
Property Settlements:

How does it work?

Most separated couples reach an agreement about how to divide their property without going to court. We can help you to negotiate a settlement with your former spouse or partner and give you advice about how to achieve the best possible outcome.

If you agree about how to divide your property, it is important that your agreement is properly documented so you avoid future claims against your assets.

There are three options for documenting the agreement about your property settlement:

1. financial agreement
2. consent orders
3. financial agreement and consent orders

We can advise you which option is best suited to your case and prepare the necessary documents.

When you can't agree

It may not be possible for you to negotiate a fair agreement with your former spouse or partner about the division of property. You might need to apply to the court for a property settlement.

What property is divided?

The types of property that can be divided include:

- interests in real estate
- interests in businesses
- interests in private companies, partnerships and trusts
- shares in public companies
- funds in bank accounts
- superannuation
- motor vehicles
- household goods and furniture
- overseas assets
- debts

Property can be divided whether it is owned:

- by both of the parties to the marriage or relationship
- by one of the parties to the marriage or relationship
- by one or both of the parties to the marriage or relationship together with a third party

In certain circumstances, property controlled (but not owned) by one party might also be divided, even if that party is not the legal owner of the property. Examples are assets held in a family trust or assets transferred to a third party.

An expected inheritance from a relative is usually not regarded as "property". It may still be treated as a "financial resource" and taken into account in a general way in the overall settlement. Entitlements to long service leave may be treated in the same way.

What property orders can be made?

Property can be dealt with in a number of ways. For example:

- Property can be sold. The proceeds can be divided between the couple or retained by one of them
- Interests in property can be transferred from one party to the other
- Superannuation can be "split". See our superannuation page for more information
- Property can be retained by one party
- Liabilities can be divided up, repaid or retained by one party

How is property divided?

There is no fixed formula for working out how property is divided after the breakdown of a marriage or relationship. The *Family Law Act 1975* sets out the factors that need to be taken into account. We can advise you about how the law will apply in your case and the range of results you can expect.

Property Settlements: How does it work?

A four step process is followed to determine how property should be divided:

Step 1: Identify all of the assets, liabilities and financial resources and work out the "net asset pool" available to be divided. If you cannot agree with your former spouse or partner about the value of an asset an expert may be appointed to value it.

Step 2: Look at the contributions each party made during the relationship and after separation, including:

- Financial contributions made by each party or on behalf of each party. These include contributions made by a party at the start of the relationship. For example, one party may have owned a house at the start of the relationship. Contributions which are particularly relevant include wages, gifts and inheritances.
- Non-financial contributions made by each party or on behalf of each party. These include contributions as a home-maker or parent and home renovations.

Step 3: Look at the circumstances of each party after separation and the ongoing needs of each party. Many factors can be taken into account at this step, including:

- the age and health of each party
- whether one party has the care of a child or children of the marriage or relationship
- the incomes of each party
- the future employment prospects and earning capacities of each party

These factors can have a significant impact upon how the property is divided.

Step 4: The final step is to determine what outcome is "just and equitable", taking into account the previous three steps and all of the circumstances of the particular case. Whether there should be a split of superannuation and the proportions of any superannuation split will often be an issue at this stage.

Time limits on applications for property settlements or maintenance

For married couples:

- Applications to a court for a property settlement or spousal maintenance must be started within 12 months of a divorce order becoming final.

For de facto (including same sex couples):

- Applications to a court for a property settlement or maintenance must be started within two years of separation.

Unless the court grants leave for an application to be issued out of time, your right to apply for a property settlement or maintenance after these time periods have passed, is lost.