



Property and tips for advancing your property matter



What is considered 'property'?

Property includes all assets (where an item is owned) and liabilities (where money is owed) of a relationship.

It may include:

- Real estate including the family home or land.
- Cash or money in bank accounts.
- Cars or other vehicles.
- Superannuation.
- Investments.
- Shares.
- Insurance policies.
- Other assets like furniture and artwork.
- Debts like credit cards, mortgages, loans and/or personal debts.
- Companion animals. See our factsheet [here](#).

Property includes assets and liabilities that are owned individually, with another person, or by a company or trust.

What is a property settlement?

A property settlement is the legal term for the division of property at the end of a marriage or de facto relationship.

In Australia, there are laws about how property should be divided if you separate. These laws are set out in the Family Law Act. It is important to get legal advice about your entitlements before agreeing or signing any documents. There are many factors that need to be considered when deciding how property should be divided, including when children are involved. It may not matter who owns the property, who bought the property or who incurred the debt. You may still be entitled to a property settlement even if you did not work or contribute financially to the property.

A property settlement can be achieved by reaching an agreement with your former partner. If you are unable to reach agreement, you can apply to the court seeking property settlement orders (provided you are within the time limits set out below).

Do we have to reach an agreement or go to court by a certain date?

There are time limits within which you must start a case in court to divide property or assets or sort out your finances

These time limits are:

1. If married, an application for property division or maintenance must be made within 12 months of a divorce order becoming final.
2. If de facto, an application for property division or maintenance must be made within 2 years from when the de facto relationship ends.

If the case is not started in court within the time limit, the right to pursue the claim will be lost.

In some matters the court may give permission for a person to commence a property settlement application after the time limitation has expired, however this only occurs in exceptional circumstances. It is your responsibility to ensure that court proceedings are commenced prior to the expiration of the limitation date.

Is property settlement the same for married and de facto partners?

Yes, the same law relating to property settlement now applies to both married and de facto couples (who separated after 1 March 2009) when they separate.

How to divide property

Overview of the process

In considering how to divide property after separation, the court will:

Consider whether it is just and equitable to make orders

The court will consider if it is just and equitable to make any orders to adjust the property interests of the parties.

There is no 'automatic' right to a property settlement. The court must work out whether it is 'just and equitable' to adjust the parties' interests in property held by either party to the relationship. For example, it may not be just and equitable to alter parties' interests when the relationship has been short, and the parties maintained largely separate finances.

Identify the property

The court must identify all assets and liabilities (debts) held by either party. It does not matter where the property came from or when it was acquired, it must still be identified. It includes property held in the name of the party, with another person, or by a company or trust. It includes legal and 'equitable' interests. Legal property includes all property held in the name of a party. Equitable interests are interests that a party has in property, even though they may not be the legal owner of the property (for example, a \$50,000 cash payment made by a party to a house that could be registered in someone else's name).

Once those items are identified, they then need to be valued, or some agreement should be reached about their value.

Take into account contributions

Contributions are what each party brings in, adds, or contributes to a relationship.

The court looks at:

- the initial contributions of the parties (meaning what assets and liabilities they held at the start of the relationship);
- the financial and non-financial contributions:
- financial contributions include money contributed to the acquisition, maintenance, or improvement of assets; the income of each party; and whether any inheritances have been received.
- non-financial contributions can include any unpaid work to improve, renovate or maintain a property. Contributions made as a homemaker or parent are also considered non-financial contributions. It is important to know that financial and non-financial contributions are considered equally important under the *Family Law Act*); and
- the direct and indirect contributions made.

Commencing 10 June 2025, the court can also take into account the effect of family violence to which one party has subjected or exposed the other party, on the ability of a party to make financial or non-financial contributions or contribute to the welfare of the family.

As of 10 June 2025, the definition of family violence under the *Family Law Act 1975* has also been expanded to include economic or financial abuse.

Economic or financial abuse can include:

- Controlling a family member's money or assets;
- Sabotaging a family member's employment or income or potential employment or income;
- Forcing a family member to take on a financial or legal liability;
- Forcibly or without knowledge, accumulating debt in the family member's name;
- Unreasonably withholding financial support needed to meet reasonable living expenses;
- Coercing a family member to give or seek money as dowry or do or agree to things in connection with the practice of dowry.

Take into account current and future circumstances

There is a list of factors the Court must take into account when considering the parties current and future circumstances.

The list of factors includes:

- age;
- earning capacity;
- care arrangements for any children of the relationship
- the health of each person;

Commencing 10 June 2025, the court can also take into account:

- the effect of any family violence one party has exposed or subjected the other party, on the current and future circumstances of the other party;
- Whether a party has intentionally or recklessly caused material wastage of property or financial resources of either party;
- The liabilities incurred by either party, including the nature and circumstances of the liabilities;
- The need of either party to provide appropriate housing for a child of marriage or de facto relationship.

Determine the final division of property

The court can approach these steps in any order to obtain a just and equitable outcome. Your lawyer will help you identify the relevant issues to your situation and give you an idea of what may be a reasonable settlement for you, and what a judge would likely decide if the matter proceeds to court. The Court will not make a property order unless it is satisfied that the proposed division of property is just and equitable.

Most importantly, your lawyer should give you advice that is practical and realistic, with a view to helping you reach a resolution as quickly as possible.

Is family or domestic violence relevant to my property settlement?

Family violence means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family or causes the family member to be fearful. This includes economic or financial abuse.

In property settlement matters, the economic effect of family violence must be considered. This might include where a person has controlled all the finances or spending. The impact of family violence could be relevant when assessing a party's contributions to the property pool and to the welfare of the family (for example, if they were not allowed to work) or if the family violence by one party made the other party's contributions substantially more difficult due to the violent conduct. The impact of family violence could also be relevant when the Court is assessing a party's current and future circumstances (for example, if they have ongoing counselling or rehabilitation costs).

It is important to note the Court will not:

- Criminally punish someone for engaging in family violence;
- Order monetary compensation for any harm caused by the family violence; or
- Make a domestic violence protection order.

These are separate issues to a property settlement and are dealt with by other Courts.

We agree about property arrangements - what is next?

If you can reach an agreement with your former spouse about the division of property, you can make either an informal or formal agreement. There are two ways to formalise an agreement to make it legally binding (enforceable by a court):

- Consent Orders; or
- A Financial Agreement.

Can an agreement reached be informal?

You can reach an informal agreement about how to divide your property. However, an informal agreement is not legally binding or enforceable by a court. You can make your agreement binding by entering into consent orders or a Financial Agreement.

What is a consent order?

Consent Orders are an agreement between two parties that is approved by the Court with the court orders then made in the agreed terms. A Consent Order is just as enforceable as if it were an order made by a Judge at a final hearing.

Consent Orders have the same legal effect as any other court order and are typically the recommended approach for formalising a property settlement. Consent orders can be difficult to change or set aside once they are made. Legal advice should be obtained before signing consent orders.

What is a financial agreement?

A Financial Agreement is a document that sets out the agreement reached between the parties. Each party must obtain independent legal advice as to the effect, advantages and disadvantages of the Financial Agreement. For a Financial Agreement to be binding, it needs to comply with specific sections of the Family Law Act 1975.

Financial Agreements can be made before, during or at the end of a relationship. Financial Agreements made before marriage are often referred to as “pre-nuptial agreements” or “pre-nups”.

WLSQ is unable to provide any further information or legal advice in relation to Financial Agreements. If you require further legal advice or legal representation, please contact the Queensland Law Society for a referral to a family law firm in your local area.

We don't agree about property arrangements - what is next?

If you don't agree about property arrangements, you may want to start court proceedings. Before commencing any proceedings, it is essential to make a genuine attempt to resolve your property dispute without going to court.

Each party to the proceeding must comply with the pre-action procedures

These include:

- Participating in a family dispute resolution (mediation)
- Making a genuine offer to resolve the dispute
- Giving written notice to the other party that you intend to apply to the Court for an order.

The Court will expect the parties to have complied with the pre-action procedures and there may be consequences if they have not been complied with, including costs orders (having to pay the other party's legal expenses).

Safety

Your safety is the most important consideration. You do not need to comply with the pre-action procedures if:

- The problem is urgent
- There has been domestic violence
- There is a risk of domestic violence

Not all matters are appropriate for Family Dispute Resolution. All Family Dispute Resolution Practitioners are obligated to assess whether it is suitable for a conference to proceed. If you feel intimidated, scared or think that you may not be able to speak freely during the process, it is important to tell the Family Dispute Resolution Practitioner, and tell them about any history of domestic violence between yourself and the other party. You should not feel pressured to agree to any property settlement. If you are uncertain, do not agree or sign anything until you have received legal advice.

If you are the Respondent to a Domestic Violence Protection Order or a Temporary Protection Order and there is a condition that prohibits you from contacting the other person, you should also obtain legal advice before any agreement is reached.

What if I don't know what assets and liabilities are?

Separated parties who are involved in a financial or property matter have a duty of disclosure. This means providing all relevant information and documents to each other in a timely manner.

Disclosure documents include providing evidence of each party's sources of income, interest they receive on investments, the value of property, and other financial resources, even if they have been disposed of.

The duty applies at all stages including when parties are negotiating outside of court, preparing to file an application in court and during court proceedings.

It is important that parties comply with their duty of disclosure. There may be consequences if a party has not complied with their duty of disclosure, including:

- Costs orders (having to pay the other party's legal expenses);
- Punishment for contempt of court, which can include fines and imprisonment; and
- The court taking the non-compliance into account when determining the property settlement.

What is spousal maintenance?

If you are married or were in a de facto relationship, you may be able to seek spousal maintenance from your former spouse. Spousal maintenance is financial support paid by one party to the other, in circumstances where they are unable to adequately support themselves. Spousal maintenance is different from child support; it is money paid to you to assist with supporting you, rather than for the support of the children. If a spousal maintenance order is made it means your former spouse will pay maintenance to you in addition to child support or child maintenance. It is not possible to make a spousal maintenance application if you have remarried or entered into a stable and continuing de facto relationship. If you remarry or enter into a stable and continuing de facto relationship after an order is made you have an obligation to notify your former spouse immediately so that any spousal maintenance order can be finalised or discharged.

If your former spouse will not agree to pay you spousal maintenance, you can make a court application seeking an order for spousal maintenance payments. Your right to spousal maintenance is not automatic and it will be necessary to prove that you are unable to support yourself adequately and that your former partner has the capacity to pay spousal maintenance after the payment of their own reasonable expenses. You will also need to declare any spousal maintenance you receive to the taxation office and Centrelink.

From 10 June 2025, when deciding a spousal maintenance application, the court can consider the economic effect of any family violence, to which one party has subjected or exposed the other party.

It is important to seek legal advice regarding any spousal maintenance agreements or applications.

What should I do when I separate?

The following content is general information only. WLSQ does not provide legal advice or representation in these areas of law.

Updating your Will and other things

After you separate you should immediately consider making a new Will.

WLSQ is unable to prepare your Will or provide you with legal advice regarding Wills and Estates. You can locate a specialist lawyer who practices in Wills and Estates through the [Queensland Law Society](#). You can also have a Will prepared (for free) through the [Public Trustee of Queensland](#) who can be contacted to request an appointment.

Updating your Binding Death Nomination

a. You may wish to make or change any binding death benefit nominations on your insurance or superannuation.

WLSQ is unable to provide you with legal advice regarding insurance or superannuation. You can locate a specialist lawyer who practices in this area through the [Queensland Law Society](#).

Updating your Power of Attorney

b. If you have previously given your partner a Power of Attorney, you can revoke it by using a prescribed form, and sending a copy to them

WLSQ is unable to prepare your Power of Attorney or provide you with legal advice regarding your Power of Attorney. You can locate a specialist lawyer who practices in this area through the [Queensland Law Society](#). The [Public Trustee of Queensland](#) may also be able to assist.

Severing joint tenancy

c. If you own any property in Queensland (a house/land/unit/townhouse etc) with your former partner, you may want to consider severing the tenancy on the property, which means changing the ownership from 'joint tenants' to 'tenants in common'. If you own the property as 'joint tenants', it means that if you die, your interest in the property will automatically go to your partner (even if your Will says something different). To change that, you can sever the tenancy so that the property is instead owned as 'tenants in common'. This means you still own the property together, however if you die, your partner will not automatically get your share. It will cost you money to do this. You do not need your former partner's approval to sever the tenancy, however they will be notified.

You should obtain legal advice regarding any changes to tenancy and/or property ownership. WLSQ is unable to provide you with legal advice regarding property law. You can locate a specialist lawyer who practices in property law through the [Queensland Law Society](#).

Do I need legal advice?

You may need legal advice if:

- You need help to understand the property division process.
- You're considering entering or signing an agreement about how to divide your property.
- You and your former spouse are unable to reach an agreement.
- You're negotiating with your former-spouse or attending a family dispute resolution.
- You are thinking about applying to the court for an order about how property should be divided.
- You are worried that your former spouse may transfer or sell an asset or has already gotten rid of property that you may be entitled to.

What other steps should I take?

Keep a diary

It is a good idea to write down the important dates (marriage, separation, dates of birth), and keep records of things that are happening and any incidents of concern.

Write a chronology (list of events in the order they happened)

List when assets were acquired and each parties' contributions throughout the relationship. Gather relevant documents.

If it is safe to do so, you should gather the following documents:

- Obtain a written market appraisal of any real estate.
- Bank statements (for the past three years).
- Tax assessments and returns (for the past three years).
- Social security pension records.
- Records of long service leave, overtime worked, payslips.
- Life insurance policies.
- Copies of statements for current home loans, personal loans, car loans.

- Copies of any superannuation statements. You can also complete and lodge a Superannuation Information Form with your Superannuation fund and your former spouse's fund for updated values. You can obtain legal advice about how to do this.
- Value of vehicles (refer to www.RedBook.com.au or www.carsales.com.au which may assist to estimate the value of any motor vehicles).
- Compile a list of your household furniture/collectables and their estimated worth.
- Shares (collect copies of holdings, dividend payments, distributions, check ASX for current share price).
- Gifts/loans (collect any loan documents, or documents [such as cards] that came with gifts to show intention at the time the funds were received).
- Trust records (copies of deeds and estimate the value of Trust assets/debts).
- Business records (family, trustee/director/shareholder). Request copy of Business Activity Statements from ex-partner or from the accountant if you have the authority.
- Collect evidence of future needs (medical or psychiatrist reports which indicate whether there are factors which prevent you from maintaining gainful employment).

****This factsheet includes general information only and is not a substitute for legal advice.***