

FAMILY LAW: How is a Property Settlement determined?

The Family Law Act sets out the basis upon which, both married and de facto couples can finalise their property settlement in order to sever their financial ties.

In any property settlement, a four step process is undertaken to determine what each party to the respective relationship is entitled to. These steps are set out in this information sheet.

Step 1 – Identifying the property pool

The parties to the relationship must first obtain or provide estimates of the value of the assets and liabilities in their possession. If there can be no agreement as to the value of certain property between the parties, then an independent valuation must be obtained.

To assist the parties in coming to an agreement on the value of the assets of the property pool, each party will be required to provide disclosure of all property. You should prepare your own list of assets and liabilities and provide the same to your solicitor. You should include all items of property, even superannuation. On the [Property Settlements](#) page of our website we outline what is regarded as property.

Step 2 – Contributions made during the relationship

Contributions made during the relationship, include both financial and non-financial contributions made by the parties are taken into consideration. Such contributions include, buying, maintaining or improving the matrimonial assets during the marriage or relationship, as well as the contributions made to the welfare of the family.

The contributions made by the parties are assessed from the commencement of the relationship, during the relationship and even following separation.

All of the contributions made by each party need to be assessed against each other when determining what weight is to be placed on either parties contributions. This assessment will always occur on a case by case basis.

Step 3 – Further adjustments

There are a number of factors which must be taken into account when considering whether any further adjustment is to be made in favour of one of the parties of the relevant relationship. Such factors include but are not limited to:

- The age and state of health of both parties;
- The children (if any) and their age, needs and who will be caring for them;
- The income of both parties and how such income may be affected (if at all) following the property settlement;
- The effect (if any) that the marriage has had on either parties ability to earn an income and obtain employment; and
- Any other matters the Court considers relevant in your marriage.

Step 4 – Just and equitable

After weighing up the contributions of the parties together with all the other factors that are relevant, the parties can agree or alternatively a Judge can make a decision in respect of the property pool and how it should be divided between the parties. The decision of a Judge is made in percentage terms and there is no precise science in respect of how such division is arrived at, as every marriage is different. However, the Judge must be satisfied that the division is 'just and equitable'. The likely outcome of an application for property settlement is difficult to predict with any certainty.

Once a decision is made or the parties come to an agreement, a just and equitable division can be achieved by selling property and dividing the sale proceeds, transferring property from one spouse to the other or splitting of superannuation interests and rolling it over to the other person's superannuation fund.

Require further information or advice?

For further general information about related topics, browse the range of other information sheets, tools for clients and information updates available on the 'Resources' page of our website.

If you require advice regarding any of the following:

- property settlements
- spousal maintenance
- de facto and registered relationships
- divorce applications
- child and parenting matters
- making a new Will or power of attorney document to take account of changed circumstances
- buying or selling property

Swanwick Murray Roche can provide timely tailored advice about your circumstances. We can offer professional advice and a compassionate approach when dealing with family and personal matters.

Please do not hesitate to contact us by phone on 4931 1888, email at enquiries@smrlaw.com.au, via our online enquiry form or by any of the other means detailed on our website www.smrlaw.com.au.