owned a house but he has a large income from several investments. Penny owns the house and has no mortgage. She has less income than Ken. During the relationship Ken pays for nearly all the couple's living expenses.

Penny and Ken decide to separate. Penny's house is likely to be the couple's family home and therefore relationship property. Ken's investments are likely to be separate property.

What is a fair way to classify Penny's house? Should the whole value of Penny's house be relationship property?

Jun and Hamish

Hamish is a widower. He has two teenage children. Jun is a single mother. She has two children under 10. Her former partner lives in Japan. She has no contact with him.

Four years ago Jun and Hamish decided to live together. They bought a house for \$300,000. Hamish contributes \$5,000 to a deposit and Jun contributes \$55,000. They fund the balance with a mortgage.

Jun and Hamish now decide their relationship is not working out. Jun leaves the home with her children.

When Jun and Hamish separate, the house is worth \$400,000 and the mortgage debt has gone down to \$150,000.

What is a fair way to classify the house? Should the whole value of be relationship property and divided equally?



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