



Does my ex-partner automatically get half of everything in in property settlement?

Date: Monday October 16, 2023

There are many stories in the community about relationships breaking down, and there is an automatic assumption that the parties split the [asset pool](#) 50/50. However, in reality, the Family Law Act 1975 (“the Act”) doesn’t state any assumption for equal division in [property settlement matters](#). In this blog, we look at the ‘50/50’ myth and explain the actual rules for property settlement in Australia.

The 50/50 myth about family law property settlement

There are a number of myths about the law (not just family law) in Australia, which have largely been the result of media portrayals of international legal systems.

There are some jurisdictions around the world, like the US or New Zealand, where property settlements are somewhat handled with a presumption of equal division. This is not the case in Australia.

So how does property settlement in Australia work?

The relevant Court for family law matters is the [Federal Circuit and Family Court of Australia](#) (“the Court”).

Even if your property matter doesn’t end up in litigation (a dispute to be determined by the Court), family law practitioners (e.g., lawyers or mediators) still approach property settlements in the same fashion as if you were going to Court. This is the case if you want to formalise agreements you reach with your former partner, like, for example, a [Binding Financial Agreement](#) for financial matters or [Consent Orders for parenting matters](#).

Under Australian family law, the standard that must be met for property settlement is a ‘just and equitable’ division of the property

pool. Notably, this does not always mean 'equal'. This test is set out in section 79(2) of the Act and requires the Court to be satisfied that, in all of the circumstances, it is "just and equitable" to make the property order.

What does the Court consider in property settlement matters?

Matters that the Court will take into consideration are set out in section 69 of the Act and include:

assets and liabilities that the parties held individually and collectively as a couple;

financial (direct and indirect) and non-financial contributions over the duration of the relationship;

future earning capacity of each of the parties; and

various other considerations listed in section 75(2) of the Act, including the age and health of each of the parties.

What about *de facto* relationships and property settlement?

For the majority of states and territories in Australia, de facto relationships are legally recognised under the Act as being:

'A relationship with another person if you are not legally married to each other, you are not related by family, and you have a relationship together as a couple living together on a genuine domestic basis'.

The principles that govern property settlement for a formerly married couple are largely the same as those that apply to de facto relationships. However, in Western Australia, the rules relating to a de facto couple property settlement differ and are set out in the Family Court Act 1997 (WA).

What else should you consider when negotiating property settlement?

Parenting considerations

If there are children of the relationship, you should also consider how the ongoing care and [parenting responsibilities](#) will be arranged now that you have separated. Care of the children is another factor that will be taken into consideration.

Spousal maintenance and child support entitlements and obligations

You should also try and resolve any related financial settlements like child support or ‘spousal maintenance’. Spousal maintenance is any financial payment(s) made by one spouse for the benefit of the other to assist that spouse after separation.

You can read more about these entitlements and obligations in our blog, [“Difference between child support and spousal maintenance”](#).

Property settlement by negotiation is better than going to Court

It is always best for both parties to negotiate property settlement between themselves on how assets of the relationship should be divided. We encourage anyone beginning their negotiations to seek legal advice from a qualified specialised family lawyer to enhance these conversations. You don’t know what you don’t know!

[Contact an experienced family lawyer: 08 6245 0855](#)

If it’s safe to do so, you could start these conversations with the other party as soon as you are ready. You do not need to wait for a [Divorce Order](#), for example, to be granted. You might start by exploring what the property pool is, what each of you has contributed, and what you are seeking to retain.

If you reach an agreement that you believe is just and equitable, then you should consider formalising this by applying for Consent Orders in the Federal Circuit and Family Court of Australia (“the Court”). We highly recommend speaking to our family law team as the application can be hard to navigate for a first-timer.

[Contact an experienced family lawyer: 08 6245 0855](#)

Note: formalising your property settlement agreement with Consent Orders is an administrative process, meaning you (and your lawyer) won’t have to attend Court.

Risks of not formalising your property settlement with Consent Orders

While it may be tempting to leave your agreement without formalising it, please know that any agreement will not be binding. This means that the other party may renegotiate a more favourable settlement at a later date. There are also other benefits to formalising an agreement, such as stamp duty exemptions on the transfer of real estate.

New pre-action procedure in family law disputes that end up in Court

If you have been unable to come to an agreement with your former partner about property settlement, you may have to take your dispute to Court.

There have been some recent changes to the pre-action procedure before you can apply to the Court for a determination on financial disputes.

The Family Law Rules require prospective parties to genuinely try to resolve their dispute before starting a proceeding in the Court. Unless exempt, parties must do certain things, like participate in [dispute resolution](#) and comply with the [duty of disclosure](#) by exchanging relevant documents. Anyone who does not comply risks facing serious consequences, including [costs being awarded against them](#).

Once you can provide evidence (e.g., Genuine Steps Certificate, which is a certificate confirming each party's compliance with pre-action procedures), then you can make an application to the Court for financial orders.

Timing of family law property settlement

As mentioned above, you don't need to wait until you are divorced or separated or a specific amount of time before you can start negotiating a property settlement. In fact, we highly recommend beginning those conversations before you apply for divorce.

If you get divorced and haven't resolved your property settlement yet, you must apply to the Court for property matters within 12 months of your divorce being granted.

If you were in a de facto relationship, you must apply to the Court within two years of the date of separation.

If you do not apply within these time frames, you must seek leave of the Court (permission) to be able to apply for property orders out of time. Permission isn't always granted, so it's important to consider your options early on.

You can read more about this in our blog, ["Time limits for family law property settlement"](#).

How a family lawyer can help

When a couple separates in Australia, their property is not automatically split 50/50. Of course, you and the other party may agree, or the Court may decide that the property will be divided in this way. The 'just and equitable' test can be hard to understand and sometimes it may not feel 'just' to one or both parties.

Having specialised and highly experienced family lawyers working with you will assist you in making informed decisions that have security and longevity. Contact us to discuss your circumstances, and we can help determine the best steps forward.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.