

# Submission

to the

# Law Commission

on the

# Review of the Property (Relationships) Act 1976

7 February 2018

## About NZBA

1. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes that contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.
2. The following seventeen registered banks in New Zealand are members of NZBA:
  - ANZ Bank New Zealand Limited
  - ASB Bank Limited
  - Bank of China (NZ) Limited
  - Bank of New Zealand
  - Bank of Tokyo-Mitsubishi, UFJ
  - China Construction Bank
  - Citibank, N.A.
  - The Co-operative Bank Limited
  - Heartland Bank Limited
  - The Hongkong and Shanghai Banking Corporation Limited
  - Industrial and Commercial Bank of China (New Zealand) Limited
  - JPMorgan Chase Bank, N.A.
  - Kiwibank Limited
  - Rabobank New Zealand Limited
  - SBS Bank
  - TSB Bank Limited
  - Westpac New Zealand Limited

## Background

3. NZBA welcomes the opportunity to provide feedback to the Law Commission on its Review of the Property (Relationships) Act (**PRA**) and commends the work that has gone into developing the Issues Paper: Dividing Relationship Property – Time for Change?
4. If you would like to discuss any aspect of the submission further, please contact:

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## Consultation question K1

5. NZBA considers that the PRA is generally appropriate in its treatment of creditors. It is important to emphasise that bank mortgagees do not believe that any “unfairness” arises as a consequence of an absolute priority of secured creditor’s rights. In relation to mortgaged property, the relationship property is the equity remaining after

payment of the secured debt, not the home itself. Altering the status quo to impinge on mortgagee's rights would not reflect this, and could be to the detriment of all interested parties (for example, delaying mortgagee sales can result in increasing the secured debt, therefore eroding the relationship property). There is no good reason to alter the status quo.

6. Notwithstanding that, NZBA does, however, accept that there are some areas of the PRA that could be improved.

### Consultation questions K2, K3, K4

7. NZBA agrees that the PRA should continue to provide a partner with a protected interest that takes priority against the other partner's unsecured creditors. However, we consider that the court or official assignee should have the ability to over-turn a protected interest where there is deliberate action to defeat the rights of the unsecured creditors.
8. NZBA supports the application of protected interests to relationship property generally, but only if there is no family home.
9. Additionally, should the PRA's definition of relationship property be amended to focus on the 'fruits of the relationship', appropriate guidance would be required in order for creditors to ascertain what is meant by 'acquired during or as a result of the relationship'. In particular, that guidance would need to address non-monetary contributions to a relationship.

### Consultation question K5

10. NZBA considers that the PRA should continue to provide partners with the ability to lodge notices of claim in respect of land in which they claim an interest. That is because a notice of claim prevents a partner from dealing with property in a way that would diminish or defeat any entitlement in the period where the distribution of relationship property has not been finalised.
11. However, NZBA notes that there may be instances where a partner lodges a baseless notice of claim. In such circumstances, we consider that the process for challenging a notice of claim should be simplified. The cost of removing a notice of claim is ordinarily secured by the mortgage, so streamlining the process/reducing removal cost would avoid the erosion of any equity in the property. Alternatively, a requirement that the partner must provide evidence in support of a notice of claim may reduce the number of baseless registrations.

### Consultation question K6

12. NZBA considers that the two-year limitation period provided by s 47(2) is difficult for creditors as they often will not know that an agreement exists. Additionally, the consequences of such an agreement may only become apparent after the two year period has lapsed (eg during recovery and enforcement action).

### Consultation question K7

13. NZBA prefers option two. Further, as noted above, NZBA considers that the current two year period is too short.