



RELATIONSHIP PROPERTY DIVISION IN NEW ZEALAND: THE EXPERIENCES OF SEPARATED PEOPLE

Research Summary – March 2022

INTRODUCTION AND RESEARCH OVERVIEW

The Property (Relationships) Act 1976 (PRA) establishes the rules for how the property of two partners is divided when they separate or when one of them dies. The underpinning principle is that ‘relationship property’, as defined by the Act, should be divided equally between the two partners when their relationship ends (the ‘equal sharing law’). Despite dramatic demographic and social changes over the past four decades, including the ways in which relationships and families form and function, the PRA has not been comprehensively reviewed since its inception. However, in 2016, Te Aka Matua o te Ture | Law Commission commenced a project examining the PRA and their comprehensive report to the Minister of Justice was published in 2019.¹

The lack of an evidence base informing relationship property division by separated couples, and the implications of this for future law reform, had been keenly felt by both the Law Commission and the wider family justice sector. In 2017, the Michael and Suzanne Borrin Foundation generously funded a research team, led by the University of Otago, to undertake a two-phase project examining relationship property division in New Zealand. Phase One (2017–2018) involved a nationwide telephone survey ascertaining public attitudes and values about post-separation relationship property division.²

Phase Two considered how separated couples divide their property and resolve any property disputes. An anonymous online survey was completed, during June to November 2020, by 378 people who had finalised all, or most, of their property division with their former partner in the last five years in New Zealand. A sub-set ($n=110$, 29%) of the survey respondents also participated in a telephone interview. This Research Summary outlines the top-line descriptive findings from this survey.³

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%). Nearly all (99%) respondents resided in New Zealand and lived across all regions.

The majority (74%) of the participants had been married to the person they were dividing property with, and a quarter (25%) had lived in a de facto relationship prior to separating. A small proportion (5%) had been in a same-sex relationship. The relationships that participants had with their former partners were generally long-standing, with nearly a third (30%) having relationships of 20 years or more. Most (70%) had children with their former partner, with 57% having children aged under 18 years, and a fifth (20%) having adult children from the relationship.

1. Te Aka Matua o te Ture | Law Commission *Review of the Property (Relationships) Act 1976. Te Arotake i te Property (Relationships) Act 1976* (NZLC Pūrongo 143, 2019).
2. 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, 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*

3. *General Population Survey – Research Summary* (Borrin Foundation, Wellington, New Zealand, 2018). <https://www.borrinfoundation.nz/report-relationship-property-division-in-new-zealand-public-attitudes-and-values/>
3. For the full report, see 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). <https://www.otago.ac.nz/cic/otago834129.pdf>

KNOWLEDGE AND UNDERSTANDING

Most participants indicated that both they and their former partner were quite well informed about the assets and debts they had to divide – 75% and 80% rated themselves and their former partner, respectively, as knowing ‘a fair amount’ or ‘a lot’.

Just over a fifth (21%) indicated that they knew ‘hardly anything’ about relationship property law at the time they separated, and only 11% knew ‘a lot’. The greatest proportion (39%) reported knowing ‘a little’. However, when asked about their knowledge of specific aspects of the law, most (89%) knew about the law of equal sharing, and that it applies to both married and unmarried couples (88%) and only to couples who have lived together for three years (or more) (80%).

While most participants were aware of the equal sharing law, not all agreed with it. Some thought the law was unfair or outdated and commented that:

- a 50/50 split should not be automatic (particularly after living together for three years).
- assets and property owned prior to the relationship should not become relationship property.
- equal sharing does not recognise financial disparities between separating parties and the different contributions each partner made during the relationship.
- the law should allow one party to obtain a greater share of the property in certain circumstances – for example, when one partner had made a greater financial contribution or taken on a greater share of the care of the children.
- equal sharing was most appropriate for relationships where the partners had built their assets together, but less so for relationships where people already owned the assets and property they brought into a new relationship.

Around half (53%) of the participants felt ‘fairly’ or ‘very’ informed about what to do to divide their property, with nearly a fifth (17%) reporting they were ‘not at all’ informed. Most participants said they needed information, advice, or help when beginning the property division process, particularly legal information/advice, legal representation, emotional support and general advice (see Table 1).

Table 1: Information, advice or help needed

Legal information/advice	77%
Legal representation	62%
Emotional support	62%
General advice	55%
Information/advice about the value of assets and/or debts	48%
Information/advice about how to resolve the property division	48%
Financial information/advice	41%
Information about services that could assist	23%
Information about professionals who could assist	21%

Most participants received all (58%), or some (28%), of the help, advice or information they needed; only 14% did not – they said they needed:

- More, and better quality, legal advice.
- More financial information from their former partner.
- Greater protection or help regarding abuse and family violence.
- Information or advice about: valuation, tax issues, KiwiSaver, how to divide debt, how to deal with issues related to their former partner (e.g., deceit, lack of engagement, fraud), the process to divide property and steps that needed to be taken, occupancy or sale of the family home, and post-separation parenting arrangements.

Some participants thought they were disadvantaged because of a lack of knowledge, information and advice. Over a quarter (26%) found navigating or understanding the process challenging and 17% reported that their lack of knowledge about relationship property law made the process of dividing their property difficult. Recommendations were made about the need for greater provision of information, advice and support for separating people, as well as public education about the implications of entering relationships and the need for greater financial literacy, for women in particular.

THE PROPERTY DIVISION PROCESS

THE TIME IT TOOK

Nearly half (49%) of the participants began the process of dividing their property with their former partner at the time they separated, with around another third (35%) doing so within a year of the separation. For over half (58%), the process of dividing their property took less than a year, and, for most (83%), matters were settled in less than three years. Generally, as the time it took to resolve the property division increased, so too did the proportion of participants who rated the time it took as unreasonable. Resolution times of a year or longer were regarded as unreasonable by the majority of participants.

STEPS TAKEN TO DIVIDE PROPERTY

The steps that participants most frequently took to divide their property were informal ones, such as communicating with their former partner, talking with family/friends (93%), and using lawyers (84%). Around two-thirds (65%) used the services of a professional other than a lawyer, and nearly a third (30%) used family justice services (such as the Ministry of Justice website or 0800 phone line). Just over a fifth (21%) used a community service (such as a community law centre or Citizens Advice Bureau), and 15% used mediation services. Only 10% went to the Family Court.

Lawyers were the professional that most (75%) of the participants first saw or sought help, advice or information from. The majority (71%) had their assets and/or debts valued by a professional – most commonly, valuers and real estate agents. The most common steps that participants took to resolve their property division are shown in Table 2.

Table 2: Most common steps taken to divide property

Obtaining legal advice	72%
Discussions or communication with former partner	66%
Talking with family members/whānau	56%
Negotiating with former partner through lawyers	54%
Talking with friends/acquaintances	53%
Using the Internet and/or social media	50%
Obtaining advice/services from a real estate agent	41%
Obtaining advice/services from a valuer	38%

After participants had indicated all the steps they had taken to divide their property, they were asked to rank which ones they found most helpful. Table 3 presents the proportion of participants taking each step who rated it as one of the top three most helpful steps (for example, 76% of those who obtained legal advice rated this as one of the top three most helpful steps they took).

Table 3: Six most helpful steps taken to divide property

Obtaining legal advice	76%
Negotiating with former partner through lawyers	61%
Discussions or communication with former partner	53%
Talking with family members/whānau	45%
Obtaining advice/services from an accountant	43%
Talking with friends/acquaintances	42%

HELPFUL FACTORS IN DIVIDING PROPERTY

Participants found the following factors to be helpful when dividing property.

Good relationship between former partners: Having an amicable separation and/or a co-operative, respectful post-separation relationship were key factors in helping people divide their property. Good communication, a willingness to be fair and reasonable, and, where applicable, keeping children's interests in mind were all features of the more straightforward property divisions.

Table 4: Percentage of participants agreeing with each statement

	Self-resolution (n=177)	Through professionals (n=167)	Through the courts (n=29)
The process worked well for me	58%	40%	7%
The process worked well for my former partner	80%	75%	67%
I had an adequate opportunity to put my position forward	65%	55%	28%
My former partner had an adequate opportunity to put their position forward	83%	83%	86%
The process was fair	57%	32%	10%
The time it took was reasonable	64%	37%	3%
I was satisfied with the approach taken	62%	44%	7%

Professionals: Lawyers were the most frequently mentioned professionals that participants found particularly helpful and, for three quarters, they were the first professional engaged with in relation to their property division. Other family justice professionals, such as mediators and judges, were also helpful to some. Valuers, financial institutions and professionals (e.g., banks, financial advisers, mortgage managers), and social service agencies and professionals (e.g., social workers, counsellors, addiction and family violence agencies) were also said to be helpful.

Friends: Friends could act as a sounding board and provide emotional support and helpful advice, particularly if they had legal knowledge or had experienced relationship property division themselves.

Itemising and documenting property: Itemising assets/debts and household items in lists or spreadsheets enabled separated people to identify and divide their property fairly and efficiently. Familiarity with their financial situation and having access to financial information was also helpful. Previous discussions about property division, or entering into a contracting out or 'prenuptial' agreement, could also aid the property division process.

DISPUTE RESOLUTION PATHWAYS

The dispute resolution pathway used to finalise the relationship property division was fairly evenly divided between self-resolution - where the participant and their former partner largely resolved the division themselves - (47%), or through professionals (45%), including legal negotiation (43%) and mediation (2%). Only 8% had their property division determined by the courts.

Those who self-resolved were generally more satisfied with the property division process than those who resolved matters through professionals, with those resolving matters through the courts being the least satisfied. Regardless of the dispute resolution pathway taken, most participants perceived that the process was more favourable for their former partner than for themselves (see Table 4).

THE COST OF PROPERTY DIVISION

The most common expense, incurred by 85% of the participants, was for engaging the services of a lawyer, followed by paying the fees of valuers (37%) and accountants (16%). Fourteen per cent did not spend any money to divide their property, the majority (96%) of whom, unsurprisingly, largely resolved their property division with their former partner themselves.

The most common amount spent by participants dividing their property was \$2000–\$5000, with a third spending this amount. Half of the participants spent between \$2000–\$10,000, with the majority (70%) spending \$10,000 or less. Only 5% spent over \$75,000, including four participants who had spent \$300,000 or more dividing their property.

Overall, just over a third (34%) rated the amount they spent to divide their property as reasonable and affordable. For expenditure over \$5000, more participants rated the amount as unreasonable and/or unaffordable, than rated it as reasonable and/or affordable.

Half of the participants reported finding the cost of dividing their property to be challenging or difficult. Unaffordability issues meant that some participants were unable to engage, or easily pay for, professional advice and support with their property division. Others benefitted from the receipt of Legal Aid.

Many found the cost of lawyers too expensive and/or not worthwhile, particularly if they thought they had done most of the work themselves or perceived the lawyers as having acted in their own self-interest. If legal costs were considered prohibitive, this could lead to participants accepting a property settlement they were unhappy with because they could not afford to instigate, or continue with, legal or court processes.

Former partners could drive up the cost of the property division process by failing to engage, delaying their responses, insisting on legal/court proceedings or valuations, or refusing to pay their share of the expenses. Dealing with a difficult former partner could also result in costs being incurred that might have otherwise been avoidable, for example, by needing to have a lawyer involved instead of self-resolving.

Some participants met the cost of their property division through the sale of assets, such as the family home, or from the proceeds of the property division. It was appreciated when lawyers did not expect payment until after the property division was settled and funds were available. Others borrowed money against a mortgage, extended a mortgage, took out a loan, or worked past the usual age of retirement to fund their legal fees and property division costs. Meeting the cost of legal fees or living expenses was made easier when people could either borrow money or accept gifts of financial support and accommodation from parents, family members or friends. Legal fees could be reduced or non-existent when friends or family members who were lawyers provided legal advice or assistance.

Participants were accepting of the costs they incurred when they considered these to be affordable, reasonable, fair, necessary,

or at a lower level because they and their former partner were in agreement, did much of the work themselves, or limited the involvement of lawyers.

CONTRACTING OUT OR 'PRENUPTIAL' AGREEMENTS

It is possible to opt out of the PRA (so its equal sharing rules do not apply) with a contracting out, or 'prenuptial', agreement that is in writing and has been certified by a lawyer. Each party must have received independent legal advice before signing the agreement. These agreements were not common – only 10% of the participants had one (see Table 5). Most (71%) had not made any agreement with their former partner, while a few (9%) had made either a verbal or written agreement but not had this certified by a lawyer. Another 9% had discussed having an agreement, but not actually made one.

Table 5: Contracting out, or 'prenuptial', agreements

No contracting out, or 'prenuptial', agreement	71%
Was discussed, but no agreement made	9%
Verbal agreement made without involving a lawyer	7%
Written agreement made without involving a lawyer	1%
Agreement made with legal advice, but not certified by a lawyer	1%
Agreement made certified by a lawyer	10%
Don't know/can't remember	1%
Total	100%


Those with an informal or formal agreement reported that it was fully followed (47%), partially followed (18%), or not followed (35%) when they divided their property.

Most (84%) of the agreements that had been certified by a lawyer were either fully (63%) or partially (21%) followed in the property settlement, compared with 75% of written agreements and 39% of verbal agreements made without involving a lawyer. While 62% of verbal agreements were not followed, only 16% of those certified by a lawyer were not.

The most common reasons given for why informal agreements that had not been certified by a lawyer were not followed, or only partially followed, were that one party reneged on the agreement and/or denied that such an agreement existed. Sometimes this was following the receipt of legal advice and/or the discovery that such agreements were void.

When contracting out agreements that had been certified by a lawyer were only partially followed, or not followed at all, the most common reasons for this related to a lack of robustness in the wording and/or lawyers arguing that the agreement was invalid. In some instances, they were not followed because one party did not seek compliance with the agreement in order to reach a settlement.

Overall, 42% found that having an agreement (of whatever type) was helpful, but over a third (37%) found them unhelpful.



Around half of those who had a written agreement or one certified by a lawyer found this helpful. In contrast, only a third with just a verbal agreement found this helpful and half did not. An agreement was more likely to be considered helpful when it had been followed in the property division.

Participants with a valid contracting out agreement rated this as helpful because it provided greater certainty, reduced stress, was clear evidence of the parties' intentions on separation, enabled their property to be divided more quickly, and better reflected the financial contributions made by each party. However, some participants reported problems with their agreement, such as it not being sufficiently robust or clear, not providing enough protection, or failing to reflect the birth of children or the lengthy duration of their relationship. Some reported being forced by their former partner into making a contracting out agreement which disadvantaged them in the property division. Those with either written or verbal agreements noted that these could sometimes be overturned, not honoured, or make no difference to the property division in the end.

When all survey respondents were invited to comment on 'prenuptial' agreements (whether they had experience of them or not), some said they had no need for an agreement, or that these were not common in the era in which they had married, or their circumstances had changed so the proposed agreement had not eventuated. Others thought there was little point having a contracting out agreement because it could be easily overturned or might not be enforceable after a period of time. Concern was also raised about the applicability of these agreements to de facto relationships, the quality of legal advice, the cost of obtaining or updating an agreement, and the confusion and potential unfairness an agreement could generate.

Some participants had wanted a contracting out agreement, but their former partner was not keen or had refused. Others wished, in hindsight, that they had had an agreement. Some had made a contracting out agreement with subsequent partners, while others would now only contemplate entering a new relationship with an agreement in place. While some participants urged people to always consider getting a contracting out or 'prenuptial' agreement, it was acknowledged that raising this could be awkward or difficult and imply a lack of trust in the relationship.

IMPACT OF FAMILY VIOLENCE

The prevalence of family violence was high amongst participants – 60% of those who chose to answer this set of questions in the survey reported that there had been family violence in their relationship with their former partner, either during the relationship or following their separation. This included 190 females, 21 males and one person who identified as gender diverse. While it was not possible to determine if the participants had experienced and/or perpetrated family violence, their comments indicated that most were victims/survivors. They outlined a range of intimate partner violence, including physical abuse, however, it was predominately psychological abuse that was described. This included being threatened, intimidated,

bullied, coerced, verbally abused, mentally controlled, manipulated, and experiencing property damage and financial/economic abuse. Threats of physical and psychological abuse included threats to kill or injure, uplift children, refuse to financially support children, disallow contact with children and grandchildren, harm animals, take or sell the family home, cause financial ruin, and destroy property. The intimidation and harassment experienced by some participants included being stalked, receiving threatening emails, and experiencing coercive control tactics by their former partner.

The physical and psychological abuse caused some participants to feel frightened of their former partner and what they might do, including using the property division process as a further opportunity to perpetuate abuse and control.

Of those who indicated there had been family violence in the relationship, half reported that it had affected their property division in a number of different ways. Some wanted to get the process over with and divide their property as quickly as possible, even if this meant they accepted a less than equal share. Conversely, for others, the property division process was lengthier as family violence appeared to be associated with longer times to reach a property division settlement.

Family violence meant that a few participants chose to walk away or leave the relationship with nothing, or were selective in what they took or claimed to avoid conflict. For others, leaving with nothing was not their choice. Some felt coerced, bullied or pressured to settle their property division or were too scared or worn down to push for what they were entitled to. Others said their former partner controlled the nature and pace of the decisions made about their property division. They thought they had no choice but to agree and/or lacked the financial resources to raise any challenge.

A small number of participants objected to perpetrators of family violence being legally entitled to an equal share of the relationship property. They wanted victims/survivors to be given greater consideration in the property division process.

OTHER CHALLENGES OR DIFFICULTIES

Most participants experienced difficulties or challenges while dividing their property with their former partner – 92% reported some personal challenges, and 81% reported difficulties relating to the process of dividing their property. Overall, the most commonly reported challenges were personal ones, relating to emotional distress/upset, stress/anxiety, and issues relating to a former partner (see Table 6). The most common challenges relating to the property division process, reported by around half of the participants, concerned the financial cost and the time it took to resolve.

Table 6: Challenges or difficulties experienced

Emotional distress/upset	81%
Stress/anxiety	78%
Dealing with former partner and/or their behaviour or attitude	72%
Lack of trust in former partner	64%
Financial expense/cost	50%
Time it took to resolve	49%
Feeling pressured to agree	42%
Dealing with lawyers	35%
Health issues	28%
Valuation of assets and property	28%
Non-disclosure of financial information by former partner	28%
Navigating/understanding the process/system	26%
Other decisions to make/other proceedings, e.g., child support, maintenance, parenting arrangements	25%
Other financial issues/problems	22%
Inability to earn an income	19%
Lack of knowledge about relationship property law	17%
Not being able to afford legal advice	17%
Involvement of, and/or difficulty with extended family/whānau	17%
Involvement of, and/or difficulty with, former partner's partner	15%
Accessing professional advice/help	13%
Dealing with the Family Court	9%

EMOTIONAL DISTRESS AND STRESS

Most participants reported experiencing emotional distress/upset (81%) and stress/anxiety (78%) when dividing their property with their former partner. For some, it was one of the most difficult experiences of their lives and could be especially challenging when having to also manage the pain and grief of their separation. Dealing with difficult, unstable or abusive former partners, anxiety about the outcome and their future financial security, selling and buying property, and moving house were all sources of stress. For parents, this could be compounded by contending with other stressful issues such as parenting and sorting out their children's care and contact arrangements. Making decisions about relationship property division while in an emotional and vulnerable state sometimes compromised a person's ability to act rationally, seek support and advice, and ensure the settlement was fair. Feeling pressured to agree to the property division was reported by 42% of the participants. Lack of support, particularly from family/whānau, could also be challenging.

FORMER PARTNERS

Nearly three-quarters (72%) of the participants found dealing with their former partner and/or their behaviour or attitude challenging, and nearly two-thirds (64%) did not trust them.

Former partners who were non-communicative, refused to engage, or lived in a different location, made it difficult for any negotiation to occur. Some former partners were said to delay or stonewall the property division process. Deceptive, manipulative, abusive, controlling, threatening, demanding, harassing or humiliating behaviour by a former partner was also difficult to deal with and, sometimes, influenced the division of property, including personal belongings and household items. Those who had experienced intimate partner violence found the division of relationship property particularly challenging (see above). 'Immoral' or fraudulent behaviour by a former partner was also a challenge for some. Over a quarter (28%) of the participants reported their former partner's non-disclosure of assets, debts or financial information as difficult, and false valuations and fraud were also alleged.

FINANCIAL ISSUES

Financial difficulties, such as not being able to earn an income or to afford legal advice, and other financial issues or problems, were experienced by around a fifth of the participants. The financial cost of dividing their property was challenging for half of the participants, with legal advice or representation being unaffordable for some.

DEALING WITH LAWYERS

Over a third (35%) of the participants found dealing with lawyers made the process of dividing their property difficult. They complained about lawyers being unhelpful, unsupportive, providing poor quality advice, having ulterior motives, or reworking a property settlement they and their former partner had reached and both considered to be fair.

HEALTH ISSUES

Their own health issues, or those of their former partner, made the property division challenging for just over a quarter (28%) of the participants. Brain injuries, mental illness and ongoing health issues due to family violence were the most commonly mentioned health problems that impacted on the property division process. Health issues could also impact on people's ability to earn an income.

DEALING WITH THE FAMILY COURT

Overall, only 9% reported finding their experience of the Family Court difficult, but this represented 92% of those who had gone to the Family Court to divide their property. Participants complained that the Family Court was frustrating or broken, with long delays, high costs and unfair outcomes.

VALUATION OF ASSETS AND PROPERTY

Over a quarter (28%) of the participants experienced challenges relating to the valuation of properties, shares or businesses. When valuations were not undertaken this could lead to under- or over-estimates of property values, which impacted on property division outcomes. Difficulties in determining accurate property values also occurred when multiple and varying valuations were obtained.

OTHER CONCURRENT ISSUES

A quarter of the participants reported that resolving other issues or having concurrent proceedings, such as for child support and/or parenting arrangements, were additional challenges that could complicate the property division. Some also raised the challenges of parenting, caring for children who were struggling emotionally, and housing issues including difficulties finding somewhere to live and the expense of relocation.

TRUSTS

Some participants were wary of trusts or concerned about how they could be used to disadvantage one party in the property division process. It could be challenging when participants' lacked knowledge about a trust, or aspects of it, or had difficulty accessing trust assets post-separation.

WHAT WOULD HAVE MADE THE PROCESS EASIER?

Suggestions made to ameliorate the difficulties involved in dividing relationship property with a former partner included:

- Differences in their, or their former partner's, attitude or behaviour – being more reasonable, fair, co-operative, honest, trustworthy, timely and transparent, or less emotional, difficult or abusive.
- Obtaining legal advice or representation, or having more professional, knowledgeable, competent and supportive lawyers involved.
- More affordable, or free, legal advice and representation.
- Obtaining a relationship property agreement to either contract out of the PRA or to set out the property division settlement once negotiated and agreed.
- Simpler or clearer documents and/or processes to divide property – such as spreadsheets, templates and online forms.
- Shorter timeframes – such as (mandatory) time limits for claims and the avoidance of undue delays.
- Affordable accommodation options and more certainty about the right to remain in the family home (for a period).
- Financial knowledge and understanding – having greater clarity, and full disclosure, about their financial situation; better understanding about the division of superannuation and the process and timing of valuations; and greater financial literacy.
- Information, advice and support – more information about the property division process and parties' entitlements; and greater support and guidance from family/whānau and agencies, particularly emotional support.
- Improvements to the law, legal system and dispute resolution processes – for example, regarding equal sharing, contributions to the relationship, access to KiwiSaver, mediation and arbitration, timely court proceedings, stronger powers to deal with non-disclosure, non-compliance and delays, and training for family justice professionals on family violence and coercive control.

THE OUTCOME OF THE PROPERTY DIVISION

The outcome of the property division concerned matters relating to equal sharing, what happened with the family home, the impact of children's care and contact arrangements, how the property division was formalised, and perceptions of satisfaction and fairness.

REASONS FOR A DEPARTURE FROM EQUAL SHARING

Most (around 70%) reported that their relationship property division was consistent with the equal sharing law, either fully (37%) or partially (33%). However, nearly a third (30%) of the participants indicated their property division departed from a 50/50 split. The specific reasons for a departure from equal sharing included the following.

The equal sharing law did not apply: The duration of the relationship had been less than three years or the couple had not lived together.

The parties agreed to divide their property in an unequal way: Sometimes an unequal division was agreed to in advance or a contracting out agreement was in place. Joint agreement to an unequal split sometimes recognised disparity in incomes and/or financial and property contributions during the relationship. Making provision for differences in post-separation incomes and/or consideration of the needs of the parent with the day-to-day care, or support, of children could also result in agreements that deviated from a 50/50 split. In some cases, one party decided not to pursue equal sharing, particularly around KiwiSaver or household items, because they wanted to help their former partner and their children financially. In other situations, it was a needs-based decision, for instance, splitting household items, such as furniture, on the basis of who needed or did not need particular items, or who the children lived with.

A desire to reach resolution: Some participants knew the property was not split evenly (or fairly), but they had accepted this to resolve the matter, stop any conflict and/or get away from their former partner. Some sacrificed what they were entitled to receive in order to end the dispute, and others acknowledged they had simply "given up". Some participants decided to settle due to their inability to afford legal costs and/or their reluctance to pursue the matter further via the courts.

Coercion or lack of choice: In contrast to those making decisions jointly and those opting not to push for a 50/50 split, some participants reported not having much choice about their property division settlement. Some felt coerced, bullied or pressured into accepting an unequal division, while others said they were threatened or manipulated by their former partner. On occasions, particularly where there was family violence, the participant's former partner had unilaterally decided on their property division. Others did not know what they were entitled to and/or felt unable to claim their equal share.

Former partner's dishonesty or deception: An unequal division could sometimes result from a former partner's non-disclosure of assets and/or their value, their claim that some assets were personal or separate from relationship property, and their under- or over-valuing of assets. When former partners (or their family members) uplifted property, participants were sometimes unable to reclaim it or include it in the division.

THE FAMILY HOME

Just under half (47%) of the participants remained living in the family home after their separation while their former partner moved out, and 36% moved out while their former partner remained. In only 12% of cases, both parties moved out of the family home and, in 6%, both parties remained immediately after the separation. Nearly half (47%) of those participants who had children aged under 18 living in the family home at the time of separation, and 37% of those with adult children living in the family home, reported that some, or all, of these children remained living in the home immediately after the separation.

Most commonly, what happened with the family home was one party bought out the other (56%). Around 1% of the participants retained joint ownership and, in over a third (36%) of cases, the family home was sold. Its sale was due to a variety of reasons, most commonly because neither party could afford to buy the other out or to pay the mortgage on their own. Other times, the family home was sold because neither party wished to retain it or it no longer met their needs. Some wanted to release the equity in the home, or one, or both, parties wished to relocate. Some participants had been reluctant to sell the family home, but their former partner had refused their offer to buy them out and/or had insisted upon its sale.

THE IMPACT OF CHILDREN'S CARE AND CONTACT ARRANGEMENTS ON THE OUTCOME

For the majority (61%) of the participants who had children with their former partner, children's care and contact arrangements did not impact on the property settlement. Only around a fifth (22%) reported that these arrangements affected the outcome of their property division 'a fair amount' or 'a lot'. This was evident in several ways, such as having an impact on the occupancy or sale of the family home. Most commonly, one parent and the children stayed longer, or remained living permanently, in the family home. Care and contact arrangements could also affect the way the children's belongings and furniture, or the household goods, were distributed between the parents in the property division. Often the children's items, and sometimes the household goods, went with the parent with whom the children were living most of the time.

To provide security for their children and enhance their wellbeing it was important to parents to, where possible, provide a familiar, settled or conveniently located home and to avoid or minimise disruption to their children. Sometimes the parent with the primary care of the children obtained a larger share of the property division. Other times, trade-offs occurred whereby one parent accepted less than they were entitled to in the property division in exchange for a preferred outcome relating to their children. Sometimes participants were subjected to pressure,

demands or threats relating to children's care arrangements by the other parent in order to leverage an advantage in the property division.

FORMALISATION OF THE PROPERTY DIVISION

Three-quarters of the participants had formalised their property division settlement in some way, mostly by a written agreement certified by a lawyer (66%) or in a court order (9%). The remaining quarter had not formalised their agreement – 17% had an informal verbal or written agreement and 8% had not formalised their settlement in any way.

Some participants had delayed formalising their property division, and did so only when one party wished to buy a new property or transfer a mortgage into their name. For others, involving lawyers when required (for example, by a bank), complicated what had been a straightforward and amicable joint agreement. The lack of a formalised agreement could be problematic when one party reneged on an informal agreement or came back later to make a property claim.

PERCEPTIONS OF SATISFACTION AND FAIRNESS WITH THE OUTCOME

Participants were asked to rate how satisfied they were with the outcome of their property division, and how fair it was for them. More participants were satisfied than dissatisfied with the outcome of their property division – 43% were satisfied and around a third were dissatisfied. However, slightly more thought the outcome was unfair (45%) than thought it was fair (40%).

The most common reason given by three-quarters of the participants who had accepted what they believed to be an unfair settlement was that they just wanted to get the matter sorted out. This was also a common reason for why people accepted a settlement that departed from a 50/50 split. The reasons why people accepted what they regarded as an unfair settlement are set out in Table 7.

Table 7: Reasons for accepting an unfair settlement

I just wanted to get things sorted out	75%
I made a trade-off/sacrifice	49%
I felt pressured	48%
I thought I had no choice	37%
My lawyer advised me to accept	36%
I wanted to avoid going to court	33%
I had safety concerns	26%
I felt guilty	8%
A judge decided, so I had no choice but to accept it	5%
Financial/affordability reasons	3%

Dissatisfaction with the outcome of the property division and/or the perception that it was unfair were largely related to:

- unequal contributions during the relationship.
- an unequal division of the property.
- an imbalance in earning ability and financial security going forward.

- sacrifices or trade-offs made or received to achieve the property settlement.
- threats, pressure, deception, wrongful conduct or violence by the former partner.
- the use of lawyers or the court to divide property.
- the incurring, or division of, debts.

Satisfaction with the outcome of the property division and/or the perception that it was fair were associated with:

- the property being divided equally.
- the parties agreeing to an unequal division and/or considering it to be fair.
- the division following a previously agreed, or contracting out, arrangement.
- satisfaction with housing – being able to remain in the family home, buy the other party out, or purchase a new home.
- satisfaction and happiness with their current circumstances and financial situation.
- being pleased that the property division process was over.

PERSPECTIVES ON THE IMPORTANCE OF A ‘CLEAN BREAK’

The survey raised the issue of a ‘clean break’ and defined this for the participants as: *A ‘clean break’ is based on the idea that former partners will use their share of the relationship property to start afresh and be financially independent from each other.*

Most (91%) of the participants rated having a clean break as ‘very’ (77%) or ‘fairly’ (14%) important. Few said that it was ‘a little bit’ (5%) or ‘not at all’ (4%) important to them.

The reasons for wanting a clean break varied according to participants’ situations. Some expressed a desire to move on in a way that was respectful, fair and reasonable for both parties and/or regarded a clean break as natural and to be expected after separation. Ensuring their children’s wellbeing was another reason for wanting a clean break. This meant both parties could move forward financially and emotionally, without any conflict over the relationship property impacting on the children. Resolving matters in a timely manner was also thought to provide stability for the children.

A clean break allowed some participants (and/or their former partner) to access their share of the property division and to use these funds to live in, or to purchase, a new home. For others, a clean break meant being able to make a fresh start, rebuild their life (and their children’s lives), and move on emotionally.

Having financial independence from a former partner was important for participants whose former partner had different financial values or was financially irresponsible. For others, a clean break was not just about being financially independent from their former partner, but was more about severing all ties and having no ongoing relationship. This was particularly so when there had been family violence and abuse. Of those who reported that there had been family violence in their relationship, 81% rated having a clean break as ‘very important’, compared with 70% of those participants who did not report any

family violence. Being financially independent from an abusive former partner could lessen ongoing abuse and control and minimised, or eliminated, contact between them.

Having a clean break and complete financial independence from their former partner sometimes came at the cost of receiving less than what a participant was entitled to in the property division, but this was considered worthwhile.

However, some participants did not regard the concept of a clean break as necessary or desirable, especially when the relationship with their former partner was amicable and friendly. A clean break between parents was also not considered possible or desirable by some participants.

Some participants’ need for a clean break was not always reciprocated by their former partner when one party wanted to sever financial (and other) ties and the other did not. This meant some participants had felt pressured to resolve the property division quickly. Those who had not wanted the relationship to end were sometimes not emotionally ready to move on. Conversely, the desire to move on quickly, when their former partner did not feel the same way, meant that some participants settled for less than what they were entitled to, or their desire for a clean break was used against them in the settlement. Differences between parties regarding the importance of having a clean break could have implications for whether houses were sold or money was left in them. Several participants would have preferred to have retained the family home, holiday home or investment property but, because the other party wanted a clean break, these properties were sold.

THE IMPACT OF THE PROPERTY DIVISION

Only 3% of the participants reported that their property division had not had an impact on them personally. Dividing property with a former partner affected most participants’ mental health (84%), financial wellbeing (80%) and physical health (55%) (see Table 8). Just over half (51%) reported that it affected their relationship with their former partner, mainly detrimentally. It was generally more common for participants to report the property division having a negative impact on their lives, rather than a positive or mixed (both positive and negative) impact. Exceptions to this were evident for impacts on relationships with children and other family members and parenting, where mixed impacts were more common.

IMPACT ON MENTAL HEALTH AND WELLBEING

The high level, and often prolonged nature, of the stress involved in dividing property (as outlined earlier) had a significant impact on the mental health of many participants. Most (84%) thought their mental health had been affected in some way, with 90% of these participants reporting a negative or mixed impact. A range of mental health impacts were described including suffering depression, post-traumatic stress disorder, anxiety, and insomnia. A small number reported having breakdowns, some requiring hospitalisation, and being suicidal. Poor mental

Table 8: Personal impact of the property division

	Impact Overall	Positive impact	Mixed impact	Negative impact
Mental health and wellbeing	84%	10%	40%	50%
Financial wellbeing	80%	12%	32%	56%
Physical health and wellbeing	55%	11%	33%	56%
Relationship with former partner	51%	5%	22%	72%
Employment/work/career	37%	10%	29%	61%
Relationship(s) with child/ren	30%	31%	49%	20%
Parenting	27%	23%	55%	23%
Ability to earn an income	26%	14%	23%	63%
Relationships with other family members	22%	8%	55%	37%
No personal impact	3%			

Please note: Due to rounding, percentages may not sum to 100% exactly.

health could result in people accepting less than what they were entitled to in the property division due to an inability to advocate for themselves.

IMPACT ON PHYSICAL HEALTH AND WELLBEING

People's physical health could also suffer due to the stress involved in the property division. Over half (55%) thought that their physical health had been affected, with 89% reporting a negative or mixed impact. Physical health could also be compromised by smoking or drinking too much, and either over- or under-eating due to stress.

IMPACT ON FINANCIAL WELLBEING

For most (80%) participants, the property division had impacted on their financial wellbeing. Over half (57%) reported it had worsened their financial situation. For some, this was due to the outcome of the property division itself, while, for others, it was related to having to move or to care for children, affecting their ability to earn an income. When the property division affected people's employment and/or ability to earn an income this could contribute to financial insecurity. Going from a pre-separation joint income to a post-separation low income could also have a negative impact on financial wellbeing.

The inability to access financial resources during the property division process had implications for some participants. Not having access to funds, or having to continue to pay a mortgage in the interim period between the separation and property settlement, could be problematic financially. Sometimes, it was the actions of a former partner that left participants with no income to live on, such as freezing accounts or delaying settlement.

Just over a fifth (21%) of the participants reported an improvement in their financial situation. For some, feeling more financially secure after the separation and property division related to having financial independence from their former partner, even if their income was lower than prior to the separation. Others reported that recovering their financial

security after the property division was helped by having the time and focus to devote to their career, business or study.

IMPACT ON RELATIONSHIP WITH FORMER PARTNER

Nearly two-thirds (65%) of the participants described a 'poor' or 'very poor' relationship with their former partner at the time they were dividing their property, with only 16% describing the relationship as 'good' or 'very good'.

Just over half (51%) thought that dividing property had affected their relationship with their former partner in some way. Of these, nearly three-quarters (72%) reported the impact as negative, 22% reported a mixed impact and only 5% rated the impact as positive.

IMPACT ON EMPLOYMENT/WORK/CAREER

Over a third (37%) of the participants reported that the property division had impacted on their employment, work or career and, for over a quarter (26%), it had affected their ability to earn an income. Of these, nearly two-thirds reported that this was a negative impact.

The division of property affected the participants' work/careers (or study) in several ways. For some, the stress of the process was detrimental to their mental health and then this impacted on their work, affecting their concentration and ability to function effectively in their job. Juggling competing and multiple demands while working, such as parenting, attending appointments relating to the property division, and getting the family home ready for sale, could be distracting and stressful. Poor mental health meant some participants were unable to work or had to change jobs. For others, the need to relocate for financial reasons also necessitated a change of job. Some participants lamented having to increase their hours of employment or continue working past retirement age as a result of their financial situation.

Parents who had to take on more care of their children after the separation also found this impacted on their career and earning ability, often at a time when their financial situation was already compromised by the separation and the property division. These parents had to reduce their hours of employment or take on a lower paid role in order to care for their children.

IMPACT ON LIVING SITUATION

Just over half (51%) of the participants moved house and over a third (36%) moved to a new neighbourhood, town or city. Being unable to purchase a new property and/or having unstable and/or low quality accommodation could result from a poor financial situation due to the property division. A reduction in the standard of housing could also be experienced.

IMPACT ON SUBSEQUENT RELATIONSHIPS

The majority (88%) of the participants indicated that their experience of dividing property with their former partner had affected the way they had approached, or might approach, subsequent relationships. Getting a 'prenuptial', or contracting out, agreement with a future partner was the most common step that 56% indicated they had already taken or would consider taking in the future. Under half said they had discussed, or would discuss, the issue of how property would be divided if they separated with a new partner (48%) and/or would seek legal advice before cohabiting or marrying (45%). Nearly a third (30%) indicated they had, or would, put their assets in a trust.

Nearly four in ten (39%) said they had chosen, or would choose, not to live with a partner because of the financial risk that moving in together might pose for them should this relationship end. Others had chosen to remain single, with some adamant they would never re-partner again as a result of their property division experience with their former partner. While some reported being much happier being single, others said they had been so detrimentally affected they were unwilling to re-partner again.

POSITIVE IMPACTS

While the impact of the property division reported by participants was predominately negative, positive impacts were also detailed. Nearly a third (31%) of the participants whose relationships with their children were affected by the property division indicated that the impact was a positive one. No longer having to have contact with a former partner, particularly if they were volatile or abusive, and having financial freedom from one's former partner, were also positive outcomes of settling the property division. General feelings of autonomy, freedom, independence and being in control were also reported, with a common theme of recovery and empowerment. Several participants made the distinction between a negative or difficult process and a positive outcome. While the experience had been difficult, they had moved on and were now in a good place.

IMPACT ON CHILDREN

Children aged under 18 years were most commonly affected by having to move house (55%), with 29% of the participants reporting that children had to move to a new location (a new

neighbourhood, town or city). However, moving house or location did not necessarily mean that children's childcare and/or education changed. Over three-quarters (77%) of those participants who reported children moving house, and 61% of those who reported children moving location, indicated that they did not need to change schools or childcare services.

Most of the participants who outlined impacts on children described negative effects on children's wellbeing from residential mobility, financial stress and insecurity, parental stress, and interparental conflict, and relationships with one, or both of their parents.

Children's relationships and contact with their parent's former partner (usually, but not always, their other parent) tended to be negatively affected by the property division. The proportion of participants reporting the property division worsened the relationship (28%) was almost three times higher than the proportion indicating an improvement in the relationship (10%).

Children's emotional and mental wellbeing could be negatively affected by both the separation and the property division when they did not understand what was happening, or there was interparental conflict and abusive behaviour towards them or their parent(s).

Adult children could also be affected by their parent(s)' property division – 31% of those participants with adult children reported largely negative impacts that included:

- affecting their relationships with other family members – such as being upset with one parent's behaviour towards their other parent during the property division.
- having to change residences if living in the family home or when properties owned by their parent(s) were sold as part of the property division.
- issues relating to inheritances and trusts – when trusts and/or assets were dissolved or split, adult children could lose some of their inheritance or no longer be a beneficiary of a family trust.
- financial implications – parents were sometimes less able to support their adult children or withdrew their financial support. This meant some parents could/would not financially help young adult children attending university or contribute to their wedding costs. Disagreements over property had also resulted in legal costs for some adult children. Sometimes they had to support their parent financially for a period after the property division.
- emotional impacts – adult children sometimes had to support their parent(s) emotionally, as well as being emotionally affected themselves by the impact of the property division process on their parent(s).

A few participants reported positive impacts on adult children, such as being in a better financial position to support them, adult children receiving money or a share in the family home, improved relationships or a reduction in conflict, and positive living arrangements.

CONCLUSION

This nationwide survey has, for the first time in Aotearoa New Zealand, ascertained the experiences of separated people when dividing their relationship property with their former partner. The research findings provide important 'grass roots' perspectives on property division from separated people directly that can contribute to future law reform processes aimed at achieving greater fairness and more responsive dispute resolution processes. As this Research Summary highlights, numerous findings and points of interest for policy and practice have emerged from the study. The following six key issues are of particular note.

Impact of Property Division: Some people navigated the property division process with their former partner in a relatively straightforward and amicable manner, but many found it to be a challenging and stressful process, even when their property division was relatively uncomplicated. Of concern, around 80% of the participants experienced emotional distress/stress, and around half found the cost and the length of the process difficult. The impact of the property division process on people's lives could be wide-reaching, affecting their mental and physical health, financial wellbeing, employment and ability to earn an income, living situation, relationship with their former partner, children, and how they approached subsequent or future relationships. The property division process could, however, positively impact on people. Many reported recovering, and moving on, from the experience and being in a better place emotionally, even if their financial situation was poor or less secure than it had been. Assisting separating couples to achieve a more straightforward, timelier and less challenging property division with fair outcomes is clearly desirable.

Information, Assistance and Support: Participants were quite knowledgeable about relationship property law and the process of dividing property, but most reported that they nevertheless needed additional information, help or advice. This has particular significance given that nearly half of the participants and their former partners largely sorted out their property division themselves. Most commonly, participants said they needed legal advice and/or representation, emotional support, and information about valuation and the property division process. While most did receive the help they needed, greater provision of information, advice and support for separating people to assist them with their property division was desired, particularly better quality legal advice, greater protection or help with family violence; and more detailed information about particular aspects of property division (e.g., Kiwisaver, debt).

The use of professionals (such as lawyers, valuers) in assisting people with their property division was common. The top two most helpful steps taken to divide property were obtaining legal advice or negotiating with a former partner through lawyers. For three quarters of the participants, lawyers were the first professional they engaged with. Many described positive and helpful experiences with lawyers, but over a third found dealing with them challenging and many said legal fees were expensive.

More easily accessible information about dividing relationship property, such as 'how to' guides or templates, would be helpful for many separating couples.

Nature of the Relationship Between Parties: People's relationship with their former partner was an influential factor in the nature and duration of their property division experience. Nearly three-quarters found it challenging to deal with their former partner and their behaviour or attitude. A former partner's non-disclosure, lack of engagement, delaying tactics, stonewalling, dishonesty, and controlling or abusive behaviour could impact on people's mental health, drive up costs, delay the process and result in unfair and unequal divisions. Conversely, a co-operative, amicable and respectful post-separation relationship helped people to achieve a less challenging property division experience. Good communication, a willingness to be fair and reasonable and, where applicable, to keep the children's interests in mind were all features of more straightforward property division processes.

Impact of Family Violence: Rates of family violence and intimate partner violence were high, with 60% reporting violence in their relationship with their former partner either during the relationship or following the separation. For half of this group, family violence impacted on their property division, often in ways that disadvantaged the victim/survivor. The property division process could also provide opportunities for ongoing abuse and coercive control to be perpetrated.

Contracting Out or 'Prenuptial' Agreements: Contracting out agreements were rare – only 10% had made one that was certified by a lawyer and even fewer had made informal verbal or written agreements. While participants acknowledged some difficulties with such agreements, nearly six times as many (56%) had (or would have) one in place for current or future relationships because of their property division experience. Most valid agreements (certified by a lawyer) were fully or partially followed, but this was much less likely for informal agreements.

Equal Sharing: The concept of equal sharing, so central to the law governing the division of relationship property, was well understood by most of the participants. However, despite this, relationship property was not always shared equally for a variety of reasons. Sometimes, both parties were happy with an uneven split, for example, because of a prior agreement, or to acknowledge disparity in incomes, childcare, and contributions to the relationship. Other participants thought the unequal division was unfair and/or reported that they were unable to claim an equal share of the property. In some cases, sacrifices were made to get the matter resolved, to avoid conflict, or to achieve a clean break or favourable outcome in relation to other decisions (such as parenting arrangements). However, there were also situations where people felt coerced and pressured and/or had little, or no, choice about how their property was divided, particularly in cases involving family violence. Others simply could not afford the cost of claiming their equal share or were unable to ascertain the assets that should have been shared due to their former partner's dishonesty or deception. Thus, unequal property division settlements can arise from many situations that may not always involve mutual agreement.



FUTURE DIRECTIONS

Participants suggested a range of improvements to the law, legal system and dispute resolution processes to make the division of relationship property easier. These suggestions, together with the research findings more generally, will hopefully assist the reform of the PRA planned by the government in response to the Law Commission's 2019 report where it has been acknowledged that the PRA is no longer fit for purpose for 21st century New Zealand. Understanding New Zealanders' experiences of relationship property division, as this study sought to do, is vitally important to future law reform endeavours and the ways that family justice and other professionals can best assist people to divide their property. The findings will also offer helpful guidance to those separated couples choosing to resolve their property division themselves.

Please cite this research summary as: Gollop, M., & Taylor, N. (2022). *Relationship property division in New Zealand: The experiences of separated people. Research Summary*. Dunedin, New Zealand: Children's Issues Centre, Faculty of Law, University of Otago.

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.