

Family Law Factsheet No. 1 Property Settlement



This factsheet looks at how property is divided when a person separates from their partner or spouse.

Who can seek a property settlement?

You can seek a property settlement if you are separated from your spouse or de facto partner.

If you were in a de facto relationship you can seek a property settlement if you have been living together for two years or more.

If your de facto relationship was less than two years, and you have a child of the relationship, or you have made a significant financial contribution to an asset, you can also seek a property settlement.

What do the family courts consider when dividing property?

First, the court looks at whether it is just and equitable to divide property. This means whether it is fair to change the legal ownership of the property of the parties having regard to the *Family Law Act 1975 (Cth)*.

Secondly, we make a list of the assets, debts, and financial resources. This includes the home, car, and any investment property, savings, shares, business and superannuation. All debts are included such as the mortgage, credit card debt, personal loans, money owed to friends and /or family.

It does not matter whose name the asset or debt is in, whether in your name, your partner or spouse's name or held jointly with someone else or in the name of a company or trust.

Next, the court looks at each party's contributions. This includes what each of you owned before you started living together, what income you each received when you were living together, whether either of you received monies from an inheritance, workers compensation claim, personal injury claim, redundancy and/or gifts of money from family. The Court also looks at non-financial contributions such as who looked after the children and did the housework.

Then the court looks at the future financial needs of each party and whether a person should receive an additional share because of reasons such as whether they have the care of children or they are unable to work for health reasons, or their income is a lot less than that of their spouse or partner.

Finally, the court decides who should receive what property and whether money should be paid to another party.

Can I ask the court to order my spouse or partner to pay a debt?

Yes, you can ask the court to order your spouse or partner to pay a debt, if you and your partner also have other assets for the court to divide between you. Assets can include a house, car, savings and/or superannuation.

Do I have to go to court?

No, you do not have to go to court. It is best if you can reach an agreement with your spouse or partner regarding your property, rather than litigate.

You can arrange for a lawyer to negotiate on your behalf.

You can participate in mediation. There are several organisations that provide mediation free or at a reduced cost based on your income.

Once an agreement is reached it may be best for you to have this formalised by having orders made by the Family Court.

How do I formalise an agreement with my partner or spouse?

You can file two documents with the Family Court to finalise your property settlement. You should get legal advice first.

You must file an Application for Consent Orders. This document outlines, amongst other things, your financial circumstances.

You must also file the orders you seek.

You can access the forms from the Family Court's website: www.familycourt.gov.au.

You can ask a lawyer to help you.

Is there a time limit for seeking a property settlement?

Yes. If you were married, a property application must be made within one year of your divorce becoming final.

If you were in a de facto relationship, a property application must be made within two years of the date of your separation.

Can I apply out of time?

Yes, if you have a good reason for the delay and the court thinks you will experience financial hardship if you are not allowed to commence an application out of time.

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This factsheet is not a substitute for legal advice. If you have a problem please seek legal advice from your local community legal centre.