

# RELEVANT LEGAL ISSUES IN FAMILY LAW PROPERTY MATTERS

## Property Settlement

The Family Court in deciding the division of property takes into consideration essentially two broad factors:

- How each of you have contributed to the acquisition, conservation and improvement of the assets including both direct and indirect contributions and contributions as a homemaker.
- The future needs of both of you – which includes your ability to earn an income and your responsibility for others.

In considering the contributions you each have made, the longer your relationship the more the Court particularly looks at lump sum contributions which usually includes what you each contributed at the beginning of the relationship and any lump sums that came in during the relationship such as inheritances, gifts, lottery wins and compensation payments.

## Superannuation

In deciding your property settlement the Court also considers superannuation to be property.

The Family Law Act and Rules provide a mechanism by which we are able to obtain information from your former partner's Super-

annuation Fund (without the knowledge or permission of your former partner) which will enable us to seek a valuation of the superannuation.

- Calculations can be made to ascertain the valuation of the superannuation for Family Law purposes.
- By agreement, or by Court Order, superannuation can be split between the parties as part of a Family Law settlement.

## Future needs

Having decided the percentage that you each contributed, the Court then turns to consider whether the percentage for the division should be adjusted to take into consideration your future needs.

In doing this the Court looks at many factors but especially at your responsibility for others and your ability to earn an income. These factors include:

- The age and state of health of the parties.
- The income, property and financial resources of the parties.
- The physical and mental capacity of the parties for appropriate gainful employment.



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- The commitment of the parties to support people they have a duty to maintain.
- The standard of living that in all the circumstances is reasonable.
- The duration of the relationship and the extent to which it has affected the earning capacity of the parties.
- The financial circumstances of any person with whom a party is cohabiting.

## Time limits

There is only one time limit that is relevant in Family Law property matters, that any application for a property settlement must be commenced within 12 months of your divorce being granted.

Therefore, until a divorce has been obtained then there is no time limit.

## Divorce

Divorce is the official ending of a marriage.

The only requirement for a divorce is the “irretrievable breakdown” of a marriage which is proved by the husband and wife having been separated for 12 months, which can include being separated in the one house.

## Wills

As you have separated from your partner, you should immediately make a new Will as you have had a significant change to your circumstances.

You may wish to discuss this with your family lawyer or make an appointment to see O’Farrell Robertson McMahon Director Russell Robertson an Accredited Wills & Estate Specialist or any other lawyer in our Wills & Estates team.

It is important to remember that once a divorce is granted any gift to your former partner is void.

## Compulsory Dispute Resolution

The Family Law Rules require that before going to Court, each party must make a genuine effort to resolve the dispute by participating in dispute resolution.

Dispute resolution includes mediation and negotiation. In many cases this is the best way to approach a matter due to the increased costs and delays associated with going to Court.

There are certain exceptions to this dispute resolution requirement. The requirement does not apply to cases that are considered urgent, matters that involve allegations of fraud or where there is a “genuinely intractable dispute”.

A compulsory brochure which sets out the dispute resolution process is included in this Information Pack.

## Prescribed Pamphlets

The court also requires that you read the brochure *Marriage, Families & Separation*.