



Understanding the total asset pool in property settlement

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In family law [property settlement matters](#), an asset pool is the total value of all the assets of the relationship. This includes, for example, the family home, investment properties, cash in the bank, shares, cars, boats, caravans, superannuation etc. Understanding the full makeup of your asset pool is crucial to getting your fair share in property settlement after separation.

We've found that often in a relationship, one party was responsible for managing the finances. They were responsible for paying all the bills, managing online banking and were the main point of contact with the financial adviser and accountant.

The above scenario is not uncommon. Often one party is not interested in financial matters and is content with the other party taking responsibility for all financial issues of the relationship.

Upon separation, the party with limited knowledge of the finances is at a significant disadvantage when it comes to understanding ownership of property and ultimately negotiating appropriate property settlement terms to protect their future.

Below are some of the steps that should be done by a party with limited knowledge of their financial circumstances to adequately inform and equip themselves for their property settlement negotiations.

Conduct various searches

Various searches should be undertaken to identify ownership of property and any corporate interests of both parties or the commercial entities owned by the parties.

This includes searches with the Australian Securities and Investment Commission (ASIC) for corporate interests and Landgate (in WA) and Land Registry Services (NSW) for real property ownership. This will protect you in circumstances where for example, you

may be aware of the family home, but you may not be aware of certain investment properties.

Undertaking the above searches will assist with understanding and preparing a structure of the various corporate interests of the parties and the various entities owned by the parties and, importantly, confirm the legal ownership of real property.

Request disclosure

In family law matters, each party has an obligation to make [full and frank disclosure](#) of their financial circumstances when negotiating a property settlement. This obligation is a positive obligation.

Parties are required to provide the other party with various documents and information, including:

bank statements;

loan statements;

current superannuation statements (noting there may be multiple funds);

tax returns; and

financial statements of any trust or company owned or controlled by the parties.

The first step is to request your former partner provide you with the above documents and information.

If your former partner refuses to provide disclosure, then an application to the Court may be required to obtain orders for specific disclosure and [issuing subpoenas](#) for those documents.

Once disclosure documents and information have been provided, a balance sheet can be prepared which lists the assets, liabilities and superannuation of you and your former partner.

Valuation of properties

If you and your former partner do not agree with the value of a specific asset, such as the former matrimonial home or the value of a business, you can seek for it to be valued.

You and your former partner would jointly engage [an independent valuer to prepare a valuation report](#).

Once the valuation report is produced by the joint expert, if there are questions regarding the valuation report, the family law rules enable a party to convene a conference with the expert or send them a list of written questions so they can clarify their report.

You may wish to engage your accountant to review any expert report. They will be able to help you understand it and identify any areas of the report that should be clarified.

Gifts and loans

It's not unusual for family members to gift or loan money or property. This may be for a deposit on a home or assistance with a new business venture, or simply interpreted as a wedding gift.

If you, as a couple, were beneficiaries of something like this, it's crucial you understand whether it was in fact, a gift or a loan.

The difference is critical in property settlement negotiations.

You can learn more about the importance of this in our blog, ["Is it a gift or a loan? The difference could be critical in your family law dispute"](#)

Get help from a family lawyer

If you have limited knowledge of your financial matters, it is important to seek advice from a lawyer experienced in family law to guide you through the settlement process as soon as possible.

Meillon & Bright also works with a number of [experienced professionals, including commercial lawyers, accountants and financial advisors](#), to consider all aspects of your family law matter to suit specific personal and financial circumstances for a variety of situations.

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.