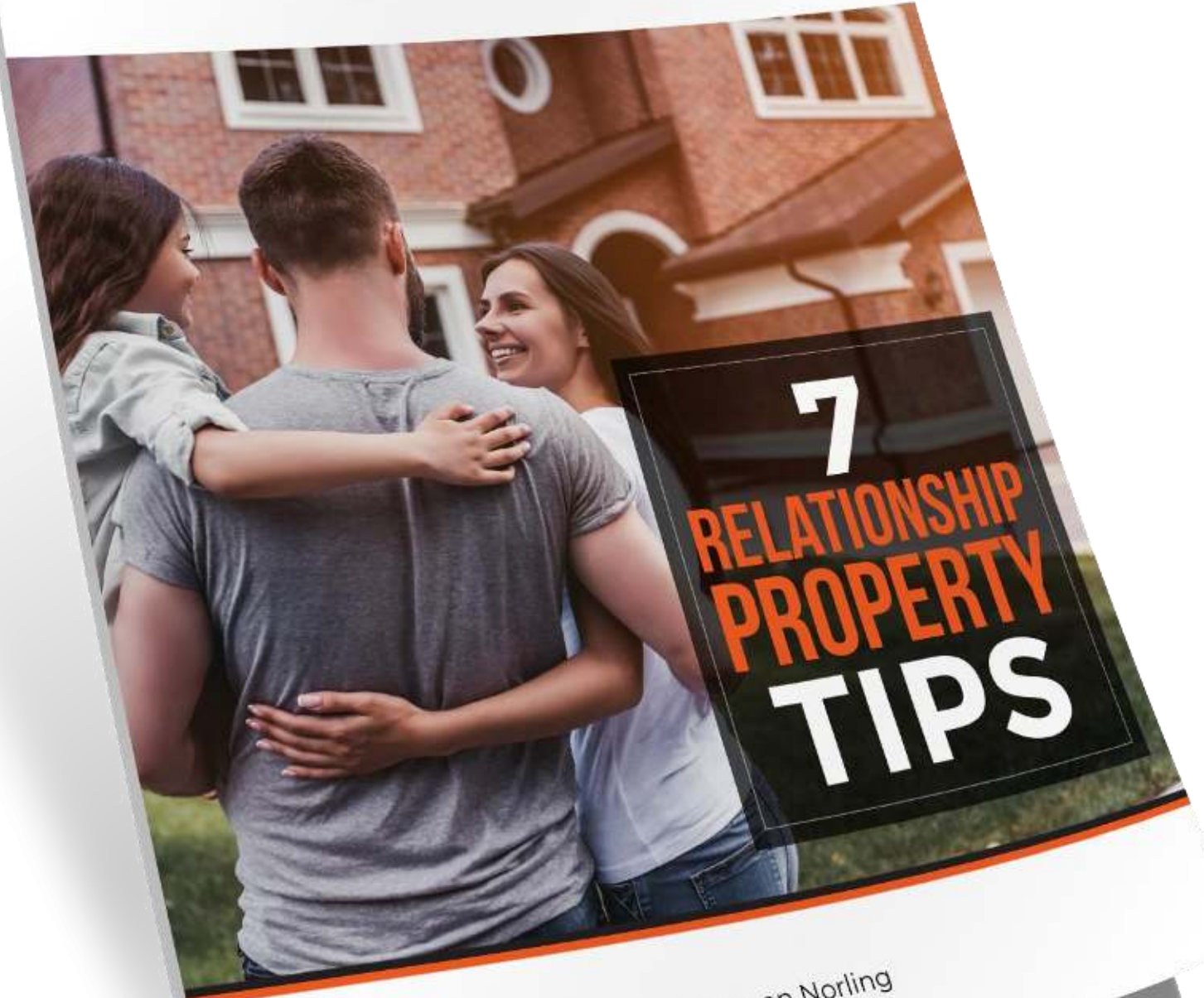




7 RELATIONSHIP PROPERTY TIPS

By Shannon Norling

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When starting a new relationship you can easily get lost in that amazing new feeling and introducing the idea of signing a prenup often carries with it negative connotations.

This need not be the case. As a relationship develops and becomes more serious it is important to protect each of you in case something doesn't quite go to plan.

In situations where one party has earned and/or inherited significant assets they may wish to protect and identify those assets as their separate property.

This is particularly relevant in situations where each of the parties has their own children from prior relationships to protect and provide for.

Times have changed and relationships often do not last as long as they once did. Obtaining a prenup doesn't have to carry the connotation that you're preparing for separation but can instead be an exercise of trust.



Shannon Norling



Here are 7 tips I have learned in my experience that protect you:

1. Know the date / de facto relationships

Ensure that you know the date when the relationship commenced. There are laws that assist to determine the commencement date.

For example a relationship started in June 2016 on a night out that went Facebook official in June 2017 that eventuated in moving in together June 2018. When does the de facto relationship commence? Each case will be determined on the facts presented and it can be a little tricky calculating the commencement date.



There are a some determining factors to consider as follows:

- How long you have been together;
- Whether you share a residence (i.e. do you share a bedroom together);
- Whether a sexual relationship exists between you;
- Arrangements surrounding your financial affairs (e.g. are you financially dependent on each other; do you share bank accounts etc.);
- Ownership, use, and acquisition of any property (assets or liabilities);
- Whether you have a mutual commitment to a shared life together;
- The care and support of any children; (even if not biologically yours)
- Who performs various household duties;
- How the public views your relationship (e.g. do your friends and family see you as a couple?)
- If you're ticking a lot of these boxes then you will likely be considered a de facto couple under the law.

When defining a de facto relationship it can be useful to define what it is not. As an example a couple who have been together for 18 months, who live independent lives and do not cohabit - even though they have an intimate, personal and even sexual relationship will unlikely meet the criteria for a de facto relationship under the Act.

2. Identify your property

Ensure that you are able to identify what property you wish to be itemised as separate property and what property you wish to be considered joint property.

This is particularly important when you're coming into a new relationship with significant chattels which are often overlooked. Once intermingled separate property is difficult to identify. For example Party A may have a significant rifle collection; we have seen collections valued at over \$70,000. Party A is the only person licenced to hold those rifles however, in a relationship property division Party B is entitled to a payment of \$35,000 which may have to be borrowed from the bank in order to fund it or from the sale of the rifles if necessary.

A second example is Kiwisaver. Clients are often surprised to learn that Kiwisaver is also considered a relationship property asset capable of division. Kiwisaver does not allow access to the fund without a Court Order which can cost significant legal fees to obtain. This often leads to clients having to make a cash payment to the other party either from savings, borrowed funds or a loan when calculating the division of relationship property.



3. Family Trusts

Recent Court cases have shown that the security a Family Trust once provided is limited and the Courts may decide to share Family Trust property with your partner.

We have seen an increase in claims against Family Trusts. A trust set up prior to the commencement of a new relationship can still be attacked and divided in equal shares if a party can establish that the home is the family home. In one case that was taken to the High Court Party A had lived in the home for over the three year period, never paid any of the outgoings in relation to the property but had painted the front fence and made a claim stating that they enriched the Trust's assets. The claim was for 50% of the asset however, as with most cases it was settled out of Court for the sum of \$40,000.

We have also seen several cases where the Family Trust was set up by parents and grandparents with a significant number of beneficiaries that would need to be considered. In those cases a partner has been moved onto the family farm and they have lived in a multi generational family home. They are still able to make an application to the Court for a division of assets despite in most instances having never paid a cent towards the upkeep of that property.

4. Family home / Main home

The asset a large percentage of couples argue about the most is the home they're living in. If a couple has been together for three years then this home may be considered the family home and divided equally. This can occur despite one party having purchased the asset in their sole name prior to meeting the person making the claim. It is best to deal with this issue head on and determine what you wish to happen in the event of separation or death.



Often during the relationship the parties will agree that the home will remain the separate property of the person that purchased it and act accordingly. For example the owning party will be expected to pay the outgoings such as mortgage, rates, insurance and maintenance. Following separation positions often change due to hurt feelings and despite having had the benefit of years of low cost living claims for 50% of the property are made and sustained by the Courts.

Although rare, there are also circumstances where couples could be found to be living together even if they do not reside at the same residence.

5. Three year rule

The three year rule can be shortened if there is a child of the de facto relationship or the person has made a substantial contribution to the de facto relationship, marriage or civil union. Each situation is unique and if the parties cannot reach a private agreement then the Court will determine how to proceed based on the evidence presented.

If you are in a de facto relationship and you do not wish for the three year rule to apply in your circumstances then you will need to enter into a prenup (legally known as a Contracting Out Agreement in New Zealand). Some examples of where you may require a prenup include:

- A couple purchasing a house together and one partners is being gifted funds from their parents;
- One or both people have their own businesses that they wish to remain separate;
- One or both people have existing property, such as a home that they wish to protect prior to the three years.

6. Estate planning

When considering your estate planning requirements you may wish to incorporate a prenup as part of that documentation in order to clarify your intentions and head off any disputes post your passing giving clarification to both your partner whom you may wish to remain in your home and your children regarding your intentions as to when they will receive their inheritance.

Children can often have mixed feelings if one of their parents is deceased and the other parent is in a new relationship where he/she stands to receive half of existing relationship property. A prenup will put to rest any issues on that front and likely improve relationships all round.



It is crucial when you do your pre-nup that you ensure your Will is up to date and if you don't have one then put one in place. We worked on a case where a prenup was in place in a second marriage however, there was no Will in place. It was clear from the pre-nup that the deceased intended to keep his property separate however, without a Will the deceased's wife claimed the first \$155,000 and all chattels which she is entitled to do at law. This meant that she claimed 100% of this particular estate and the deceased's two children were entitled to nothing without making a claim to the Court. Given the low value of the estate they elected not to do so. Access to justice is expensive in comparison to getting the correct documentation in place.

7. It's a negotiation

Whether it's a separation or prenup be reasonable.

If you have children to consider in a separation be kind and keep in mind you'll have a semblance of a relationship with this person for the remainder of your life via your children.

If it's a prenup then identify what is separate property and create a pathway forward to create wealth as a couple and plan for your future together.

If you are separating or would like to look at getting a Prenup reach out. I offer a 15 minute no obligation free consultation to answer the key questions you have and make sure you are safe.

Book a time in Shannon's calendar

Book a time in Christian's calendar