



BRIESE LAWYERS FACTSHEET
Family Law

Property Settlement



Recent cases in the Family Court have again emphasised the importance of formalising a division of property as soon as possible after a marriage has ended

Once a relationship has irretrievably broken down, it is in the parties' best interests to resolve their property settlement sooner rather than later. This is due not only to the fact that it allows the parties to move on with their lives but more critically, the Court always determines the values of assets for Family Law property matters *at the time that the matter comes to Court* and not at the time of separation.

To avoid litigation, parties can reach an agreement with respect to how their property should be divided. To read more on coming to agreement without Court litigation, refer to our Factsheet entitled "**Mediation & Conciliation**".

If you can come to an agreement without going to Court, it is extremely important to formalise that agreement with appropriate documents to prevent further claims in the future. To find out more on the importance of formalising your negotiated settlement and the grave risks of not doing so, refer to our Factsheet entitled "**Formalising Negotiated Agreements & Settlements**".

An Application for property settlement can be made at any time after separation. However, if the parties are unable to reach an agreement, then an Application to the Court for a determination of the property settlement must be made within 12 months of a Divorce becoming absolute.

The steps in working out a just and equitable property settlement are as follows:

- Step 1** - determine the net value of all the property owned by the parties whether owned jointly by yourself and your partner, or through a company, trust, or other entity (the 'asset pool'). Property includes such items as real estate, cash, investments, shares, furniture, motor vehicles, interests in partnerships or businesses, and superannuation;
- Step 2** - the Court determines the entitlement of each of the parties to the asset pool by assessing the contributions each party has made to the acquisition, conservation and improvement of the property. This includes financial and non-financial contributions of property before, during and after the marriage. The Court usually regards the contribution of one party as the primary "breadwinner" to be equivalent to the contributions as the primary parent and homemaker for children;
- Step 3** - Consider the future circumstances of you and your partner. In this final step, the Court must examine a number of other matters listed under section 75(2) of the *Family Law Act*, including age, health, future earning capacity, and care of child/ren;
- Step 4** - After having considered all of the above matters, the Court then has a very wide discretion to make the Order that it considers to be, in all circumstances, just and equitable.

There are no hard and fast rules for percentage divisions on property settlement, but our Solicitors will be able to guide you and advise you as to the likely range of outcomes that the Court could make in your particular matter.



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PROPERTY DISPUTES ARE OFTEN COMPLEX!

Valuation of Property

In some matrimonial disputes, the property involved may be difficult to identify, or be difficult to value and the process can be time consuming and expensive. Determining the net value of the asset pool may be complicated by:

- you and/or your partner owning a business/s which must be valued;
- you and/or your partner may have an interest in various Companies, Trusts or Partnerships which need to be identified and valued;
- you and/or your partner may own or part-own a rural property and that property may also form part of a going family concern; or
- you may not be aware of what property your partner owns and it may be necessary for investigative searches and enquiries to be undertaken to identify the net value of such property.

At Briese Lawyers, we are experienced in dealing with complex property disputes, including those involving rural properties and businesses, and will be able provide advice and guidance to protect your interests.

Restructuring

Where Companies, Partnerships, Trusts, etc are involved, it is necessary to carefully consider and deal with changes in ownership or interest in such entities. A settlement which leaves efficient structures in place and takes into account Estate Planning, taxation implications, Duty and other matters is a desired outcome for you and your partner.

Capital Gains Tax and Duty

In resolving your complex property dispute, you may be able to take advantage of exemptions from Duty and obtain Capital Gains Tax rollover relief on any restructure or transfer to give effect to a property settlement which is formalised by a Binding Financial Agreement or Order of the Court.

Superannuation

The Superannuation interests of both parties are included in the asset pool for determination of a Family Law property matter. For more information on Superannuation and Family Law property settlements, refer to our Factsheet entitled "Superannuation & Family Law Property Settlements".

Property settlement is a critical issue for most separating couples and it is important that you receive sound, practical legal advice as soon as possible. There are significant financial and emotional advantages in engaging a Solicitor who will provide sound advice and guidance and who will work to protect your interests in a fair and just manner.

Further details with respect to property settlements may be obtained by contacting one of our Solicitors. Our Managing Partner, Kym Briese, has many years of experience in advising on strategies for complex property settlements. We are up-to-date with all recent legislation and case law affecting separating couples and use a strategic approach to obtain the best result for you. We are experienced negotiators in all manners of property division, and can assist you in finalising your property settlement, often out of Court. Our expertise covers a range of property issues, including taxation and Duty implications, Estate Planning considerations and recent legislative changes.



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