



# Property (Relationships) Model Form of Agreement Regulations 2001

Silvia Cartwright, Governor-General

## Order in Council

At Wellington this 9th day of July 2001

Present:

The Right Hon Helen Clark presiding in Council

Pursuant to section 21E(2) of the Property (Relationships) Act 1976, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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## Regulations

### 1 Title

These regulations are the Property (Relationships) Model Form of Agreement Regulations 2001.

**2 Commencement**

These regulations come into force on 1 August 2001.

**3 Interpretation**

In these regulations, **Act** means the Property (Relationships) Act 1976.

**4 Model form of contracting-out agreement prescribed**

The form of agreement set out in the Schedule is prescribed as a model form of agreement for the purposes of section 21 of the Act.

**5 Use of form optional**

Under section 21E(3) of the Act, using a prescribed model form of agreement is optional.

**6 Agreement based on form has no special status or effect**

An agreement under section 21 of the Act and that is based on the form set out in the Schedule—

- (a) has no special status or effect just because that form is prescribed by law; and
  - (b) must be treated in the same way as an agreement under section 21 of the Act and that is not based on that form.
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## Schedule

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## Prescribed model form of agreement

*Property (Relationships) Act 1976, section 21E***Agreement for the purpose of contracting out of the  
Property (Relationships) Act 1976 (the Act) by providing  
that listed property is to be separate property**

Key to text in this form (to be omitted when this form is used):

*Text in italics is an example to be adapted, or guide text to be omitted.*

[Text in square brackets is to be inserted, adapted, or, like the brackets, omitted.]

This agreement is made on *21 November 2001*,  
between *Robin Huia Spencer, Nurse, Notown (Robin)* and  
*Kerry Lee Young, Teacher, Notown (Kerry)* (the **parties**), who  
[are husband and wife] *or*  
[are **de facto partners** as defined by section 2 of the Act] *or*  
[are contemplating entering into a marriage] *or*  
[are contemplating entering into a **de facto relationship** as defined  
by section 2 of the Act],

and, for the purpose of contracting out of the Act (*the general  
scheme and effect of which is outlined in the notes to this form*) in  
terms of section 21 of the Act [other than on the death of 1 or both of  
the parties], agree that

[, once they have entered into this agreement,] *or*

[, if, after they enter into this agreement, they enter into [a marriage]  
*or* [a **de facto relationship** as defined by section 2 of the Act],]

the status, ownership, and division of their property to which this  
agreement applies is to be as follows:

**1 Property to be [Robin's] separate property**

Property listed in Schedule 1 is owned by [*Robin*] alone when  
this agreement is entered into, and must, after this agreement  
takes effect, be dealt with as if it were [*Robin's*]  
separate property within the meaning of the Act.

**2 Property to be [Kerry's] separate property**

Property listed in Schedule 2 is owned by [Kerry] alone when this agreement is entered into, and must, after this agreement takes effect, be dealt with as if it were [Kerry's] separate property within the meaning of the Act.

Schedule 1

Property to be [Robin's] separate property  
[list property]

Schedule 2

Property to be [Kerry's] separate property  
[list property]

Signed by [Robin Huia Spencer]: .....

In the presence of:

.....

[James Quentin]  
[Lawyer]  
[Notown]

I certify here that, before [Robin] signed, I explained to [Robin] the effect and implications of this agreement.

.....

[James Quentin]  
Barrister [and Solicitor] of the High Court of New Zealand

Signed by [*Kerry Lee Young*]: .....

In the presence of:

.....

[*Mary Rouse*]

[*Lawyer*]

[*Notown*]

I certify here that, before [*Kerry*] signed, I explained to [*Kerry*] the effect and implications of this agreement.

.....

[*Mary Rouse*]

Barrister [and Solicitor] of the High Court of New Zealand

### Notes to this form (to be omitted when this form is used)

#### *Important*

- Nothing in this form or these notes is intended to take the place of legal advice, and you should take independent legal advice before entering into any agreement based on this form.
- Under the Act, an agreement based on this form is void unless each party to it has independent legal advice before signing it. The Court may give effect to a void agreement in certain circumstances, but, if it does not do so, the Act has effect as if the agreement had never been made.
- Using this form is optional. The purpose of an agreement based on this form is to contract out of the Act by providing that listed property is to be separate property. That is just 1, quite limited, approach to contracting out of the Act.
- Couples who are considering entering into a contracting-out agreement may find that one based on this form does not suit their circumstances or requirements at all, or will suit them only if this form is modified. They should also be aware of these matters (outlined in the rest of these notes):
  - the general scheme and effect of the Act:
  - the general effect and implications of an agreement based on this form:
  - procedural requirements for entering into an agreement, and other rules that apply to an agreement (for example, the Court's power to set an agreement aside).

*Guide to general scheme and effect of Act*

In general terms, the purpose of an agreement based on this form is to contract out of the Property (Relationships) Act 1976. The following notes are only a guide to the general scheme and effect of the Act.

- The Act is mainly about how the property of married couples and couples who have lived in a de facto relationship is to be divided up when they separate or 1 of them dies.
- Different rules apply depending on the length of the marriage or the de facto relationship.
- In the case of marriages, special rules apply to marriages of less than 3 years.
- In the case of de facto relationships, the Act usually applies only when the de facto partners have lived together for at least 3 years, but it may apply to shorter de facto relationships in certain circumstances.
- In general, the couple's property is to be divided equally between the couple.

*General effect and implications of agreement based on this form*

The following notes are only a guide to the general effect and implications of an agreement based on this form.

- This form of agreement applies only to property owned by 1 of the parties alone when the agreement is entered into, and listed in Schedule 1 or Schedule 2 (*see* clauses 1 and 2). (Other property the parties acquire later is dealt with by this agreement only if it is acquired out of, or is the proceeds of a disposition of, or is derived from, that property listed in Schedule 1 or Schedule 2.)
- If property owned by 1 of the parties alone is listed in Schedule 1 or Schedule 2, it must be dealt with after the agreement takes effect as if it were that party's separate property within the meaning of the Act (*see* clauses 1 and 2).
- Separate property may be made the subject of orders under the Act on a division of relationship property under the Act (for example, orders referred to in section 15A(3)).

- As to property acquired out of separate property, the proceeds of any disposition of separate property, increases in the value of separate property, income or gains derived from separate property, and when separate property becomes relationship property, *see* sections 8 to 10 of the Act.

#### *Procedural requirements for agreement*

An agreement entered into under section 21 of the Act is (*see* section 21F of the Act) void unless—

- it is in writing and signed by both parties;
- each party to it has independent legal advice before signing it;
- the signature of each party to it is witnessed by a lawyer;
- the lawyer who witnesses the signature of a party certifies that, before the party signed it, the lawyer explained to that party its effect and implications.

The Court may give effect to a void agreement in certain circumstances (*see* section 21H of the Act) but, if it does not do so, the Act has effect as if the agreement had never been made (*see* section 21M of the Act).

#### *Court may set agreement aside if it would cause serious injustice*

Even though an agreement satisfies the requirements of section 21F of the Act, a Family Court Judge may set it aside if, having regard to all the circumstances, the Judge is satisfied that giving effect to it would cause serious injustice (*see* section 21J(1) of the Act). In deciding whether giving effect to an agreement under section 21 of the Act would cause serious injustice, the Judge must (*see* section 21J(4) of the Act) consider—

- the provisions of the agreement;
- the length of time since it was made;
- whether it was unfair or unreasonable in the light of all the circumstances at the time it was made;
- whether it has become unfair or unreasonable in the light of any changes in circumstances since it was made (whether or not those changes were foreseen by the parties);
- the fact that the parties wished to achieve certainty as to the status, ownership, and division of property by entering into the agreement;
- any other matters that the Judge considers relevant.

*Other rules that apply to agreements under section 21 of Act*

Other aspects of agreements under section 21 of the Act are governed by other provisions in the Act (for example, in Part 6 or section 47) or by the general law (for example, the law of undue influence).

Marie Shroff,  
Clerk of the Executive Council.

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**Explanatory note**

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations are made under the Property (Relationships) Act 1976 (the **Act**) (that is, the Matrimonial Property Act 1976 as it is renamed on 1 February 2002 by section 5(1) of the Property (Relationships) Amendment Act 2001 (the **Amendment Act**).

*New Part 6 of Act (Contracting out)*

On 1 August 2001, section 21 of the Act is repealed, and a new Part 6 (containing new sections 21 to 21T) is substituted (*see* section 21 of the Amendment Act). These regulations are made under new section 21E(2), and come into force on the same day as it does (1 August 2001). However, most of the amendments made to the Act by the Amendment Act come into force later, on 1 February 2002. Two purposes of the Amendment Act are—

- to amend the Act so that it applies to the division of the property of married couples when 1 of them dies; and
- to extend the property division regime in the Act so that it applies to the division of the relationship property of couples who have lived together in a de facto relationship, when they separate or 1 of them dies.

The 1 August 2001 commencement date for new Part 6 enables husbands and wives and de facto partners to consider their position, and to make any arrangements they wish to, before most of the amendments for those 2 purposes come into force.



*Model form of contracting-out agreement prescribed*

*Regulation 4* prescribes the form of agreement set out in the *Schedule* as a model form of agreement for the purposes of new section 21 of the Act.

*Regulation 5* provides that, under new section 21E(3) of the Act, using a prescribed model form of agreement is optional.

*Regulation 6* provides that an agreement under new section 21 of the Act and that is based on the model form of agreement has no special status or effect just because that form is prescribed by law, and must be treated in the same way as an agreement under new section 21 of the Act and that is not based on that form.

The notes to the form outline the general scheme and effect of the Act, the general effect and implications of an agreement based on the form, procedural requirements for entering into an agreement, and other rules that apply to an agreement (for example, the Court's power to set an agreement aside).

However, nothing in the form or the notes to it is intended to take the place of legal advice, and anyone who is considering entering into an agreement based on the form should take independent legal advice before doing so.

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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 12 July 2001.

These regulations are administered in the Ministry of Justice.

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