

Property and Financial Settlements

Relationship breakdown is often traumatic. Not only do you have to deal with emotional impact but at some point, you need to make decisions about a fair division of property and assets – financial or otherwise. Property and assets may be divided between you and your partner by:

1. Private agreements (not legally binding)
2. Using solicitors to negotiate a settlement on your behalf, then having the documents formalised by the court
3. Going to court and having a Judge make a ruling on behalf of you and your former partner
4. Using a Family Dispute Resolutions Practitioner (FDRP) to help you both reach agreement and then having the documents formalised by the Court
5. Using Solicitor Assisted Family Dispute Resolution (mediation where you both have your lawyers present and a Family Law Mediator)
6. Collaborative Law. (a meeting where lawyers, accountants, mental health professionals all work with you and your former partner to negotiate a settlement).

The division of property, assets and liabilities is not always straight forward. It is always recommended that you get legal advice, so you understand your position fully and a Family Dispute Resolutions Practitioner can help you work out just what you need to ask your solicitor. It is often important to get legal advice and formalise your agreement even if you amicably reached an agreement. If you go through the court, a Judge's job in making a decision about the division of your property, finances, and debt, is neither simple nor straightforward and discretion plays a large part. Keep this in mind when getting legal advice and ensure you have made full disclosure including assets, liabilities and entitlements. Family Dispute Resolution Practitioners cannot give legal advice, but they can help guide you through the Family Law process and ensure that any agreement reached complies with the 4 requirements of the Family Law Act. By asking the right questions they help you find the right solutions for your situation. If you have children, they will always keep the best interests of children at the forefront of negotiations.

It is important to understand that taking a Financial Settlement through the Family Court can take in excess of 12/24 months to finalise. Your first appearance at court is to find out who your Judge is and discover what s/he wants you to do first, and ironically that is often mediation. It takes the form of court ordered conciliation and is conducted in court buildings or solicitor's offices with solicitors and/or barristers present, a court registrar may mediate the meeting and there is often a strict time allocation. Your first two court appearances will take months to come to fruition and cost many thousands of dollars. It is often recommended that unless you have a very large property pool, to try alternative solutions before proceeding down the adversarial path; legal avenues are always available if mediation fails.

Financial Settlements

When should we divide our property & finances?

You do not have to be divorced or separated before you divide your property. However, it helps if you have gone through the worst of the emotional upheaval and made some arrangements about your children. There are time restrictions for applying to court and they differ depending on your relationship. For divorced couples, you must apply to the court for a property settlement within 12 months of your divorce unless there are special circumstances. For de facto couples, applications regarding maintenance and property must be lodged within two years of the relationship ending.

De facto includes:

1. Couples who have lived together in a domestic relationship for two years or more
2. Have a child born of the relationship
3. One of the parties having made such a substantial contribution that if the court did not make an order it would be unjust
4. A registered relationship

The Four Guiding Principles of Property Settlement:

1. What are the assets and liabilities?
The general assumption is any assets and/or liability acquired during the relationship are joint property
2. Contributions?
As a rule, financial and non-financial contributions are weighted equally.
3. Future needs and the issues which impact on them?
This looks at whether someone within the relationships be more greatly disadvantaged by the breakdown of the relationship
4. Is the agreement just and equitable?
Any agreement reach must satisfy the Family Courts requirements for justness and equitability, If your agreement is deemed to not be just and equitable the court may not formalise the agreement.

Most people have never had experience with Family Law when they find themselves looking for ways to finalise their separation and divorce. It is important to research your options and educate yourself about your obligations and rights under the Act. The Family Court website is a good place to start www.familycourt.gov.au

**A qualified Family Dispute Resolutions Practitioner will also give you information
and help direct you to the best solutions for your family**