



PROPERTY SETTLEMENTS - THE FIVE STEP PROCESS

Your property settlement entitlements are based on the principles set out in the Family Law Act 1975 (Cth) (the Act).

STEP 1 - IS IT JUST AND EQUITABLE?

The Court must decide whether there should be an adjustment to the parties' interests in the property available to be divided.

There are instances where the Court will consider that there is no need to change the existing property ownership of a couple; if your marriage (or de facto relationship) was a short one, and/or if have not intermingled your financial affairs the Court may not make a property adjustment order, but you may be able to enter into a binding financial agreement.

STEP 2 - WHAT IS THE PROPERTY POOL AND ITS VALUE?

Each party is under a positive obligation to make full and frank disclosure of their financial circumstances. Each party must identify their assets, including money in any bank account, real property, any debts that are owed to the party, shares in any company, any chattels, such as your jewellery or furniture.

You must also make full disclosure of your superannuation interests. The Court needs to be told about all the property that you own or have an interest in. That can also include trust property.

The concept of "property" is very widely defined in the Act. Along with your assets, you must also make full disclosure of all of your liabilities (debts).

It does not matter when you acquired the asset (whether before, during or after the relationship). The same applies for any debts or liabilities.

You should prepare a schedule setting these things out. The easiest way to do this is to list the assets and debts in separate columns. You can obtain a copy of a Form 13, Financial Statement from the Federal Circuit and Family

Court webpage. That document sets out the information that you need to disclose.

The parties may agree on what something is worth. If they cannot then the item (whether it is the family home, or a car, or shares in a private company or a business) will need to be valued by an expert.

Property is valued at the date it is being divided, not at the date of separation.

To assist in identifying the value of each asset or liability, parties can use bank statements and valuations or property appraisals (but if you don't agree on the value based on an appraisal then you will need to engage the services of a valuer to value the item of property, an appraisal is not evidence of value unless the parties agree).

STEP 3 - WHO MADE WHAT CONTRIBUTIONS DURING THE RELATIONSHIP?

Contributions to the relationship include financial and non-financial contributions (direct and/or indirect), made by and on behalf of each of the parties to the acquisition, conservation or improvement of property, as well as homemaker and parenting contributions.

The court will generally assign a percentage to each party's contributions.

Contributions are assessed at the beginning of the cohabitation (initial contributions), during the relationship and after separation. The Court may look at each asset individually or globally. In assessing contributions, the Court does not engage in a mathematical exercise. The Court must look at all of the contributions made by each party.

Homemaker and parent contributions may be given as much weight as the main income earner's financial contributions.



STEP 4 - OTHER RELEVANT FACTORS?

In addition to the contributions made by a party towards the property available to be divided, the Court must also look at a variety of other factors in deciding what adjustment (if any) should be made in favour of one party or the other. These factors are known as the 'section 75(2) factors' (referring to the section of the Act in which they appear).

The factors include:

- Whether either of you has the care of a child of the relationship;
- The age and state of health of each of you;
- The income, property and financial resources of each of you;
- The physical and mental capacity of each of you for appropriate gainful employment;
- The earning capacities of each of you and how the marriage has affected your earning capacities (i.e. increase or decrease);
- Commitments that are necessary for each of you to support yourself or any other person;
- A standard of living that is reasonable in the circumstances;
- The amount of any child support being paid;
- Whether, in all the circumstances of the case, the proposed order is 'just and equitable'; and
- Other relevant facts.

Not all section 75(2) factors will be present in every case and some may not have any at all.

After weighing up those factors, a Court might make an adjustment to the contributions-based entitlement nominated at Step 3.

STEP 5 - IS IT JUST AND EQUITABLE?

In the final stage, the Court looks at how best to divide the property based on the percentage range.

This does not involve selling everything and dividing "the cash." It is about dividing the property in a way to meet the parties' needs and realities of life.

This is the stage where the Court checks to see that the orders proposed to be made are in fact, just and equitable.

QUESTIONS?

If you require assistance with your property settlement, please do not hesitate to contact us on (07) 3172 3474 or (07) 4659 9958 reception@redhilllegal.com.au.