



After separation there are usually assets and liabilities that need to be divided up. A “property settlement” refers to the way this property is divided.

PROPERTY SETTLEMENT

If you and your ex-partner have reached agreement on the terms of a property settlement, you may enter into a written agreement. But, for this agreement to be binding, you and your former partner must have independent legal advice.

Or, provided you have reached agreement, you may complete, sign and file an Application for Consent Orders with the Court. Provided that the Court considers the terms fair, it will make them into a final binding Order. You should consult a lawyer before agreeing to or signing an Application for Consent Orders.

If you cannot agree, an application can be made to the Court for it to determine the terms of the property settlement.

THE FOUR STEP PROCESS TO A PROPERTY SETTLEMENT

The first step is to determine the net value of the property in the asset pool. Property includes all

assets, including cash, real estate, businesses, trusts, investments and superannuation. It also includes liabilities. It is important to include all assets and liabilities. At this first step it is irrelevant who, when, where and how the assets and liabilities were accumulated.

The second step is to determine the contributions of the parties. This includes financial contributions, non-financial contributions and contributions to the family as a homemaker. Contributions that were made before, during and after separation will all be considered.

The third step is to consider other factors, including the future needs of each party. The most commonly considered factors are the age and health of the parties, which party is the primary carer of any minor children, and the duration of the marriage.

The final step is to consider whether the practical effect of the proposed property settlement would be just and equitable to both parties.

In diligently applying the above steps, each party (through their legal advisors) will gain a reasonable idea of the approximate amount of the asset pool that a Court would likely order each party to receive.