

Property Settlement | Empower Family Law & Mediation

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Services

Property Settlement

Dividing your hard-earned property following separation can be emotionally exhausting. Having clear advice about your options and a considered strategy for achieving your goal brings certainty and confidence. While every case is different, at Empower Family Law & Mediation we have the experience to provide you with realistic and strategic advice about your property and spousal maintenance entitlements.

The outcome in each case will be different depending on the facts and circumstances of the case. The Family Law Act 1975 sets out a number of steps to be taken into account in determining how the assets of a separated couple should be divided.

In general, the steps involve:

Identifying and valuing all of the assets, financial resources and debts of the parties. Each party is required to disclose their financial circumstances. Where the value of any asset is uncertain, or if the parties do not agree on the value, an expert valuation is sought.

Assessing the contributions each party has made toward the acquisition of the assets. Contributions include both financial and non-financial contributions. Non-financial contributions include contributions as a homemaker and parent. Homemaker and parent contributions are generally given similar weight as contributions made by way of income. Financial contributions include income as well as funds received from outside sources, for example, an inheritance.

A consideration of the 'future needs' factors set out in section 75(2) of the Family Law Act 1975. These include factors which may affect a party's financial future, such as their age or state of health, discrepancies in income, earning potential or expenses associated with caring for children.

An overall examination of the findings to determine whether the overall result is "just and equitable" in all the circumstances.

Since 10 June 2025, the Family Law Amendment Act 2024 has also required the Court to specifically consider the economic effect of family violence, including financial and economic abuse when weighing contributions and dividing property. If family violence has affected your finances during or after your relationship, the Court must now take that into account.

What if I had significant assets at the start of our relationship?

The assets, including real property, investments, shares and savings each party brought to the relationship will be considered in assessing their respective contributions. Where one party's contributions at the commencement of the relationship were significant, for example where they have provided a springboard from which to extend a couple's asset base, they may impact the overall division of assets following separation.

However, in general less weight is given to initial asset contributions the longer a relationship continues. Substantial initial contributions by one party may be 'eroded' or balanced by the later contributions of the other party.

Put simply, the weight to be given to an initial contribution may turn on a number of factors and professional advice should be sought before any agreement is reached.

What if my family helped us out along the way?

As property prices and the cost living rise, it is increasingly common for couples to receive family help along the way, this help can include:

A lump sum amount to assist with a property purchase.

Periodic sums to help with living expenses.

Rent free accommodation to help parties to save.

Loans.

Security for loans.

Trust distributions.

Assistance with school fees.

Following separation, it is important to tease out the nature of these contributions and to figure out what weight should be attached to them. In assessing contributions made on behalf of one party, the following factors are relevant:

Whether the contribution was a gift or a loan.

How much was contributed.

How the funds were contributed (for example, directly to one party or to a joint account?).

At what point during the relationship was the contribution made?

Was there a loan agreement or mortgage executed between the parties and the family members providing the assistance?

In general, financial assistance rendered to a couple will be considered to have been intended to benefit the party to whom the family providing the assistance is related and may ultimately increase the share of property that party receives at settlement.

Parties who receive financial assistance from family members should consider:

Executing a loan agreement requiring regular repayment or a mortgage if the funds are a loan to be repaid.

Documenting the receipt of the funds and how and when they were spent.

Executing a Financial Agreement which takes account of the financial assistance.

How can I reach agreement with my ex-partner?

The Federal Circuit and Family Court of Australia encourages parties to reach agreement between themselves wherever possible. In most cases, with the assistance of their lawyers, parties can agree by negotiation or will attend a mediation to decide how to divide their property.

If parties cannot agree, they can bring an application for orders dividing their property. For married couples this needs to be within 12 months of a divorce order being in effect, and for de facto relationships, within 2 years of separation.

Regardless of how you agree the division of your assets, the following points are vital:

You and your ex-partner have a duty to provide full and frank disclosure of all documents relevant to your financial circumstances during your negotiations. You should insist on the opportunity to review those documents and satisfy yourself that your ex-partner is not seeking to hide assets or income.

You should seek independent legal advice from a family lawyer before you sign any settlement documents.

You must formalise your settlement agreement by way of either a consent order sealed by the Federal Circuit and Family Court of Australia or a binding Financial Agreement. There have been many cases

where informal settlements have been re-opened and litigated years later, usually at great expense to both parties.

You should revisit your Will, Powers of Attorney and the nominated beneficiaries on your superannuation fund to ensure they are consistent with your property division and your current wishes.

You should not base your settlement agreement or your expectation of how your property should be divided on other people's experiences. Every case is unique, and the settlement must be tailored to the circumstances.

Why do I need to formalise my settlement?

Clients often balk at the expense of formalising a settlement. If a settlement has been reached amicably, they may feel that seeking to formalise the agreement will upset or insult their ex-partner. Some clients are simply exhausted and want to wrap things up as quickly as possible.

However, it is critical to formalise an agreement by either consent orders or a financial agreement. Here's why:

The other party may not follow through with the agreement.

An agreement that has not been documented in accordance with the requirements of the Act is neither binding nor enforceable.

Superannuation entitlements cannot be split unless there is a formal agreement, which are formalised in either a Binding Financial Agreement or Court Orders.

Even after parties separate their finances, either party could apply to the Court later for a further adjustment. Any additional assets, liabilities or superannuation that either party accrues following an informal settlement will be included in the asset pool.

Litigation that arises after an informal separation will place financial and emotional stress on new relationships.

Litigation that arises after an informal separation will almost definitely be more costly and stressful than properly formalising an agreement will be.

Unless an agreement is carefully drafted, both parties may remain liable for joint debts. If one party does not maintain their obligations, there is nothing to stop the creditor from requiring the other party to meet the outstanding obligations.

At Empower Family Law & Mediation we understand you have worked hard to build your assets. We are experienced at providing strategic advice on your options which is calculated to ensure you receive your full entitlements.

We will keep you informed every step of the way, and we will be clear on your legal costs. Please contact us on (03) 7020 6542 to discuss your property matter.

Speak with us

Your first 30-minute consultation is free. Call (03) 7020 6542 or contact our team to discuss your circumstances and next steps.

Phone : (03) 7020 6542

Email : info@empowerfamilylaw.com.au

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How is property divided after separation in Australia?

A property settlement is not determined by a fixed percentage. The process generally identifies and values all assets, liabilities and financial resources; assesses each party's financial and non-financial contributions, including homemaking and parenting; considers future-needs factors such as age, health, income, earning capacity and care of children; and asks whether the overall result is just and equitable. Both parties have a duty to provide full and frank financial disclosure. If a value is disputed, an expert valuation may be needed. Since 10 June 2025, the economic effect of family violence, including financial and economic abuse, must also be considered when contributions and property division are assessed. Because the result turns on the whole history and current circumstances, another person's settlement is not a reliable guide to the likely outcome in a different family.

How are assets brought into the relationship, inheritances and family financial help treated?

Property held at the start of a relationship and later contributions such as inheritances can affect the contributions assessment, but their weight depends on the amount, timing, use of the asset, length of the relationship and the parties' later contributions. A significant initial asset may provide a springboard for later wealth, while its relative weight may diminish over a long relationship as both parties contribute financially and as homemakers or parents. Family assistance also needs careful characterisation. Relevant questions include whether money was a gift or loan, whether any loan agreement or security exists, who received it, when it was provided and how it was used. Preserve bank records, agreements and communications. Advice should be obtained before assuming that family help will automatically be repaid or credited entirely to one party.

What disclosure and valuation steps are required in a property settlement?

Each party must give full and frank disclosure of documents relevant to their financial circumstances. This ordinarily includes information about property, bank accounts, investments, businesses, trusts, debts, income, superannuation and other financial resources. The duty continues throughout negotiations and proceedings. Where an asset's value is uncertain or disputed, the parties may need an independent expert valuation rather than relying on competing estimates. Begin by preserving records lawfully available to you and preparing a clear asset and liability schedule. Missing information should be requested and unexplained transactions examined. Hiding assets, omitting accounts or destroying records can increase cost and affect the case. Complex interests such as companies, trusts, cryptocurrency, self-managed super funds or defined benefits may require specialist input. A lawyer can help determine the proportionate disclosure and valuation steps for the actual pool.

Why should a property settlement be formally documented, and what deadlines apply?

An informal division may not be binding or enforceable and can leave both parties exposed to later claims, joint debts or non-performance. Superannuation generally cannot be split without the required formal instrument. The page recommends formalising an agreed outcome through consent orders made by the Court or a binding financial agreement prepared in accordance with the legal requirements. Wills, powers of attorney and superannuation beneficiary nominations should also be

reviewed separately. For married couples, an application for property orders generally must be started within 12 months after a divorce becomes final. For de facto partners, the general limit is two years after separation. Permission to apply out of time is not automatic and adds cost and uncertainty. Obtain independent advice before signing or treating a settlement as final.