



PROPERTY SETTLEMENT UNDER THE FAMILY LAW ACT

If you and your spouse separate it is important that you take the time to think about the division of any property that the two of you own. The Family Law Act makes provision for property settlement for couples that have been married, but it does not apply to de facto relationships. Depending on the value of the property involved applications can be made to the Family Court of Australia, The Federal Magistrates Court, or the Local Court. Commins Hendriks will be able to advise you which one is most appropriate for you.

If you and your spouse can reach agreement:

If you can reach an agreement without lawyers then you and your spouse will need to apply to the court for consent orders. This is a relatively simple and inexpensive procedure. The benefits of having orders made are that they are binding and enforceable, and there can also be certain stamp duty benefits involved.

If you and your spouse cannot reach agreement:

If you can't reach agreement on the division of property then you will need to file an application from property settlement with the appropriate court. The Family Court handles most property disputes. The court will provide the parties with an opportunity to meet with their lawyers and an officer of the court to try and sort of the proceedings. If you cannot come to an agreement, the court will decide how to divide the property by having a hearing in front of a judge or other office of the court.

The court must follow certain steps in deciding how the property of the marriage is to be divided.

Step 1: Identifying and valuing the parties' assets, liabilities and financial resources

The first step involves identifying all of the party's property no matter how or when it was acquired. Then that property is valued. Property includes all assets, liabilities and financial resources of the parties. Often this step is quite simple, however where businesses or complex financial structures are involved it can become complicated and often requires the help of experts.

Step 2: Assessment of the contributions made by both parties

This involves the court looking at who has contributed what to the financial and property assets and liabilities of the marriage. The court can examine the following things:

- Any direct or indirect financial contributions
- Any direct or indirect non financial contributions
- Contributions to the overall care and welfare of the family, such as homemaker duties.

Often the court finds that contributions of the parties are equal. This is often the case in long marriages. However, the court can find that contributions are not equal in situations where:

- There has been a short marriage and there are no children
- One party has brought significantly more assets to the marriage than the other



- One party has made a large contribution due to a windfall, such as an inheritance or a gift
- One party has brought skills or talents which have enabled them to acquire significant wealth during the marriage, or
- Where one party has deliberately and or recklessly behaved in such a way as to cause a loss to the parties.

Step 3: Future needs of the parties

In this step, the court has to take into consideration:

- Age and health of both parties
- Each parties' income, property and financial resources as well as the capacity to earn income and if this has been altered by the marriage
- If either party has primary care of any child or children of the marriage under 18 years
- If either party has the care and responsibility for any one else, eg a parent
- Whether either party is eligible for a pension or superannuation
- A reasonable standard of living in the circumstances
- If either party is living with someone else, that person's financial contributions

The court can then, after considering these issues, order an adjustment in favour of one of the parties to compensate for any imbalance.

The effect of pre nuptial agreements

It is now possible, thanks to recent amendments to the Family Law Act, to have a binding pre nuptial agreement in place. This can help to alleviate many property disputes in the event of a relationship breakdown and can be particularly appealing to parties who have already been through a marriage or other relationship breakdown. For more information on pre nuptial agreement please refer to the Commins Hendriks Plain English Guide to pre nuptial agreements.

Helpful information to bring to your appointment

The following is a basic checklist of some information which if you have it available, you should bring with you to your appointment with Commins Hendriks, as it will be helpful in preparing your case.

- ❑ Your marriage certificate
- ❑ The names and dates of birth of your spouse, and any children
- ❑ Copies of title deeds to any real estate you or your spouse may own
- ❑ Market valuations of your home and any other real estate
- ❑ A list of any valuable personal property you or your spouse may own, such as jewellery, cars, electronic equipment etc.
- ❑ The name of your spouses legal representative
- ❑ A list of any bank accounts, shares, stocks or investments that you or your spouse may own,
- ❑ A list of any debts, mortgages, credit cards debts, personal loans you and your spouse may have
- ❑ A list of monthly expenses,
- ❑ Copies of yours and your spouses tax returns for the last three years
- ❑ Copies of any superannuation documents
- ❑ Copies of any medical and life insurance policies that cover either yourself or your spouse,
- ❑ If either of you have been divorced before copies of your divorce papers,
- ❑ If either of you own a business, copies of the tax returns and financial statements for the business for the last three years.