

Property Settlement

Application

Who can apply to the Family Court to finalise division of property after the breakdown of a marriage/relationship?

If parties were married, in same sex or heterosexual de facto relationship of at least two years (there are exceptions) and have separated after 1 December 2002 they can apply to the Family Court.

I have been in a de facto relationship of less than two years. Can I still make an application in the Family Court?

You may be able to if you can demonstrate that there is a child of the relationship or you have made substantial financial contribution and it is not fair to bar you from making an application in the Family Court just because the relationship is less than two years old.

Is there a time frame within which I have to apply to the Family Court?

Yes there are limitation periods. Whether you married or are in a de facto relationship you can apply for property settlement once you have separated.

You do not have to be divorced before applying for property settlement, but note that if you get divorced, you have twelve months from the date of your divorce to file an application in the Court. If you were in a de fact relationship you have to apply to the Family Court within two years of separation.

Can I apply for property settlement after the limitation period has passed?

You can make an application but you need to obtain permission from the court to make an application out of time. You need to provide reasons why the application was not made on time and the court has discretion on whether to give you permission to commence proceedings or deny you the opportunity to commence property settlement after the expiration of the limitation period.

How can I finalise property settlement?

If you and the other party can reach agreement, both of you can draft and file consent orders and complete a Form 11 for filing. In this way you avoid unnecessary legal cost of going to court.

You may decide to mediate to come to an agreement on how the assets are to be divided. If you reach agreement it is advisable to convert them into court orders.

If both of you cannot reach an agreement, you may consider filing documents in the Court asking the Court to assist you in settling property matters.

Division of Assets

How does the Court decide on the division of the assets of the marriage/relationship?

The Court will take into account a number of factors. The Court typically uses a four-step process to arrive at a decision. They are as follow:

1. Identify the asset pool of the parties;
2. Assess the contribution made by parties – financial, non-financial and contribution as homemaker and parent;
3. Identify the factors outlined in section 75(2) of the Family Law Act; and
4. Assess if the outcome obtained after taking all these factors are fair and just.

Can my spouse/partner and I come to an agreement and sign a contract without going to Court?

You can but it is only by having Family Court orders that property settlement between parties is finalised.