

Property settlement

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If your marriage or de facto relationship ends, property may be divided between you and your ex-partner. This is called a property settlement.

It is a good idea to get legal help before you start negotiating a property settlement and before you sign any agreement.

Going to court is a legal process, so it's a good idea to get legal advice before you go.

What is property?

Property includes assets (things you own) and liabilities (things you owe money on).

This includes:

- › the family home and any other real estate or land
- › money in bank accounts
- › cars and other vehicles
- › investments and shares in assets
- › superannuation entitlements
- › household items, including jewellery and tools
- › businesses
- › debts, such as mortgages, loans, credit cards and personal debts

All the property you and your ex-partner own, either in

your joint names or in your individual names, is known as the "asset pool".

What do we do about our debts?

Debts are part of the asset pool, even if they are not in your name. As well as working out who gets what property, you will need to work out who is responsible for which debt.

Does it make a difference if we are married or in a de facto relationship?

No. The law relating to property settlement applies to married and de facto couples when they separate.

If you separated from a de facto partner before 1 March 2009, you have different legal rights that you should talk to a lawyer about.

When can I get a property settlement?

You can start working out the details of a property settlement as soon as you have separated.

We were married, do I have to get divorced first?

Married couples do not have to be divorced to work out a property settlement.

It is usually best to get a property settlement before you apply for a divorce because there is a strict time limit to organise a property settlement after divorce.

How do we split everything?

Your property settlement will depend on your situation, so will probably be different from others you may have heard about.

To work out what a fair split is, lawyers and the Court look at:

- › what each person has given to the relationship. This includes earnings, savings, gifts, inheritances or property owned before the relationship, improvements to property, and unpaid work as a homemaker and parent.
- › the future needs of each person, including how much you can earn in the future, your ages, responsibilities and the care and financial support of children.

Who gets to keep the house?

If you leave the family home, you will not lose your rights to the house or your things.

Who keeps the family home depends on your total asset pool, the contributions you have both made and your future needs.

You need to consider who can continue to pay the mortgage, whether one of you can pay out the other, and if you have children, where they will live most of the time.

Sometimes the family home will have to be sold so that each partner gets their share of the property.

What if I owned property and my ex-partner owned nothing when we became a couple?

It depends on how long you have been in a relationship for.

If it has been a long relationship, during which both of you have made various contributions, then your 'initial contribution' of bringing property into the relationship may be less relevant than if your relationship was short.

My ex-partner worked and paid the mortgage while I stayed at home. Can I get anything?

Yes. Unpaid work as a homemaker and/or parent counts as a contribution to your asset pool.

If you were studying, you may still have made non-financial contributions by doing the household work (such as cleaning, washing clothes, shopping and cooking).

I've got no income now that we have separated and can't make ends meet. What can I do?

If you have no income, and your ex-partner is not giving you any money or paying the bills, then you may be able to apply to Court for an order for spousal maintenance.

Spousal maintenance is when one person pays money so that their former partner has enough to live on.

Your ex-partner has a responsibility to provide you with financial support if you are unable to pay your own expenses. You must show the Court that you have a need for financial support, and that your partner has the ability to pay this support to you.

I bought a car after we separated. Can my ex-partner get it?

If you buy the car before finalising a property settlement, the car is part of the asset pool.

Whether your ex-partner has a claim on the car may depend on what money you used to buy the car.

I am worried that my ex-partner is going to spend our money and get rid of our property. What should I do?

You may be able to get a court order to stop your partner using bank accounts and/or selling property. A court order is a document from the Court that tells a person that they must do something.

You should get legal advice as soon as possible.

I am thinking of separating. Is there anything I should do to protect my financial position?

If it is safe to do so, it is useful to collect documents about you and your partner's finances and property. If you are planning to leave the home, get copies

of statements that show bank account numbers, superannuation amounts, and membership numbers for both you and your partner.

You may also want to direct your salary and any government benefits into a bank account in your sole name and change the nominated beneficiary of any superannuation policy you have.

If possible, try to see a lawyer before you separate to get advice about your circumstances. If it is not safe for you to delay leaving the home, see a lawyer once you have left.

I am planning to see a lawyer about property matters. What should I take with me?

You should write out a history of your relationship. This helps the lawyer work out what your contributions have been during the relationship. This should include:

- › important dates like when you started to live together, when you married, when your children were born, when you separated
- › what property you had at the start of the relationship
- › when you bought or sold property
- › when you and your partner worked, studied or took parental leave

If you can, you should also prepare a list of any property you and your partner own and a rough value of it. Include details of any debts such as money owed on credit cards, a mortgage, or personal loans.

My ex-partner and I have reached an agreement about how to split our property. What do we have to do to make this agreement legal?

If you have reached agreement about your property, you should ask the Federal Circuit and Family Court of Australia to formalise the agreement and make court orders.

This will make the agreement final and binding on each

of you.

Once you have made a final agreement you or your ex-partner cannot make a further property claim unless there are exceptional circumstances, or you are applying for spousal maintenance.

You will need to tell the Court who is going to get what, including financial details. The court must be satisfied that the agreement you have reached is fair.

You can use the Court's do-it-yourself kit to apply for the court orders. You can get the kit via:

- › the website
- › in person at the Federal Circuit and Family Court of Australia registry at the Owen Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne VIC 3000
- › in the mail, by writing to the Registrar, Federal Circuit and Family Court of Australia, GPO Box 9991 Melbourne 3001 and asking for the Consent Orders Kit

You may not have to go to court if you apply for court orders in this way.

Before you sign your documents, you should both get independent legal advice about whether it is a fair agreement.

What do we do if we can't reach agreement about how to split our property?

You should each get independent legal advice and ask your lawyer to help you negotiate an agreement with your ex-partner.

If negotiations do not result in an agreement, you may have to make an application to the court for a property settlement.

Remember that once your divorce is final you only have 12 months to make an application to the Court for a property settlement unless there are exceptional circumstances.

You should see a lawyer as soon as possible if you have been divorced in the last 12 months.

We welcome feedback. See our website to share your feedback or complaint:

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