

Take the stress out of separation and property settlements

Property disputes

Applications are made in the Family Court or Federal Magistrates Service for orders for property settlement. The Family Law Act sets a time restriction of 12 months after your divorce for you to apply for a property settlement but the time can be extended.

If you can both agree on how to divide your assets, the family Court or Federal Magistrates Service can make orders by consent otherwise the Court process may take some time to complete.

The rules governing the division of assets are complex, and you should see a lawyer before making a final decision.

There are three steps the Court will take:

Working out the Net Asset Pool

The Court ascertains the net assets of the parties. Generally the rule is that all assets must be taken into account even when acquired before or during the marriage or after separation.

The Court looks at the parties financial resources. These include assets which a party has influence or control, for example trusts, long service leave entitlements and personal injuries claims.

The term 'property' has a very wide definition. 'Property' includes assets of either or both the parties, such as real estate, shares, cars, jewellery, savings, furniture and effects and superannuation.

Who contributes to the Net Asset Pool?

The Court will look at who contributed what to the marriage, both financial and non-financial, and look at the contribution made as homemaker or parent. What was brought into a marriage is taken into account such as gifts and inheritances received during the marriage.

Future needs

Finally, the Court will look at both parties' future needs, and consider issues such as income earning capacity, the financial circumstances of any new relationship, the property each party has, whether they have the care or support of children from the marriage, age and health.

If you cannot agree how to divide property you may need to go to court. Both parties must give a full and frank disclosure about respective financial circumstances.

The Courts will encourage you to settle your differences through negotiation or mediation.

If you cannot agree your case will go to hearing. You will have your day in Court, and a judge will make a decision as to the ultimate division of your property.

Mediation

Mediation is a process to assist people to reach an agreement without the expense and stress of litigation. The Court encourages mediation before filing in Court.

Divorce

When you apply for a divorce the Court does not take account what caused the marriage breakdown. All that is necessary is that the marriage has broken down irretrievably. If you are married and you have been separated for at least twelve month, you can apply to the Family Court for a divorce.

If you have been married for less than two years, you will normally require a counselling certificate before applying to the Court for a divorce.

If you have children, the Court has to be satisfied that there are proper arrangements for the children's welfare before granting a divorce.

Children's matters

Residence, contact specific issues

The Court is concerned with the best interests of children. It recognises that children can be cared for and have contact with both parents and other significant people in their lives.

The Court can make orders about residence, contact and issues like schooling, medical treatment, etc. The Court will consider the conduct and behaviour of the parents.

Where parents agree about children's matters, the details of the agreement can be filed in the Court Registry and Consent Orders can be made by the Court. The Court encourages agreement between parents. There is no filing fee and no attendance in Court is required.

Change of name

A child's surname is a parent's responsibility. If there is a dispute, the Court can make orders regarding the child's name. The Court considers what is in the best interests of the child.

Relocation

If one parent wants to relocate with a child and the other parent does not want the child to relocate, an application can be made to stop the other parent relocating with the child. The best interest of the child is the deciding consideration.

Grandparents and grandchildren

The Family Law Act allows for grandparents and other relatives who play a role in the care and welfare of a child to have continuing contact.

Child support and maintenance

Children of marriages separated before 1 October 1989 have their maintenance assessed by the Court (Stage 1 matters).

After 1 October 1989 the law changed and maintenance is assessed by the Child Support Agency (Stage 2 matters). There can be Child Support Agency assessment, but if no agreement

is reached an application can be made to the Court for a departure from a child support assessment.

Maintenance Agreements or Child Support Agreements may be made between parents. There are limits on these agreements, which are best explained by your lawyer.

Pre-nuptial and cohabitation agreements

At law, pre-nuptial agreements are referred to as Binding Financial Agreements. Under the Family Law Act 1975 you may make a Binding Financial Agreement in contemplation of marriage which details how property and financial resources and maintenance will be dealt with in the event of a breakdown. It is wise not to write your own agreement - get a lawyer.

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