



Australian Government
Attorney-General's Department

A guide to dividing your property and finances after separation

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This guide was first published in May 2021 under the title 'Property and Financial Agreements and Consent Orders – What You Need To Know.' This updated version was published in June 2025.

This guide provides some examples and case studies. They are examples only and are not intended to be representative of how property of any particular nature should be split. It is up to individuals to make their own decisions based on their specific circumstances, with legal advice as appropriate. Any names used in the examples and case studies, and details about assets and monetary figures, do not refer to any actual person, living or dead, or their circumstances.

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ABOUT THIS GUIDE

WHO IS THIS GUIDE FOR?

This guide is for people who want to divide their **property** because a relationship has ended. The aim of this guide is to help separating partners who are able to reach agreement produce a clearly written agreement that can be implemented and enforced. This guide does not constitute legal advice.

This guide can be used by any person in Australia who is or was married or in a de facto relationship. If you are, or were, in a de facto relationship in Western Australia, you should check the **Family Court Act 1997 (WA)** (Family Court Act) to ensure you are using the correct law. In Western Australia the **Family Law Act 1975 (Cth)** (Family Law Act) sets out the relevant law for people who are or were married, while the Family Court Act sets out the relevant law relating to de facto relationships.¹

This guide refers to 'the **family courts**' or 'the Court' for statements that apply equally to the processes in the Federal Circuit and Family Court of Australia (FCFCOA) and to the Family Court of Western Australia (FCWA). There is a **glossary** at the end of this guide that explains commonly used terms in family law **property settlement** proceedings. References in this guide to 'property matters', along with references to 'property settlement proceedings' and 'property' which are used in the Family Law Act, are intended to capture financial matters and finances. An explanation of property is included in this guide.

YOU CAN USE THIS GUIDE IF YOU WERE MARRIED OR IN A DE FACTO RELATIONSHIP

This guide can be used by people who were married (in Australia or overseas), or people who were in a **de facto** relationship. This guide uses '**partner**' to refer to a person in a marriage or de facto relationship.

The Family Law Act says that a de facto relationship is where two people, of the same or opposite sex, had a relationship as a couple living together on a genuine domestic basis but were not married to one another or related by family. There is no fixed minimum time you must live together for a relationship to be considered de facto, it depends on the circumstances.

I HAVE QUESTIONS ABOUT MY OTHER FAMILY LAW ISSUES, WHERE CAN I GO FOR HELP?

Information on a range of support services available to families during the time of separation - including legal assistance - is available on a fact sheet on the Attorney-General's Department website, by searching 'family law services and support' on www.ag.gov.au.

Information about child support matters is available from Services Australia by searching 'child support' at www.servicesaustralia.gov.au.

The department has published other guides to assist family law users to resolve their disputes. You can search for 'Parenting orders – what you need to know' or the 'Separating with debt: a guide to your legal options' on the AGD website for further information (www.ag.gov.au).

¹ Note: For de facto relationships in Western Australia, the relevant law for those seeking to split superannuation is in Part VIIIC of the *Family Law Act 1975* (Cth).

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This edition (2025) has been prepared to reflect changes to the laws governing property settlements that came into effect on 10 June 2025 following the commencement of amendments in the *Family Law Amendment Act 2024*.

The department would like to express our deep gratitude to the many people who assisted with the update of this guide. This includes the Federal Circuit and Family Court of Australia, the Family Court of Western Australia, National Legal Aid, Family & Relationships Services Australia, Relationships Australia, and Women's Legal Services Australia. This guide is available online at www.ag.gov.au. Any questions about the guide can be directed to the department at familylawunit@ag.gov.au.

FAMILY VIOLENCE

The Court, and **parties** negotiating outside of court, must consider the economic effect of family violence, where relevant, when making decisions about property after separation. The economic effect of family violence will also be relevant to **spousal maintenance** applications.

The Family Law Act recognises that family violence may impact a person's ability to contribute to the property of the relationship. For example, if one partner has prevented the other partner from working during the relationship, or they have caused their partner an injury which has prevented them from working or requires ongoing counselling or rehabilitation costs.

WHAT IS FAMILY VIOLENCE?

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. Economic and financial abuse is a form of family violence relevant to property and financial matters.

Examples of behaviours that may constitute family violence include (but are not limited to):

- Physical abuse such as hitting, punching, choking, using weapons to frighten.
- Verbal abuse such as using insulting names or saying things to cause fear. Sexual violence and coercion which is sexual activity where consent is not freely given or obtained, is withdrawn or the person is unable to consent due to their age or other factors. It occurs any time a person is forced, coerced or manipulated into any sexual activity and can happen between people who are married.
- Stalking and harassment such as through tracking of a phone, or persistent messages.
- Economic or financial abuse such as controlling all spending, incurring debts for which a partner is jointly responsible, forcing a partner to sign up for a loan, harassing a person in their workplace resulting in that person being unable to work.
- Coercive controlling behaviour which is a pattern of controlling and manipulating behaviours and can include isolating a partner from friends and family, not letting a partner make their own choices or have freedom or threatening the family pet or another animal or children.

WHERE TO GET HELP

If you believe there is an immediate risk of harm to you or your family, contact the police on **Triple Zero (000)**.

If you are concerned about the welfare of a child, child protection services are the responsibility of state and territory governments. You can find local help at www.familyrelationships.gov.au by searching 'children's safety'.

The following information and services are available to help people who are experiencing or have experienced family violence and abuse:

- The **Family Violence Law Help** website at familyviolencelaw.gov.au provides information about domestic and family violence, relevant laws in Australia (including family law, child protection law and domestic violence protection orders), and where to get help.
- The **Family Advocacy and Support Service (FASS)** provides free assistance to families who have been affected by family violence. You may be eligible for this service if you or a family member has experienced, used, or is alleged to have used, family violence in your relationship and you need legal assistance with a family law, or related child protection or family violence matter. More information on how to access FASS can be found at the Family Violence Law Help website at www.familyviolencelaw.gov.au/fass/.

- **1800 RESPECT** is a confidential online and telephone counselling, information and referral service that provides support to people who have experienced sexual assault, family and/or domestic violence. More information on how to contact 1800 RESPECT can be found at www.1800RESPECT.org.au.
- **Mensline** is available for men who are seeking assistance because they have experienced violence. Mensline can be contacted at 1300 78 99 78 or www.mensline.org.au. Support is also available for those who have been violent to a family member and want help to change their behaviour. The Men's Referral Service provides information and counselling to help men who use family violence and would like help with male behavioural and relationship concerns. You can contact the Men's Referral Service on 1300 766 491 or visit www.ntv.org.au. Mensline is also available for men who are seeking assistance because they want to stop using violence.
- **Financial counsellors.** Financial counselling is available through community organisations, Community Legal Centres and some government agencies. Visit www.moneysmart.gov.au/managing-debt/financial-counselling for more information. The Moneysmart website also provides information about emergency financial relief and other resources to help those feeling the impact of family separation, see: www.moneysmart.gov.au/family-and-relationships/getting-divorced-or-separating.

DIVIDING PROPERTY AFTER SEPARATION

When people separate (whether from a marriage or a **de facto** relationship), they will usually need to sort out how to divide their property

If it is safe to do so and if you are able, a cost effective and efficient way to achieve this is to reach an agreement with your former partner. This guide will provide you with practical examples and information on the ways **parties** can finalise their property settlement.

If you were married, you may be also going through a divorce process. **Divorce is a completely separate process to the process for dividing property or the process for reaching agreement about children.** You should be aware that once divorced, there is a time limit for you to apply for property and spousal maintenance orders. You can ask the Court to make orders for property settlement or **spousal maintenance** arising out of a marriage even if you are not yet divorced. Search for 'divorce' on the family courts' websites for further information (www.fcfcoa.gov.au or www.familycourt.wa.gov.au for separating couples in WA).

The law about spousal maintenance is different to the law that applies in property proceedings. Search for 'spousal maintenance' on the family courts' websites for further information (www.fcfcoa.gov.au or www.familycourt.wa.gov.au for separating couples in WA).

WHAT IS PROPERTY?

For the purposes of family law, **property** means all assets, **liabilities** and financial resources that you and your former partner own or have an interest in. This includes things that are owned by you, or things that you have responsibility for, as well as things that are in both your names.

Property includes assets owned or located in Australia and overseas such as:

- a house
- an investment property
- a car
- money in a bank account (which might include savings from wages and other income)
- superannuation
- money that you owe, including credit card debt, a loan, mortgage, tax debt
- money that is owed to you (debts and loans in your favour)
- shares
- cryptocurrency (e.g. bitcoin)
- jewellery
- collections (e.g. stamps, records, memorabilia, military honours)
- animals including pets and animals that are part of a business (e.g. livestock)
- furniture, vehicles and personal belongings including antiques
- companies
- money in trusts (e.g. a family trust), and
- gifts, inheritances and other windfalls.

DEBTS AND BANKRUPTCY

Be aware that your property also includes your debts and leases (e.g. motor vehicle leases). These can include credit card debts, mortgages, car loans, tax debts, personal debts, and student loans. **You must tell your former partner about your debts** (as well as all your assets and financial resources) as part of your **duty of disclosure**.

Bankruptcy is a legal process where you declare bankruptcy, or a court declares you bankrupt, because you are unable to pay your debts when they fall due. Declaring yourself bankrupt is a serious decision that may impact your ability to participate in property proceedings. If you declare yourself bankrupt, your property will still form part of the **property pool** for the purpose of family law proceedings and could be transferred to your former partner. You may wish to speak with a lawyer or financial counsellor if you are thinking about declaring bankruptcy.

Further information about managing debts in the context of a relationship breakdown is available on the Attorney-General's Department website at www.ag.gov.au by searching 'separating with debt.'

ANIMALS (INCLUDING COMPANION ANIMALS / PETS)

Under the **Family Law Act**, animals are treated as property. You may need to consider whether any animals should be included in your agreement or **consent orders**. You do not have to include animals in your agreement or consent orders where you agree or there is no dispute about who owns and has responsibility for the animal after separation.

The Family Law Act provides specific laws where couples cannot agree about ownership of a family pet after separation (these are referred to as companion animals in the Family Law Act). If a dispute about a family pet goes to the family courts, the Court will consider things like: whether the pet or any other animal has been harmed by either party, who the pet is most attached to, who bought the pet, who has cared for the pet, and who is able to care for the pet going forward. The Court has broad discretion to assess and weigh these factors.

Be aware that the Court cannot make an order for shared ownership, or shared care of a family pet. This means your consent orders cannot propose joint ownership of a family pet. Your consent orders also cannot propose joint possession of a pet, or joint responsibility for the costs of a pet. The Court cannot make these orders.

Animals that are part of a business and are not pets (for example, cattle or sheep) are treated like any other item of property. Remember that you do not have to include an order specifying who owns the family pet in your consent orders if there is no dispute about ownership of the pet.

You may wish to make separate, informal arrangements for the care of a pet. Some families consider arrangements for their pet in the context of their children's care arrangements. For example, if you and your former partner have an agreement for shared time with your child, you could agree that the family dog stays with the child as they move between homes.

SUPERANNUATION

Superannuation is a way of saving for retirement, and is an increasingly significant asset for Australian couples.

Superannuation is treated as property under the **Family Law Act**. When a couple separates, superannuation is included in the pool of assets and **liabilities**, and superannuation splitting laws allow it to be divided between the couple.²

You and your former partner have to tell each other about all superannuation interests, as part of **your duty of disclosure**. You or your former partner can also apply to a trustee of a superannuation fund for information about a particular superannuation interest. If this is not done, you or your former partner (or your lawyer) can apply to the family courts to request the other party's superannuation information from the Australian Taxation Office (ATO). The ATO will provide this information to the family courts, and then it will be provided to all **parties**.

Superannuation interests may have tax advantages so you should consider seeking legal and/or financial advice before agreeing to split superannuation.

The most common types of superannuation interests include:

- accumulation interests
- defined benefit interests, and
- self-managed superannuation funds.

A superannuation interest can either be in the growth phase (where the member is not yet able to access their superannuation interest), or in the payment phase (when a condition of release is satisfied, usually as a result of the member of the fund reaching retirement age).

Most superannuation interests are an accumulation interest in the growth phase. They are like bank accounts but the member cannot yet make a withdrawal.

As part of dividing property after separation, a superannuation interest can remain with the partner who is the member of the fund (or funds).

Alternatively, a superannuation interest can be divided ('split') between the parties, so the non-member partner gets some or all of the member partner's superannuation interest.

For a self-managed superannuation fund, the parties may change the membership entitlements in the fund or, more commonly, split up the assets in the fund (such as real estate, shares and cash) by rolling some of those assets out into another fund for the benefit of one of the parties.

Self-managed superannuation fund interests can be complicated to split. Parties should obtain advice from an independent self-managed superannuation specialist to understand the options available and the financial consequences associated with each option (for example, the tax implications).

Further information is available by searching 'superannuation' on the Attorney-General's Department website at www.ag.gov.au, and on the family courts' websites (www.fcfcogov.au or www.familycourt.wa.gov.au for separating couples in WA).

² Note that it is not possible to split some superannuation interests, outlined in the Family Law (Superannuation) Regulations 2025, including a superannuation interest of less than \$10,000.

YOUR OPTIONS FOR DIVIDING YOUR PROPERTY

There are different options for dividing your property:

- **agree to a non-legal, informal arrangement**
- **agree to make legally enforceable consent orders**
- **enter into an enforceable Binding Financial Agreement, or**
- **resolve through litigation.**

Deciding which of these options is best will depend upon your individual circumstances and the outcomes you want to achieve.

This guide focuses on consent orders, however the information is also useful for people making a non-legal, informal arrangement.

You are encouraged to agree on arrangements for your **property** without going to court, if it is safe to do so. Most people reach agreement without going to court. Going to court is costly, time consuming, and may not result in a decision you agree with.

Before you consider options for dividing your property and speak to the other party about these options, you may wish to speak to a family lawyer. A family lawyer can help you understand your rights and obligations, and help you decide which option is best for you.

AGREE TO A NON-LEGAL, INFORMAL ARRANGEMENT

You can make an informal, non-legal arrangement with your former partner. This may be appropriate where you are able to agree on how to divide property without going to court. For example, you may both agree to sell an asset or assets and divide the sale proceeds. This option can be quicker and much less expensive than the other options. However, it will not be legally enforceable and may not be final. If you make an informal arrangement, you or your former partner may still have the right to apply to the family courts at a later time and ask for orders to be made under the **Family Law Act**.

Be aware that:

- An informal arrangement is generally not legally enforceable, which may create problems if the agreement isn't followed, or if there is uncertainty about what was agreed.
- If you want to apply to the family courts later to formalise the arrangement, you should be aware of **time limits**. Generally, an application for orders must be **filed** within 12 months of a divorce occurring, or within two years of the breakdown of a **de facto** relationship.
- You should consider whether there are any financial implications, such as tax or stamp duty, that could impact you. For example, you may not have to pay stamp duty if the property was transferred as the result of court orders or a **Binding Financial Agreement**. You may wish to speak to a financial counsellor for further information. Visit www.moneysmart.gov.au for more information.
- You are unable to split superannuation with an informal arrangement. If you are considering splitting superannuation with your former partner, you will need to consider one of the other options.

AGREE TO MAKE LEGALLY ENFORCEABLE CONSENT ORDERS

Consent orders formalise an agreement between separated partners and are legally enforceable. Consent orders can be made about a range of matters and this guide focuses on consent orders for property matters. If you would like information about consent orders for parenting matters, the department has published the '*Parenting orders – what you need to know*' guide which is available on the department's website (www.ag.gov.au).

Consent orders are generally approved and made by a **registrar** without any court hearing. A registrar is a court official who has powers to make certain orders. Consent orders made by a registrar are enforceable in exactly the same way as if the orders had been made by a judge following a court hearing.

Consent orders will be final, although in limited circumstances the family courts do have power to change orders, set orders aside, or make new orders. The family courts will only make consent orders that the court considers are just and equitable.

If you want to make consent orders, you must prepare the orders, the appropriate **application** for filing and submit them to the Court. This may take some time and may require legal or financial advice in some cases.

This guide will show you how to draft consent orders for property matters.

ENTER INTO AN ENFORCEABLE BINDING FINANCIAL AGREEMENT

A **Binding Financial Agreement** is a contract between two or more parties made under the Family Law Act. Binding Financial Agreements are enforceable in the Court and can provide greater certainty on how property, including superannuation, will be divided in the event of separation.

You cannot enter into a Binding Financial Agreement without first getting legal advice from an Australian lawyer. You and your former partner must each obtain separate, independent legal advice before entering into a Binding Financial Agreement. There are additional requirements you must comply with, and your lawyer can help ensure you meet these requirements. Be aware that obtaining legal advice for a Binding Financial Agreement can be expensive.

You can enter into a Binding Financial Agreement before, during or after a marriage or a **de facto** relationship. Binding Financial Agreements entered into before a marriage are sometimes referred to as pre-nuptial agreements.

A Binding Financial Agreement means the Court cannot decide how to divide the property covered by the agreement. However, the Court has the power to **set aside** a Binding Financial Agreement and make orders in certain circumstances, for example, if one or both of the parties have deceived the other, or if there has been unconscionable conduct by a party in the making of the agreement.

RESOLVE THROUGH LITIGATION

Litigation is the process of resolving a dispute by commencing court proceedings. If court proceedings are commenced, you and your former partner can reach an agreement at any time during the proceedings, but if no agreement can be reached, the Court will determine how the property will be divided. The Court will consider the orders you want, but will only make the orders it considers are just and equitable in all the circumstances.

Litigation may be a necessary pathway in some circumstances, but you should consider:

- The financial cost of litigation: search for 'divorce' on the family courts' websites for further information (www.fcfcoa.gov.au or www.familycourt.wa.gov.au for separating couples in WA). Be aware that if you have a lawyer, they will have their own costs.
- The emotional cost of litigation: litigation is likely to negatively impact the relationship between you and your former partner, any children, and your broader family.
- Litigation can be time consuming: you may be required to take periods of time out of work, and/or from the care of children, to prepare for, and attend, court hearings.

Your matter may be eligible for the Priority Property Pool Cases program which provides a simplified court pathway for resolving property and financial disputes, seeking to minimise legal costs and time. Search for 'Priority Property Pool' on the family courts' websites for further information (www.fcfcoa.gov.au or www.familycourt.wa.gov.au for separating couples in WA).

Time limits apply for court applications

There are time limits that apply to making an **application** to the Court for a property dispute. They are:

- if you were married, an application must be **filed** within 12 months of the date a divorce order came into effect, or
- if you were in a de facto relationship, an application must be filed within two years from the date of separation.

The Court may grant a time extension but only in limited circumstances. If you think the time limit is approaching, you should obtain legal advice as soon as possible.

ASSISTANCE TO HELP YOU RESOLVE YOUR DISPUTE

Resolving property disputes can be difficult. There are a range of tools and services available to help you.

amica

'amica' is an online dispute resolution tool which provides a cost-effective way to assist amicable couples to reach an agreement on family law parenting and property matters. amica supports separating couples to negotiate and reach agreement about parenting and property issues through a secure online platform. For property matters, the tool creates a suggested division of assets based on the financial information you provide. You can use this to make an informal agreement or you may formalise the agreement through consent orders made by the Court. You can visit amica at www.amica.gov.au.

Dispute resolution

The Court expects that people involved in family law disputes will only make an application to the Court when there is no other way to resolve their dispute (unless the application is for the Court to make consent orders). There is a requirement that you will make a genuine attempt to resolve your dispute unless it is not safe to do so. This may be through discussion, compromise, and dispute resolution. A professional can help you and your former partner to reach agreement about your property. This includes through family dispute resolution, **mediation**, **arbitration** and **conciliation**. Legally assisted dispute resolution may also be available.

The Government funds a range of family law services designed to help families with family relationship issues, as well as to help couples resolve their parenting and property disputes. You can find local help by searching Family Relationships Online at www.familyrelationships.gov.au.

An agreement that is reached through dispute resolution can be formalised through consent orders or a Binding Financial Agreement made by the Court. Search for 'dispute resolution' on the family courts' websites for further information (www.fcftoa.gov.au or www.familycourt.wa.gov.au for separating couples in WA).

THE PROCESS FOR MAKING CONSENT ORDERS

Generally, the process for making consent orders about property (which can include orders to split superannuation) is:

1. You and your former partner have separated.
2. If it is safe to do so, you and your former partner negotiate and reach an agreement as to how you will divide the property. You may reach this agreement on your own or with the assistance of a lawyer or through dispute resolution. If you have not done this with the help of a lawyer, you may wish to seek legal advice. You may also wish to seek financial advice.
3. You and your former partner also agree to apply to the Court for consent orders.
4. You (or your lawyer) gather all necessary information, fill out the application forms and draft your consent orders.
5. You (or your lawyer) **file** your application and draft consent orders with the relevant family court.
6. If the Court is satisfied it is just and equitable to do so, the Court will make the consent orders.
7. You and your former partner do all of the things the consent order requires such as signing documents or selling property.

YOU MUST TELL YOUR FORMER PARTNER ABOUT ALL YOUR PROPERTY

You and your former partner each have a legal obligation to fully disclose all information relevant to your financial circumstances from the time you start preparing to make consent orders. This is called your duty of **disclosure**. This duty means you must provide all information and documents to your former partner, relating to all of your property, even when it is yours alone.

The duty of disclosure applies in relation to all property whether the property was acquired before, during or after the marriage or de facto relationship. The duty of disclosure is ongoing until final agreement is reached or a court order is made.

Consequences of non-compliance

There can be serious consequences if you do not disclose all of your property and finances. For example, the Court can change the orders, **set aside** the orders (meaning you will have to reapply to have orders made) or make other orders. The Court can also order that you pay the legal costs of your former partner or find you in contempt of court. The Court can punish contempt of court by a sentence of imprisonment, a fine, or both.

SUPERANNUATION SPLITTING ORDER

As part of your property consent orders, you and your former partner can agree to receiving some or all of the other's superannuation interest. This is done in a superannuation splitting order that splits the benefits of a single superannuation interest into two parts (which may or may not be equal).

Superannuation can be split in either one of two ways:

- By allocating a dollar figure, known as the base amount, to the non-member partner.
- By allocating a percentage of the superannuation interest, to the non-member partner.

The dollar figure or percentage is then used by the **trustee** of the relevant superannuation fund to calculate how much the non-member partner is entitled to.

In some circumstances, such as for defined benefit interests, the non-member partner may not get the superannuation entitlement until the member partner has retired. In these cases, the amount they get in the end, may be different to the dollar figure or percentage stated in the superannuation splitting order.

If you and your former partner want to include superannuation splitting orders in your consent orders, a copy of the draft splitting orders must be sent to the trustee at least 28 days before the draft orders are **filed** with the Court. If the trustee does not object to the draft orders within 28 days after receiving them, the parties may file them with the Court.

The superannuation trustee is responsible for managing the superannuation interest. If you do not provide the trustee with a copy of the draft superannuation splitting orders, the trustee may not be able to implement them. For example, if the draft orders specify a dollar figure (base amount) that is higher than the actual superannuation balance, or if the draft orders refer to the name of the trustee incorrectly, the trustee is not able to comply with the consent orders. You should provide the Court with a copy of the letter from the superannuation trustee as evidence that the trustee has been provided with a copy, and does not object to, the draft orders, as well as a copy of a document showing the current value of the member's benefit interest to be split, otherwise the Court may refuse to make the consent orders.

WHAT IF I AM UNHAPPY ABOUT THE CONSENT ORDERS MADE?

Consent orders can be appealed or **set aside** in very limited circumstances. The law about appeals and setting aside court orders is very complex and you should seek legal advice.

HOW CAN CONSENT ORDERS BE ENFORCED?

If you or your former partner do not follow the consent orders, the other party can apply to the family courts for some kind of enforcement or sanction. Search for 'enforcement' on the family courts' websites for further information (www.fcfcoa.gov.au or for separating couples in WA: www.familycourt.wa.gov.au).

The law on enforcement is complicated. It is strongly recommended that you get legal advice before making any applications to the Court. A lawyer can explain the legal options to enforce your existing family law orders that are available and appropriate for your circumstances.

YOUR PROPOSED CONSENT ORDERS SHOULD NOT OVERLAP WITH AN EXISTING BINDING FINANCIAL AGREEMENT

Consent orders cannot deal with the same subject matter (property) as a **Binding Financial Agreement**. If you have a Binding Financial Agreement, it must be attached to the application for consent orders, so the **registrar** can be satisfied that it deals with different subject matter.

YOUR CONSENT ORDERS SHOULD ONLY INCLUDE PEOPLE WHO KNOW ABOUT IT

Consent orders cannot be made if they affect or create obligations on third parties who are not parties to the application. A **third party** could for example, be a business partner or a creditor.

If it is necessary to involve third parties, they need to be parties to the application, so that the registrar can see that the orders have been agreed to by all relevant parties.

You should seek legal advice about preparing your application for consent orders if the orders involve a third party.

THE LEGAL STEPS FOR DIVIDING PROPERTY

The **Family Law Act** sets out the steps the family courts will use, and that you should also use, when deciding how to divide your property. These are some of the key sections you should be aware of:

Married couple's division of property – section 79 of the Family Law Act

- **Spousal maintenance for married couples** – sections 72 and 75 of the Family Law Act
- **De facto couple's division of property** – section 90SM of the Family Law Act
- **De facto spousal maintenance** – section 90SF of the Family Law Act
- **De facto couple's division of property (Western Australia)** – section 205ZG of the **Family Court Act**
- **De facto partner maintenance (Western Australia)** – section 205ZD of the Family Court Act.

You should always check you are using the correct law. If you are unsure you should seek legal advice.

When resolving property matters, the family courts ensure that the financial relationship between separated couples is brought to an end, bringing certainty and closure for the future. The family courts will only make consent orders where it is satisfied it is **just and equitable** to do so. You should only propose orders that are just and equitable based on all the circumstances.

This section provides an overview of the legal steps that the family courts take for considering a property matter. You and your former partner should use these steps when negotiating an agreement about how to divide your property. There is also a **case study** to explain how the legal steps work.

THE STEPS IN THE PROCESS

1. Identify and value all property

The first step is to identify and value all property as at the **date of making the agreement or filing the consent orders**. This includes things that were brought into the relationship, that is, property owned or **liabilities** existing before the marriage or **de facto** relationship started that still exists, as well as property owned or liabilities existing after separation.

- You will need to identify what assets you have (such as real estate, businesses, **superannuation interests**, vehicles, furniture, clothes, jewelry, shares, individual or joint savings accounts).
- You will need to identify what debts you have (such as credit card debts, mortgages, personal loans, leases, salary sacrifice arrangements, buy now pay later payments, tax debts and student loans).
- You will need to identify what financial resources you have (such as distributions from a family trust or long service leave entitlements, wages, shares, dividends, interest, or other income).
- You will need to identify whether the assets or debts are owned by you individually, by you both as a couple, or with a **third party**.

You can agree on the value of assets or you can engage a professional valuer. The value of particular items of property can be relevant to assessing whether the orders would be considered to be just and equitable under the circumstances. Valuing certain superannuation interests can be complex and may require an expert superannuation valuer.

At this step, it can be useful to create a 'balance sheet' which is a table with separate columns to separately identify everything that each person owns or owes, and everything that is owned or owed jointly.

Valuing Superannuation

As part of the first step, parties will usually agree or obtain a value for their superannuation interests so they can complete a balance sheet and understand the overall value of their **property pool**.

Before the Court can make an order for superannuation to be split (including by consent), it must first determine the value of the superannuation interest. The **Family Law Act** requires the Court to value the superannuation interest in accordance with the **Family Law (Superannuation) Regulations 2025** and (if applicable) the Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Approval 2025.

How a superannuation interest is valued under these laws will depend on the type of interest.

For accumulation interests, a recent statement issued by the superannuation **trustee** of the superannuation fund will include the account balance as a dollar amount, and this is the value of the interest. This method of valuation complies with the Family Law (Superannuation) Regulations 2025 (see section 53).

Defined benefit interests, partially vested accumulation interests, interests in self-managed superannuation funds, and other less common types of superannuation interests, are more complex to value, and may need to be valued by an expert.

Members of a superannuation interest, or former partners of a member, are able to complete the **superannuation information kit** and send it to the trustee to obtain this information. In response to the information request, the trustee will provide information required by the Family Law (Superannuation) Regulations 2025, which may include a value of the interest, or information needed to determine the value of the interest.

There is no requirement under the Family Law Act to value a superannuation interest if no superannuation splitting orders are being made.

2. Identify each of your contributions

The second step is to identify each of your contributions to the relationship including:

- direct financial contributions (such as money earned from wages). It does not matter if the money earned was used for day-to-day expenses or for direct payments such as mortgage repayments
- indirect financial contributions (such as gifts or inheritances from family members)
- non-financial contributions (such as carrying out renovations or repairs on the family home or unpaid support of the family business)
- household and parenting contributions, such as caring for children.

Contributions to the relationship includes property that you and the other party brought into the relationship.

The family courts do not, and you do not need to, list and value every single contribution. This is usually not possible, especially if there has been a long relationship. Mathematical approaches are generally avoided. Contributions are considered holistically to determine a percentage contribution of each partner. If relevant, the family courts would consider the economic effect of any **family violence** on a person's ability to contribute to the relationship. For example, if one party was unable to earn an income due to family violence.

The percentage should be a just and equitable reflection of your circumstances.

For example, some people may agree that their contributions to the relationship were equal and they each contributed 50%. Other people may agree on another percentage to better reflect their contributions. The percentages added together should equal 100%.

3. Assess your and your former partner's current and future circumstances.

The third step is to consider what each person currently needs and will need in the future.

The Court will consider the following factors (so far as they are relevant):

- the economic effect of any **family violence** to which one party has subjected or exposed the other party, on the current and future circumstances of the other party (e.g. if one party has ongoing medical expenses, such as counselling costs due to the family violence of the former partner)
- the age and health of the parties
- the financial and property resources of the parties (what is the current income and earning capacity of the parties)
- the effect of any material wastage of property or financial resources (e.g. excessive gambling, allowing a third person to live in a property rent free so that their former partner cannot collect income from that rent, or live in the property themselves, undermining the profitability of a business by damaging its reputation)
- any **liabilities**, including the nature and circumstances in which the liability was incurred
- who will have primary or the majority of caring responsibilities for any children of the relationship, including the need to provide appropriate housing for any children
- commitments of each of the parties necessary to enable the party to support themselves and their children
- responsibilities of either party to support any other person
- pension/benefit eligibility
- a standard of living that is reasonable in the circumstances
- the duration of the relationship and how it has affected the earning capacity of both parties
- the ability of the parties to earn or gain employment which will support them financially
- the extent to which maintenance would assist a party to increase their earning capacity, for example, through undertaking education or training
- the financial circumstances of a person with whom a party is cohabitating
- the amount of child support payable by each of the parties
- the terms of any specified court orders or financial agreements
- any other relevant fact or circumstance.

These factors must also be considered holistically. This means looking at all of the relevant circumstances of each party, and making an adjustment to one party (or making no adjustment at all) as part of this step.

4. Adjust the percentages to ensure a just and equitable division of property

After identifying your current and future needs, the Court may make an adjustment to the percentages determined at step 2 and 3 to ensure the division of property is just and equitable. This will be the final overall percentage split for your property.

CASE STUDY

James and Linh are separating. They have been together for 15 years and married for eight years. James works full time and earns \$87,000 a year. Linh works part-time and earns \$68,000 a year. They have two children aged six and four. They decided to negotiate an agreement regarding their property and finances and to apply to the Court for consent orders. Using the steps above they arrive at a decision.

1. Identify their assets and debts:

Item	Owner	Asset (market value)	Liability	Net
Family home	Joint	Valued by the bank at \$670,000	(\$300,000) mortgage	\$370,000
Car 1 (blue)	James	\$55,000	(\$10,000) loan	\$45,000
Car 2 (white)	Linh	\$8,000	Nil	\$8,000
Furniture	Joint	\$25,000	Nil	\$25,000
Superannuation	James	\$300,000	Nil	\$300,000
	Linh	\$120,000	Nil	\$120,000
Savings account	Joint	\$15,000	Nil	\$15,000
	James	\$20,000	Nil	\$20,000
Shares	Joint	\$20,000	Nil	\$20,000
Boat	James	\$20,000,000	Nil	\$20,000
Credit card	Linh	Nil	(\$8,000)	(\$8,000)
Transaction account	Joint	\$1,200	(\$500) overdraft	\$700

2. Identify their contributions and determining their contributions a percentage:

Both James and Linh have worked throughout the duration of their 15-year relationship. Since having children 6 years ago, Linh has worked part-time so that she can care for the children 2 days a week. She is also responsible for taking the children to and from day care and school. While James and Linh tried to share caring responsibilities for the children after work, James travelled a lot for work, so Linh was often solely responsible for the care of the children. This caring arrangement allowed James to earn a higher income. They also both acknowledge that Linh's ability to earn superannuation was limited by extended periods of maternity leave and the fact that she was working part-time.

James and Linh agree they have contributed equally overall to the relationship with their contributions being 50% each.

3. Assess their current and future circumstances

James and Linh are both in their late 30s and are likely to be able to work until retirement. They agree that the children should live primarily with Linh and spend a significant amount of time with James. They each acknowledge that Linh will have care of the children for a greater amount of time than James. This will impact Linh's ongoing ability to work full time. James and Linh agree this means there should be an adjustment from the percentage at step 2 in Linh's favour of 5% to account for her current and future circumstances.

4. Adjust the percentage to ensure a just and equitable division of property (if needed)

As Linh will continue to have the majority of child care responsibilities and this affects her income earning capacity, Linh and James agree that the property should be divided 55% to Linh and 45% to James. They agree this percentage split is just and equitable.

Linh and James each sought independent legal advice and each consulted a financial counsellor. They decide that Linh should retain the family home with the furniture because she will have more significant caring responsibilities for the children. They consider the proposed division to be just and equitable in all the circumstances.

Linh to keep	James to Keep
\$370,000 Family home & mortgage	\$45,000 Car 1 (blue) & loan
\$8,000 Car 2 (white)	\$300,000 Superannuation
\$25,000 Furniture	\$20,000 James' savings account
\$120,000 Superannuation	\$20,000 Shares
	\$20,000 Boat
(\$8,000) Credit cards	\$700 Transaction account
	\$15,000 Joint savings account
= \$515,000 (55%)	= \$420,700 (45%)

APPLYING FOR PROPERTY CONSENT ORDERS IN THE FAMILY COURTS

If you and your former partner have reached an agreement on how to divide your property, and you want to formalise that agreement and make it legally binding, you will need to apply for consent orders in the family courts. Search for 'consent orders' on the family courts' websites for further information (www.fccoa.gov.au or www.familycourt.wa.gov.au for separating couples in WA).

Remember that consent orders are usually **final orders**. They resolve your property disputes so that each person can carry on with their lives, with the certainty of knowing their property and financial matters are settled. Consent orders can be appealed or **set aside** in very limited circumstances. The law about appeals and setting aside court orders is very complex and you should seek legal advice.

HOW TO WRITE CONSENT ORDERS

Your **consent orders** should set out your property, how it will be split and what each of you need to do to ensure the property is split.

It is not possible to foresee everything that could go wrong. Some people find it useful to anticipate issues that may arise and have orders that set out how disputes are to be dealt with. Some examples are included in this guide.

Your consent orders can include orders allowing you or your former partner to apply to the family courts to deal with a problem when you can't agree. For example, if you cannot agree whether the property should be sold by auction or by private treaty, you can apply to the family courts to determine the matter. Even if you don't include these kinds of orders, you can still apply to the family courts and ask them to make these orders. Search for 'application for consent orders' on the family courts' websites for further information (www.fcftoa.gov.au or www.familycourt.wa.gov.au for separating couples in WA).

TIPS FOR DRAFTING CONSENT ORDERS

The orders should have a clear structure

- Use numbered paragraphs rather than dot points.
- Use headings and sub-headings.
- The aim is to make it clear who must do what, and when.

Use simple, clear, consistent and precise language

- Use simple, everyday language to be as clear as possible.
- Sometimes it is necessary to use legal words where the law requires it, but this should be kept to a minimum.
- You can use both words and numbers to refer to money, such as 'seventy-five [75]'
 - This is not legally necessary but it can avoid problems where there is a typo in a number, or an extra or missing zero.
- The orders need to be consistent with what is included in the application.

The consent orders need to clearly identify the parties

- You can refer to yourself and your former partner in a variety of ways.
- You can use:
 - Husband, wife, partner, partner
 - Applicant, respondent
 - Your names
 - Party A, Party B
- You must be consistent throughout the consent order and it must be clear who the orders are referring to.

You must clearly identify property

- You must identify the specific items of property you are referring to. For example:
 - Use the address for real estate e.g. Unit 3/521 Peach Street, Kingston Park, New South Wales 2000.
 - Use bank account details by using the account number, BSB and account name.
- You can refer to items by a short name, after using the full name and indicating the short name. For example: 123 Blossom Road, Flinders, Queensland 4545 ('the Queensland property').
- If you are identifying many items of property, you can insert a glossary at the beginning. This can be useful in complex matters, where there are many **liabilities** terms that need to be defined. For example, you could define 'the Queensland property' at the beginning of the consent orders instead of in the orders themselves.

The consent orders should specify who has to do what, and when

- Consent orders should be written so that it is clear who is required to do what and exactly what needs to be done.
- The consent orders should be final in nature (that is, you should not seek interim orders).
- It should also be clear as to *when* the parties must do what needs to be done.
- It is important to avoid statements that do not properly explain what each party must do. Even if the answer seems obvious, it is always best to be as clear about what a party must do.
 - For example, a statement such as '*the property is to be sold*' does not specify what each party has to do or when. Instead, the orders might say that '*Party A must sell the property within 30 days*'.
- The words '*Party A must sell the property*' are a good start in establishing an obligation, but need to be made more specific to deal with questions like:
 - When is the sale to happen?
 - What happens if the parties disagree about how to organise the sale, or what offer should be accepted?
 - Is the sale to be by auction?
 - Is Party A also required to discharge the mortgage?

How to express who needs to take an action

You should be consistent in how you express who needs to take an action. You may wish to use one of the following:

- Anastasia must...
- Muhammad shall...
- Elijah is to...
- Charlotte is ordered to...
- Zuberi sells/signs/pays/transfers...

Each of these require a party to do a specific action. Either form of the words used above will be equally effective. Choosing between the different ways of stating what a party needs to do is a matter of style and preference.

- You should use the same wording throughout the orders.
- If the wording changes, for example if one order says a party 'must' do something and another order says a party 'is to' do something else, this might be confusing.

Consider whether there is going to be an application for maintenance

You should consider whether you or your former partner intend to make a claim for **spousal maintenance**, which is financial support paid by one party to the other, where one party is unable to adequately support themselves and the other party has capacity to support that party. Further information and examples of spousal maintenance orders are further below in the Guide.

Important things to consider if you are splitting superannuation

Example superannuation splitting orders are included **later in this guide**. The Family Law Act requires superannuation splitting orders do the following:

- Outline that whenever a splittable payment is made to the member partner, the **trustee** must pay the non-member partner an amount (base amount) calculated in accordance with the **Family Law (Superannuation) Regulations 2025** or a percentage of the payment.
- Specify the base amount or the percentage of each payment that the non-member party is to receive.
- Outline that the member partner will have a reduction in their superannuation interest once the superannuation splitting orders are implemented.
- Set the time at which the superannuation splitting orders take effect (commonly this is set as beginning of the fourth business day after the day on which the orders are served upon the trustee and known as the operative date).

The orders should specify that the orders bind the trustee and any subsequent trustee of the fund. A superannuation splitting order should be drafted with reference to the following sections of the **Family Law Act**:

- Section 90XD (or section 90YD for WA de facto couples) - sets out the legal definitions for superannuation-related terms.
- Section 90XT (or section 90YY for WA de facto couples) - sets out the orders the family courts can make in relation to superannuation.
- Section 90XZD (or section 90YZT for WA de facto couples) - sets out when superannuation orders will be binding on the trustee of a superannuation fund.

Because these orders bind the trustee and any subsequent trustee of the fund, you must provide a copy of your draft orders to the trustee at least 28 days before the draft orders are filed with the Court. The trustee may give feedback or require a change to the orders before they are submitted to the Court. If a change is required, you must provide the draft orders to the trustee again for their review as a requirement of **procedural fairness**. The Court may refuse to make the orders if they are not satisfied that the trustee will be able to follow the orders.

EXAMPLE ORDERS

This chapter provides examples of common consent orders to help you draft your own with example **parties** and numbers shown in *<brackets and italic red text>*. It does not attempt to deal with every situation that might arise. However, wording suitable for some commonly occurring situations may help with wording for other situations.

This guide does not offer legal advice. The examples of orders below are to be used as a guide only and you will need to change them to suit your specific circumstances. You may wish to seek legal advice in drafting your orders.

If you are in Western Australia, you should consider example orders published by the Family Court of Western Australia. Search 'example property orders' at: www.familycourt.wa.gov.au.

ORDERS DEALING WITH PROPERTY

Orders dealing with real estate may be grouped together. Court orders mainly require parties to carry out actions. Orders can provide that real estate is retained by a person, transferred to a person, or that the **property** be sold. Real estate is often also subject to mortgages or used as security for personal loans and it is common for orders to provide that one party must pay the amount owing to a home loan so that the mortgage can be **discharged**. Paying the amount owing on a home loan might mean refinancing the home loan into one party's name so that the other party is no longer liable for the loan. This usually occurs when an interest in real estate that is subject to a mortgage is transferred from one party to the other.

Parties obliged to sell former home

<The Applicant and the Respondent> ('the parties') are to do everything necessary to sell the property known as *<number street name, suburb, postcode, state/territory>* being the land in Certificate of Title *<title reference>* ('the former home') and distribute the proceeds of sale as provided in the following clauses of these orders.

or

The parties shall do all acts and things and sign all documents necessary to list for sale and sell the *<number street name, suburb, postcode, state/territory>* being the land in Certificate of Title *<title reference>* ('the former home') for the best price reasonably obtainable and in the following manner:

Appointment of Agent for sale

The parties are to, within *<number days/weeks>*, appoint an agent for the sale of the former home *<number street name, suburb, postcode, state/territory>* being the land in Certificate of Title *<title reference>*. In the absence of agreement, to be a person nominated by the President of the Real Estate Institute of *<state or territory>*.

or

The parties are to appoint an agent as agreed in writing, and in default of agreement as to agent, then within *<number days/weeks>* *<the Applicant>* shall nominate *<number>* agents and *<the Respondent>* shall select one of those agents ("the agent") to list for sale and sell the *<Suburb>* Property *<number street name, suburb, postcode, state/territory>* being the land in Certificate of Title *<title reference>* by auction.

Appointment of Solicitor for sale

The parties are to appoint a solicitor or conveyancer to act in the sale of the former home *<number street name, suburb, postcode, state/territory>* being the land in Certificate of Title *<title reference>* or, in the absence of agreement, to be a solicitor nominated by the President for the time being of the Law Society of *<state or territory>*.

Time of sale and distribution of proceeds

The *<Applicant/Respondent/parties>* are to take all practicable steps to ensure that the sale and distribution of proceeds are to be completed as soon as practicable.

Sale by private treaty

The *<parties>* are to do all acts and things necessary to list the former home *<number street name, suburb, postcode, state/territory>* being the land in Certificate of Title *<title reference>* with the agent for sale by private treaty within *<number days/weeks/months>* of the date of the Orders.

The contract for sale in relation to the sale of the *<Suburb>* Property will provide for the date of settlement to be within *<number days/weeks>* after the date of the contract.

Within fourteen (14) days, the parties agree on a listing price and failing agreement within that time, that the *<Suburb>* Property be listed for sale at a price recommended by the agent selected pursuant to these orders.

The *<parties>* are to co-operate fully with the agent in relation to the marketing of the property, allow inspection at all times reasonably requested by the agent, make the keys for the home available, and ensure that the property is clean, neat and in good order at the time of any inspection.

When agreement is reached with the purchaser, the *<parties>* are to execute the contract of sale and all other documents necessary to complete the sale including all transfer documents.

The *<parties>* are to provide vacant possession upon settlement of the sale of *<Suburb>* Property to the purchaser, including ensuring that all furniture and possessions are removed from the property prior to settlement of the sale and bearing any expense(s) related to removal of same.

Sale by auction if not sold by private treaty

In the event that the *<Suburb>* Property is not sold by private treaty within *<2 months>* from the date of these orders or such other date as the *<parties>* agree, the *<parties>* shall immediately take all necessary steps to sell the *<Suburb>* Property by auction pursuant to the following orders:

- a) In the event that the *<parties>* do not agree on the auctioneer to be employed, the auctioneer shall be appointed by the selling agent.
- b) The *<parties>* shall execute all documents as may be necessary to authorise the auctioneer to sell the *<Suburb>* Property by auction.
- c) The reserve price is to be the amount agreed between the parties, or if they cannot agree, the parties shall accept a reserve price as recommended by the selling agent.
- d) The *<parties are to make an equal contribution to>/<the Applicant/Respondent is responsible for>* any money requested by the auctioneer for advertising or auction expenses. If one party pays the auctioneer at first instance, the other party will reimburse them so that the parties' contributions are equal.
- e) The *<parties>* are to co-operate fully with the auctioneer in relation to the sale, allow inspection at all times reasonably requested by the auctioneer, make the keys for the home available, and ensure that the property is clean, neat and in good order at the time of any inspection and on the day of the auction.
- f) The *<parties>* shall attend the auction sale and, in the event that the *<Suburb>* Property is not sold, shall negotiate with the highest bidder.
- g) In the event that the *<Suburb>* Property does not sell at the first auction, then the property shall be relisted for auction within one (1) month at a reserve price as agreed between the parties and failing agreement, at 5% less than the reserve price at the first auction; and
- h) In the event that the *<Suburb>* Property does not sell at the second auction, then the property shall continue to be relisted on the same basis and with a continued reduction of the reserve price on the same basis.
- i) When agreement is reached with the purchaser, the *<parties>* are to execute the contract of sale and all other documents necessary to complete the sale including all transfer documents.
- j) The *<parties>* are to provide vacant possession upon settlement of the sale of *<Suburb>* Property to the purchaser, including ensuring that all furniture and possessions are removed from the property prior to settlement of the sale and bearing any expense(s) related to removal of same.

Proceeds of sale

The *<parties>* are to do all things and sign all document necessary to cause the proceeds of sale to be distributed as follows in the following order:

- a) to discharge the *<Name of Bank mortgage No XXXX>* over the former home ('the mortgage')
- b) to pay the council and water rates adjustments
- c) to pay the agent's commission and advertising expenses and any other expenses payable on the sale
- d) to pay the legal costs and outlays relating to the sale
- e) to pay the balance equally to each of the parties.

or

Upon settlement of the sale of the *<number street name, suburb, postcode, state/territory>* being the land in Certificate of Title *<title reference>*, *<the Applicant>* and *<the Respondent>* are to cause the proceeds of sale to be applied as follows and in the following order:

- a) to pay the costs and expenses of the sale, including legal fees of the conveyance and real estate agent fees and commissions;
- b) to pay the council and water rates adjustments
- c) to discharge the *<Name of Bank mortgage No XXXX>* and
- d) to distribute the balance as follows:
 - i. *<XX per cent to the Applicant>*; and
 - ii. *<XX per cent to the Respondent>*.

Transferring property interests to one party where parties have joint ownership

On or before *<date>*, *<the Applicant>* is to pay to *<the Respondent>* the sum of *<amount in writing, amount in numbers, e.g. thirty thousand dollars (\$30,000)>* ('the Settlement Sum').

Simultaneously with the payment of the Settlement Sum from *<the Applicant>* to *<the Respondent>*, *<the Respondent>* shall do all acts and things and sign all documents necessary to transfer to *<the Applicant>* all *<his/her>* right, title and interest in the *<number street name, suburb, postcode, state/territory>* being the land in Certificate of Title *<title reference>* ('the *<suburb/investment>* *<house/unit>*').

Simultaneously with the transfer of the *<Suburb>* Property, the *<the parties>* will discharge the mortgage *<mortgage number listed on the Certificate of Title>* with *<name of financial institution>* ('the Mortgage') secured against the *<Suburb>* Property and *<the Applicant>* shall refinance any loan, encumbrance or mortgage associated with the *<Suburb>* Property, so as to **indemnify** and keep indemnified the *<the Respondent>* in respect of same.

In the event that the *<the Applicant>* fails to pay to *<the Respondent>* the Settlement Sum or is unable to refinance the mortgage over the *<Suburb>* Property into *<his/her>* sole name, pursuant to these orders, the *<parties>* are to do all acts and things necessary to list the *<Suburb>* Property with the agent for sale, and for this purpose the below sale provisions will operate *insert sale provisions*

or

Within *<number days/weeks, e.g. twenty-eight (28) days>* of the date of these Orders the parties are to do all things necessary to transfer *<the Respondent's>* interest in *<number street name, suburb, postcode, state/territory>* being the land in Certificate of Title *<title reference>* to *<the Applicant>* and in that regard:

- a) *<The Applicant>* is responsible for the preparation of any documentation necessary to transfer *<the Respondent's>* interest in the *<Suburb>* Property to *<her/him/they>*;
- b) *<The Respondent>* is to sign and return any documentation delivered to *<her/him/they>* in that regard within *<number days/weeks e.g. 7 days>* of the receipt of same; and
- c) The *<Applicant>* is responsible for the registration of any such documentation.

Where a party is to retain their property

<The Respondent> is to retain their interest in the property located at *<number street name, suburb, postcode, state/territory>* being the land in Certificate of Title *<title reference>* ('the *<suburb/investment>* *<house/unit>*') and is to **indemnify** *<the Applicant>* against any mortgage or other liability relating to the property.

Where a party is to continue living in the property

From the date of these Orders until the settlement date for the sale of the <Suburb> Property> or date of transfer of the <Suburb> Property into the <Applicant's> sole name:

- a) <the Applicant> has the sole right to occupy the Property <number street name, suburb, postcode, state/territory> being the land in Certificate of Title <title reference>
- b) <the Applicant> pays the loan repayments for the mortgage secured by the Mortgage, house insurance, rates, body corporate and land tax (if any) with respect to the Property; and
- c) <neither party> is to mortgage or otherwise offer the Property for security.

Dealing with a property subject to a mortgage

If the parties want to transfer a property that is subject to a mortgage, the orders should specify who is to pay the amount owing under the mortgage. Even if one party will be paying the amount owing under the mortgage, because the mortgagor (for example a bank) requires both parties to sign a request of **discharge** form, it will usually be appropriate for the orders to require that both parties must take all necessary steps to have the mortgage settled. The party retaining the property will be required to refinance the mortgage in their sole name.

Within <number days/weeks e.g. five [5] days> <the Applicant> and <the Respondent> take all necessary steps to discharge the mortgage <Name of Bank mortgage No XXXX> for <number street name, suburb, postcode, state/territory> being the land in Certificate of Title <title reference>.

One party to transfer property after payment

On or before <date>, <the Respondent> is to pay to <the Applicant> the sum of <amount in writing, amount in numbers, e.g. two-hundred thousand dollars (\$200,000)>. At the same time <the Applicant> must execute all documents submitted by <the Respondent> and do everything else necessary to transfer to <the Respondent> <his/her/their> interest in the property located at <number street name, suburb, postcode, state/territory> being the land in Certificate of Title <title reference> ('the <suburb/investment> <house/unit>')

Payment of rates and expenses relating to a property

As from the date of these orders <the Respondent> is to make all payments for strata, council and water rates and charges levied on the property, including arrears, and permanently **indemnify** <the Applicant> in relation to such liability.

PERSONAL PROPERTY

The distribution of **personal property** (portable items) can take a number of forms.

Where the items are of considerable commercial value or personal significance, they can be dealt with by individual orders. Where they are not, they can sometimes be grouped into categories such as a party's stamp collection, tools or musical instruments.

Sometimes parties will agree, after having dealt with the more important items, that other items will belong to the person having possession of them at a particular time. Sometimes, especially where there are many items of no great individual value, the parties can agree on a process for allocating the items.

<The Respondent> is to retain the following items free from any claim by *<the Applicant>*:

- a) *any bank accounts solely in his/her/their name;*
- b) *the <Vehicle make, model motor vehicle, Reg No XXX XXX>;*
- c) *His/her/their <musical instruments/all items of personal property>.*

<The Applicant> is to retain the following items free from any claim by *<the Respondent>*

- a) *any bank accounts solely his/her/their name;*
- b) *the <Vehicle make, model motor vehicle, Reg No XXX XXX>;*
- c) *his/her/their <Dell laptop>.*

or

Within *<number days/weeks>* from the date of these orders *<the Applicant>* is to do all acts and things and sign all documents to transfer to *<the Respondent>* any interest *<she/he/they>* may have in the *<Sailing boat Reg No ABC 1234 ['the sailing boat']>*. *<The Respondent>* is to **indemnify** *<the Applicant>* permanently against any liability relating to the *<sailing boat>*.

Apart from the items otherwise referred to in these orders, each party is to be solely entitled to:

- a) property in the name of that party, or being in neither party's name, in the possession of that party at the date of this order; and
- b) money in any bank accounts in the name of that party.

or

Items of personal property, furniture, furnishings and effects belonging to the parties or either of them are to be divided between the parties in the following manner:

- a) Within *<number days/weeks e.g. thirty (30) days>*, *<the Applicant>* is to prepare and provide to *<the Respondent>* *<two (2) lists>* of furniture such that the property in each list has approximately the same value.
- b) If within *<number days/weeks e.g. fourteen (14) days>* of receiving the *<two (2) lists>*, *<the Respondent>* notifies *<the Applicant>* of *<his/her/their>* selection of one of the lists, *<the Respondent>* becomes solely entitled to the items on that list and *<the Applicant>* becomes entitled to the items on the other list.
- c) Within *<number days/weeks e.g. sixty (60) days>*, each party must make the items to which the other party is entitled available for collection by the other party or any person nominated by that party at any reasonable time proposed by that party.
- d) Pending the distribution of the property as indicated above each party shall properly maintain all items of property in that party's possession or control.

or

The parties will divide items of personal property, furniture, furnishings and effects contained in the home in the following manner:

- a) The parties will prepare a list of all items to be divided between them, and all items with disputed value are to be valued by agreement or failing agreement within *<number days/weeks e.g. seven (7) days>* of the date of these orders, by *<name of valuer>*.
- b) Following valuation, the parties will each select items from the list that they seek to retain.
- c) An account is to be taken of the total value of the items selected by each party and any adjusting payment to be made by one to the other be paid within *<number days/weeks e.g. seven (7) days>* (or paid at the same time with the payment in paragraph *<specify paragraph number>* of these orders).
- d) If each party selects the same item or items then a ballot for such items will be conducted by and under the supervision of the parties' solicitors or such persons as the party may appoint and the result of such ballot will be binding upon the parties.
- e) The cost of the valuation and any ballot will be paid by the parties equally.

or

<The Applicant> is declared to be the sole legal and beneficial owner of all items of personal and **real property** in their possession or of which they are the registered proprietor as at the date of this order, including but not limited to all or any money standing to their credit in any bank or building society, shareholdings, motor vehicles and any present or future expectation under a trust or estate.

Debts and liabilities

Except as otherwise provided in this order, *<each party>* is solely responsible for any **liability** in that party's name or relating to any item of property which is *<that party's>* property pursuant to this order (including liabilities for borrowings, personal loans, student loans, personal or company tax debts and credit card liabilities), and is to **indemnify** *<the other party>* permanently against any such liability.

Obligation to give effect to orders

Each party is to do everything reasonably required by the other party, including the signing and execution of all necessary documents, to give effect to these orders within *<seven (7) days>* of being requested to do so.

SPOUSAL MAINTENANCE

Orders can be made for one party to pay maintenance to the other. Such orders often provide for periodic payments. They should specify:

- who is to make the payments
- who is to receive them
- the amount of the payments
- the times at which they must be paid
- the date on which the first payment is to be made, and
- if the orders are for maintenance over a specified period, the date of the last payment.

The orders could also spell out how the payment is to be made, such as by payment into a specified bank account. Alternatively, maintenance orders might provide for the payment of a lump sum rather than periodic payments.

Periodic spousal maintenance

<The Respondent> is to pay to <the Applicant> maintenance of *<amount>* each *<week/fortnight/month>* until *<date>* and is to pay the first payment on or before *<date>* into account *<bank account details>*.

If the words “<until date>” are absent, under the Family Law Act the orders would require maintenance to be paid until one of the parties dies, the party entitled to maintenance re-marries, or the orders are later varied or **discharged**.

Lump sum payment of spousal maintenance

<The Respondent> is to pay to *<the Applicant>* maintenance in a lump sum of *<amount>* on *<date>* into account *<bank account details>*.

Orders stating lump sum payment was for the purpose of spousal maintenance

These orders to which *<section 77A(for married persons)/section 90SH (for de factos)/section 205ZF (for de facto persons in WA)>* of the *<Family Law Act 1975 (Cth)/ Family Court Act 1997 (WA)>* apply and *<amount>* lump sum payment to *<the Respondent>* is maintenance for *<where for limited period, specify period>*.

Spousal maintenance, whether in the form of payments or the transfer of property, is treated differently from other income and assets in means testing for social security purposes. Section 77A of the Family Law Act provides that where the family courts order a transfer of property or a lump sum payment and one of the purposes of the transfer or payment is the maintenance of a party, it must state that section 77A applies to the orders. In the absence of such a declaration, the orders will be taken not to have been made for the purpose of maintenance. The declaration enables those administering social security to treat the transfer of property as maintenance. Section 90SH of the Family Law Act provides the same in relation to de facto partners and section 205ZF provides the same for de facto partners in WA.

Having a declaration under this section does not, by itself, prevent a future claim for spousal maintenance.

If you seek to exclude any future spousal maintenance claim, legal advice may be needed.

COMPANIES, TRUSTS AND BUSINESSES

Where the parties' assets include interests in companies, trusts or businesses, legal advice may be needed about formulating and drafting the property orders given the complex nature of these assets. However, it may be useful to note some general points.

Shares in public companies

If parties' own shares in public companies, those shares are simply a form of property that can be readily dealt with in property orders.

<The Applicant> is to transfer to <the Respondent> <his/her/their> shares in <Company name/ ABN> on or before <specify date>.

Directors of companies and trustees

Parties must also carefully consider whether assets and **liabilities** are held by them or are assets of the business and how that impacts upon the enforceability or effect of the orders.

If the parties are directors of companies or are **trustees**, the property orders will normally state the parties' personal obligations in those roles. The orders might require a person to exercise their powers as director of a company in a particular way. They might also include an injunction restraining a director from altering the current shareholding in a company, or dealing with a company's loan account.

In the case of a trust, the orders might say that a party is prevented from removing a trustee, appointing a person as trustee or distributing assets of the trust in a particular way.

In relation to interests in businesses, what is required to be included will depend on the legal status of the business. An order might require a party to transfer their interest to the other party in a particular business. If the business has creditors, debtors or trading partners, legal advice is recommended.

If you and your former partner are involved in various company or trust structures or other businesses, you should seek legal advice because company structures can be very complex and problems can arise if they are not properly dealt with.

Within *<twenty-eight (28) days>* of the date of these orders, the parties are to each respectively do all things necessary to:

- a) Remove *<the Respondent>* as a director of the Company *<Company name & ABN/ ACN>* ['the Company'];
- b) Transfer *<the Respondent's>* interest and shareholdings in the Company to the *<the Applicant>*, or their nominee;
- c) Cause *<the Respondent>* to relinquish the whole of their interest in the Company as to income and or capital beneficiary;
- d) Remove *<the Respondent>* as a signatory of any accounts held in the name of the Company; and
- e) Cancel the credit card held by *<the Respondent>* in connection with *<Bank account number 3456>* in the
- f) Transfer from *<the Respondent>* to *<the Applicant>* any debit or credit loan or beneficiary account in the name of the Company.
- g) At the same time as the above order, *<the Applicant>*, in their capacity as director of the Company, shall **indemnify** *<the Respondent>* in relation to any and all **liabilities** referable to the Company and any actions, claims, suits or demands as may be made against *<the Respondent>* in relation to the Company.

Superannuation splitting order

Any proposed **superannuation** splitting orders must first be sent to the trustee at least 28 days before being **filed** with the family courts.

In accordance with paragraph 90XT(1)(a) of the *Family Law Act 1975* (the Act), whenever a splittable payment within the meaning of section 90XE of the Act becomes payable to or on behalf of *<the Respondent>* from *<his/her/their>* interest in the *<superannuation fund, membership number>*, *<the Applicant>* is entitled to be paid (by the trustee) the amount calculated in accordance with Part 7 of the Family Law (Superannuation) Regulations 2025, using a base amount of *<\$X,000>* and there is a corresponding reduction in the entitlement *<the Respondent>* would have had but for these orders. The operative time for this order is *<four (4) business days>* after the day of **service** of the final orders on the trustee. This order binds the trustee and any subsequent trustee of the superannuation fund.

or

In accordance with paragraph 90XT(1)(b) of the *Family Law Act 1975* (the Act), whenever a splittable payment within the meaning of section 90XE of the Act becomes payable to or on behalf of the husband from his interest in the *<superannuation fund, membership number>*, *<the Respondent>* is entitled to be paid (by the trustee) *<X%>* of the splittable payment and there shall be a corresponding reduction in the amount *<the Applicant>* would be entitled to receive but for these orders. The operative time for this order is *<four (4) business days>* after the day of **service** of the final orders on the trustee. This order binds the trustee and any subsequent trustee of the superannuation fund.

Where no superannuation splitting order is to be made

Except as otherwise provided for by these orders, each party will retain, to the exclusion of the other party, any superannuation fund in which he or she has an entitlement.

HOW TO RESOLVE CONFLICT

Here are some ideas for machinery orders to assist with resolving conflict about the sale of property:

- The orders can set a sale price, or a minimum sale price, or they might provide that if the parties cannot agree the agent can set the price. Similarly, the orders might provide that the agent or auctioneer can set the reserve price at an auction.
- The orders can provide for a **third party** to determine a dispute – for example, orders might provide for the estate agent to be a person nominated by the head of a body such as the real estate institute.
- The orders can provide that if the parties cannot agree on a real estate agent, one is to provide the other with a list of three names and the other can choose one of the three.
- The orders can provide that if the property does not sell at the auction, it is to be listed for sale at a particular price, and then if necessary, at successively lower prices, until it does sell.
- One party rather than the other, or a third party trusted by both, can be given the task of carrying out the sale.

Sometimes, people are unable or unwilling to do what they are required to do under their consent orders. For example, the orders may provide for one party to pay a sum of money, but when the time comes that party may be unable to do so. Court orders are binding, and in principle the other party can take enforcement action if a party does not comply with the orders.

But enforcement proceedings can be slow and expensive. Well-drafted orders can often include 'machinery' provisions that provide a simpler and faster solution to the problem.

For example, where a person fails to pay a sum of money when required by the orders to do so, a possible solution might be for the orders to specify that if the payment is not made by the due date, a piece of property belonging to the person is to be sold and the profit used to pay the debt due under the orders.

Executing a document

To transfer property from one person to another, it is often necessary for the first person to sign certain documents, and the orders can provide for this. It is often convenient to provide that the person must execute documents provided to them by the other party.

<The Applicant> must execute all documents submitted by *<the Respondent>* to implement these orders.

Where a party fails to execute a document

If the person fails to execute documents when required to do so by orders, section 106A of the **Family Law Act** or section 221 of the **Family Court Act** provides that a third person, such as a **registrar**, can sign the documents, and this will have the same effect as if the individual had done so.

The Registrar, *<name>*, of the *<name of registry>*, *<Federal Circuit and Family Court of Australia/ Family Court of Western Australia>* is appointed to execute documents in the name of *<the Applicant>* and do all acts and things necessary to give validity to any documents *<the Applicant>* is required to execute by *<these orders>*.

or

If either party refuses or neglects to sign any document necessary to implement these orders within *<fourteen (14) days>* of a request to do so, *<name of person appointed>* is appointed to execute such document on behalf of that party.

Payment of interest when a person fails to pay by the due date

One commonly used form of machinery orders requires interest to be paid when a person fails to pay money as required:

If *<the Applicant>* does not pay *<the Respondent>* the sum of *<specify sum of money>* in accordance with *<specify paragraph>*, *<the Applicant>* must pay to *<the Respondent>* interest thereon at the rate *<prescribed by the Federal Circuit and Family Court of Australia (Family Law) Rules 2021/ Family Court Rules 2021>* calculated from the due date on so much as is from time to time outstanding.

Alternatively, such orders could specify a rate of interest rather than refer to the Rules.

Injunctions

Property orders can be combined with orders that restrain people from acting in a certain way, or require them to act in a certain way. These orders are called '**injunctions**.' For example, orders may prevent a person from selling or mortgaging a property without the consent of the other party. If you need to make an application to the court for an injunction, it is recommended that you seek legal advice.

GLOSSARY

Term	Definition
application	A form filed as part of legal proceedings in courts, particularly an initiating application which is filed to begin legal proceedings.
arbitration	A process where parties to a financial dispute present arguments and evidence to an independent arbitrator, who makes a decision to resolve all or part of the dispute.
binding financial agreement	An agreement that can be entered into at any time before, during or after a marriage or de facto relationship. This type of agreement can deal with how property, including debts, are split. Each person must receive independent legal advice to make a binding financial agreement.
conciliation	A form of dispute resolution that provides an opportunity for parties involved in a legal dispute to reach an agreement with the assistance of a third party, the conciliator. The Court may refer a proceeding, or a part of a proceeding or a matter arising out of a proceeding, for conciliation, as an informal, quick, and cost-effective way to resolve issues in dispute.
consent orders	A court order made with the consent of the parties. These orders are usually made by a registrar without any court hearing and are legally enforceable.
de facto	A relationship between two people, who are not legally married or related by family, who have a relationship living together on a genuine domestic basis. There is no fixed minimum time you must live together for a relationship to be considered de facto, it depends on the circumstances.
discharge	To terminate or remove something, such as a court order or liability under a mortgage.
disclosure	Providing relevant information to the court or the other person. In property or financial proceedings in the family courts, parties have a obligation to make full disclosure of their financial situation, including the property they own or have possession of (like assets, income and other financial resources and debts).
family courts	For the purposes of this guide, 'family courts' means the Federal Circuit and Family Court of Australia and the Family Court of Western Australia.
Family Court Act	The <i>Family Court Act 1997</i> (WA) is the Western Australian law that applies to ex nuptial parenting, de facto property, and certain other proceedings in the Family Court of Western Australia. However, the <i>Family Law Act 1975</i> (Cth) provides the laws for de facto couples in WA to split superannuation.

Term	Definition
Family Law Act	<p>The <i>Family Law Act 1975</i> (Cth) is a Commonwealth law that applies to parenting, property and other proceedings in the family courts. It applies to married and de facto couples throughout Australia, except in relation to de facto couples in Western Australia.</p> <p>Please note that the Family Law Act provides the law for superannuation splitting for de facto couples in Western Australia, all other family law proceedings for de facto couples in Western Australia use the <i>Family Court Act 1997</i> (WA).</p>
Family Law (Superannuation) Regulations 2025	The Family Law (Superannuation) Regulations 2025 are rules connected to the <i>Family Law Act 1975</i> (Cth) and outline the operation and procedures of the family law superannuation splitting regime.
family violence	<p>Violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful. Some illustrative examples of behaviour that may constitute family violence include (but are not limited to):</p> <ul style="list-style-type: none"> • assault • sexual assault or other sexually abusive behaviour • stalking • repeated derogatory taunts • intentionally damaging or destroying property • intentionally causing death or injury to an animal • economic or financial abuse, which includes unreasonably denying financial autonomy, unreasonably withholding financial support, and dowry abuse • preventing the family member from making or keeping connections with family, friends or culture, and • unlawfully depriving the family member, or any member of the family member's family, of their liberty.
filing	Taking or sending documents to the court registry.
final orders	An order made by the family courts bringing a matter to a close. If final property orders have been made, the parties cannot re-litigate the issues, except in limited circumstances.
indemnify	Legal protection from a liability, as where one person indemnifies another against liability arising under a mortgage. Such an indemnity would mean that the person indemnified can recover from the indemnifying person the amount paid to the creditor.

Term	Definition
injunction	An order made that requires a person to do something, or refrain from doing something, breach of which may be punishable.
liabilities	A person's legal obligations to do something or pay something.
mediation	A form of dispute resolution where an independent person, known as a mediator, assists people to negotiate an agreement to resolve their dispute.
parties	The people who are involved in a court case or a legal dispute. In a family law property matter the parties will usually be ex-partners.
partner	A member of a married couple, or a member of a de facto couple in relation to the other.
personal property	Items or property that a party can own and take with them, such as jewellery and furniture (distinct from 'real' property, i.e. land).
procedural fairness	A legal principle that says people must be made aware of claims or charges against them and have the opportunity to defend the claim or charge. Previously often referred to as 'due process of law'.
property	Property is broadly defined under the <i>Family Law Act 1975</i> (Cth) to mean property to which the parties to a marriage/de facto relationship are entitled, whether jointly or separately, and whether the right to that property is a current right, or a future right. This may include real estate, goods and personal property, animals, debts, money owing to the party(ies), business interests and shares, licences and permits that can be sold or transferred, an interest in a trust, and superannuation.
property pool	All the assets and debts of the parties to a relationship. It includes all assets and debts which are in one party's name or in both party's names.
property settlement	The division of assets and debts/liabilities acquired during a marriage or de facto relationship. Property settlements are based on the contributions made and the future circumstances of each person.
real property	Land or a building which is part of land, such as a house. Does not include personal property.
registrar	An officer of the Federal Circuit and Family Court of Australia or the Family Court of Western Australia who has authority, among other things, to make property orders by consent.

Term	Definition
service	The formal process of giving court documents to a party to proceedings or bringing the documents to the attention of a party to proceedings. Generally, ordinary service is completed by personally delivering the documents to an individual.
set aside	To cancel, annul or revoke a judgment or order.
spousal maintenance	Spousal maintenance is distinct from child maintenance which is a payment ordered to support a child or dependent under social security legislation. Spousal maintenance refers to payment(s) provided by one partner to the other as financial support following separation or divorce if a person cannot meet their own reasonable expenses from their personal income or assets.
superannuation	Money for retirement accumulated throughout an individual's working life, which is considered property in family law property settlements and agreements.
superannuation information kit	<p>Available from the family courts, it provides information and forms required to obtain information from a superannuation trustee in relation to the value of a superannuation interest. The kit includes the Form 6 Declaration and Superannuation Information Request Form which are to be completed and provided to the trustee, as well as the Superannuation Information Form which is completed by the trustee. For parties to a current proceeding who are unsure which fund/s they require valuations from, the kit provides information about requesting superannuation information held by the Australian Taxation Office.</p> <p>The superannuation fund may charge a fee for providing information in response to the kit.</p>
third party	A person whose interests are part of a family law matter and who is not a member of the marriage or de facto relationship.
trustee	In relation to superannuation, a person or persons, appointed to administer the affairs of the superannuation fund and manage the assets held by the fund.

