

Legal Aid ACT



PROPERTY SETTLEMENT AFTER SEPARATION

THE FAMILY LAW ACT 1975 (CTH)

Both de facto (same sex and heterosexual) and married couples' relationships are governed by the Family Law Act.

Separation occurs when one party communicates to the other party that they believe the relationship is over. In Australia the law is not concerned with whose "fault" it is that the relationships broke down. The main concern is what is best for the children.

DIVIDING YOUR PROPERTY

You can apply for a property settlement at any time after separation. You do not need to wait until you get a divorce. If you do get a divorce, you must apply to the Court for property settlement within 12 months of the date of divorce. If you were in a de facto relationship, you must apply for property settlement within 2 years of the date of separation.

You may be able to apply for property settlement out of time but only in limited circumstances. **Seek legal advice.**

ATTENDING MEDIATION

A good first step in settling disagreements about how to divide the property is attending mediation or having direct negotiations. Mediation enables you to reach an agreement without going through the Court process, which can be very slow and stressful.

Once an agreement has been reached, the agreement can be made into a Binding Financial Agreement or Consent Orders.



There are several services that can help with mediation including:

- *Family Relationships Centre*
(02) 6122 7190
- *Relationships Australia*
(02) 6122 7100
- *Conflict Resolution Centre*
(02) 6162 4050

Legal Aid ACT can provide lawyer assisted mediation if one of you is eligible for a grant of legal aid.

IF YOU CAN AGREE ON ARRANGEMENTS AT MEDIATION

Informal Agreement

Some parties may prefer to reach an informal agreement without anything in writing. However, without a formal written agreement, a further claim on your property can be made up to 12 months after the date of divorce or 2 years after the conclusion of the de facto relationship. The Court can also grant a party leave to make a claim after this period.

Binding Financial Agreement

The parties can put their agreement in writing as a Binding Financial Agreement (BFA). Both parties must obtain independent legal advice and have a Statement signed by their lawyer to that effect. A BFA is not filed with the Court.

Consent Orders

While you do not need formal Court Orders for property settlement, there is also the option to apply to the Court for Orders by agreement. These are known as Consent Orders and they are final and binding. You will be exempt from paying stamp duty on property transfers if you have Consent Orders or a BFA.



IF YOU CAN'T AGREE ON ARRANGEMENTS AT MEDIATION

Court Orders

There is no assumed right to have property settlement Order be made. The Court will only make an Order if it is just and equitable to alter the existing property interests.

The process that the Court will go through is:

1. Identify the existing legal and equitable interests of each party in the property.
2. By reference to those interests, determine whether it is just and equitable to make a property settlement order.
3. Determine as a percentage based entitlement the direct and indirect, financial and non-financial contributions made by or on behalf of each of the parties to the acquisition, conservation and improvement of the various assets as well as the contributions made by each of the parties as homemaker and parent.
4. Consider whether a further adjustment to the percentage based entitlement should be made taking into account the future needs of the parties, including their earning capacity, age and health, care and financial support of children, responsibility for looking after other people, and the length of the relationship.
5. Consider whether the result reached is a just and equitable result in all the circumstances.

COMMONLY ASKED QUESTIONS

Q. Does the property have to be split 50/50?

There is no formula or rule as there are many considerations to be taken into account in deciding how the property should be divided.

Q. Do I lose my rights to the property if I move out of the family home?

You do not lose your rights to your share of the house or your things if you leave the former matrimonial home. You may be able to return to the home to collect your personal property.

Q. How can I prevent the other person from selling the house?

It may be possible to lodge a caveat over the property title. You may also get Court Orders in place to stop property being sold or money being spent. If this is something you are concerned about, **seek legal advice immediately.**



HOW LEGAL AID ACT CAN ASSIST

Please see our pamphlets on *Applying for Legal Assistance* and *Information about Our Family Practice*.

This pamphlet only provides basic information on family law. You should seek legal advice about what do to in relation to any of these matters.

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