

Fact Sheet: Essential Family Law Information - Property Settlement

Property divisions under the Family Law Act 1975

Family law disputes over property division are decided under the *Family Law Act 1975* ('the Act').

A divorce legally finalises a marriage but a divorce is separate from property division.

In this factsheet the term '**partner**' is used to refer to both married and de facto partners and includes both heterosexual and LGBTQI+ partners who have separated.

Both married and de facto partners can apply for a property division under the Act.



IMPORTANT: TIME LIMITATIONS

If you seek to make an application to the Court for a property division, time limitations will apply:

1. Marriage - within 12 months from the date of your divorce being finalised.
2. De facto relationship - within two years from the date of separation.

An application to the Court may be made after the limitation date with leave of the Court. This is not always granted.



Property division – Marriage

For a married partner to apply for a property division, you only need to show that you were legally married and are now separated.

Property division – De facto relationship

For a de facto partner to apply for a property division, you will need to show that you were in an eligible de facto relationship and are now separated. To establish that you were in an eligible de facto relationship, you need to show that either:

- The relationship lasted for at least two years or
- A child was born of the relationship or
- The relationship was or is registered under a prescribed law of a State or Territory or
- One partner has made significant contributions and that a failure to issue an order would result in a serious injustice.

Property division process

The Act does **NOT** say the property of a relationship will be divided equally. Rather, the Court will consider how property should be divided using the following 4 step process:

STEP 1: If it is just and equitable for a property division to take place.

STEP 2: Identifying the property pool

Part 1

Identify the current assets and liabilities of the relationship, held jointly or solely:

Assets - For example:

1. Real estate (house, land)
2. Cars, caravans, boats, trailers
3. Cash and bank accounts
4. Interests in business/company
5. Trusts/shares/investments
6. Furniture, jewellery and household items
7. Superannuation

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Debts - For example:

1. Mortgage
2. Credit cards
3. Loans
4. Debts - miscellaneous or “other”



Part 2

Value the assets and liabilities using current supporting documents. This is called financial disclosure.

Financial Disclosure

There is a duty under the Act on partners to give full and frank financial disclosure to each other in a timely manner and be upfront and honest as to property in their name or possession. This duty is ongoing until the finalisation of the matter.

Examples of financial disclosure include:

1. Market appraisals of property from a real estate agent
2. Vehicle valuations such as from Redbook
3. Bank/mortgage statements
4. Credit card/loan statements
5. Superannuation statements
6. Tax returns/payslips



STEP 3: Consider an adjustment to the property pool based on the contributions of the partners.

1. Financial contributions

For example:

- Salary and wages
- Inheritances
- Compensation payments
- Redundancy payments
- Gifts/loans
- Windfalls
- Property owned prior to the relationship

2. Non-financial contributions

For example:

- Caring for children
- Property renovations, maintenance and gardening
- Home duties

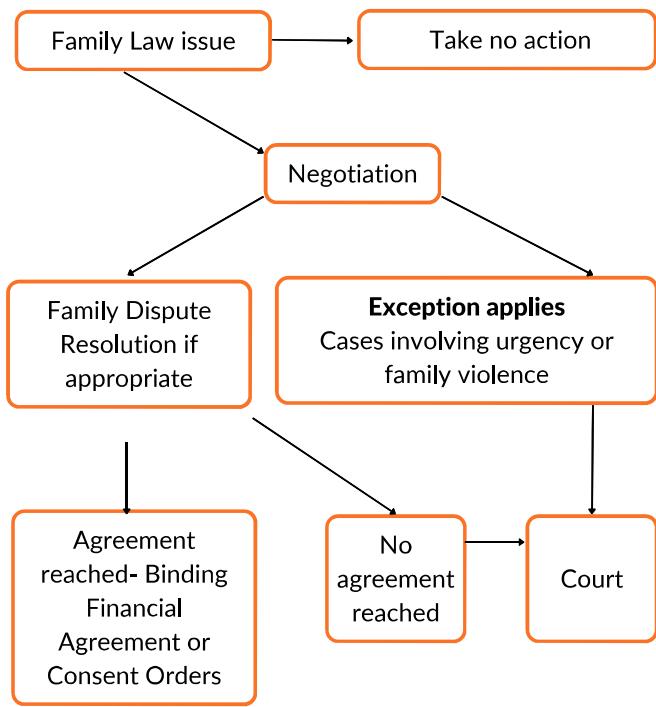
FROM 10 June 2025: The Court also considers the effect of any family violence on a partner to make financial and non-financial contributions.

STEP 4: Consider an adjustment to the property pool based on the current and future circumstances of the partners.

For current and future circumstances, factors a Court might consider include both partners:

1. Age and health
2. Income, property and financial resources
3. Care of any children or other dependants
4. Future earning capacity
5. Property and other financial resources
6. A reasonable standard of living
7. The length of the relationship
8. The effect of any family violence a partner has exposed the other partner to
9. The effect material wastage of property either intentionally or recklessly
10. Any liabilities incurred by a partner
11. Other

Overview of legal process



**You should seek legal advice
about your options**

Negotiation

You may negotiate your own agreement before asking a Court to decide, **but only** where it is safe for you to do so. You can negotiate directly with the other person or through a lawyer.

You can start by identifying the property pool as outlined at Step 2 and gathering your financial disclosure, then consider seeking legal advice about what an equitable and just division under *the Act* for you might be.



Family Dispute Resolution (FDR)

If negotiations fail, you can try Family Dispute Resolution (FDR) to resolve a property division. You can attend FDR by applying for a grant of legal assistance or by attending at a Family Dispute Resolution Centre such as Upper Murray Family Care ('UMFC') or by contacting a private FDR practitioner (for a fee).

If your matter is urgent or attending FDR is unsafe, FDR may not be appropriate in your circumstances. Urgent legal advice may be necessary, for example if the other partner is trying to sell or dispose of property.

During FDR, an independent mediator helps partners resolve property issues in a safe environment.

Anything said in an FDR session is confidential and cannot be used in Court. FDR may be in person, by phone or by video link. If you feel unsafe, a mediator may shuttle back and forth between partners.

FDR allows the partners to be the decision-makers and FDR is more likely to lead to an outcome that suits both partners. It is also cheaper and less stressful than going to Court.

Any agreement reached at FDR may be formalised as Consent Orders or a Binding Financial Agreement.

Court

If partners are still unable to reach a property division, an application may be made for the Court to make orders for a property division. When making a decision, a Judge must consider the 5 step process outlined above.

Court can be a time consuming, costly, and stressful process. There is a risk that Orders made by a Court may be very different to what you want due to the decision-making powers being placed in the Court's hands.

If you are served with a Court Application, we recommend you seek urgent legal advice

Formalising the Agreement

It is important that you properly document the property division to formally end your financial relationship.

If you do not formalise the agreement, you risk the other partner seeking a further adjustment of the property pool on a later date.

You can formalise the agreement in two ways:

1. Consent Orders

Consent Orders are a written agreement about the property division which has been drafted into a format signed by both partners and made into Orders by the Court. Generally, you won't be required to attend Court.

These Orders can be enforced by a Court if not followed. The Orders end the financial relationship of partners on a final basis.

2. Binding Financial Agreement

A Binding Financial Agreements (BFA) is a written agreement about the property division that is signed after both partners have been provided with independent legal advice. The agreement does not have to be approved by a Court and it is therefore very important that it is drafted correctly.

A BFA can be enforced by a Court if drafted correctly. A BFA can be made before, during or after the relationship and allows for an ongoing financial relationship if required.



Spousal and de facto maintenance

IMPORTANT: TIME LIMITATIONS

If you seek to make an application to the Court for spousal maintenance, time limitations also apply:

1. Marriage - within 12 months from the date of your divorce being finalised.
2. De facto relationship - within two years from the date of separation

Under the Act, a partner has a responsibility to financially assist their former partner if:

1. A former partner cannot meet their own reasonable expenses from their own income and
2. The other partner has the capacity to pay these reasonable expenses.

To determine how much maintenance is paid a Court takes into consideration the current and future circumstances of the partners.

If remaining in or leaving a property

If you remain in or leave the property consider:

1. Who will pay the expenses such as mortgage, a lease or utilities
2. Who has access to your bank accounts, mortgage and loan accounts
3. Who has ownership of your vehicle
4. Changing all passwords and the other parties access to your electronics
5. Updating your Will and superannuation beneficiaries

If you are considering remaining in, or leaving the property, we recommend you seek independent legal advice

1. Remaining in a property

You can remain in a property if your name is on the title or lease, unless there is a Court Order excluding you from the property such as an intervention order or a Family Law Court Order.

You may also consider remaining at the property even if your name is not on the title or lease, however we recommend you seek independent legal advice at the earliest opportunity.

You should always consider your safety if you remain in the property and reach out to support services if possible.

2. Leaving a property

You can leave the property but consider:

1. Your safety in doing so
2. Taking any important items with you such as ID documents, clothes, pets and sentimental items
3. Removing yourself from the lease or utilities for the property
4. Preserving your property rights, such as:
 - a. A caveat if you are not on the title
 - b. Injunction to stop a partner selling any property

COMPANION ANIMALS

As of June 2025

The Court can now make decisions about the ownership of a companion animal after partners have separated.

A companion animal is defined as an animal kept for companionship.

Legal Aid

You may be eligible for a grant of legal aid to attend FDR or Court. Legal Aid will fund a lawyer to represent you and assist you through the process.

Please discuss your eligibility with a lawyer who is on a legal aid panel.

Other Options For A Lawyer

If you are not eligible for legal aid and you are unable to afford upfront legal fees, you may be able to seek a deferred payment arrangement with a private lawyer.

There are also not for profit lawyers who charge reasonable fees, if you are not eligible for legal aid and you are unable to afford upfront legal fees.

Contravention or Enforcement

Applications

If there are Court Orders in place and one partner does not follow these Orders, then the other partner may make a contravention or enforcement application to the Court.

When making an application, a partner may ask the Court for the Orders to be followed, for further orders or for changes to be made to the Orders.

They may also ask for an order for court costs, compensation, a bond, educational courses, community services, a fine or imprisonment.

If you are considering making a contravention or enforcement application, we recommend you seek independent legal advice

Disclaimer

Every matter is unique, and we highly recommend you seek independent legal advice that applies to your individual circumstances.

This fact sheet is not a substitute for legal advice

Further information



www.fcfcoa.gov.au/fl/fp/overview

www.legalaid.vic.gov.au/dividing-your-property

www.legalaid.nsw.gov.au/my-problem-is-about/my-family-or-relationship/finance-and-property



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