



Etheringtons
Solicitors

YOUR GUIDE TO PROPERTY SETTLEMENT AFTER SEPARATION

2026 Edition

Your Guide to Property Settlement



Dividing property after a relationship breakdown is almost never a straightforward 50/50 split. Australian family law lays out a defined four-step framework for determining who receives what, and since 10 June 2025 that framework appears in the *Family Law Act 1975* ("the Act") in clearer terms than before.

This guide takes you through each stage and addresses the two most common misconceptions about property settlements: that assets are valued as at separation **(they are not — it is the settlement date that counts)**, and that each partner is entitled to an equal share as a matter of fact **(they are not)**.

What Counts as Property in a Settlement?

A property settlement encompasses everything you and your ex partner own, owe or hold an interest in, regardless of whether it was acquired before the relationship began.

Your property pool generally includes:

- The family home and any other real estate
- Vehicles, household items and other personal belongings
- Bank Savings, shares and other investments
- A business or business interests
- Superannuation entitlements
- Debts such as the mortgage, credit cards, personal loans and tax liabilities



Pets are now dealt with under their own separate rules rather than as ordinary property.

Does the Four-Step Process still apply even if we agree?

The four steps below originate from section 79 of the Act and describe how a Court approaches property division.

Most couples never end up in a courtroom — they negotiate a settlement between themselves. Even so, the same four-step approach applies, because the Court will only sign off on a private agreement once it is satisfied the outcome is fair to both parties.

Understanding these steps is essential when determining whether a proposed deal is actually reasonable.

FOUR-STEP PROCESS

01

Identify and Value the Property Pool

The starting point is compiling a full list of every asset and liability and assigning each a value. This is where mistakes commonly happen: **the pool is valued as at the date of agreement or the court hearing - not the date of separation.**

That distinction matters. If property values have risen since you moved out or if either of you has come into an inheritance, that change will typically be captured within the settlement rather than excluded from it. Delay works against neither party consistently — it can cut either way, and there is no way to know which party will benefit from it. That unpredictability is a strong argument for resolving matters promptly.

Superannuation is valued at this stage according to a method set by a prescribed regulatory method. Account-based funds are generally valued at their current balance, while defined benefit schemes and self-managed funds are more complex and typically call for expert valuation.

Honesty from both sides is essential here. As of 10 June 2025, the obligation to provide full and frank financial disclosure is now written into the Act itself, applying from the start of settlement preparations right through to finalisation.

02

What Did Each of You Contribute?

The second step examines what each partner brought to the relationship, and this covers considerably more than most people assume.

Contributions the Court take into account include:

- Financial contributions, such as income, gifts and inheritances
- Non-financial contributions, such as renovating the house or unpaid work in a family business
- Raising children and managing the household

Rather than tallying contributions item by item, the court considers the relationship holistically and reaches a percentage split. Since June 2025, the Act now explicitly requires courts to factor in whether family violence made it harder for one partner to contribute as they otherwise would have — for instance, by being prevented from working.



03

What Will Each of You Need in the Future?

The third step shifts the focus from past contributions to current and future circumstances, considering how each person will be positioned once the settlement is complete.

Relevant considerations include:

- Age and health
- Income and earning capacity
- Who will care for any children under 18, and their housing needs
- Current and future financial obligations
- The economic and financial effect of any family violence
- Whether either partner has recklessly wasted money or assets



04

Is the Overall Result Just and Equitable?

The final step checks everything decided so far. A court cannot make a property order unless satisfied that doing so is just and equitable given all the circumstances.

It's a common misconception that separation alone entitles someone to a share of the property pool. That isn't correct. In *Stanford v Stanford [2012] HCA 52*, the High Court held that a court must be satisfied it is just and equitable to make an order at all, before it even considers how to divide the property. In practice, this threshold is usually met once a couple has separated and stopped sharing use of their property — but it is never assumed automatically.

This test operates throughout the entire process rather than a final checkpoint, and it applies in both directions: the court will not interfere with existing property rights unless justice demands it, and any order made should go no further than the circumstances require.



How Do You Make a Property Settlement Legally Binding?

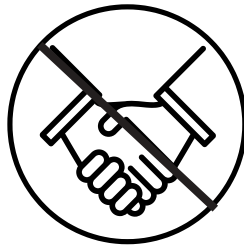
Reaching an agreement is only half the process. An informal arrangement — even one written and signed before a JP — carries no legal force and will not protect either party from having to go to court later.

There are two routes to formalising a settlement:

1. **Consent Orders.** Your agreement is submitted to a court Registrar for approval, using the same just and equitable test a Judge would apply.
2. **A Financial Agreement.** This is a private contract that removes the court process entirely. Both parties must obtain independent legal advice for it to be valid, and it remains open to being set aside in certain limited situations.

Formalising a settlement also unlocks stamp duty and capital gains tax concessions unavailable through an informal arrangement.

What If You Can't Reach Agreement?



Not every settlement can be worked out directly between the parties. Before filing in Court, **you must make a genuine attempt to resolve the dispute**, usually through family dispute resolution or mediation, and exchange financial documents unless an exception applies (such as urgency or family violence). General guidance on this process is available on the Federal Circuit and Family Court of Australia website.

If an agreement remains out of reach, litigation is an option. The court will only make orders that it considers fair to both parties, which **may not align with what either side wanted**.

Litigation is also costly, involves delays, and is hard on everyone involved, particularly children. For smaller asset pools, a streamlined court pathway exists to resolve matters faster and at lower cost, so it is worth asking a family lawyer whether your matter qualifies. You can read more about this pathway on the Federal Circuit and Family Court of Australia website.

How Long Do You Have to Settle?

Time limits depend on the type of relationship:



- If you were married, you have **12 months** from the date your divorce order takes effect.
- If you were in a de facto relationship, you have **two years** from the date you separated.

Once these deadlines pass, the court's permission is required to proceed, and this is only granted where genuine hardship would otherwise result. You don't need to wait for a divorce to begin the settlement process, it can start any time after separation.

An informal agreement that was never formalised does not pause the clock. If you and your former partner agreed on something privately and it is no longer being followed, or there is a dispute about what was actually agreed, you may find the time limit has already passed. Needing the court's permission to proceed is a common and avoidable pitfall.

Contact Us

Whether negotiated privately or decided by a court, a property settlement follows the same four-step process, and the pool is always valued at the date of settlement, not the date of separation. Given the strict time limits that apply, **seeking advice early generally results in more options than waiting does.**

If you're separating and need guidance on reaching a fair property settlement, our family lawyers can walk you through each step and help formalise an agreement. Contact us today to arrange a consultation.

