

Matrimonial Property Settlements

Matrimonial Property Settlement

A matrimonial property settlement is the division of property arising out of a marriage. The governing legislation is the *Family Law Act 1975 (Cth)*.

This information is not applicable to people dividing property after their de facto or same sex relationships have ended. For more information please see the 'Defacto/Same Sex Property Settlements' fact sheet.

What Is Property?

Property is anything that is capable of being owned including land, houses, shacks, businesses including partnerships or companies, motor vehicles, bank accounts, shares, household goods and furniture, tools of trade or other equipment and superannuation.

A matrimonial property settlement can include property brought into the relationship, acquired during the relationship and following separation.

When Can Property Be Divided?

The parties can divide property at any time from separation.

Following separation of 12 months a divorce can be applied for. Upon a divorce being finalised the parties have a 12 month time limit to institute property proceedings in the Family Court or Federal Magistrates Court.

How Is The Property Divided?

The Act sets out a number of factors that the Court must take into account when dividing property. Broadly speaking, these can be divided into two categories – *Contributions* and *Future Needs*.

Contributions Of Both Parties

This includes *financial* and *non-financial* contributions of each party to the relationship. *Financial contributions* include such things as wages and the paying of household bills, inheritances, gifts of a financial nature and other financial contributions. *Non-financial contributions* includes performing household duties and parenting duties. The contributions may be direct or indirect.

Future Needs Of Both Parties

This includes such factors as the age and health of the parties, their educational qualifications in terms of relevance to future work prospects and their need to care for any dependent children.

The Court generally weighs up contributions and future needs and adjusts the division accordingly.

How To Obtain A Property Settlement?

There are a number of steps to follow in order to conduct a property settlement:

Pre-action Procedure For Financial Cases

Parties must genuinely try to resolve their dispute before starting a case in the court. Exceptions to this are cases:

- that involve urgency
- have allegations of family violence or fraud
- where there is a genuinely intractable dispute
- where a person would be unduly prejudiced or adversely affected if another person became aware of the intention to start a case
- where a time limitation is close to expiring; or
- where there has been a previous application about the same issue or subject in the last 12 months.

If agreement is reached at any stage above, then the parties may apply to court for consent orders.

Family Dispute Resolution:

The parties of a relationship may choose to participate in family dispute resolution at a dispute resolution service.

Participating in mediation may allow the issues in dispute to be identified and the partners of the relationship may come to an agreement. If this occurs, the partners may choose to file Consent Orders in the court.

Consent Orders

Consent Orders set out how the parties have agreed to divide the property. They are legally binding which means if one party does not comply, they have breached the court Order. The relevant forms can be found on the Family Court's website (www.familylawcourts.gov.au) or can be obtained by ringing the Family Court on 1300 352 000.

If agreement cannot be reached, a party may choose to make an application in a court.

Making An Application In A Court

An application can be made in either the Family Court or the Federal Magistrates Court. The relevant form is an Initiating Application it can be found on the Family Law Court's website. There is a filing fee however the applicant may be able to apply for a reduction of the court fees based on financial hardship.

Federal Magistrates Court

The Federal Magistrates Court generally deals with less complex matters that are likely to be decided quickly. The Federal Magistrate may order that the parties attend mediation to resolve the matter.

Family Court

For matters, a Case Assessment Conference will be conducted initially with the Registrar. Both parties will be required to attend and it is a final opportunity to negotiate the matter, prior to taking it before a Judge. If the matter can be resolved at this stage, then the parties will be able to file for consent Orders as to what has been agreed.

If the matter is unable to be resolved at the Case Assessment Conference, then the matter will be listed for a hearing before a Judge. The Judge will then make the ultimate decision.

Contacts

The Women's Legal Service can be contacted on **1800 682468**.

"Matrimonial Property Settlements" is intended to give general information to people who have or who are contemplating a division of property after their marriage has ended. Whilst we have made every effort to ensure the contents of this publication are accurate at the time of publication the law and services do change. Legal and service exactness is not possible in a publication of this nature. This publication should not be used as a substitute for legal advice.

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