

Property Settlement - The Four Step Process

By Townsville Family Lawyer, Jodi Dingwall, 7th May 2021.

When separating from a former partner or spouse there is usually a need to talk about how you are going to divvy up your property. This includes your assets, debts and superannuation entitlements.

It might seem overwhelming – but it doesn't have to be.

When I meet a new client to talk about property settlement with their former spouse, *before* I give specific advice about their situation, I take the time to firstly explain the Four Step Process the Court follows to determine the division of property.

In this two-part article, I will explain this process

The Four Step Process is based on various sections in the Family Law Act 1975 (Cth) that a Judge must apply when deciding how to divide property.

Walking a client through this process is important as this is the basis on which a family lawyer gives advice to a client about their range of entitlements in a property settlement. It also helps to identify issues and how to best move forward.

When giving advice about property, a family lawyer should be benchmarking their advice against what a Judge would decide if the matter could not settle, and it went to Court.

The Four Step Process for Property Settlement

Step 1 - Identify and value the property pool. Assets, liabilities, superannuation and other financial resources that are held in joint names and individual names are identified and valued.

Step 2 – Determine the parties' contributions to the property of the marriage/relationship.

Step 3 – Consider if there are any future needs components for either party.

Step 4 – Look at what is a likely, just and equitable result.

Step One

This is where we identify and value the property pool and everything that is available for division in your property settlement.

One of the first things your solicitor will do is prepare a Balance Sheet or a Schedule which lists the assets, the debts and the financial resources (this includes the value of superannuation entitlements) of you and your former partner/spouse. It is necessary to know what there is to divide.

It will save you time and money if you are prepared. Ideally, when you meet with your solicitor for the first time, have a list of these items. The list should contain the address of your home and any other real estate; details of investments; bank accounts and balances; and any debts (mortgages, loans and credit card balances); etc.

[Here](#) is a link to the Balance Sheet used by the Family Court of Australia and Federal Circuit Court of Australia.

If an agreement cannot be reached between you and your former partner/spouse about the value of the assets, they will need to be valued.

If an asset has been disposed of or wasted before property settlement, it may be necessary to give this asset a notional amount and addback the value of this asset to the property pool.

Step Two

This is where we look at the contributions made by the parties:

- at the commencement of the relationship/marriage,
- during the relationship/marriage, and
- after separation.

The time a contribution was made and its impact on the property pool is very relevant.

Consideration is given to the:

- direct and indirect financial contributions made by the parties,
- non-financial contributions made by the parties,
- contributions to the welfare of the family, including contributions in capacity of homemaker or parent. These are referred to as homemaker and welfare contributions.

There are times where the contributions made by both parties during a relationship/marriage may be considered equal and there are times where one party may have made greater contributions that warrant an adjustment in their favour.

One of the first steps is to identify what assets and liabilities each person had at the beginning of the relationship. Sometimes, both people will have had assets of a similar value and have some household furniture, a car and some cash. Other times, one person may have had assets that were of a significantly greater value than the other person. For example, one person may have owned a house, shares or superannuation.

If one person had significantly greater assets at the beginning of the relationship, depending on the circumstances of the case, this will generally be reflected in their favour when a settlement is arranged. This is an even stronger likelihood if the relationship was for a short period of time.

The next step is to look at what contributions, both financial and non-financial and direct and indirect, each person made during the relationship.

Financial contributions may involve a salary from employment or income from business activities.

Non-financial contributions may involve work around the house/yard, caring for the children or renovations/improvements to the home or a property. The court will also consider contributions made by members of the person's family such as financial gifts or babysitting.

The role of breadwinner and care provider are generally weighted evenly.

There are also contributions which are called "windfalls". These include inheritances, compensation payments, redundancy payments. These are attributed to the person that they relate to.

Contributions are always assessed on a case-by-case basis. Every situation is different.

Step Three

This is where we look at whether either of the parties have future needs factors that warrant an adjustment being made in favour of one of the parties to help them continue on after separation.

Often one party will be in a better financial position than the other at/after separation.

For example, one person may have a greater earning capacity than the other. Or, one person may have to be the primary care provider of three young children.

Again, this is assessed on a case-by-case basis.

The size of the property pool will also be a factor when determining how great that adjustment might be. It is fair to say, the smaller the property pool the larger the adjustment. And conversely, the larger the property pool, the smaller the adjustment.

The matters that are looked at when determining whether there should be an adjustment in favour of one of the parties include:

- The age and health of the parties.
- The income, property and financial resources and physical and mental capacity for employment of the parties.
- Whether a party has care and control of children of the relationship/marriage.
- Financial commitments necessary for support.
- The eligibility for a pension or superannuation.
- The standard of living reasonable in the circumstances.
- The effect the duration of the marriage has had on a parties earning capacity.
- The financial circumstances relating to cohabitation with another person – this is where one or both parties are cohabitating with another person or have remarried; and
- The child support commitments of the parties.

Step Four

This is where we look at the practical effect of any proposed settlement. This is where the Court will consider whether the proposed settlement is just and equitable in all the circumstances. It includes consideration of how the settlement should be carried out and the long term effects of this on each party.

Where to from here?

Everyone's situation is unique. It is always sensible to consult with a family lawyer to discuss your situation and obtain advice about how this process specifically applies to you.

OSheaDyer Townsville has experienced family lawyers who practice exclusively in family law.

We offer first appointments at a low fixed fee so everyone can afford to obtain advice about their situation.

Please call us to make an appointment. 47 725 155.