



NEW ZEALAND
LAW SOCIETY

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WHAT HAPPENS WHEN YOUR RELATIONSHIP BREAKS UP?

The break-up of a marriage, civil union or de facto relationship can be very stressful. One or both of you may be distressed, resentful or angry. Hopes may seem shattered, your life disrupted and your lifestyle at risk. Whether you feel upset, numb or relieved, you face a lot of sorting out: you are likely to have many questions about separation, dissolution (the legal word for divorce), care of your children, child support and the division of your property.

This guide outlines the legal steps that can be involved in the break-up of a marriage or civil union. In most respects it also applies when de facto couples break up. However, it cannot take the place of the legal advice that you are likely to need and should get from your own lawyer. De facto couples should also see the Law Society's guide *Living together*.

COUNSELLING

If your relationship is in trouble, you may want to get help from a counsellor. Counselling lets you explore alternatives, reach decisions and deal with your emotions. You may want to consider whether getting back together is possible or, if not, to work on reaching agreement about the issues involved in separation. Counselling can be for you or your partner, alone or together.

VIOLENCE

If your partner has injured you or you fear for your safety or the safety of your children,

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talk to your lawyer about getting protection orders. In an emergency, the police may issue a safety order, which enables a police officer to remove a violent person from the household. This is a temporary safeguard for up to five days.

For further information, refer to our guide *Family violence*. For married, civil union and de facto couples, a separation agreement can be simply an oral agreement to live apart.

SEPARATION

Couples sometimes live apart temporarily, for work or family reasons. They are not “separated”. Some couples split up abruptly, with one partner leaving or being forced out by the other. They may then need to sort out whether they will get back together or will separate (live apart) permanently.

Some couples agree to separate while they are still living together. In most cases, one partner will then move out but it is possible for separated partners to live separate lives in the same home, and some do. If one partner in a marriage or civil union wants to separate and the other does not, the partner wanting to separate can apply to the Family Court for a separation order.

The court will make a separation order if it is satisfied that it is unreasonable to require the couple to continue living together. Partners in a de facto relationship cannot apply for a separation order but the Family Court may be able to assist in other ways, such as with occupation of the home.

Often, however, partners will arrange for their lawyers to write a separation agreement that includes provision for the care of and contact with children, child support and dividing up property. If you and your partner can reach agreement on these things (or even some of them), you will save yourselves time, worry and expense. If you can’t agree, you may need the Family Court’s help.

If you decide to separate, talk to your lawyer who will:

- explain your rights and obligations and those of your partner;
- advise you on matters causing you concern;
- tell you what action you can take;
- act for you if you reach an agreement or in court proceedings;
- help you apply for legal aid if you are entitled to it;
- take urgent action if that becomes necessary.

Each partner should have their own lawyer so that they get independent legal advice related to their own situation.

DISSOLUTION (DIVORCE)

When a married couple or a couple in a civil union has lived apart for two years (or more), either partner or both can apply to a Family Court for an order of dissolution of their marriage or civil union.

A separation order or agreement is evidence that the couple has lived apart for the time the agreement or order has been in force. The two years' separation can include short periods of living together again (trial reconciliations), as long as these do not total more than three months.

In most cases dissolution orders are made by a registrar without you having to appear in Court. You can however ask to appear in court in which case the matter will be dealt with by a judge.

If the former couple make the application together or if the application is made by one partner and not opposed by the other, the order takes effect as soon as it is made by a judge or one month after it is made by a registrar of the Court: when the order takes effect the couple is no longer married or in a civil union and each is free to marry or enter a civil union again.

If the application is opposed, the order does not take effect immediately – the partner opposing the order has a month to decide whether to appeal against the court's decision.

CARE OF YOUR CHILDREN

Even if you separate or divorce, both parents retain guardianship of any children born or adopted during the relationship or after you have parted. Guardianship gives each of you a legal right to have a voice in important decisions about the children's upbringing, including such matters as education, health, where they live, which religion they follow and other issues to do with their welfare.

If you separate, you need to decide who the children will usually live with – this is now referred to as having “day-to-day care” rather than having “custody

A parent who does not have day-to-day care responsibility, will still be entitled to have “contact” with the children (this used to be called “access”).

It is up to both of you to work out an arrangement that best suits the needs of you and your children. If you cannot agree about day-to-day care and contact arrangements for your children or about guardianship matters (family dispute matters), there are some out-of-court community-based services available to assist you. These services were introduced on 31 March 2014 as part of large changes to the family justice system and are designed to help you try to resolve these matters without having to ask a Family Court to decide for you.

At first, people will be encouraged to agree on a “Parenting Plan”. Templates for such plans along with directions for how to achieve them are available on the new Family Justice

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Website (<http://www.justice.govt.nz/family-justice>). As part of this stage, the parties are strongly encouraged to do **“Parenting Through Separation” (PTS)** which is a *free* parenting information programme that can be done in either two, two-hour sessions or one four-hour session. It will be compulsory for parties to have completed PTS before most family dispute matters can be put before the Family Court, although some exemptions will apply such as when people are at risk.

Secondly, people will be assisted to reach resolution of their family dispute through a new out of court process called **Family Dispute Resolution (FDR)**. FDR is a mandatory pre-court entry requirement, although some exemptions apply as outlined below.

At a glance, FDR is the process whereby an independent, approved person (known as an **FDR provider**) will work with the parties to help define the matters in dispute, discuss their issues constructively and try to reach agreement on them. The FDR provider is focused on helping to achieve agreements that are best for the child. They may also involve other family members, such as grandparents, or the whanau.

The FDR provider will carry out an initial assessment to identify any risks (for example, any risk of harm to children) or parties’ suitability to undertake FDR. If there are risks identified, or the FDR provider believes the dispute is unsuitable for the FDR process, the parties will be given a form exempting them from participating in FDR.

Following the initial assessment, the FDR provider can refer one or both parties to **Preparatory Counselling** which may be helpful in preparation for the family dispute resolution. The counselling is not to be used for the purpose of resolving the dispute itself or reconciling your relationship.

If agreement is reached at FDR, your provider will set out the agreement in a form. If parties wish to have the agreement formalised by the Court in a Court “order” they will need to pay a fee and complete Court documents.

If the parties DO NOT reach agreement at FDR they can apply to the Court for a Judge’s decision. Anyone that makes an application to the court for care of child matters must have completed FDR within the last year and will be required to produce the form from their FDR provider as evidence of this (unless they are exempted). If they are unable to produce the form, court staff will be able to access it on the web-based system where the provider will have entered it.

People are responsible for contacting an FDR provider and paying for the sessions themselves. Some people will be eligible for FDR funding. Parties eligible for FDR funding will be eligible for all the funded out of court services including PTS, preparatory counselling and assistance from the Family Legal Advice Service (FLAS). The FLAS is intended to help parties understand their responsibilities and options, give guidance on possible outcomes and help with completion of court entry forms or notices of response.

For more information about the FLAS and whether you qualify for funding for this service, go to the Family Justice Website (www.justice.govt.nz/family-justice).

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You may prefer to ring the newly set up family justice help line on 0800 2 AGREE (0800 224 733).

Where Family Court determination of your matter is required, the court will base its decisions on what is in the best interests of the child. The court **may** appoint a lawyer to represent the child where the court has concerns for the safety or well-being of the child **and** considers an appointment necessary. For further information, refer to the New Zealand Law Society guide *What happens to your children when you part?*

Where there has been domestic violence the Court will only allow a person to have contact with the child if the court is satisfied that contact is safe for the child. This may mean that contact has to be supervised. For further information, refer to the Law Society guide *Family Violence*.

CHILD SUPPORT

No matter who has day-to-day care of the children, both parents will have ongoing responsibility for their financial support and the parent not having day-to-day care is expected to pay child support. This can be a voluntary arrangement or one administered by the Child Support Agency of the Inland Revenue Department. If the parent with day-to-day care is on a welfare benefit, the Child Support Agency must administer the arrangement.

For further information, refer to the Law Society guide *What happens to your children when you part?*

PROPERTY

This topic is covered by the Property (Relationships) Act, which applies to couples in de facto relationships, including same-sex couples, as well as married couples and those in civil unions. See the Law Society's guide *Dividing up relationship property* for more details.

As a general rule, you and your partner are each entitled to half of all the relationship property – that is all the assets that you have acquired during your relationship. There are, however, many special rules, for instance about:

- relationships of less than three years' duration;
- the situation where children are involved;
- separate property;
- contributions made (eg, household duties, childcare);
- debts and creditors;
- contracting out of the act's provisions;
- your rights if your partner dies.

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This is an area in which you must ultimately seek legal advice. While you can decide these matters between you, only a written agreement prepared and certified by a lawyer for each of you has legal status.

If you have children and own a house, you may want to consider agreeing that the parent with day-to-day care of the children lives in the house until the children are older.

If so, there needs to be clear agreement about who will pay the mortgage, rates, insurance and maintenance costs.

If you can't agree on dividing your property, either of you can apply to the Family Court for orders in relation to the property.

Because the act says you both own your property, you must not sell or remove assets (such as furniture, appliances or vehicles) without the consent of your partner or a court order.

YOUR WILL

You should always review the contents of your will as your personal circumstances change. If your relationship is breaking up, you will probably want to think about whether you want to change your will as regards your former partner. When a marriage ends in divorce, any gifts in a will to the former spouse are automatically revoked unless the will expressly provides otherwise, but this does not apply on separation only; nor does it apply to civil unions or de facto relationships. The Property (Relationships) Act can also affect your will. You should seek legal advice about your will. See also the Law Society guide *Making a will and estate administration*.

MAINTENANCE

The law encourages you to become financially independent as soon as possible after your relationship breaks up. It is only in special circumstances that one partner must pay maintenance to the other. You should discuss this with your lawyer.

DO THE RIGHT THING - SEE YOUR LAWYER FIRST

Lawyers deal with many personal, family, business and property matters and transactions.

No one else has the training and experience to advise you on matters relating to the law. If your lawyer can't help you with a particular matter, he or she will refer you to another specialist. Seeing a lawyer before a problem gets too big can save you anxiety and money.

Lawyers must follow certain standards of professional behaviour which are set out in their Rules of Conduct and Client Care. When you instruct a lawyer, he or she must provide you

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with certain information, as outlined in the Law Society guide *Seeing a lawyer – what can you expect?* This includes informing you up front about the basis on which fees will be charged, and how and when they are to be paid. The fee, which must be fair and reasonable, will take into account the time taken and the lawyer’s skill, specialised knowledge and experience. It may also depend on the importance, urgency and complexity of the matter.

There could also be other costs to pay, such as court fees. You should discuss with your lawyer how you will pay for the work and advise if you don’t want to spend more than a certain sum without the lawyer checking with you. A lawyer is required to tell you if you might be entitled to legal aid.

The guide *Seeing lawyer – what can you expect?* also outlines how you can help control your legal costs and get best value from your lawyer. Choose your own lawyer for independent advice. You do not have to use the same lawyer as your partner or anyone else involved in the same legal matter. In fact, sometimes you must each get independent legal advice.

Lawyers must have a practising certificate issued by the New Zealand Law Society. You can call the Law Society on (04) 472 7837 or email registry@lawsociety.org.nz to see if the person you plan to consult holds a current practising certificate.

You can also check this on the Register of Lawyers which is accessible through the website www.lawsociety.org.nz. If you have a concern about a lawyer, you can talk to the Lawyers Complaints Service, tel 0800 261 801.

IF YOU DON’T HAVE A LAWYER

- ask friends or relatives to recommend one;
- look in the Yellow Pages under “lawyers” or “barristers and solicitors”;
- inquire at a Citizens Advice Bureau or Community Law Centre;

CHECK THESE WEBSITES

www.lawsociety.org.nz/for-the-community/find-lawyer-and-organisation

www.familylaw.org.nz/public/find-a-lawyer

To the best of the New Zealand Law Society’s knowledge, the information in this guide is true and accurate as at 1 July 2014. However, the Law Society assumes no liability for any losses suffered by any person relying directly or indirectly on information in this guide. It is recommended that readers consult a lawyer before acting on this information.

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