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— LAW —

Financial and Property Settlements

After separation there are usually assets and liabilities that need to be divided between the parties. A 'property settlement' refers to the way in which this property is divided.

PROPERTY SETTLEMENT

If you and your former partner have reached agreement on the terms of a property settlement, you may enter into a written agreement. However, in order for this agreement to be binding, you and your former partner must each independently obtain legal advice regarding the effects of entering into the agreement.

Alternatively, 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 agreement cannot be reached an application may 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. Furthermore, 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. All types of contributions are considered, including financial contributions, non-financial contributions and contributions to the family as 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.



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