



thinking Family Law Property Settlement

When people separate, they usually need to sort out how they will divide their assets and debts. A property settlement is a final resolution of the ownership of property held by parties as a consequence of their marriage or de-facto relationship breakdown.

The Family Law Act 1975 (Cth) provides for property settlements between couples who are, or have been, married and couples who have been in a de-facto relationship. Under the Family Law Act 1975 (Cth) a de-facto relationship includes a relationship between two people of the same sex. Generally, when the Court embarks upon the task of determining the proper division of property, it will apply what is commonly known as the four-step approach.

Step 1: The first step involves identifying the net asset pool between the parties. The net asset pool includes all assets or liabilities acquired before, during and after the relationship. Property includes assets and liabilities of either or both the parties. This can include: real estate; household goods; vehicles; bank accounts; investments; jewellery; family trusts; mortgages; loans; credit cards; and, personal debts. The Court will also have regard to other financial resources over which a party has influence, control, or prospective entitlements.

Pursuant to the Rule 13 of the Family Law Rules 2004 (Cth), parties have a clear obligation to make full and frank disclosure about their respective financial circumstances and each party has to provide to the other party all of their supporting financial documents.

Step 2: The second step requires the Court to assess the contributions made by both parties to the relationship. This includes both financial and non-financial contributions to the acquisition, conservation or improvement of the matrimonial pool. Financial contributions may include: property owned at the commencement of the relationship; money put towards a purchase price; loan or mortgage; money spent on household goods; groceries; and, utilities. Non-financial contributions include: cleaning; cooking; and, completing maintenance or renovations to property. Section 79(4) of the Family Law Act 1975 (Cth) also includes consideration of any

contribution made by a party to the welfare of the family in their capacity as homemaker, parent or otherwise.

Step 3: The third step requires the Court to consider factors relevant to the future needs of the parties and to make an adjustment accordingly. Section 75(2) of the Family Law Act 1975 (Cth) identifies matters to be taken into consideration. These include: the age and health of the parties; their mental and physical capacity to obtain future employment; and, their future responsibilities to care for any children or other people.

Step 4: The final step is to consider the practical effect of any proposed settlement and to achieve a result that is just and equitable in all the circumstances.

If possible, parties should first attempt to reach their own agreement about the division of property and consider mediation before initiating Court proceedings. If an our come can be settled by consent, there are two options to formalise an agreement. Consent orders are orders entered into by agreement and filed in the Court. The Court will only make the orders if it is satisfied that the order would be considered just and equitable.

In the alternative to filing for Consent Orders, a Binding Financial Agreement may be considered. This is essentially a private contract between you and your partner, without the need for a third party such as the Court to approve the agreement. A Binding Financial Agreement requires legal advice and should be considered with caution to ensure compliance with the law as if the proper process is not applied the BFA may be deemed invalid and could, on application, be set aside by the Court.

Matrimonial and de facto property settlements can be a stressful and sometimes a complex process. Acquiring professional legal and financial advice will ensure that you are informed and if necessary represented fairly to determine a proper outcome.

Talk to us, you'll be inspired!

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Thinking family



Your goals

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