



Separating in New Zealand

A plain-English guide to dividing relationship property: what to do first, what to avoid, and how a separation is resolved.
Written for anyone who has separated, or is about to.

The first 30 days

The weeks after a separation are when people feel most pressure to act, and when decisions are most often made without the information needed to make them well. Very little has to be resolved in this period. A few things are worth doing straight away, and a few are worth holding off on until you have advice.

Worth doing now

- **Write down the date you separated.** If you are still living under the same roof, note when the relationship ended in practice, and anything that shows it.
- **Keep copies of the financial records.** Recent bank and credit card statements, the mortgage, KiwiSaver and investment statements, and any trust, company or tax documents you can access.
- **Keep paying the joint outgoings.** The mortgage, rates and insurance still need to be met. Payments one of you makes after separation can be taken into account in the division.
- **Check your access.** Note which accounts are joint, which cards are linked, and who holds the passwords to shared online banking and records.

Worth holding off on

- **Signing anything about property.** This includes informal notes of who keeps what, however reasonable they look at the time.
- **Selling, transferring or borrowing against assets.** Including drawing down on a joint mortgage or line of credit.
- **Changes to a family trust.** Distributions, new loans or changes of trustee all need care once a relationship has ended.

Why the date matters

The date you separated usually decides what is in the relationship property pool, and time limits for bringing a claim run from the end of the relationship. Values are generally taken later, at settlement or at a hearing. The date is often agreed without difficulty. Where it is disputed, a clear record made at the time helps.

Five mistakes that cost people later

Most of the difficult separations we see did not start out difficult. They became so because of a decision made early, usually in good faith and without advice.

1. Moving money or assets out of reach

Transferring savings to a new account, gifting money to family or selling an asset quietly can look like self-protection. Where it is done to defeat the other partner's claim, the Court can order the property returned or its value paid back, and the conduct will colour everything that follows.

2. Putting property into a trust

Property that is moved into a trust during the relationship, with the effect of defeating the other partner's rights, can lead to an order for compensation from the other assets, or from the trust's income. A trust set up or added to around the time of separation draws particular scrutiny.

3. Assuming there is plenty of time

For de facto partners, a claim must be brought within three years of the relationship ending. For married couples and civil union partners, it must be brought within twelve months of a final dissolution order. The Court can extend these limits, but no one should plan on that.

4. Treating an informal agreement as the end of it

An agreement dividing relationship property is generally void unless each of you has had independent legal advice and your signatures are witnessed and certified by your lawyers. A signed note, an exchange of emails or a spreadsheet you both agreed does not meet that standard.

5. Forgetting the documents outside the settlement

Your will, enduring powers of attorney, trust roles and insurance may still favour your former partner after the property is divided. A settlement does not change them. We cover this under "After the agreement".

Where the law starts

The Property (Relationships) Act 1976 sets the default rules for dividing property when a marriage, civil union or de facto relationship ends. Most separations are settled by agreement rather than in Court, but the agreement is negotiated against these rules, so it helps to know them.

Equal sharing

The starting point is that relationship property is shared equally. It does not matter whose name an asset is in, who earned more, or who paid for what. Paid work, raising children and running the household are treated as equal contributions to the relationship.

Relationship property and separate property

Relationship property generally includes the family home and household contents, whenever they were acquired, together with property acquired during the relationship, including KiwiSaver contributions and savings built up while you were together.

Separate property generally includes assets you owned before the relationship (other than the family home and its contents), and inheritances and gifts received from third parties. Separate property can lose that status if it is mixed with relationship assets, and an increase in its value can be shared where the other partner contributed to it.

Married and de facto couples

The same rules apply to marriages, civil unions and de facto relationships of three years or more. A de facto relationship does not require a shared bank account or a formal commitment. It is assessed on how the two of you actually lived.

Relationships under three years

A relationship of less than three years is treated differently. Equal sharing of the home and contents may not apply, and shares are more closely tied to what each partner contributed. A de facto relationship under three years is covered only in limited cases, for example where there is a child of the relationship or one partner made a substantial contribution.

The rules are a starting point. Where one partner's earning capacity has been reduced by the division of roles in the relationship, an adjustment may be made in their favour. We cover this under "When it is more complicated".

What people believe, and what the law says

These are the five beliefs we hear most often in a first conversation. Each has some truth in it, which is why it persists.

"It's in my name, so it's mine."

Legal ownership does not decide whether an asset is relationship property. A home in one partner's sole name, or a KiwiSaver account built up during the relationship, is usually shared in the same way as a jointly owned asset.

"The trust protects it."

Property properly owned by a trust is generally not divided, because neither partner owns it. That is the starting point only. Where relationship property was put into the trust, compensation can be ordered, and the way a trust has been run can open other claims. Whether a trust protects anything depends on how and when it was set up and used.

"We've agreed it between us, so we're done."

An agreement is binding only if each of you has independent legal advice and your lawyers certify that the effect of the agreement was explained before you signed. Until that is done, the agreement is generally not binding, and either of you can walk away from what was agreed.

"If I move out, I lose the house."

Moving out does not, by itself, affect your share of the family home. It can affect day-to-day arrangements, such as who pays the mortgage in the meantime, how those payments are accounted for, and whether occupation rent is claimed, so it is worth taking advice on the arrangements before you leave if you can.

"We were only together a short time."

The three-year mark is counted from when you began living together as a couple, which is often earlier than people assume. In some cases the full rules apply to a shorter relationship, and a longer one can be treated as short.

From separation to settlement

Most separations are resolved by a negotiated agreement. Each of you has your own lawyer, and the steps below are how the matter moves from first advice to the transfer of assets.

1. Initial assessment

We identify what your matter involves and where you broadly stand, and recommend the package of work it needs, with a fixed quote.

2. Disclosure

Both sides set out what they own and owe, with supporting documents. Where full disclosure is not given, there are formal steps to require it.

3. Valuation

The home, any business and other significant assets are valued, by agreement where possible, or by independent valuers.

4. Negotiation

Proposals are exchanged between lawyers, sometimes with a meeting or mediation, until terms are agreed.

5. A binding agreement

The terms are recorded in a written agreement. Each of you signs with your own lawyer, who certifies that the effect of the agreement was explained.

6. Transfer

The agreement is carried out: the home is transferred or sold, the mortgage refinanced, KiwiSaver and accounts divided. Where land is transferred, we work with the conveyancing lawyer to complete it.

What we mean by making it easier

We set the pace and do the chasing, so the matter keeps moving. You know the next step before you need to ask. Meetings are by Zoom or phone where that suits you, so the process does not take you away from work or family.

Between separation and settlement

Most separations take months to settle. What happens in that period can change the final division, so it is worth getting the arrangements right from the start.

Separating under the same roof

You can be separated while still living in the same house. The law looks for two things: a physical separation, meaning you no longer live together as a couple, and an intention by at least one of you to end the relationship, made clear to the other by words or conduct. The other person does not have to agree.

The difficulty is proof. A person who relies on a separation date earlier than the day someone moved out needs to show that the relationship itself changed at that point, and the Court looks closely at what actually happened. A couple who agree to separate but carry on as before, for the children's sake or until the house sells, may be found to have separated only when one of them left. What helps is a dated message stating that you have separated, separate bedrooms, separate finances where possible, and telling family and friends.

Who pays what in the meantime

The mortgage, rates, insurance and repairs often fall on one of you after separation. Those payments can be credited to you in the division, but they are rarely repaid dollar for dollar. They are weighed against everything else each of you has paid for, and benefited from, since separation. And if one of you deliberately runs down the value of relationship property in this period, the other can be compensated.

- Keep a record of what you pay and when.
- Agree significant spending, such as repairs before a sale, in advance where you can.
- Do not refix or restructure joint lending without the other person's agreement.

Occupation rent

Where one of you stays in the home and the other moves out, the person who left may be compensated for the other's sole use of the property. This is usually called occupation rent, and it is not automatic. Whether it is fair depends on why the person stayed, for example to give the children stability, how long the arrangement lasted, who paid the outgoings, and whether the person who left was paying for accommodation elsewhere. Where it is allowed, it is usually calculated as half the market rent or as interest on the share of capital tied up in the home, and taken into account in the overall division rather than paid separately.

The family home and KiwiSaver

For most couples, the home and KiwiSaver are the two largest assets, and the two that need the most practical planning.

The family home

There are three common outcomes:

- **One of you buys the other out.** This depends on an agreed value and on the buyer being able to refinance the mortgage in their sole name. It is worth speaking to a bank or mortgage adviser early to confirm what is achievable.
- **The home is sold and the proceeds divided.** The agreement sets out how the sale is run, who pays the costs, and how the net proceeds are shared.
- **One of you stays on for a period.** Often until the children reach a certain age, with the sale or buyout deferred. These arrangements need careful terms on outgoings, maintenance and the eventual value.

Value is usually set by a registered valuation, or by agreement where both of you are comfortable. Where values are close but not agreed, an average of two valuations is a common compromise.

KiwiSaver

The part of each KiwiSaver balance built up during the relationship is generally relationship property. It is often balanced against other assets, so that each of you keeps your own account. Where that is not possible, the KiwiSaver interest itself can be divided, and we advise on the right mechanism for your scheme. Either way, the funds remain subject to the KiwiSaver withdrawal rules.

Household contents and vehicles

These are often agreed between you directly. Their value is usually modest compared with the cost of disputing them, which is worth keeping in mind.

Businesses and family trusts

A business or a trust usually adds more value, and more room for disagreement, to a separation than any other asset. Both need specialist advice, often with an accountant or valuer alongside.

Businesses and farms

Shares acquired during the relationship are generally relationship property, whichever partner holds them and whether or not the other partner ever worked in the business.

A business owned before the relationship usually stays separate, but an increase in its value can be shared. Where relationship money or income was put into the business, the increase is shared in the usual way. Where the increase came from the other partner's work, it is divided according to what each of you contributed. Growth from market movement alone generally stays separate.

Shareholder current accounts are easily overlooked. An account in credit is money the company owes the shareholder, and an overdrawn account is money the shareholder owes the company. Both affect what is divided.

Values are usually taken at settlement, or at a hearing, rather than at separation, so how the business performs in the meantime matters. The outcome also needs to work for the business: who keeps it, and how and when the other partner is paid out.

Family trusts

Property owned by a trust is held by the trustees, so it is not divided in the usual way. That is only the starting point.

- **Powers can be property.** Where one partner's powers under the trust deed amount in practice to control of the trust assets, those powers can themselves be relationship property.
- **Contributions can found a claim.** Money or work put into trust property can give rise to a claim where both partners reasonably expected the contributor to share in it.
- **Varying the trust after dissolution.** For married couples and civil union partners, the Court can vary a family trust once the marriage or civil union is dissolved, which is usually at least two years after separation. De facto partners cannot use this power and rely on the other routes.
- **Information comes first.** A partner who is a beneficiary may be entitled to information about the trust, which is often the first step in understanding what it holds.

When it is more complicated

Some separations involve circumstances that need more than the standard approach.

Assets overseas

Property or accounts in another country may be subject to that country's rules as well as New Zealand's, and an agreement may need to be recognised and carried out there. Polina holds the STEP Advanced Certificate in Cross-Border Estates and advises on separations with an international dimension.

Economic disparity and maintenance

Where one partner's income and standard of living after separation are likely to be significantly higher, because of how roles were divided during the relationship, the other partner may be entitled to an additional share. Ongoing spousal maintenance is a separate question, assessed on needs and the ability to pay.

When the other side does not engage

Non-disclosure, delay, and assets moved to reduce the pool all need a firm response. Where a matter cannot be resolved by negotiation and needs to go to Court, we tell you early and engage a barrister to initiate proceedings.

After the agreement: your will, attorneys and trust

A property settlement divides what you own. It does not change the documents that decide who inherits from you, who can act for you, or who controls a trust. Each needs reviewing once the agreement is signed, and some sooner.

Separation does not change your will

For married couples and civil union partners, gifts to a spouse in a will, and their appointment as executor, are cancelled only once a separation order or dissolution order is made. For de facto partners, nothing changes automatically at all. Until you make a new will, a former partner can still inherit under the old one.

- **Make a new will.** Ideally as soon as you separate, and again once the settlement is signed if your assets have changed.
- **Replace your enduring powers of attorney.** If your former partner is your attorney for property or for personal care and welfare, appoint someone else.
- **Review your trust.** Trustee appointments, the power to appoint and remove trustees, the beneficiary class and the memorandum of wishes may all still reflect the relationship.
- **Check insurance and accounts.** Life insurance policies, joint accounts and anything else that names your former partner.
- **Read the agreement against your will.** A full and final settlement can affect what a former spouse is entitled to if you die without a will. The wording decides it.

Dissolving a marriage or civil union

Dissolution is a separate step from the property settlement. You can apply once you have lived apart for two years, either jointly or on your own. Signing a settlement does not end the marriage, and until it is dissolved your former spouse remains your spouse in law. We prepare dissolution applications as part of finishing a separation properly.

What to bring to your first meeting

You do not need all of this to get started. The more you have, the more specific the advice at the first meeting can be. Where you do not have a document, a note of what you know is useful.

☐**Key dates**

When you began living together, married or entered a civil union (if you did), and separated.

☐**The family home**

The title or address, the most recent valuation or rating value, and the current mortgage statement.

☐**Other property**

Any rental, holiday or overseas property, with values and lending.

☐**Bank accounts**

Recent statements for every account in either name or jointly held.

☐**KiwiSaver and superannuation**

Current statements for each of you, and any overseas pension.

☐**Investments and other assets**

Shares, managed funds, cryptocurrency, vehicles and anything else of significant value.

☐**Debts**

Credit cards, personal loans, car finance, student loans, and money owed to or by family.

☐**Business interests**

Company names, recent financial statements, shareholder agreements and current account balances.

☐**Family trusts**

The trust deed, recent financial statements, and any memorandum of wishes.

☐**Separate property**

Anything you owned before the relationship or inherited, and records of where it went.

☐**Payments since separation**

A record of who has paid the mortgage, rates, insurance and repairs since you separated.

☐**Existing agreements**

Any contracting out agreement (prenup), and any correspondence about the separation so far.

About PK Law

PK Law is an Auckland firm specialising in relationship property and private client law. In a separation we act for one partner and resolve the matter by negotiated agreement. Where a matter needs to go to Court, we engage a barrister to initiate proceedings.

Polina Kozlova, the firm's director, has spent ten years in this one area of law. She is a full member of STEP (the Society of Trust and Estate Practitioners) and holds the STEP Advanced Diploma in Trusts and Estates and the STEP Advanced Certificate in Cross-Border Estates.

We are working towards removing the billable hour from our practice entirely. Our fees are fixed, set by the value of the work to you, and quoted before we start. If you would prefer to be charged hourly, ask us.

"Working with Polina during my separation was an absolute blessing. My case was particularly challenging due to the complex trust structures involved. Polina guided me through each step with clarity and compassion. I couldn't have asked for a better advocate during such a difficult time."

VERONIKA, SEPARATION INVOLVING TRUSTS

Book an initial separation assessment

A fixed fee of \$950 + GST. Before we meet, you complete our questionnaire setting out your assets, debts and circumstances. At the meeting we go through your situation, identify the issues that will shape the outcome, and explain where you broadly stand. Afterwards you receive a short written summary with a recommended package and a fixed quote for it.

Book at pklaw.nz, or call 09 873 4270.

Prefer detailed advice to negotiate yourself? Standalone separation advice is available from \$2,950 + GST. Not ready to book? A free 15-minute call confirms we can act for you and which starting point suits you. It does not cover legal advice or fees.

PHONE	09 873 4270
EMAIL	hello@pklaw.nz
OFFICE	QBE Centre, Level 4, 125 Queen Street, Auckland CBD

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