



**Hayman Lawyers**

Your lawyers for all reasons

# Relationship Property

*Common questions answered*

## How the relationship property legislation affects you!

Many clients seek advice from Hayman Lawyers about relationship property so we have produced this simple fact sheet to answer some of your questions.

## What is the law?

The Property (Relationships) Act 1976 governs how property is divided between married, civil union and de facto (including same sex) couples when they separate.

The Act also allows couples to write their own agreement for the division of their property. This is called "contracting out" of the Act.

## Who does the Act apply to?

The Act applies the same property sharing rules to all people who are married, in a civil union, or in a de facto (including same sex) relationship. Before 2002, the property sharing rules only applied to people who were married or in a civil union.

## What is a de facto relationship?

The Act defines a de facto relationship as one where both of you are aged 18 or over and live together without being married.

The Act lists nine factors to be considered when deciding if a couple is in a de facto relationship. Living in the same house and having an intimate relationship are not compulsory!

If you are not sure if you are in a de facto relationship, please consult us.

In these notes, we refer to members of a qualifying relationship as "spouses".

## How is the property shared?

If you have been in a qualifying relationship for three years or more, the Act generally provides that the family home and family chattels will be divided equally if you separate. If your relationship has been less than three years, the Act generally provides for the property to be divided according to the contributions made by each spouse.

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## What happens if one of us dies?

The Act also applies when a spouse dies. If your spouse dies, you can choose to take what is left to you under their will or to receive a half-share of the relationship property under the Act.

## What if my spouse works and I don't?

A lot of people are concerned about what happens in the situation where one of the spouses has worked and advanced their career while the other has given up paid employment to care for their children. In circumstances like this, the Court has the power to order lump sum payments from one spouse to the other. This can help to address differences in economic position when a marriage or relationship breaks down.

## What if we don't want the Act to apply to us?

A lot of people don't want to be bound by the rules set out under the Act. For instance, where a couple are buying a house and one of them is putting up all the cash, they often want to ensure that that person's contribution is protected if they separate.

The Act allows couples to contract out of the rules and make their own arrangements for dividing their property when they separate or when one of them dies.

To contract out of the Act, a written agreement must be prepared and signed by each spouse. Each spouse must receive independent legal advice from different law firms before signing.

## How Hayman Lawyers can help you!

Entering into a relationship is one of the biggest decisions we make. It is important when you enter a relationship that you take steps to ensure your interests are protected. The best way to do this is by entering into an agreement that will set out what you are entitled to if the relationship ends. This is the best way to ensure that you safeguard the property you bring to the relationship. We can assist you to put in place an agreement that protects both your and your spouse's interests.

If your relationship breaks down, you will want to ensure that you receive all that you are entitled to. We can assist you negotiate a settlement that is fair to both your spouse and yourself.

## Must review terms to ensure they are fair

Agreements which are reasonable at the time they are signed can become unfair over time due to changes in circumstances. The court has power to set an agreement aside if, having regard to all the circumstances, it is satisfied that giving effect to the agreement would cause serious injustice.

So, you must review the terms of any agreements if your circumstances change. Common events requiring agreements to be reviewed are the arrival of children and changes in the spouse's functions within the relationship. Reviewing agreements every five years or so in any event would be a good practice to adopt.