



Navigating the Property Settlement Maze in Queensland: Your Roadmap to a Fair and Secure Future

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INTRODUCTION



After divorce, several family law matters should be considered. Property settlements are often among the most complex and come in many asset classes. Determining how to divide them can be highly challenging.

This guide aims to give you an overview of how family law property may impact you in a divorce. It is vital to understand the role of the law in property matters. Having this knowledge can ensure your financial entitlements are equally split.

PROPERTY SETTLEMENT BASICS

The Family Law Act 1975 doesn't approach property by who owns which assets. The law aims to divide property based on the contributions and future needs of the parties.

The property settlement process depends on the method chosen by the parties. There are several options available that this guide will explore. The avenues available include:

- **Consent orders;**
- **Financial agreements;**
- **Property orders.**

Property settlements include various types of assets, including:

- **Bank accounts;**
- **Superannuation;**
- **Shares and bonds;**
- **Income streams;**
- **Business interests;**
- **Personal effects;**
- **Real estate.**

It's important to note that liabilities like credit card debt are also considered part of the asset pool.

People often wrongly assume a property is beyond a property settlement's scope based on its purchase date. Property purchased before a relationship is eligible for inclusion, as bought during separation. The scope of a financial settlement usually only ends after finalising the divorce, though specific legal advice should be sought.

IDENTIFYING AND VALUING ASSETS

To accurately divide an asset pool, you must know its proper value. Before you can make a valuation, both parties must fully and frankly disclose their finances.



There may be circumstances where a party attempts to hide assets from a settlement proceeding. Using a **forensic accountant** can help ensure you account for all assets.

VALUATIONS

When valuing asset pools, you must include assets and liabilities to find the pool's net value. You can value individual assets in different ways. Often, parties will determine valuations through research and consultation with industry experts. For example, a real estate agent may appraise an investment property.

Businesses can be tricky to value. You can use a forensic accountant to find a fair market value. You may base the valuation on the net value of the business's assets or its future earnings.

SUPERANNUATION

Parties often overlook superannuation during property settlements. However, superannuation is increasingly becoming one of the most valuable assets in a person's estate.

Superannuation splitting laws allow parties to divide super interests. When the superannuation reaches the retirement phase, a percentage goes to the non-member spouse.

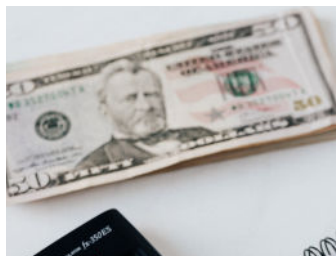
AGREEING ON FINANCIAL ARRANGEMENTS



Reaching an agreement on financial matters makes for a smoother settlement process. Financial agreements and consent orders are the primary ways to formalise consensual financial arrangements.

FINANCIAL AGREEMENTS

Parties enter financial agreements without the Court's involvement. There are specific requirements you must meet to make them legally binding.



Each party must receive independent legal advice from a family lawyer. The lawyer will advise them on how the agreement affects their interests.

If the parties agree on the terms, they must sign the contract.

They will then receive a **Certificate of Independent Legal Advice**.

Financial agreements provide more flexibility than consent orders. Parties can settle on any division of property they wish, no matter how one-sided. Some exceptions apply, and specific legal advice should be looked into this.

CONSENT ORDERS

A financial consent order is a legally binding settlement the Family Court grants. They are governed by a stricter standard than financial agreements. Before the Court will grant the order, it must be satisfied that the proposed settlement is "fair and equitable" for both parties.



You can apply for consent orders by submitting an application through the [Commonwealth Courts Portal](#).

Whichever method you choose, we recommend always making your settlement legally enforceable. When you do, it will be easier to protect your entitlement if the other party refuses to adhere to your agreement.

THE FOUR-STEP PROCESS

After applying for a consent order, the Court will assess your application using a four-step process.

STEP 1:

The Court will determine the net value of your marital asset pool. Parties must fully disclose their finances, including all liabilities. The Court can only properly assess each party's entitlements with the necessary information.

STEP 2:

The Court will consider each party's contribution to the marriage. Financial and non-financial contributions are relevant. Examples of non-financial contributions are keeping the home, childcaring and home renovations.

STEP 3:

The Court considers the future needs of each party. Some factors the Court may account for include each party's:

- Age and health;
- Access to financial resources;

- Future earning capacity;
- Caring responsibilities;
- Eligibility for government benefits.

STEP 4:

In the final step, the Court decides whether the settlement is "fair and equitable". If it isn't satisfied the application meets this requirement, it will make adjustments to the previous steps.

NEGOTIATION AND MEDIATION

Divorce is difficult enough without engaging in unnecessary conflicts. The best way to agree on crucial matters when emotions are high is to keep communication open and transparent.



Avoiding conflict doesn't mean disagreements are unacceptable. The important thing is to approach disputes respectfully and constructively.

FAMILY DISPUTE RESOLUTION

When disagreements arise, effective mediation is a vital resource. Family dispute resolution (FDR) services are essential to working through issues civilly.



Mediation is a time and place when parties can come together to resolve their differences. An accredited FDR provider is an impartial third party who will acknowledge the concerns of both sides. Once the parties have clarified their issues, mediators can work through strategies to find a compromise.

LEGAL ADVICE



Property matters can be challenging to handle alone. Before beginning a settlement or dispute process, always get legal advice. A common mistake clients make in family law is not seeking legal assistance early enough. It's better to approach a lawyer before problems arise. Otherwise, you may lose out in a settlement.

An effective lawyer will ensure you understand your situation and what you can expect from the process.

PREPARING FOR FAMILY COURT



The Family Court is mandated to divide asset pools in light of each party's contributions and needs. You can apply for [consent orders](#) if both parties agree or file an [initiating application](#) if you disagree on the correct division. Either way, you must include certain supporting documents in your application.

FINANCIAL STATEMENT

A financial statement provides information on your current financial circumstances.

FINANCIAL QUESTIONNAIRE

A financial questionnaire details your financial and non-financial contributions to the marriage. It also establishes the contribution-based entitlement you're seeking.

SUPERANNUATION INFORMATION KIT

If you want to split superannuation, you need information on that super interest. You can use this kit to request the information. Attach the document received back from the trustee to your financial statement.

GENUINE STEPS CERTIFICATE

This certificate shows that you have completed the necessary pre-action dispute resolution process.

You can submit your application after completing the appropriate form and compiling the supporting documents. If you submit an initiating application, you must serve it on your spouse using an authorised intermediary. They will then have the chance to respond.

TIPS FOR A SUCCESSFUL OUTCOME

- Ensure you organise all necessary supporting documents before applying;
- Don't make any legal decisions without sound advice from a lawyer;
- Ensure you and your ex-spouse fully disclose all relevant financial information;
- Approach any disputes constructively.

CONCLUSION



Property settlements can be complex depending on the asset types. If you involve the Court, please make sure that your proposed settlement can pass the Court's four-step process. Unfortunately, your application will only be successful if the division is fair and equitable.

When you disagree on property matters, you must seek mediation before asking the Court to settle the dispute.

Legal advice is essential before seeking a financial agreement or court order. The Shanahan Family Law team understand the correct steps to split your share equally. Feel free to call us today if you need help with your settlement.

OUR PROPERTY SETTLEMENT CHECKLIST: A GUIDE TO GETTING STARTED

BEFORE YOU START:

- ✓ Get legal advice. A lawyer can help you understand your rights and options and ensure you take the best possible steps for your future.
- ✓ Gather your financial information. This includes all of your assets, liabilities, and income. You will need this information to complete your financial statement and financial questionnaire.
- ✓ Complete your financial statement and financial questionnaire. These documents will provide the Court with an overview of your financial circumstances.
- ✓ Consider mediation. Mediation can be a more cost-effective and less stressful way to resolve property disputes than going to Court. Mediation is a process where you and your ex-spouse work with a neutral mediator to reach an agreement on property settlement.

IF YOU GO TO COURT:

- ✓ File an application with the Court. Your application must include your financial statement, questionnaire, and a genuine steps certificate.
- ✓ Serve your application on your ex-spouse. You can serve your application by mail or by personal service. It is best to have it witnessed when delivered.
- ✓ Attend a hearing. The Court will schedule a hearing to review your application and decide on property settlement.

AFTER THE HEARING

- ✓ The Court will issue a property order. The property order will set out the terms of your property settlement.
- ✓ You and your ex-spouse must comply with the property order. If you do not comply with the order, the Court may take enforcement action against you.



TIPS FOR A SUCCESSFUL PROPERTY SETTLEMENT

- ✓ Be prepared. The more prepared you are, the more likely you will reach a fair and equitable property settlement.
- ✓ Be flexible. Be willing to compromise to reach an agreement.
- ✓ Be respectful. Remember that you are dealing with a person who was once your spouse. Treat them with respect, even if you are angry or upset.
- ✓ Get help. If you struggle to reach an agreement, don't hesitate to get help from a lawyer or mediator.

We hope this checklist helps you navigate the property settlement maze in Queensland.