
LIVING TOGETHER

**Do the right thing –
see your lawyer first**



NEW ZEALAND
LAW SOCIETY

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1. Living together (de facto relationships)

The term ‘de facto relationship’ is the name given to a relationship where people live together as though they are married or in a civil union but without actually being legally married or in a civil union. Some people who live in a de facto relationship have deliberately decided to avoid the legalities of a marriage or a civil union but others may develop such a relationship less consciously – sometimes by simply drifting into it.

This pamphlet looks at some areas of the law that affect people who choose to live together without getting married or entering a civil union, although often the law treats de facto couples the same as married or civil union couples.

In particular, the Property (Relationships) Act applies automatically to de facto couples (including those of the same sex). Accordingly, people entering or already in a de facto relationship should consider its effects. It governs how property should be divided and applies not only when a relationship ends through separation but also if it ends through the death of a partner. If you do not want this law to apply to you, you may contract out of the Property (Relationships) Act’s provisions by drawing up a legal agreement – you will each need independent legal advice about this so that any agreement is fair to you both. See our other pamphlet *Dividing up relationship property* for more information on this complex area of law.

2. | Names

It is quite legal to use any name you like so, if you decide to live with someone, you can keep your own surname or use your partner's surname. If you want to change your name, just ask your friends, your employer, your bank, the Inland Revenue Department, etc, to call you by the new name.

If you want to change your name for official purposes, such as on a passport or title to land, you can do so formally by signing a deed poll. See your lawyer or the Registrar of Births Deaths & Marriages about it. The deed poll does not change the name on your birth certificate but it is accepted as an official change of name.

It is for you and your partner to decide by what surname your children will be called. If you wish to change a child's name officially, the child's other parent or guardian must agree. If the two of you cannot reach agreement, you can ask a Family Court to decide.

3. | Children

Status: All children in New Zealand are equal before the law. There are no 'illegitimate' children in this country.

Paternity: The law presumes that a man who lives with a woman as her partner at any time between conception of a child and that child's birth is the father of that child. For certainty, though, it is best to record the father's name on the birth certificate, which requires the approval of both parents. If your circumstances are not covered by this presumption or by the father's name being on the birth certificate, the mother and father can make a joint declaration of paternity, or either of them can apply to the Family Court for a declaration of paternity. Even if the father of the child has died, it is possible to prove paternity through a declaration in the High Court under the Status of Child Amendment Act. It is best to seek legal advice on how to make any of these declarations.

Guardianship: Guardianship is the term used to describe the rights and responsibilities of a parent. Every child in New Zealand has at least one natural guardian (the mother). Most children in New Zealand have two guardians, the other being the father – but not every father is a guardian. However, a father who was living with the mother as a de facto partner at any time during the period beginning with the conception of the child and ending with the child's birth will be a guardian of that child. A father named on the birth certificate of a child born after 1 July 2005 will be a guardian of that child. A father who is not automatically a guardian of the child can be appointed a guardian by the court or by agreement with the mother (which agreement must be ratified by the court). If you are not sure whether you are a guardian or not, ask your lawyer. Guardians who separate retain the rights and responsibilities of guardianship. It is very unusual for a guardian to be deprived of that status. Guardians who do not have day-to-day care of their children retain the legal right to have a say in all important decisions about the child's names and upbringing, including such matters as education, health, where they live (residence), which religion they follow and other significant issues to do with their welfare. If guardians cannot agree on these matters, they can ask the Family Court to make a decision, which will be based on what is best for the children.

Care of children: If you and your partner separate, it will be important to decide how your children will be cared for. Even if one parent has primary responsibility for day-to-day care (formerly known as custody), the other parent still has the rights of guardianship and, usually, rights of contact (formerly known as access). It is possible to negotiate an agreement to share day-to-day care of the children. Any arrangement should focus on the best interests of the children as this is the basis on which the Family Court will resolve any dispute. The Family Court offers free counselling, conciliation and mediation to help you reach an agreement. Children may be involved in the counselling and mediation processes. If you can't agree, then the court can decide on appropriate arrangements for the care of your children. A lawyer may be appointed to represent any children as the court will want to know the children's views. The court bases its decisions on what is best for the children. It does not make any presumption about equal sharing and does not assume in advance who might be the better parent.

Contact with children: The parent who does not have day-to-day care will usually be granted reasonable contact with the children. Again, if you can't agree on this, the Family Court will decide on an arrangement in the best interests of the children.

Violence: The court will not allow a person who has physically or sexually abused a partner or a child to have care of or unsupervised contact with the child, unless the court is satisfied that the child will be safe. See our pamphlet *Domestic violence*.

See our other pamphlet *What happens to your children when you part?* for more detailed information

4. | Your partner's children

Parental rights: You and/or your partner may have children from previous relationships sharing your family household. Even though you may be acting as a parent to your partner's children, you do not have the legal powers of a parent unless you are formally appointed a guardian by the court or you adopt them.

Financial support: Generally, even if the children are living in your household, you have no legal obligation to support your partner's children unless you have adopted them or have signed a binding agreement to pay maintenance for them. There are certain circumstances, however, where a non-natural parent may be liable to pay child support under the Child Support Act – check these with your lawyer. See also 'Financial support' below. Also, the income of both partners will be taken into account if either one receives or applies for a social welfare benefit (such as the Unemployment Benefit).

Care and contact: If you and your de facto partner separate, you can ask a Family Court for permission to apply for care of, or contact with, your partner's children.

5. | Getting help

A primary aim of our family law is to help people reach agreement by themselves and to avoid a court hearing wherever possible. De facto couples can access free counselling and mediation at the Family Court to help settle their differences. Contact your nearest Family Court for information about these services. If you are unable to reach agreement, the court can make the necessary decisions.

6. | Domestic violence

You can get protection from a violent partner through legal means. If you are assaulted or threatened, you can contact the police and they can arrest your partner on a criminal charge.

Under the Domestic Violence Act, a Family or District Court can issue a protection order to protect you from anyone with whom you share a household or have a close personal relationship who has been violent to you. The definition of violence includes physical or sexual abuse, psychological abuse (such as intimidation, harassment, damage to property and threats) and allowing a child to see or hear such abuse. The protection order gives you the right to choose if and when you have contact with the person who has been violent.

Applications for protection orders can be made on behalf of children and they can protect the new partner of an abused person.

The orders can be made very quickly – sometimes, in urgent cases, on the same day the application is made. It is best to see a lawyer who will guide you through the forms and apply to a Family Court for you. Legal aid may be available to assist with costs.

For further details, see our other pamphlet *Domestic violence*.

7. | Financial support

Domestic Purposes Benefit (DPB): You will not be eligible for the DPB if you are living with a partner, even if your children are not that partner's children. If you and your partner are struggling to support children on a low income, ask about family support. If you have children and no longer have a partner, you can apply to Work and Income for a DPB. You will need to name the other parent(s) of your children to get a full benefit. The other parent(s) will then be liable to contribute towards the cost of the benefit by making child support payments to the Inland Revenue Department.

Child support: If you are on a DPB, you must apply to the Inland Revenue Department for an assessment of how much child support the children's other parent(s) have to pay. If that amount exceeds the DPB you receive, you are entitled to the surplus. If you cease to receive the benefit, the other parent(s) must still pay the assessed amount to you. If you are not receiving the DPB, you and the other parent(s) can agree on how much child support the other parent(s) should pay or you may apply to the Inland Revenue Department for an assessment of the child support the other parent(s) will be required to pay. In making its assessment, Inland Revenue uses a formula that takes into account the income and circumstances of the other parent(s), such as who else they have to support. If either of you disagrees with the assessment, you can ask the Child Support Agency to review it (see the pamphlet *Child Support Administrative Reviews*, which is available from the Inland Revenue Department). If you are still not satisfied with the assessment, in some circumstances you can apply to a Family Court for a 'departure order'. A former partner may be liable to pay child support for the children of a partner even if he/she is not the father/mother of those children.

Other benefits: While you are living together, your partner's income will be taken into account in deciding your entitlement to any benefits, including an Unemployment Benefit or Sickness Benefit.

New Zealand Superannuation: You and your partner (whether married, civil union or de facto, including if

of the same sex) will be entitled to receive New Zealand Superannuation when you reach the qualifying age of 65. Contact your local Work and Income office for further details.

Partner support: If you separate, the court may award spousal maintenance in some circumstances.

8. | Property

Property (Relationships) Act: When any de facto (including same sex) relationship that has lasted longer than three years ends, property of the relationship will be divided according to the Property (Relationships) Act unless you have an agreement otherwise. This applies to relationships that began before the act took effect (1 February 2002) and it can apply when a relationship ends through death as well as through separation. The general principle is that all relationship property and debts will be shared equally, though there can be exceptions and some property can remain separate. The home you have both lived in, though, will be classed as relationship property that has to be shared equally except in exceptional circumstances, even if one person owned it before the relationship started. See our other pamphlet *Dividing up relationship property* for more information and do get legal advice as this is a complex area of law.

Contracting-out property agreement: If you do not want to be covered by the Property (Relationships) Act, then you should formally contract out of the act by having a legal agreement as to how your property should be divided if your relationship ends. Each partner will need separate legal advice to make sure the agreement is fair to each of you. You may like to consider having such an agreement: if either of you already owns assets (a home, business, etc) when you get together; if either of you has inherited, or is likely to inherit property; or if either of you has children or other dependants to provide for. If you do not have an agreement, you will automatically be covered by the Property (Relationships) Act.

9. | Death

Will: If you want your partner (or your partner's children) to receive some or all of your money or property after your death, it is preferable to make a will. If there is no will, your partner and your children may inherit under the Administration Act, but your partner's children cannot inherit from you under that act. Whether you have made a will or not, your partner can choose to make a claim under the Property (Relationships) Act for their share of the relationship property if they feel that the inheritance is not enough. If your partner makes that choice, they will normally lose the inheritance unless you have expressly said in your will that they may inherit as well as take their share of the relationship property.

Your partner, your children and, in some circumstances, even your partner's children could also make a claim under the Family Protection Act if you have not provided for them sufficiently in your will, or possibly under the Law Reform (Testamentary Promises) Act (see our other pamphlet *Making a will and estate administration*).

It is very important to review a will if you separate.

Family home: If you and your partner own the home in which you live as joint tenants, your partner automatically becomes the sole owner on your death. If you both own the home in defined shares (whether equal or unequal), your share becomes part of your estate and is dealt with according to your will or the Administration Act rules that apply to people who die without a will. This may not be what you want and it could mean the home has to be sold so that your estate and your partner can each be paid their share out of the proceeds. However, if your partner chooses to apply for a division of relationship property under the Property (Relationships) Act, the family home (no matter which partner owns it or when it was acquired) is classed as relationship property and the surviving partner may claim a share under that act. Your partner will then normally not inherit, as explained above.

10. | Other matters

Parental leave: People in de facto relationships qualify for parental leave entitlements. A mother is entitled to up to 14 weeks' maternity leave and a father up to two weeks' paternity leave, and there is provision for this to be extended up to 52 weeks in total for either parent. Parental leave applies to the birth of a child of the relationship and to the adoption of a child if not more than five years of age. In addition, up to 13 weeks (14 weeks from December 2005) **paid** parental leave (this is different from the leave mentioned above) will be available to the mother in the case of a birth, or either parent in the case of an adoption, where they meet certain criteria as regards employment. For more details on any form of parental leave, see the website **www.ers.dol.govt.nz** or check with the Department of Labour or your lawyer.

Contraception, sterilisation and abortion: In law, the consent of a partner, or of the parents of a child or young person, is not necessary for contraception, sterilisation or abortion.

11. | 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 as set out in their rules of conduct and client care. When you instruct a lawyer, he or she must provide you with certain information, as outlined in our brochure *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 brochure *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 at one of the offices listed below) 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 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/home/for_the_public/find_a_lawyer
 - www.familylaw.org.nz
 - www.propertylawyers.org.nz

- contact your local New Zealand Law Society branch:

Auckland (including Northland, South Auckland, Coromandel) (09) 304 1000

Waikato Bay of Plenty (including Taupo) (07) 838 0264

Gisborne (06) 867 1562

Hawke's Bay (06) 835 1254

Taranaki (06) 758 3238

Wanganui (06) 345 7092

Manawatu (06) 356 2214

Wellington (including Wairarapa) (04) 472 8978

Nelson (03) 545 2613

Marlborough (03) 578 7269

Canterbury-Westland (03) 366 9184

Otago (03) 477 0596

Southland (03) 218 8778

Law Awareness Programme

The New Zealand Law Society publishes this pamphlet as part of its *Law Awareness Programme* to inform you of your legal rights, the law and how lawyers can help you. The full list of titles in this series is:

- Buying or selling a property
- Over the fence ... are your neighbours
- Domestic violence
- What happens to your children when you part?
- Dividing up relationship property
- What happens when your relationship breaks up?
- Living together
- The family trust
- Making a will and estate administration
- Powers of attorney
- Motor vehicles, accidents and alcohol
- You and the police
- Giving evidence
- Going into business

Other brochures

The Law Society also publishes the following brochures outlining the standard of service that clients can expect from their lawyers and about the Lawyers Complaints Service:

- Seeing a lawyer – what can you expect?
- How to complain about a lawyer

Copies of the Law Awareness pamphlets and the client care brochures may be obtained from the New Zealand Law Society, PO Box 5041, Lambton Quay, Wellington 6145, tel (04) 472 7837, fax (04) 463 2985, email pamphlets@lawsociety.org.nz or from Citizens Advice Bureaux or Community Law Centres. They are supplied free to individuals and non-profit community service organisations, and at a small charge to others. They are also available on the Law Society website – www.lawsociety.org.nz/home/for_the_public/how_can_we_help_you

Notes

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

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