

Dividing Relationship Property: A Guide about Issues to Consider

November 2022

Nicola Taylor and Megan Gollop
Faculty of Law | Te Kaupeka Tātai Ture
University of Otago | Te Whare Wānanga o Ōtākou
New Zealand | Aotearoa

Research Highlight

6

This Research Highlight is based on findings from research about relationship property division in New Zealand,¹ led by researchers from the Faculty of Law at the University of Otago, and generously funded by the Michael and Suzanne Borrin Foundation. This research was undertaken in two phases:

- Phase One involved a nationwide telephone survey ascertaining public attitudes and values about post-separation relationship property division. During 2018, 1,361 telephone interviews were undertaken with a representative sample of 1,011 people, with additional interviews with 150 Māori, 100 Pasifika and 100 Asian respondents.
- Phase Two examined how separated couples divided their property and resolved any disputes. During 2020, an anonymous nationwide online survey was completed by 378 people and 110 of these respondents also participated in a telephone interview about their experiences and perspectives. The majority of the 378 survey respondents were women (82%), were born in New Zealand (79%), and had a tertiary qualification (71%). Most identified as New Zealand European (89%) and/or Māori (7%).

For full details of the study methods, participants and findings, please refer to our research reports and summaries, referenced at the end of this Research Highlight.



Introduction

When couples separate, they have to consider how they will divide their property, including their assets and any debts. This is governed by the Property (Relationships) Act 1976 (PRA) and usually, but not always, involves the equal sharing of relationship property between the former partners.² There can be much to think about at this time and key decisions to be made. The separated people who contributed to our research provided many helpful insights based on their experience of dividing property with a former partner. Many suggested that having a guide of what to consider when dividing property following separation would be very helpful.

A checklist saying have you thought about this, have you discussed this, these are the things to take into consideration.

- ¹ The research informed a review of the Property (Relationships) Act 1976; see Te Aka Matua o te Ture | Law Commission *Review of the Property (Relationships) Act 1976 – Te Arotake i te Property (Relationships) Act 1976* (NZLC Report | Pūrongo 143, 2019).
- ² PRA 1976, s 11(1): On the division of relationship property under this Act, each of the spouses or partners is entitled to share equally in (a) the family home; and (b) the family chattels; and (c) any other relationship property.

Research Highlight 6

A step-by-step kind of thing, these are the important things you need to think about.

This Research Highlight therefore draws on our participants' experiences to set out some of the key issues to think about when dividing relationship property with a former partner. It is based on what the participants did, what they found helpful, and what they wished, in hindsight, they had known about at the time. Referring to the other five Research Highlights in this series will provide more in-depth information on each of these issues.

This guide is not intended to replace the need for legal advice – in fact, over three-quarters (76%) of the participants sought legal advice when they divided their property, and lawyers were the *first* professional that the majority sought out for help, advice or information.

This Research Highlight is instead intended to prompt people to think about some important issues, whether they divide their relationship property themselves or through the use of professionals (such as lawyers or mediators) or the courts. Giving prior consideration to the issues addressed in this guide will be helpful preparation for any discussions with a former partner and/or any professionals.

Access and Collate Important Information

Start by collating and detailing all the information relevant to the property division. This will be useful for any discussions with a former partner and/or a lawyer, consultations with other professionals (such as valuers, accountants), or applications to the Family Court.

- **Record important dates** as the nature and length of the relationship can affect property entitlements under the PRA. Important dates include the:
 - Date the relationship began.
 - Date when living together/co-habitation commenced.
 - Date of marriage or civil union.
 - Date of separation.
- **Gather relevant documents** such as:
 - Bank account and credit card details and statements/balances.
 - Investment details – shares, bonds, property etc.
 - Superannuation scheme(s) details.
 - Insurance policies.
 - Loan and mortgage agreements.
 - Debts owed.
 - Hire purchase agreements.
 - Ownership papers e.g., house, vehicles.
 - Receipts, invoices, bills, accounts.
 - Tenancy agreements.
 - Trust deeds.
 - Prenuptial or contracting out agreement (see Research Highlight 5).
- **Itemise assets and debts/liabilities in a list, table or spreadsheet** that also records their values and when they were acquired or incurred (if known). This enables them to be clearly documented for both parties to see, amend, and discuss as negotiations proceed. These assets and debts may, or may not, be subject to equal sharing under the PRA, but having them set out like this may be helpful. See page 3 for a list of assets and debts to consider.
- **Indicate any assets that might be separate property and any personal debts** (as these may possibly not be subject to equal sharing).

Assets – What is Owned	
Houses/real estate/property	
– The family home	– Lifestyle block(s)
– Holiday home(s)	– Investment properties
– Land/section(s)	
Businesses	
– Farm/orchard	
– Professional practices	
– Business (e.g., café)	
Finance/money	
– Money or savings in bank accounts or with other financial institutions	– Life insurance policies
– Shares, bonds, other investments	– Inheritances
– Superannuation/KiwiSaver/pensions	– Family gifts
	– Redundancy/severance payments
	– ACC or other payments
Household contents/chattels	
– Furniture	– Hobby equipment/materials
– Whiteware	– Sports equipment
– Appliances	– Children’s belongings
– Tools/garden equipment	– Bikes
– Artwork	– Other household goods
– Kitchenware	
– Manchester/household linen	
– Musical instruments	
Vehicles	
– Car(s)	– Motorcycle
– Truck	– Caravan/motorhome
– Boat	– Horse float
Personal effects	
– Family heirlooms	– Photographs
– Taonga/treasures	– Keepsakes/momentos
– Jewellery	
Animals	
– Pets	
– Livestock	
Overseas assets	
– House(s)	– Money
– Land	– Businesses
– Investments	– Superannuation/pensions
Assets held in trusts	
Assets co-owned with other people	
Any other assets?	

Debts/Liabilities – What is Owed
Mortgage(s)
Commercial/business loan(s) or debt
Personal/family loan(s)
– Private – e.g., from family or friends
– From banks/finance companies
Hire purchase agreement(s)
Credit card debt
Store card debt
Student loan
Tax to pay
Outstanding bills/invoices to pay
Any other debts? e.g., gambling debt

Consider the Decision-Making Pathway

Next, consider how best to work out the property division. Many former couples can sort things out themselves, with or without legal advice. If that isn’t possible, the property division can be negotiated through each party’s lawyers, or through another impartial person (such as a mediator or arbitrator). If self-resolution or the use of a professional doesn’t resolve matters, then an application can be made to the Family Court to determine the property division.

The pathway taken will obviously be dependent on a number of factors such as:

- Whether there is a prenuptial or contracting out agreement.
- The nature of the relationship between the former couple.
- Whether there are any family violence or safety concerns.
- The cost.
- The value and complexity of any assets and debts/liabilities.
- Whether a legally enforceable property division agreement is needed.³

³ To be legally enforceable in court, this must be a formal agreement that is certified by a lawyer for each party (see PRA 1976, ss 21A and 21F).

Research Highlight 6

If the parties have a civil and cooperative post-separation relationship, and act in a reasonable and fair manner, then dividing the property between them can be relatively straightforward. However, situations involving high conflict, family violence, or manipulative or controlling behaviour might make it impossible to engage directly with a former partner and require protective measures, legal representation, or court intervention.

Sometimes, too, people are forced into a particular decision-making pathway by the actions of their former partner. While perhaps preferring to avoid the cost of lawyers or the court, they find themselves needing to obtain legal representation because their former partner has already engaged a lawyer and/or initiated court proceedings. A former partner's lack of engagement in the property division process may also lead to professionals needing to become involved.

Similarly, it can be important to consult professionals, such as lawyers and accountants, if the property division process involves complex financial matters.

Seek Information, Advice and Support

Consider what information, advice and support might be needed. Be informed about and understand:

- The assets, debts and financial situation of the separated couple.
- Property entitlements and rights under the PRA.
- What is regarded as relationship property and separate property under the PRA and how to determine this.
- What is regarded as relationship debt and personal debt under the PRA and how to determine this.
- The property division process and what to expect.
- If applicable, the implications of any trust, or prenuptial or contracting out agreement, for the property division.

There are many people and services who can provide information, advice, tips and support about these matters.

- Talk with people who have experienced relationship property division themselves, such as friends, family or whānau members, or colleagues.
- Look online for information and advice about the PRA, entitlements and the property division process (see the helpful websites and the other Research Highlights listed below).
- Seek legal advice from a lawyer or community law centre. Ask around for recommendations for a lawyer with relationship property/family law expertise. Ask for an estimation of the likely cost.
- Accountants, financial advisors and banks can assist with financial issues.
- Valuers and real estate agents can provide information about valuing or selling any property, such as houses, land, or businesses.

Relationship property division can be a challenging process, particularly when also dealing with other separation-related issues, and adjusting to personal and family transitions. It is important for people to look after their physical and mental health, and to seek support when needed:

- Consider having a support person throughout the process.
- Seek informal help and support from family, whānau, hapū, iwi, friends, church, and other personal or cultural networks.
- Consider accessing, or joining, a support group involving other people who have experienced separation and relationship property division issues.
- Contact government departments, community agencies, social services and family violence services for support and assistance if required.
- Seek professional help from a doctor, counsellor or psychologist if required.

Consider the Timing of the Property Division Process

It is worth thinking about the best time to begin the property division process:

- Does the property division need to be completed soon after the separation, so each person has money to relocate or to purchase a new property and household goods? Or is, it better to wait until emotions are less raw?
- Consider the implications of proceeding straight away, or of waiting.
- Consider seeking legal advice about the implications of any interim arrangements, such as who stays in the family home or who pays the mortgage, since these can affect what each party gets in the final property division.⁴
- What other important decisions need to be made, for example, parenting arrangements (children's day-to-day care and contact), child support, or maintenance? Consider whether to make these decisions at the same time as dividing the property, earlier, or later. Some people find it easier to resolve everything at once, while others prefer to deal with property and child-related matters separately to minimise any conflict about one spilling over into the other.

Discuss how best to deal with any financial issues in the period between the separation and the property division e.g., access to joint bank accounts, responsibility for paying the mortgage, rent, rates, insurance, outstanding bills, house maintenance, and any child-related costs.

To prevent later regret, avoid agreeing to things in a rush, or when feeling under pressure or not fully informed.

Consider Whether and How to Value Property

Give consideration to how to determine the agreed value of the family home and any other property. This could be by:

- Putting the property on the open market and using the actual selling price.
- Registered valuations from a valuer.
- Real estate agents' market value estimates/appraisals.
- Using capital values (CV), government values (GV) or registered values (RV).
- Using comparable asking prices, property values and sales history in the surrounding area/suburb.
- Simply agreeing on a value that each party thinks is fair and reasonable.

If using a registered valuer, which might sometimes be required, it is helpful to agree in advance on:

- What valuer(s) to use.
- How the valuation will be paid for.
- How many valuations to obtain.
- How to deal with multiple valuations, if more than one is obtained.

Think about the date at which valuations are undertaken as this can have significant implications for the property division. The PRA stipulates that the value of property is to be determined as at the date of the court hearing if the matter is before the courts,⁵ or the court may, in its discretion, use another date.⁶ However, if people resolve their property division out-of-court they can decide on the valuation date taking into account:

- Changes to the capital value and selling price of properties over time.
- Whether valuations are still accurate if the property division is delayed.

Consider how to value household contents (such as furniture and appliances), vehicles, and other significant items of property (e.g., jewellery, art, heirlooms). This could be by using:

- The purchase price.
- The insured value.
- A professional valuer.
- Estimates of similar items from second-hand dealers, car dealers, or online auction sites, such as Trade Me.

⁴ PRA 1976, s 18B.

⁵ PRA 1976, s 2G(1).

⁶ PRA 1976, s 2G(2).

Research Highlight 6

Think About How to Divide Household Items

While the PRA stipulates the equal sharing of household chattels, how the division is achieved varies. It can be helpful to consider and discuss together, or with lawyers, whether to:

- Share everything exactly equally (e.g., split a dinner set in half).
- Keep what was owned prior to the relationship and divide what was purchased together.
- Leave the children's property (e.g., furniture, bikes, car seats) out of the division, so it goes with the children.
- Leave hobby, sporting or recreational equipment with the person who uses it.
- Split items based on who needs what to set up a new home.
- Value items, calculate who has taken what, and determine whether one party needs to be compensated if the other has received a greater share.
- Be flexible, allowing items to be shared or claimed at a later date.

Don't forget about items of sentimental, rather than financial, value (e.g., family photos, children's baby items, keepsakes, momentos).

Any Need for a Formal Agreement?

Consider whether any agreement about the property division needs to be formalised. Separated couples may just verbally agree on their property division, write their own agreement, seek legal advice, and/or have an agreement drawn up by a lawyer. A property division agreement won't be legally enforceable in court unless certain requirements are met:

- The agreement is in writing.
- Each party has had independent legal advice before signing the agreement.
- The signature of each party is witnessed by a lawyer.
- The lawyer who witnesses the signature has certified that, before the party signed the agreement, they explained the effect and implications of the agreement to that party.⁷

Property issues can also be included in a separation agreement which covers broader matters such as parenting arrangements, financial support, and the date of separation.⁸

Having a formal written agreement may make it easier to:

- Transfer joint bank accounts or mortgages etc. into one party's name.
- Have the separation recognised by Government departments (e.g., Work and Income).
- Prevent further property claims at a later date.

⁷ PRA 1976, s 21F.

⁸ Family Proceedings Act 1980, s 39(3).

Entered, or Entering, Into a New Relationship?

If repartnering, consider the need to protect any assets by:

- Understanding a partner's financial situation and approach.
- Talking with a partner about how to divide property in the event of separation.
- Seeking legal advice before living with, marrying, or entering into a civil union with someone.
- Entering into a prenuptial or contracting out agreement.

Look to the Future

Finally, consider the need to:

- Make or update wills.
- Obtain a divorce to avoid estate/inheritance issues in the event that one party dies after the separation.
- Let 'the dust settle' and move on.

"You need to move on. I think that's the big thing, just do what you've got to do and just move on."

Helpful Websites

Ministry of Justice | Te Tāhū o te Ture

- <https://www.justice.govt.nz/family/relationship-property/>
- <https://www.justice.govt.nz/family/relationship-break-up/>
- Contact the family justice help line: 0800 2 AGREE (0800 224 733)

New Zealand Government | Te Kāwanatanga o Aotearoa

- <https://www.govt.nz/browse/family-and-whanau/separating-or-getting-divorced/separating-from-your-spouse-or-partner/>

Community Law

- <https://communitylaw.org.nz/community-law-manual/chapter-12-relationships-and-break-ups/dividing-your-property-when-you-split-up-relationship-property/>

New Zealand Law Society | Te Kāhui Ture o Aotearoa

- <https://www.lawsociety.org.nz/for-the-public/common-legal-issues/dividing-up-relationship-property/>

Citizens Advice Bureau | Ngā Pou Whakawhirinaki o Aotearoa

- <https://www.cab.org.nz/search/tag:%22Relationship+property%22>

Research Highlight 6

Relationship Property Division in NZ Research Highlight Series

There are six Research Highlights in this series.
Each provides helpful information and advice about:

1. Knowledge and Understanding of Relationship Property Division
2. Relationship Property Division: Insights From Those Who've 'Been There, Done That'
3. How the Relationship Between Former Partners Affects Their Property Division
4. The Challenges and Impact of Relationship Property Division
5. Prenuptial/Contracting Out Agreements
6. Dividing Relationship Property: A Guide about Issues to Consider

Research Reports and Summaries

Phase One

Ian Binnie, Nicola Taylor, Megan Gollop, Mark Henaghan, Shirley Simmonds and Jeremy Robertson, *Relationship Property Division in New Zealand: Public Attitudes and Values. A General Population Survey* (Technical Research Report, Michael and Suzanne Borrin Foundation, Wellington, New Zealand, 2018).

Ian Binnie, Nicola Taylor, Megan Gollop, Mark Henaghan, Shirley Simmonds and Jeremy Robertson, *Relationship Property Division in New Zealand: Public Attitudes and Values. A General Population Survey* (Research Summary, Michael and Suzanne Borrin Foundation, Wellington, New Zealand, 2018).

<https://www.borrinfoundation.nz/report-relationship-property-division-in-new-zealand-public-attitudes-and-values>

Phase Two

Megan Gollop, Nicola Taylor, Ian Binnie, Mark Henaghan and Jeremy Robertson, *Relationship Property Division in New Zealand: The Experiences of Separated People* (Descriptive Research Report, Children's Issues Centre, Faculty of Law, University of Otago, Dunedin, New Zealand, 2021).

Megan Gollop and Nicola Taylor, *Relationship Property Division in New Zealand: The Experiences of Separated People* (Research Summary, Children's Issues Centre, Faculty of Law, University of Otago, Dunedin, New Zealand, 2022).

<https://www.otago.ac.nz/cic/research/index.html#relationship-property>

ISBN 978-1-99-117745-2

Please cite this as: Nicola Taylor and Megan Gollop, *Dividing Relationship Property: A Guide about Issues to Consider* (Research Highlight 6, Michael and Suzanne Borrin Foundation, Wellington, New Zealand, 2022).

Many thanks to the Michael and Suzanne Borrin Foundation, Ian Binnie (Solasta Consulting), Professor Mark Henaghan (University of Auckland), Dr Jeremy Robertson, Nicola Liebergreen (Assistant Research Fellow), Blair Hughson (Core Development), and Helen McQueen and Nichola Lambie (Te Aka Matua o te Ture | Law Commission) for their invaluable contributions to the research project. Particular thanks to the many participants for sharing their views on, and experiences of, post-separation relationship property division.
