

DISCLAIMER:

This fact sheet is NOT a substitute for individual legal advice. There may be other issues that are relevant to your case. You should seek legal advice from a lawyer for assistance with understanding your specific entitlements.

This information is provided by the Hume Riverina Community Legal Service. **Please note that time limits apply for finalising property settlements.** For married couples you must apply for property orders within 12 months of the divorce. For de facto couples you must apply within two years of the date of separation.

We encourage both parties to the relationship to obtain specific legal advice for their situation. Be aware that you should not accept everything your partner tells you as there may be a conflict of interest (i.e. he or she may seek to reduce any payout and may not disclose assets such as superannuation)

The law says that any division of property has to be just and equitable (or fair and practical). This is an overall consideration and is to be considered before and after each of the following steps:

1. Identify the pool of assets from the relationship.
2. List the contributions (financial and non financial) of the each party.
3. Consider the future needs of each party (s75(2) factors).

STEP ONE: Identify the pool of assets from the relationship.

We suggest you draw up a table as follows. An example follows.

ASSETS:

You need to know everything that is owned individually and jointly by both parties

Description of the Asset	The legal owner of the asset ie in whose name is it owned	The estimated value of the asset
Matrimonial home at 7 Gayview Drive, Wodonga Vic 3690 Certificate of Title Vol 6570 Fol 349	Joint names as joint tenants - John George Smith & Mary Bernadette Smith	\$300,000
Superannuation from Uncle Ben's	John George Smith	\$56,780
	TOTAL	

DEBTS

Description of the debt	The legal owner of the debt.	The estimated debt
Hire purchase loan to AGC a/c 345 678 987	Mary Bernadette Smith	\$36,980
Unsecured loan from Joyce Lee Carruthers	I think it was given to both of us to buy the house.	\$60,000
	TOTAL	

Equity = Total Asset pool minus total debt pool = equity (in dollar figures)

MY WORKSHEET

OUR ASSETS

Description of the Asset	The legal owner of the asset ie in whose name is it owned	The estimated value of the asset
		\$
		\$
	TOTAL	

OUR DEBTS

Description of the debt	The legal owner of the debt.	The estimated debt
		\$
		\$
	TOTAL	

STEP TWO: List the contributions (financial and non financial) of each party

We suggest a chronology showing the significant dates, and list what each person did. An example follows;

Date	Event	Contribution
12.3.1987	Moved in together and renovated house	House owned by John with mortgage to CBA. Work on renovations done equally by John and Mary.
	Both parties continued in full time paid work and worked on the house at the weekends.	Mortgage payments made by John, Mary paid \$200 week for groceries and her share of the mortgage. Estimated they each spent 8 hours each weekend over 2 years on the house renovations.
5.7.1991	First child born	

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Date	Event	Contribution

STEP THREE: Does any adjustment need to be made taking into account the future needs of each party?

The Family Law Act gives guidance under s75(2). These factors help the court to work out what is a fair and just settlement.

These elements are sometimes called FUTURE NEEDS. At the end of this process, there will be a property settlement based on a percentage breakdown of the equity held by the parties.

The matters to be taken into account include:

- the age and state of health of each of the parties;
- the income, property and financial resources of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment;
- whether either party has responsibility for a child under 18 of the relationship;
- commitments of each of the parties that are necessary to enable the party to support:
 - himself or herself; and
 - a child or another person that the party has a duty to maintain;
- the eligibility of either party for a pension, allowance or benefit;
- a standard of living that in all the circumstances is reasonable;
- the extent to which the length of the relationship has affected the earning capacity of the party;
- the need to protect a party who wishes to continue that party's role as a parent;
- the financial circumstances of any party's partner, if any;
- any child support payable;
- any factors the court wants to take into consideration;

MY WORKSHEET

List any "future needs" factors that you think apply to your case.

Spousal Maintenance

A party may be able to ask for spousal maintenance if they are unable to support themselves and the other party has the capacity to pay maintenance, in some situations.

You should get legal advice if you think you may have an entitlement to spousal maintenance.

The same time limits apply for seeking spousal maintenance as for property settlements.