



Global vs asset-by-asset approaches to family law property settlement

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Following separation, parties to a relationship are entitled to divide the assets of a relationship by way of [family law property settlement](#). Most commonly, parties will pool all the assets and liabilities before commencing negotiations for the property settlement. Another less common approach is the asset-by-asset approach, where Courts consider the division of property by looking at each individual asset. In this blog, we explore the key differences between “global property settlement” and “asset-by-asset” property settlement.

What is the global approach to family law property settlement?

The process of a family law property settlement usually involves ‘pooling’ the parties’ property, before assessing and calculating each parties’ contributions as a percentage.

This means bundling together all of the assets, liabilities, superannuation and financial resources at the time of separation and creating one big balance sheet. The overall pool is then divided in accordance with the percentage contributions. This approach is preferred and commonly known as the ‘global approach’.

What is the asset-by-asset approach to family law property settlement

It is open to the Court to also consider the contributions of each party with respect to individual items of property.

This alternative approach is known as the ‘asset-by-asset’ approach. The asset-by-asset approach is where the Court looks at contributions and division of property of the relationship with respect to individual assets rather than asset pooling.

The High Court has confirmed that either approach is acceptable and has wide discretion as to what should be included or excluded from the asset pool.

Understanding the asset pool is crucial no matter which approach is used. You can learn more about the asset pool after separation in our previous blog, [“Understanding the total asset pool in property settlement”](#).

When will the asset-by-asset approach be applied?

The asset-by-asset approach is the less common approach, however, the Court has considered this approach to be appropriate in circumstances where:

the [marriage of the parties was considerably short](#);

assets were owned by a party prior to cohabitation and/or marriage;

the parties' maintained a strict division of assets and financial affairs;

an [inheritance was received by a party later in the relationship](#); and/or

there was a [significant amount of superannuation](#).

However, the Court has also noted that these factors are not definitive of the Court applying an asset-by-asset approach to property settlement. For example:

a short marriage may not automatically lend itself to considering contributions with respect to individual assets; or

the specific circumstances of an inheritance may cause it to be included in the total asset pool for distribution.

A practical example of where the Court may adopt an asset-by-asset approach:

Jack and Sue commence cohabitation when Jack is 67, and Sue is 66.

At the time, Jack has no assets of any significance. Sue has a home from a former marriage valued at \$7,000,000.

The parties stay together for 4 years.

During this time, Jack does not work. He spends the day playing golf.

Sue continues to work full-time, earning an income of \$200,000 per annum.

Sue is the sole provider to Jack.

The parties separate.

Sue files an application for the home to be assessed solely as hers on an asset-by-asset approach.

The Court agrees.

It should be noted that the above is an example only. Our Family Court system is a highly discretionary jurisdiction where even two cases with near identical facts may be decided differently and lead to significantly different outcomes.

Will my property settlement be a global or asset-by-asset approach?

The short answer is – it depends. There is merit to both approaches.

While the global approach is preferred and often more common, there is a myriad of circumstances and contributions that the Court must consider in concluding which approach is more appropriate on a case-by-case basis.

Get help from a family lawyer

If you are separating from your partner and have concerns in relation to how your property settlement may be determined by the Court, you should seek advice from a lawyer experienced in family law.

Our team of family lawyers can assist you with any property settlement issues after separation or any other questions you may have about your family law matter.

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.