

Property Settlement After Separation

The Basics

Both de facto and married couples' relationships are governed by the *Family Law Act 1975* (Cth).

Separation occurs when one party communicates to the other party that they believe the relationship has finished. In Australia the law is not concerned with whose "fault" it is that the relationship broke down.

You must be separated for a period of 12 months before applying to the court for a divorce.

Dividing Your Property

You can apply for a property settlement at any time after separation.

- You do not need to wait until you are divorced.
- 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 a property settlement within 2 years of the date of separation.

Superannuation

Superannuation is also considered property for the purpose of a property settlement. However, if a person is to receive part of another person's superannuation this is done by way of a Splitting Order or a Flagging Order. A person does not simply receive a sum of money.

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. Court proceedings can be slow and stressful.

There are several services that can help with mediation. Legal Aid ACT can provide lawyer-assisted mediation if one party is eligible for legal aid.

Legal Aid ACT

www.legalaidact.org.au

Phone: **1300 654 314**

Relationships Australia

www.relationships.org.au

Phone: **1300 364 277**

Family Relationship Advice Line

www.familyrelationships.gov.au

Phone: **1800 050 321**

Conflict Resolution Service (CRS)

CRS can help you to resolve your dispute

www.crs.org.au

Phone: **(02) 6162 4050**

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

Informal Agreement

Some parties may prefer to reach an informal agreement without anything in writing. However, this is not advised. Without a formal written agreement, a further claim on your property may be made.

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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

You can apply to the Court for Orders **by agreement**. These are known as Consent Orders.

They are:

- Final
- Binding

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

Court Orders

There is no assumed right to have a Property Settlement Order be made. The Court will only make an Order if it is just and equitable to alter the existing property interests. It is a complicated process.

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.

If you would like further help understanding the process set out above, consider attending one of our free legal information sessions on the topic of family law property. Visit the Legal Aid ACT website for dates and times.

Legal Aid ACT

www.legalaidact.org.au/events

Phone: 1300 654 314

Commonly Asked Questions

Q: What compromises an 'asset pool'?

All assets, liabilities and superannuation of the parties must be disclosed in property settlement matters, regardless of whether the asset is in one party's name or both. After the asset pool has been determined, then it may be divided between parties.

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

No. There are many considerations to be taken into account in deciding how the property should be divided.

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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.

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

It may be possible to do this by applying to the court. If you are concerned about this, seek legal advice immediately.

Get Help

Legal Aid ACT

If you need to speak to a lawyer, there is a free duty lawyer at the Family Court Monday-Friday 10am – 3pm or you can call the Legal Aid Helpline.

Legal Aid also runs free legal information sessions on family law and property. Visit the website for further information.

<http://www.legalaidact.org.au/events>

Phone: **1300 654 314**

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