

When you separate, you and your ex-partner will likely need to discuss if and how you will divide your finances and property – this includes your assets and your debts.

What is property?

In family law, 'property' includes **all** assets and liabilities of a relationship, including things in both person's names and in individual names. Property includes things like real estate, money in banks, superannuation, motor vehicles, mortgages, and credit card debts.

When determining property of a relationship, it does not matter who owns what – everything is counted.

What are property arrangements?

Property arrangements are arrangements for how your finances and property will be divided at the end of your relationship.

You do not have to be married to be able to make property arrangements – de facto couples can also make property arrangements.

It is also important to know that there is no set division of property under the Family Law Act 1975 (Cth) (the **Family Law Act**) – every relationship is different. A division of property is made according to the parties' circumstances, including the length of the relationship, contributions by the parties during the relationship, and each person's future needs.

When can I make property arrangements?

You can make property arrangements at any time during or after your relationship, but it is usually best to make arrangements shortly after separation. The division of property is from the date of finalising property arrangements, not the date of separation – this means that all contributions, including financial and non-financial contributions, will be relevant up until a division of property is finalised.

However, after you separate and if you need the Federal Circuit and Family Court of Australia (the **Court**) to make a decision about property, there are important time limits to keep in mind –

- **De facto couples** – you must make an application to the Court within two (2) years of your separation; and
- **Married couples** – you must make an application to the Court within 12 months of your divorce being finalised.

You should seek legal advice about the consequences if you do not observe these time limits, which can include the Court not accepting your application for property orders.

How can I make property arrangements?

You can make property arrangements informally or through formal ways such as Consent Orders, a Financial Agreement or an application to the Court for property orders. Often, property arrangements can be made through mediation and you will not have to go to Court.

Parties are required to make genuine efforts to resolve their dispute before making an application to the Court for property orders. This usually includes attending mediation, where safe to do so, or negotiating together or through or a lawyer.

Duty of disclosure

Before making property arrangements, parties should provide full and frank disclosure to each other, known as the 'duty of disclosure'. This means that you and your ex-partner will disclose your full and complete financial circumstances, including assets, debts, and superannuation.

If you are preparing to make an application to the Court for property orders, you **must** comply with the duty of disclosure – it is a mandatory duty. This duty of disclosure continues to apply once you have commenced Court proceedings until the matter is resolved.

How to divide property - the four-step process

While there is no set formula used to divide your property, the Court uses and expects parties to use the following four-step division process when making property arrangements. Before commencing the process, parties and/or the Court must consider whether it is just and equitable to divide the property pool.

Step 1 – Identify the property pool – You must identify all of the property of your relationship, including assets (i.e. houses, cars, boats, inheritances, and shares), superannuation, and debts and liabilities, to determine the property pool's value.

Step 2 – Assess contributions – You must assess each parties' contributions to the relationship, including financial (i.e. wages, inheritances) and non-financial (i.e. caring for children, unpaid work such as housework, a home-business, and the impact of any family violence). It is important to know that financial and non-financial contributions are considered equally important under the Family Law Act.

Step 3 – Assess future needs – You must assess the current and future needs of you and your ex-partner, including your ages, earning capacity, care of any children of your relationship, the impact of any family violence, wastage, liabilities, and/or housing needs.

Step 4 – Just and equitable – After assessing that a split is appropriate in the circumstances, you must confirm that the split is just and equitable. The Court will not make a property order unless it is satisfied in all of the circumstances that the proposed split is just and equitable.



We agree about property arrangements – what’s next?

If you and your ex-partner agree and want to make property arrangements, you can make either an informal or formal agreement.

Formal agreements include Consent Orders, which is an application to the Court, or Financial Agreements.

You should seek legal advice before starting any of these processes.

We don’t agree about property arrangements – what’s next?

Under the Family Law Act, it is a requirement that parties have made genuine efforts to resolve their dispute before making an application to the Court for property orders. This means that you must try and reach an agreement through private negotiation or a formal resolution process, such as mediation (known as family dispute resolution or ‘FDR’), before making an application to the Court.

You should seek legal advice before starting any of these processes.

My partner and I have just separated – do we have to wait to make property arrangements?

No – you can make property arrangements at any time before or after your separation.

My partner and I have just separated – will I lose my rights if I move out of the house?

No – you do not need to stay in the family home (if you own one) in order to make property arrangements and this does not affect any rights you may have in the property pool.

Our property is all in my ex-partner’s name – does this mean that we cannot split property?

No – property of the relationship is **all property** in one of the person’s names or in both names. You should seek legal advice to ensure that your rights are protected.

My ex-partner offered me money to not get legal help with a property split – should I take it?

You should always seek legal advice before agreeing to any payments or settlements about property. This is because some agreements may not be fair or in your best interests – a lawyer can help you to assess this.

Our property pool includes significant debt and liabilities – what will this mean?

When a property pool includes debt, people will generally make property arrangements to either split or have one person inherit the debt. Debts, such as mortgages, can sometimes be difficult to refinance, so it is important to seek legal advice and/or financial advice from a financial advisor or counsellor about ways to make property arrangements for this.

A note about domestic, family and sexual violence

If there is or has been domestic, family and sexual violence (DFSV) during your relationship – including emotional, psychological, sexual, financial, controlling, and physical violence – it will be an important consideration when making property arrangements. DFSV can affect peoples’ ability to resolve the dispute, as well as impact any assessment of contributions during the relationship and their future needs.

If you are experiencing or have experienced DFSV, you should seek legal advice.

Things to consider about property arrangements

If you and your ex-partner have children together, it will be important for these matters to be taken into account when resolving your property.

Property arrangements, including where you have made agreement, can often take time to settle, so you may need to take steps to protect your financial and personal security in the meantime. This can include making arrangements for:

- Bank account access;
- Bills that need to be paid;
- Child support;
- Where you and, if applicable, any children of your relationship will live;
- Cars for everyday use; and
- Stopping the sale of any properties.

You should seek legal advice if you need help making these arrangements, including if your ex-partner is restricting your access to property or money.

Do you need legal advice or assistance? You can contact TEWLS for a free appointment.

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