

PROPERTY AND MAINTENANCE

A "Property Settlement" is the legal term for property division between married and de facto couples at the end of the relationship. "Maintenance" is money paid to you by your former partner to assist with your support after separation. The Family Law Act (the Act) sets out the rules for how this occurs. You can apply to the court for orders or come to an agreement about property and/or maintenance at any time after separation (within the time limits below).

Time Limits

You will lose your right to court orders, other than in exceptional cases, if you do not start proceedings in court within these time limits:

- Married and divorced: you have 12 months from your divorce order date to start court proceedings.
- De facto relationships ending after 1st March 2009: you have two years from your separation date to start court proceedings.
- De facto relationships ending before 1st March 2009: different rules apply so seek legal advice ASAP.

What is considered property?

Property can include anything of value such as a house, land, superannuation, livestock, car, furniture, artwork, personal property like jewellery and tools, bank accounts, shares, insurance policies and business interests.

Property purchased during the relationship, will be considered as property of the relationship regardless of name or legal ownership.

Generally (although not always) in short relationships, property that was owned by you before the relationship started will remain yours. However, with long term relationships and certain types of property, the boundaries become less clear. It is likely all property will be considered.

How are property settlements worked out?

The court and lawyers use a four-step process:

1. Work out the net value of the property (value of assets less any debts).
2. Consider the contributions to the property pool that both parties have made. Contributions include financial and non-financial such as caring for children, renovation, decoration or unpaid work for a family business. In limited cases, family violence, gambling and substance abuse can be considered. Legal advice should be sought.
3. Consider the future needs of both people. This is about anticipating the financial needs of each person in the future for example, ability to work; likely income, property and resources; age and health issues; responsibilities for children; the length of the relationship and whether this has impacted on an ability to work.
4. Consider if the proposed settlement 'just and equitable' or fair in all the circumstances.

Are all de facto relationships covered by the Family Law Act?

The Act now applies to de facto relationships ending after 1st March 2009, provided one of the following applies:

- The period or total periods of the defacto relationship is at least 2 years; or
- There is a child from the relationship; or
- There were substantial contributions made during the relationship and serious injustice would result without court orders; or

- If the relationship was registered in a State or Territory which allows this.

Spousal and de facto maintenance

Spousal and de facto maintenance is different from child support. It is money paid to assist with your support after separation. It is not automatic. You must prove you are unable to support yourself adequately (eg. caring for children, lack of qualifications, ill health or disability) and your ex-partner can afford to pay the maintenance. Generally, maintenance orders are only for a limited time and can be periodic payments or a 'one-off' lump sum (usually at the time of property settlement). Maintenance could affect your entitlement to Centrelink so this should be checked.

What about debt?

Property settlements should, where possible finalise debt, for example, by selling assets and paying them out or transferring the debt into one name. Until then, you are legally responsible to repay any debts in your name, including joint debts. At separation, you should

try to reach an agreement about which debts each of you will pay. Often the person who retains the asset pays for the debt at least until the property settlement is finalised. If a debt in your name goes unpaid, your credit rating will be affected and it might be difficult to borrow money in the future.

Urgent court orders can be obtained in some circumstances if you believe the other party might sell or dispose of property or if you are in need of immediate financial support. You should obtain legal advice about this.

You can find more information in our Separation Booklet at <http://www.wlsq.org.au/resources/legal-toolkit>.

This info sheet was developed with the assistance of an *Arrow Energy Brighter Futures community grant*.

Legal Advice:

Women's Legal Service at www.wlqs.org.au or 1800 677 278
North QLD Women's Legal Service at www.nqwls.com.au or 1800 244 50
QLD Community Legal Centres at www.qails.org.au
Legal Aid Queensland at www.legalaid.qld.gov.au or 1300 65 11 88

Domestic Violence Assistance:

DV Connect (24hrs/ 7days) 1800 811 811
QLD DV Services at www.qlddomesticviolencelink.org.au
Call 000 for emergencies or Policelink (non-emergency) 131 444 (24/7)
www.police.qld.gov.au/apps/stationlocator/

Women's Legal Service Disclaimer: This info sheet contains legal information only. Legal advice from a lawyer should be obtained. We do not accept any responsibility for any loss suffered by any person who relies on the information contained herein. The material in this information sheet is protected by Australian copyright law. All rights reserved.