MEILLON & BRIGHT LEGAL

Property valuations in family law proceedings

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For most separating couples, the family home is their most valuable asset in both a sentimental and monetary sense. Its precise valuation is paramount in ensuring a fair distribution during a family law dispute. So, what happens when your ex doesn't agree with your estimated value? This blog will look at the role of property valuations, including the family home and any other assets like other real estate, vehicles, jewellery, shares etc, in family law proceedings.

What is considered property when negotiating property settlement?

The term "property" is used in family law to cover all financial assets owned either individually or jointly by the parties involved. Put simply, it includes anything of monetary value that is relevant to the relationship, and that will be considered during property settlement negotiations after separation. In some cases, it can include property acquired before the relationship commenced and even during the period of separation.

During your financial settlement, one of the first things you will be asked to do is draw up a list of assets and liabilities; an asset pool.

This includes, but is not limited to:

- real estate;
- motor vehicles;

- caravans, boats, etc;
- shares;
- business and partnerships;
- furniture and household contents;
- jewellery;
- superannuation;
- mortgages;
- credit cards;
- personal loans; and
- tax debts.

For assets such as bank accounts, up-to-date statements and current balances can help establish the value. For other property such as real estate, motor vehicles, shares and business interests, the value that is taken is the “market value”.

What is market value?

Market value is generally understood to be what someone is prepared to pay for something at that point in time.

Many people make the mistake of thinking the value used in family law proceedings is the amount that was paid on the date of purchase. Unless the parties agree, this is not generally the case, as the value of assets depreciates over time.

Using property appraisals for property settlement

When trying to understand the value of real estate, a good starting point is to get a property appraisal. An appraisal is when a real estate agent provides an estimated value of the property based on their understanding of the current market.

For the purpose of a family law property settlement, you should aim to get 2 or 3 appraisals. This is so you can get a reasonable understanding of the property's value.

Appraisals take into consideration things like the state of the property, the number of bedrooms/bathrooms, and recent sales in the area. They can tend to be a bit higher in value because the agent wants to motivate you to list the property with them.

It's important to highlight that a property appraisal is not a proper valuation and may be disputed by your former partner.

Using property valuations for property settlement

If the other party disputes the value provided in the appraisals, the solution is to obtain a valuation from a property valuer registered with the Australian Property Institute.

The valuer can be nominated by the parties, or a valuer can be requested by the Court. It is advisable to nominate a panel of valuers (usually 3) and for the other party to nominate their preferred valuers.

Once you and the other party have agreed on a valuer, both parties collaboratively instruct the valuer through a jointly prepared letter.

The valuer performs an on-site property inspection, thoroughly assesses the property, and then produces an independent report. Their report is usually very detailed and gives the most accurate value of the property, which can be used in property settlement negotiations without the need to actually sell the property.

A valuation is more formal than a property appraisal and can be relied upon as expert evidence in court proceedings. This means that any valuer that is instructed by the parties must adhere to single expert witness rules. The property valuer should not communicate with the parties directly (unless a party is self-represented) and they must be impartial, independent, objective, and professional.

Other assets that may need valuing in family law matters

Motor vehicles

Similarly, valuations for motor vehicles can be researched on the "Red Book" website. A "Red Book" valuation, like an appraisal, is a good starting point.

If the other party disputes your motor vehicle valuation, then you will need to engage an experienced motor vehicle valuer who will do a valuation for a fee.

Jewellery and household effects

Jewellery valuations are often the most disappointing for people. Usually, the market value is significantly less than what it costs to buy and what it is insured for. It is not uncommon for jewellery to have a market value of 25% or 30% less than what you paid for it. Like all other property, if you and your former partner cannot agree on the value of jewellery, you may need to engage an expert jewellery valuer.

The majority of separating parties can agree on a general value for their furniture and household effects. However, household effects can be valued fairly quickly and inexpensively if you can't agree.

Business interests and shares

There are business valuers or external accountants that can be appointed to value a business or shareholding.

To adequately value a business, the valuer will need access to business information such as ASIC searches, tax returns, financial statements, agreements, and constitutions.

Valuing a business is far more complicated than valuing other property so, if you don't agree with the outcome, we recommended instructing a second valuer or seeking legal advice about your options.

Superannuation

There are many types of superannuation interests, but the most common is an accumulation interest. The parties can rely on the balance as detailed in their superannuation statement, so there is no need for a formal valuation.

Other types of superannuation interests, like a defined benefit fund, have complex valuation formulas. We recommend that you engage an actuary to value these sorts of interests because the balance detailed in the superannuation statement may not be accurate.

You may need to instruct valuers if you or your ex hold an interest in a self-managed superannuation fund. In some instances, these funds own real estate or other types of assets so you might be required to obtain multiple valuations.

Who pays for property valuations in family law proceedings?

In most cases, valuers won't release their report until their invoice/s have been paid.

The cost of the valuation is usually shared equally by the parties. If your former partner refuses to obtain a valuation or if you disagree with a valuation and wish to obtain a second opinion, you will be responsible for the cost.

How can a family lawyer help?

Don't let uncertainty about the value of your assets complicate your property settlement. We can help connect you with experienced professionals to ensure accurate property valuation for all your property, which will lead to a more fair and equitable property settlement.

If you have any questions relating to the valuation of an asset or property settlement in general, please get in touch with one of our experienced family lawyers.
