

Property Settlement Guide

Am I eligible for a property division?

You may commence a property division matter with your spouse or de-facto partner:

- ✓ During a marriage or de-facto relationship;
- ✓ Within one year of a divorce; or
- ✓ Within two years of the end of your de-facto relationship. A de-facto relationship is characterised by a “genuine domestic relationship” lasting two (2) or more years.

Being married or in a de-facto relationship does not automatically entitle you to an adjustment of property. There are a range of factors that a Court considers when deciding whether an adjustment of property would be just and equitable. These factors are further explained below.

How can I resolve my property dispute without going to Court?

Under the Family Law Rules parties are required to genuinely attempt to resolve their dispute prior to filing an Initiating Application seeking Financial orders. We can provide you with a range of personalised options designed to assist you to negotiate with the other party and resolve your matter without need for litigation, after careful consideration of all of the circumstances of your matter. Some strategies may include negotiation, mediation and exploring options for settlement by correspondence with the other party.

If your matter is urgent, involves allegations of family violence or fraud, is close to the time limit expiry, involves dispute about the existence of a relationship or the other party refuses to negotiate, you may be exempt from participating in dispute resolution prior to filing your application. Our experienced solicitors can provide you with legal advice if any of these scenarios apply to you and, if required, assist you with filing an Initiating Application seeking orders for property division.

What does filing an Application involve?

There are three documents that you will need to complete when making your Application:

- ✓ An **Initiating Application** sets out the orders you would like the Court to make: for example, that a property be sold and the proceeds divided in certain percentages between the parties and/or that one of the party’s superannuation be split to the other. You may also seek Orders that preserves property or financially supports somebody until a final decision is made about how the property of the relationship will be divided: for example, that one party pay spousal maintenance to the other until final orders are made.
- ✓ A **Financial Statement** outlines all of your assets and liabilities, income, expenses and financial resources.

- ✓ An **Affidavit** needs to include all of the evidence that supports your Application. Generally, your Affidavit will need to contain information about the length of the relationship, explain the financial, non-financial and homemaker/parent contributions throughout the relationship and the future financial needs of the parties.

What does a Court consider when making Orders?

The Court has wide discretion when making orders that alter the interests of property between spouses or de-facto partners.

Generally, there are five steps which are followed to determine property division between the parties:

1. To determine whether it is “just and equitable” to make any adjustment to the parties’ interests in property;
2. To value all the property of the parties, including all assets, liabilities and superannuation of each party;
3. To consider the financial, non-financial and homemaker contributions of each party to the property of the relationship;
4. To consider the future needs of each party, including:
 - a. The age and state of health of the parties;
 - b. The care arrangements of any children of the relationship;
 - c. The income, property and financial resources of the parties;
 - d. The physical and mental capacity of the parties for employment;
 - e. The disparity in the income earning capacities of the parties;
 - f. Any instances of family and/or domestic violence; and
 - g. Commitments that are necessary for the parties to support themselves or any other person.
5. To consider whether, in all the circumstances, the proposed order is “just and equitable.”

What does duty of disclosure mean?

Whether or not the parties are involved in litigation, each party has a duty to make full and frank disclosure of all of their financial information relevant to the dispute.

Such documents include:

- ✓ Your taxation return and taxation assessment for the last three (3) years;
- ✓ Your bank records for the previous 12 months;
- ✓ Documents about any relevant superannuation interest;
- ✓ Your three most recent pay slips;
- ✓ If you own or control a business, trust or partnership, those entities' Business Activity Statements for the previous 12 months, financial statements for each (including balance sheets, profit and loss accounts, depreciation schedules and taxation returns) for the three last financial years;
- ✓ For any corporation, its most recent annual return, listing directors and shareholders; and the corporation's constitution;
- ✓ For any trust, the trust deed;
- ✓ For any partnership, the partnership agreement, including amendments;
- ✓ Unless the value is agreed, a market appraisal of any item of property in which a party has an interest; and
- ✓ Any other document relevant to determining the income, expenses, assets, liabilities and financial resources of the party.

The other party has the same obligation. Both parties must provide the above information to the other in a timely manner.

What happens once we reach agreement?

If you have successfully negotiated a final agreement with regard to property division between the parties, there are two ways you can formalise and record your agreement in accordance with the Family Law Act:

1. By writing a Financial Agreement; or
2. By filing an Application for Consent orders in the Family Court.

Once your Financial Agreement is signed or orders issue from the Family Court, your property division is finalised and the matter cannot be brought back into the Federal Circuit Court or Family Court except in special circumstances.

What if we cannot reach an agreement?

If the parties cannot reach agreement with regard to property division, an Initiating Application seeking financial orders may need to be filed. The parties should attempt to resolve as many issues as possible prior to filing such application.

What does making an Application Court involve?

There are three documents that will need to be carefully prepared when making your application to the Federal Circuit Court or Family Court of Australia:

An **Initiating Application** sets out the particulars of the relationship, details of the parties and the Orders sought. In addition to making Application for final orders, a party may make an application for interim orders if there is something that needs to happen straight away: for example, to preserve the assets of the relationship or financially support somebody.

An **Affidavit** provides the Court with evidence about why the orders sought are just and equitable.

It should detail the financial history of the relationship, including:

- ✓ Initial financial contributions;
- ✓ Financial, non-financial and homemaker contributions during the relationship;
- ✓ A current Property Pool;
- ✓ Post-separation contributions; and
- ✓ The future financial needs of the parties.

A **Financial Statement** sets out all of the particulars of a party's income, expenditure, assets, liabilities and, if Application is made for spousal maintenance, your living expenses.

What happens after I file my Application?

After you file your Application a Court date will be set. At that appearance, the parties and the judge will discuss the progression of your matter. Sometimes one or both of the parties need to provide further disclosure, the matter might be referred for mediation or, if Application for Interim Orders is made, a date might be set down for Interim Hearing, depending on the circumstances of your matter.

Once your Application is on foot, it is very important to follow all of the directions and orders made by the Court, attend all appearances and continue to adhere to your Duty of Disclosure.

Filing an Application in the Court does not mean that your matter will necessarily proceed all the way to a Trial. If at any point the parties reach agreement, Minutes of Consent can be drafted and signed by the parties and your solicitor can then make submissions to the Court about the justice and equity of that agreement. If the Court is satisfied with the agreement reached between the parties, it can issue orders in accordance with your agreement and finalise your matter.

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