

Property Settlement Under the Family Law Act



Property settlement for the division of property of married or de facto couples can be entered into at any time during the time that couples live together or following separation but Court proceedings must be commenced within one year of a divorce order being granted.

Proceedings for property settlement are generally commenced in the Federal Circuit Court and most matters settle at an early stage without going to hearing before a judge.

Reaching Agreement With Your Ex-Spouse - Ensuring That the Agreement is Binding and Enforceable

In some cases parties are able to reach agreement about a property settlement with the assistance of their lawyers. If an agreement is reached then they can make an application for consent orders. The consent orders are binding and enforceable.

Parties Unable to Reach an Agreement about the Division of Property

If parties cannot reach an agreement on the division of property then an application for property settlement has to be filed either in the Federal Circuit Court or the Family Court. Negotiations continue and matters settle even after the filing of an application for property settlement in Court. Matters that are not settled proceed to a hearing before a judge who hands down a decision on the division of a couples property.

How Will the Court Divide The Property?

The Court determines the application for property settlement by way of a four-set process. These steps are:

1. The Court identifies and values the net property including superannuation of the parties after debts have been taken into account.
2. The Court then considers the contributions that each party has made to that property.
3. The Court next examines the parties' present and future needs; and

4. Finally, the Court will make an order that is just and equitable in the circumstances.

Contributions

The Court looks at three things in examining contributions:

1. The direct and indirect financial contributions the parties have made to the acquisition, conservation or improvement of the property.
2. The direct and indirect non-financial contributions the parties have made to the acquisition, conservation or improvement of the property.
3. The contributions made to the welfare of the family including as a homemaker or parent.

Present and Future Needs

In addition to contributions, the Court looks at a whole range of factors set out in section 75(2) of the Family Law Act that focus on the parties' present and future needs. Issues such as health, carer responsibilities, relative earning capacity and so on are relevant.

Disclosure

Parties are required to make full and frank disclosure of all of their financial interests [including monies and properties held overseas] before proceedings are commenced. If the Court believes that a party to family law proceedings has concealed assets or income, the Court can impose harsh penalties, including making orders that give the majority of the share of the property that the Court knows about to the other party.

Urgency

The Court has wide powers to make urgent orders in relation to property especially in circumstances where there is a risk that property of the relationship might be sold, concealed or dissipated. The Court's powers include:

- The power to stop a party from disposing or otherwise dealing with property;
- The power to compel one party to continue to make mortgage payments;
- The power to compel the sale of a property;
- The power to exclude one party from the home especially where there is a risk of family violence;
- The power to compel one party to pay urgent spousal maintenance to the other.

It is recommended that where a party is concerned that property might be disposed of, to lodge a caveat preventing the sale of that property.

This article is meant for general information and should not be relied upon as legal advice.

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