

AFTER THE SPLIT

In New Zealand there's one divorce for every two marriages each year. A split will always be stressful but you can survive. Sarah Lang talks to legal expert Vanessa Bruton about three women's experiences

STUDIES SHOW THAT DIVORCE is the second most stressful life event after the death of a spouse, but with a startling 27 divorces in New Zealand each day it's an experience many Kiwi women will face.

As well as untangling finances and working out who lives where and keeps what, nearly half these couples share children and so must deal with custody and child support. Is it any wonder your ex can become your enemy? But if you're divorcing or considering it, being informed about your rights, obligations and options will ease concerns and hopefully hostility.

"Don't feel pressured to give in or walk away due to guilt or because you can't face the acrimony," says Vanessa Bruton, a family and relationship law expert at Auckland's Brookfields Lawyers. "A prompt settlement may be best, but only with all the relevant information and sound advice."

To help anyone dealing with the reality of divorce, three women who've been through it share their stories – and Vanessa explains what anyone in their position needs to know.

Suddenly single

Penelope*, 34, runs her own Auckland consultancy and has two sons aged seven and four. She and project manager Richard*, her partner of 11 years and husband of seven, broke up in 2005.

"I got home from a work trip and Richard confronted me saying, 'I don't love you anymore.' I was floored. We had a baby and a toddler and I didn't feel anything had gone fundamentally wrong. But he felt trapped.

"I tried to fix it, but had an epiphany on New Year's Eve. We were with some other loved-up couples, and I looked at him and knew he was gone. I spent the night weeping in the toilets. The next day I let go – he needed me to give him that kick – and he moved out three weeks later. I changed my name that day.

"On March 1 I found out he'd moved in with his accountant and her child. He denies they were together before he left but I've heard rumours.

"I've never been so sad and scared. Richard cleared out the kids' bank account, which really hurt, and I saw a lawyer but wouldn't really face up to the situation. Then his lawyers faxed through a list of every item in the house, literally down to the fireplace tongs. That day everything changed. I changed the locks and told →



my lawyer, 'I'm putting up a fight.' That's the best money I've ever spent. When everything was getting too emotional she'd make it really legal, and I could sleep knowing I was in safe hands.

"A big concern was how to pay the mortgage solo. So I went from part-time to full-time work, but because my boss wasn't willing to give me flexible hours I resigned. I went on holiday with Mum, Dad and the children, and lay in a hammock bawling and reading self-help books. It was there I decided to turn a negative into a positive and start my own business.

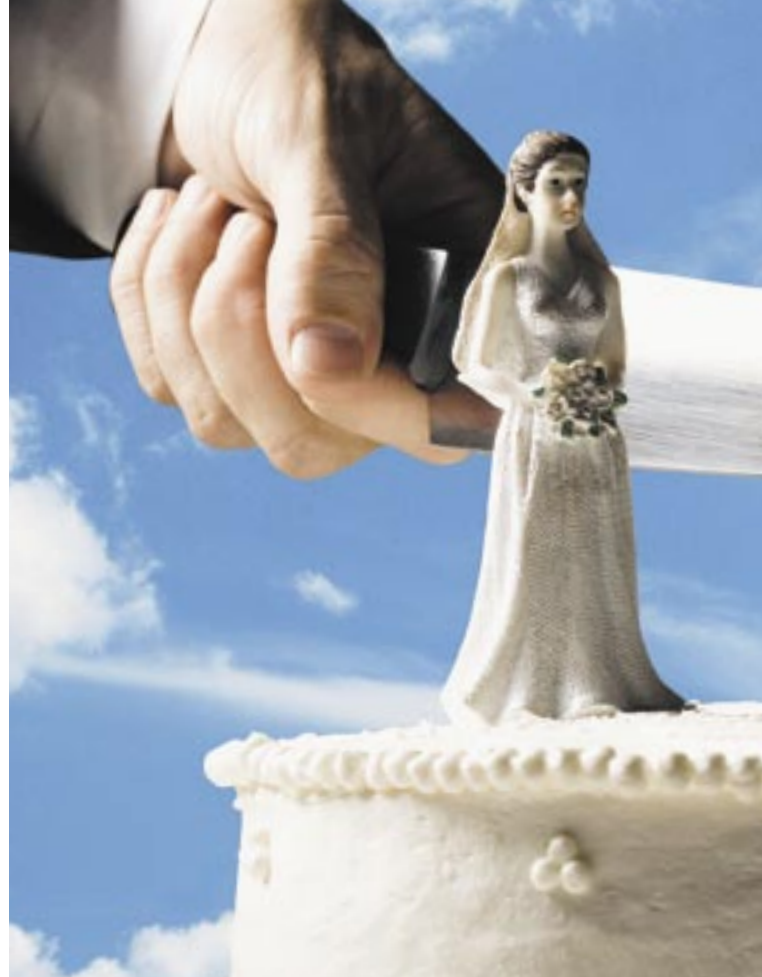
"I was adamant I'd keep the house. Even as a part-timer I'd earned more than Richard, my parents had paid the mortgage deposit – luckily they'd legally documented it – and my money set up the home. But when you're in love that counts for nothing. I remember Dad saying on my wedding day, 'You really should have a pre-nup,' and me laughing in his face. I didn't realise that seven years later I'd be asking him to raise money from the family trust to pay Richard off.

"I paid him out for a deal negotiated through the lawyers: His half of the house minus the deposit, a \$24,000 debt, the car and what he'd taken when he left.

"Our separation agreement included my custody: Richard saw the kids two evenings a week. After a year, I asked for a break from having them most of the time. So now he has them overnight two nights a week. He's dabbled with the concept of 50/50 childcare, largely to avoid paying maintenance, but I think he's realised the financial burden would be far greater – not to mention the support required to juggle work and childcare.

"Richard's child-maintenance payment is the government minimum – the IRD never got involved – but he resents it and has never increased it despite inflation and (you hope) pay rises. It doesn't even cover one child's childcare: I pay the mortgage, the groceries and the clothes – and he now refuses to pay school fees. But I pick my battles, it's much better for us to have a united approach to the kids rather than battling. We have a cup of tea when he picks them up, but the animosity took 18 months to go. I've forgiven a lot; I haven't forgotten."

While Penelope's stayed single since the split, Richard, 34, has had four girlfriends. He says, "On top of having to try and pay rent, help out as much as I could with the mortgage, contribute to the kids, pay ongoing legal costs and living costs, it turned out to be an incredibly expensive experience both emotionally and financially. My biggest concern was large childcare payments that restrict living arrangements and being able to provide a decent home environment."



Vanessa advises: Can I keep the house?

Generally, all 'relationship property' is split 50/50. If your relationship assets exceed the house's value you may, like Penelope, be able to buy your ex out. If you can't, the Family Court (www.justice.govt.nz) may allow you to live in the house for a set time to avoid disruption to the children. Or it can postpone the relationship-property division if this would cause 'undue hardship' to the parent with custody.

What if I need more money?

The Court may order payments to be made to a partner who can't meet their reasonable needs, for a variety of reasons including division of functions in the marriage which reduced earning potential, and needing to undertake study to become self-sufficient.

How do I get custody of our children?

Usually, parents come to an agreement on the day-to-day care (previously called 'custody') and contact (previously called 'access'). If you can't agree, apply to the Family Court for a parenting order. A family-law counsellor will help you reach an agreement. Failing this, there'll be a mediation conference. Failing that, the Court will make orders for care and contact.

What about child support?

Usually, the parent who doesn't have day-to-day care pays child support until each child turns 19. If



you can't agree on the amount, the IRD can assess it and enforce payment. But as IRD amounts are comparatively low (see www.ird.govt.nz/childsupport) it can be better to reach a voluntary agreement, which can also cover incidental expenses like school fees.

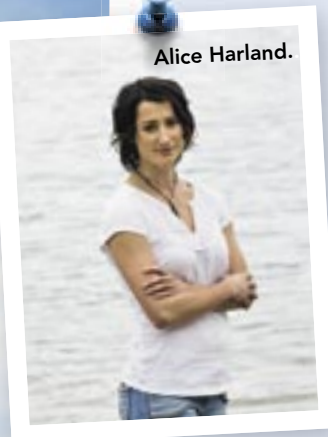
What if my ex tries to dictate when he sees the kids?

Children need consistency in their care, not to have arrangements changed on a whim. If your ex is being unreasonable, ask the Court to step in.

What if I earn more than my ex or vice versa?

Often a high-earning partner gives up her career to look after the kids, while the other partner powers ahead in his career. When relationship property is divided, the lower-earning partner can apply for compensation for economic disparity. Grounds are that one partner's income and living standards are likely to be significantly lower than the other's due to "division of functions within the relationship".

Richard would not succeed in an economic-disparity claim unless he could prove he earned less than Penelope because of the division of functions within their relationship. It's possible for a lower-earning partner to seek maintenance, but this is only awarded for limited periods of time eg. it might be awarded for a certain number of years while they finish training for a new career.



Alice Harland.

Bittersweet parting

Wellington architectural designer and university lecturer Alice Harland, 26, split with her partner of four years, Aidan, in 2001.

"We were 17, 18 and very in love when we married, but three years later we weren't getting on brilliantly and wanted different things. I went to stay with a friend for a night and Aidan said, 'You're not coming back, are you?' And I said, 'No, it's not working,' and bolted, crying. I'd

realised we weren't right for each other.

"I went to stay at my grandmother's and left behind the flat, most of our belongings, and our mutual friends – because he needed them and I felt hugely guilty. I kept paying half the rent and handled all the paperwork. I didn't mind – I was the one who left.

"As students we had little money or assets. We didn't think we needed a lawyer and didn't document anything. We divvied up our possessions according to who needed what. Aidan kept our most valuable purchase, the computer, for study.

"When Aidan moved out, he left me to pack up the flat. It felt weird because it wasn't my house any more and his new girlfriend had been staying there. I was sad for a very long time that it didn't work but I'm now happy with my husband Sean. Aidan and I email about once a year. We're not bitter; we've moved on."

Computer-software developer Aidan, 28, lives with partner Sarah in London. "I was hurt but in general we tried to make things easier for each other," he says. "I'm glad we didn't pick at the details. Ultimately, divorce was the right decision."



Vanessa advises:

Should I get a lawyer even if we don't own much?

Yes. Informal agreements aren't valid unless they're in writing, signed, and each party has independent legal advice. If things are amicable, it's possible for the agreement to cost less than \$1000 each and you can move on with your lives with certainty.

As Alice and Aidan show, it's less emotionally fraught and costly to take an amicable, hands-on approach to practical details like who keeps what.

After adultery

Auckland teacher Beverley*, 42, split with journalist husband Greg* in 1992 after a 10-year relationship.

"I found a photo of a woman in Greg's shirt pocket, then I found Visa bills with payments to hotels and restaurants. I confronted him and he said he'd fallen in love with an older woman. I was stunned, shocked, sickened. Things had been okay between us, although he worked evenings and I worked days. In 10 years I never thought he'd cross that line – the line. It was the one thing I couldn't accept, and emotionally he'd already left. I remember thinking, *We haven't even had our second wedding anniversary– this isn't how the fairytale works.*

"Greg drove off in our car, which he kept. We'd rented a flat and shared a bank account, which I discovered had been cleaned out, along with my pay – all I had at the time. While I was at work he took all we had of value, including the best wedding gifts. I felt sick. His money had gone on his skiing and skydiving toys, while my money had paid the rent, power, food. I couldn't keep paying rent by myself so I moved in with my sister. I also had a part-time wine-sales job and, after we split, he ran up a tab with my boss and left me to pay that bill.

"I never saw a lawyer. I couldn't really afford one, and was exhausted by the humiliation, the emotion, the failure. I wish I'd been stronger.

"I never thought I'd give up my heart again, let alone my financial independence, but a year later I met the right man. We've been happily married for 14 years, and have three children.

"I don't hate Greg any more, but that memory of betrayal has never left. My advice: Seek help and change the locks."

* Names have been changed for privacy.

Vanessa advises:

Should I see a lawyer?

Yes. Seeing a lawyer early on is money well spent. It means you don't walk away from your entitlements. See whether you qualify for legal aid and find legal-aid lawyers' contact details at the Legal Services Agency (www.lsa.govt.nz/caniget.php).

How do I stop him ripping me off?

Cancel cashflow cards and tell the bank that withdrawals from joint accounts must have joint authority. Or withdraw your half share of the funds. If your partner does clean out an account, ask for an adjustment for this in the division of the relationship property.

Who's obliged to pay the rent (or mortgage)?

It depends on who signed the tenancy (or mortgage) agreements. Generally whoever remains in the home is responsible for payment, but sometimes the partner remaining in the house can claim assistance. If it's you moving out, give your landlord and partner notice that your tenancy has ended so you're no longer liable.

I've met a new man, should I protect myself?

Yes. Have a pre-nuptial (relationship property) agreement, especially if you are bringing most of the assets into the relationship. You need to be informed about your financial affairs (see box below). And be aware that the laws concerning the division of relationship property now apply to de facto relationships as well as marriages and civil unions. The general rule is that relationship property is split 50/50 after three years. ■

Protect yourself There are five key things you can do to ensure you stay financially safe in the event of a divorce:

1 Know what's going on with your financial affairs during your relationship. Know where you and your partner's income comes from and how it is spent. If trusts and companies are involved, understand the documentation you're signing. Be aware that some items – such as inheritances and gifts – will be considered your separate property, unless you mix them with joint property.

2 If you're thinking about separating, get copies of all documentation concerning you and your partner's property, for example income sources and amounts, bank account details, trust and company resolutions, and financial accounts and emails.

3 See a lawyer before or after a split. This may be more affordable than you think – many lawyers do work on legal aid or will accept deferred payments. To find a good lawyer, ask friends and family for recommendations, or contact the Citizens Advice Bureaux (www.cab.org.nz).

4 Think carefully and realistically about you and your children's long-term financial survival in terms of money, chattels and living arrangements. Don't put this off.

5 At any stage (preferably early on) you can talk to your lawyer about a relationship property agreement (sometimes called a pre-nuptial). These specify how your property should be distributed if you do later split up.