Factsheet - Property

What Is Property?

Under the Family Law Act (Cth) many things are considered to be property. They include land, houses, shacks, businesses including partnerships or companies, motor vehicles of any description, bank accounts, shares, household goods and furniture, tools of trade or other equipment and superannuation. Property includes everything that is capable of being owned. So long as these items have been bought during the relationship or with funds acquired during the relationship then they may constitute matrimonial property. Additionally, even if these items were owned by one of you prior to the start of the relationship, or they were left in a will to one of you, they may form part of the property settlement. Any debts also need to be calculated and taken into account in a property settlement.

How The Property Is Divided

In reaching a property settlement two very significant things have to be considered. The first is the nature and amount of contributions made by either of you. These can be financial contributions such as wages or non-financial contributions such as being a homemaker and parent. In most cases both partners will have made financial and non-financial contributions. The value of these contributions is assessed differently in each case, depending on the circumstances that existed in the marriage.

The second thing to be considered is the future needs of both parties. In considering this the court will take into account such factors as the age and health of the parties, their educational qualifications in terms of relevance to future work prospects and their need to care for any dependent children. With 50/50% as a starting point the court then weighs up contributions and future needs to determine the property settlement.

When Is The Property Divided?

You can divide property or have a "property settlement" at any time up until one year after the date of your divorce. After that time you will need to make a special application to the Family Court to seek a property settlement out of time. This may or may not be granted.

Achieving A Property Settlement

There are a number of ways in which a property settlement can be achieved. If you are both agreed, you can apply to the Family Court for Consent Orders. You ask the Family Court to accept the settlement you have reached and make orders to reflect that settlement. Provided it is fair and equitable, the advantage is that neither of you can seek a further property settlement. If you can't agree on a division of your property, then you can ask the Family Court to decide by making an application for property settlement. You may also seek the assistance of a mediation service to assist you in reaching an agreement.

Supporting The Children

If you have children, then both of you have a financial responsibility towards them. The parent who has the day-to-day care of the children will usually be entitled to regular child support payments from the other parent. The Child Support Agency calculates and usually collects these payments from the liable parent if he or she is employed. If the liable parent is unemployed and is on a Centrelink benefit, a periodic deduction of $5.00 per week is taken out of that benefit for child support.

Spousal Maintenance

You may be entitled to spousal maintenance from your partner if you can show the need for financial support and the ability of the other person to pay.

You should seek legal advice on any property or maintenance issues if you are in dispute with the other party.

RELEVANT LEGISLATION

Family Law Act 1975 (Cth)

CONTACTS

Family Court of Australia

RESOURCES

Property Settlement Check List - 88kb PDF file. A suggestion as to what information to take to your Family lawyer regarding yourself and your former spouse.
To read this file you will need Acrobat Reader which you can download for free from the Adobe website.

The information contained in this factsheet is not legal advice. If you have a legal problem you should talk to a lawyer before making a decision about what to do. The information in this factsheet is written for people resident in, or affected by, the laws of Tasmania, Australia only. All questions concerning this factsheet to info@legalaid.tas.gov.au.

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