

A fair share

Negotiating your property settlement



Relationships Australia.

Authors

Susie Winter (Project Manager) in collaboration with Bill Field (RA Tasmania) and the assistance of Relationships Australia National Family Dispute Resolution Network: Michael Hunt (Convenor, RAV), Max Wright (RAV), Gai Campbell (RAV), Serena Griggs (RACR), Mandy Flahavin (RAWA), Rick Greene (RANSW), John Cleary (RAQ), Angie Robertson (RATAS), Jenny Devlin (RANT), Virginia Leeuwenburg (RASA), Alison Brook (RAN), Kerry Buchholz (RAQ).

Additional writing and editing by Helpful Partners Pty Ltd www.helpful.com.au

Acknowledgements

Relationships Australia receives funding from the Australian, state and territory governments and other agencies. We gratefully acknowledge this support which assists us to provide relationship services.

First edition, printed September 2010

Second edition, printed June 2012

Third edition, printed April 2014

Fourth Edition, printed July 2016

© Relationships Australia

This work is copyright. You may download, display, print and reproduce this material in unaltered form only (retaining this notice) for your personal, non-commercial use or use within your organisation. All rights are reserved. Requests and enquiries concerning reproduction rights should be addressed to:

National Executive Officer

Relationships Australia

PO Box 5046, Kingston

ACT 2604

Ph: (02) 6162 9300

www.relationships.org.au

Email: natoffice@relationships.org.au

About this guide

Before you get started

The importance of legal or financial advice

This guide gives general information about the law. It does not replace the need to seek appropriate legal or financial advice.

▲ in this guide means we that we recommend you gain legal or financial advice on the topic.

Contacting a legal information service or advice line is not usually considered the same as having obtained independent legal advice from a lawyer.

Even if there is very little dispute, the same lawyer cannot act for both you and your former partner. To avoid a conflict of interest each of you should engage a separate lawyer.

The same applies to financial advice.

Is this guide for married, de facto or same-sex couples?

This guide is for all married or de facto heterosexual or same-sex couples who separated on or after 1 March 2009, (or, in the case of South Australia, on or after July 2010) *whether children are involved or not*.

De facto couples who separated before these dates can choose to settle matters of property division or adult financial support (spousal maintenance) under their own state or territory laws or the federal Family Law Act. A lawyer can advise what path is suitable.

While the Commonwealth Family Law Act, 1975 applies across the majority of Australia, in Western Australia de facto couples remain subject to State law about property division and adult financial support. Affected couples should discuss this with their lawyer.

The Court

In this guide, Court refers to the Family Court of Australia, the Federal Magistrates Court of Australia or the Federal Circuit Court of Australia.

Glossary

Some terms used in this booklet carry a specific legal meaning. For further explanation refer to the Glossary on page 33.

Contents

Why this guide?	4
Dividing property	
Does having children affect me finalising my property?	
Your property agreement	
What is the process?	
When separation happens	9
Resolve urgent living arrangements	
Who should leave the home?	
What if we can't agree?	
Should I stay or should I go?	
Can we be separated under the same roof and still finalise our property agreement?	
Who will pay the bills if one of us moves out of the house?	
What about my will after I separate?	
Family Dispute Resolution and your property agreement	14
What is Family Dispute Resolution?	
The role of the FDR practitioner	
The FDR process	
Are you ready for FDR?	
Is FDR right for every situation?	
Choosing a Family Dispute Resolution practitioner	
Before you start FDR!	
The FDR process and what I can expect	

Finalising your property agreement	26
Consent orders: Do-it-Yourself Kits	
Consent orders: Using lawyers	
A binding financial agreement	
Property settlement, the end of the process	
Alternatives to Family Dispute Resolution	29
Make an informal arrangement	
Use lawyers to propose an agreement	
Obtain a court ordered property settlement	
The Tools	33
Glossary	
Financial checklist	
Property list	
List of debts	
Contacts and further assistance	

Why this guide?

Whether you have been married or living as a de facto couple, whether you have been living together for many years or only months, separation is a painful and disruptive time.

Finalising arrangements for property (and for children if you have them) can be complex and emotionally draining. While the majority of couples resolve things satisfactorily and move on with their lives, it does take time.

Dividing property

Most married or de facto couples acquire assets (like real estate and motor vehicles) and liabilities during their relationship. Resolving who gets what can cause conflict and tension when couples separate.

This guide will help you with the process of dividing up your property. The main emphasis is on how Family Dispute Resolution (FDR) can help you through this process.

Does having children affect me finalising my property?

No. You may have your own children or your children may be from a previous relationship. Yours may have been a blended family or your child may belong to a same-sex former partner. None of these circumstances affect your ability to finalise your property.

Not in this guide

Living arrangements for children

Negotiating children's living arrangements can be difficult and emotional. The Relationships Australia handbook *Share the Care: Collaborative Parenting Apart* offers some assistance with this process.

Other Relationships Australia handbooks that may help at this time:

Men and Separation

Women and Separation

Available from Relationships Australia,
ph. 1300 364 277

Adult financial support (spousal maintenance)

Not covered in this guide.

What is property?

Most couples have some idea as to what is classed as property but there are also some common misconceptions about what is considered 'property of the relationship' when negotiating a property agreement.

Property of a relationship will include:

- All assets (things you own) held by you and your former partner in joint or separate names such as:
 - family home
 - holiday home
 - cars and boats
 - household effects from stereos to cups and saucers
 - personal items like jewellery and clothing.
- All assets under your own or your former partner's control such as:
 - a business
 - superannuation
 - a share in an extended family business or investment property held under a family trust.
- All liabilities (things that you owe money on) in joint or separate names such as:
 - mortgage debts
 - credit cards
 - hire purchase agreements.

It may also include property you held in your own name prior to entering into the relationship, or property you have acquired since separation.

Your property agreement

Relationships Australia works every day with separating couples on property matters. We believe that negotiating your own mutually acceptable property agreement is the best way to finalise the cash, assets and liabilities you have acquired during your relationship.

What is a property agreement?

A property agreement is a document that sets out how you and your former partner will divide up your property.

What are the advantages of negotiating a property agreement?

- It minimises the cost of lawyers and avoids an adversarial court process.
- It allows you to be part of the process rather than having a decision imposed on you by a court.
- It can provide a speedy resolution.
- There is likely to be less emotional toll or impact on children.
- It is an important step towards ending the financial relationship between you and your former partner.

How do we negotiate a property agreement?

A property agreement is best negotiated using family dispute resolution with advice from lawyers or financial planners as required.

You do not have to be totally alone. These phone numbers can refer you to services appropriate for you, including family dispute resolution and counselling. Many initial services are at low or no cost.

Family Relationship Advice Line 1800 050 321

Relationships Australia 1300 364 277

What if we can't agree?

There are other options for resolution. However these normally involve lawyers and may involve significantly more time and cost.

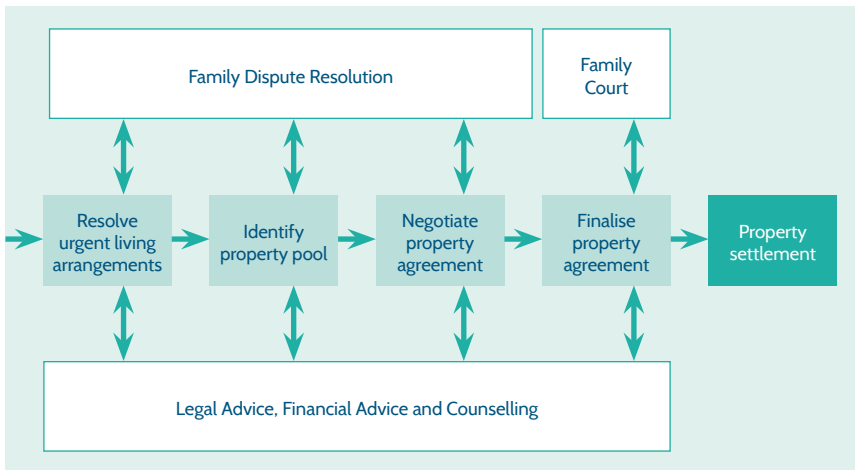
What is the process?

This is the process that most people follow from separation to their property settlement.

It involves:

- identifying what is included in the property pool
- negotiating the division of the pool by way of a property agreement
- formalising the agreement to achieve a property settlement.

Your process may have some differences. The important thing is to realise that legal advice, financial advice and other support services are available along the way.



When separation happens

Resolve urgent living arrangements

Separation may have been coming for quite a while or it may come as a total shock. Resolving your new living arrangements is vital. This means agreeing with your former partner on a temporary living arrangement. Once this is done you can start thinking about your property agreement.

At this time it is easy to be overwhelmed by a thousand feelings and questions. It may be helpful to talk about the options with someone who is not your former partner. The Family Relationship Advice Line or Relationships Australia are a good start (refer to Contacts, pages 39-40).

Who should leave the home?▲

There are no rules about who should move out. Consider factors such as who will have primary care of children in the short term and your individual financial circumstances.

It is also important to consider the effect any move may have on children, or whether there is an issue of safety for you or your children because of ongoing conflict between you and your former partner.

What if we can't agree?▲

If you are unable to agree, seek family dispute resolution or legal advice. (Refer to Contacts, pages 39-40).

Peter and Belinda

Peter and Belinda have two children. Peter works full time and Belinda is a casual worker with primary care of their children.

After some discussion they agree that the children should stay in the family home.

As Peter is working full time, he will move into rental accommodation until they have finalised their property issues. They also agree that Peter can access some of their joint savings to cover rent and the purchase of basic furniture and household items to set up his accommodation.

Should I stay or should I go?

- Consider leaving the home if it is affecting your own or your children's safety.
- Legal entitlements to a share in the property of a relationship are not affected by one former partner leaving the home. ⚠
- Leaving your home may limit your future access to property or personal or financial documents, particularly if family violence is involved. ⚠
- Consider taking photographs of furniture and making copies of important documents if you plan to leave (refer to Financial Checklist, pages 36-38).

Keep track!

It is important to keep track of all your property until your property agreement is finalised and settlement is reached. This can sometimes be difficult, particularly if not all the assets are in joint names.

You may need to seek legal advice before separation about how to protect your existing property until your property settlement is completed.

Can we be separated under the same roof and still finalise our property agreement?

Yes. You may or may not still be living together as a couple (cohabiting).

Sometime couples cease their intimate relationship but continue to stay in the family home.

You can still finalise your property agreement during this period and attend family dispute resolution if you wish.

Who will pay the bills if one of us moves out of the house?▲

There are no set rules about this. It will depend on you and your former partner's financial circumstances.

It is important to deal with the bills, debts and ongoing costs of maintaining the property of the relationship as soon as possible. This way you will minimise penalties or costs associated with non-payment of debts.

John and Aneetha

Who should pay the mortgage?

John and Aneetha both work, but John earns substantially more than Aneetha. Over the years, bills and mortgage payments for the family home have been paid out of a joint account into which both have paid their income. Although Aneetha is still in the home, she is unable to cover the mortgage payments and contribute to bills on her income alone.

To ensure that the costs associated with the home are covered, they do a budget and at their first FDR session they discuss what they can each afford to pay. John and Aneetha agree that John will pay the mortgage payments, whilst also paying rent for his alternative accommodation until the home is sold.

What about my will after I separate?▲

If you are married, a divorce may automatically render your existing will invalid.

Separation however, does not automatically revoke a will, whether you are married or in a de facto relationship. Therefore any will that is valid at the time of separation will continue to be valid after that date, and so any property you have left to your former partner may pass to them if you died.

You may wish to consider amending your existing will or making a new one soon after separation to reflect your changed circumstances.

Financial assistance

Contact the Centrelink – Families and Parents Line 13 61 50 if you think you may be eligible for assistance as a single parent. www.humanservices.gov.au

The Child Support Agency 13 12 72 can assist you in relation to your eligibility or liability for child support. www.humanservices.gov.au

Family dispute resolution

It is worth seeking family dispute resolution as early as possible during separation. It can:

- assist you to work out a viable short term plan while you are finalising your property agreement.
- help you resolve short term issues and set the scene for future planning.

Refer to Contacts, pages 39-40.

I was so glad I listened to my counsellor and attended FDR soon after we separated. We were able to agree to share the bills until the house was sold and I stopped worrying so much.
Rosie

Family Dispute Resolution and your property agreement

What is Family Dispute Resolution?

Family Dispute Resolution (FDR) is the legal term for services like mediation that separating couples can use to obtain assistance in sorting out disputes and as an alternative to going to Court. In FDR the separating couple is assisted by a qualified and impartial FDR practitioner to reach a mutually satisfactory agreement about property.

The role of the FDR practitioner

The FDR practitioner is an impartial person whose role is to assist you in reaching an agreement. The practitioner is not able to give legal advice and will not dictate to you what options you should be considering.

It is the FDR practitioner's role to ensure you are both coping with the process and that you each feel able to negotiate freely.

The FDR process

The process is designed to be fair. Each person is given the opportunity to speak without constant interruption, and respond to any matters put by the other person.

The process is designed to meet the needs of both parties. You have the opportunity to negotiate arrangements that meet your needs as a separating couple.

The FDR process is designed to aid negotiation between you. If you maintain a fixed position and are not willing to negotiate, you may not reach agreement in this process.

Even if you can't reach agreement in FDR, agreement may still be possible with the assistance of lawyers. Any work you have done in a mediation process to identify the issues can still be useful in a more legal setting.

At the time of publication it is not compulsory for couples to attend family dispute resolution for property matters. However this requirement may change in the future.

Are you ready for FDR?

- Have I resolved my urgent living arrangements?
 - housing? .
 - financial assistance? .
 - child support? .
- Am I able to think clearly and talk constructively about the issues without becoming too emotional? .
- Will my former partner be willing to participate? .
- Do I have enough information about my rights and obligations? .
- Am I able to sit in a room with him/her or am I too intimidated? .
- Do I feel safe enough? .

If you have doubts about your readiness to participate with your former partner, an initial meeting with a FDR practitioner on your own can be helpful.

Counselling

Feeling supported throughout the process of family dispute resolution is important.

Attending counselling before or during the process may assist you in looking after your emotional wellbeing.

Alternatively you may choose to see your GP.

“I realised after talking to my FDR practitioner that I was just too angry about her leaving to be able to discuss money stuff. I spoke to my GP who referred me to a counsellor. Now I am much more in control of my emotions and ready to think about the future.”
Adrian

Is FDR right for every situation?

Family dispute resolution may not be right for every situation. Examples of instances in which it is not recommended are:

- where there is family violence or child abuse, or a risk that these will happen
- where one person cannot make decisions on an equal basis with the other because they feel intimidated or unsafe
- in urgent situations, for example, if children have not been returned from a visit, or if one party thinks that the other might take or damage property that they are entitled to
- where one person refuses to participate
- where the ability of one of the parties to participate is affected by a mental illness or a drug or alcohol abuse problem.

Seek legal advice if you are in this situation. ⚠

Choosing a family dispute resolution practitioner

FDR services such as Relationships Australia are available in all Australian states and territories. All states also have a number of Family Relationship Centres (FRCs) which are funded by the Commonwealth Government. While FRCs deal primarily with parenting disputes, they may also assist with more straightforward property matters.

To find a FDR practitioner in your area, visit www.familyrelationships.gov.au or call Relationships Australia 1300 364 277.

You do not need to have children to access FDR.

All couples can access the service.

Before you start FDR!

Legal advice – before you start and along the way

Most people are not clear about how family law operates in relation to property division. Information from well-meaning friends or relatives can lead to misunderstanding or confusion about your own situation.

FDR practitioners recommend that you seek legal advice before you begin family dispute resolution and at appropriate times throughout the process.

Proper legal advice:

- avoids unrealistic expectations about the possible outcomes
- helps speed up the negotiation process.

You should inform your lawyer you are intending to use the FDR process to try and resolve your issues.

Finding a family lawyer

Ask friends and family if there is someone they recommend, or contact the Law Society in your state or territory.

Establish if you are eligible for legal aid by contacting your local legal aid office or Legal Aid Commission (refer to Contacts, page 39-40).

Ask your lawyer

Ask your lawyer about the possible best and worst outcomes and the likely costs.

Find out how long the process is likely to take and when you should come back for further advice.

Any advice you receive from your lawyer should be in writing.

Minimise your costs

Refer to pages 36-38 for types of financial and property information you need to take to your lawyer.

Financial advice – before you start and along the way

You may need to get some independent financial advice from a financial planner or accountant or speak to your lending institution before you start family dispute resolution. Good advice can help you understand the financial impact of different ways of dividing property.

During the FDR process financial advice may be required again, particularly regarding proposals for allocating superannuation.

Ask your Financial Planner

- Am I in a financial position to buy my former partner out?
- Could I obtain a mortgage that would enable me to finance myself into another property?
- Can I access any portion of my superannuation before I retire?
- Can I refinance to manage my debts?

The FDR process and what I can expect

Intake

Before any joint sessions you will usually meet separately with the FDR practitioner for an individual session. This way the practitioner can obtain background information that will assist you both during the process.

The practitioner will also give you information about the nature of the FDR process, the role of the practitioner and how you can best participate.

The practitioner will then decide if you are both emotionally ready for the dispute resolution process and able to look after your own interests. Sometimes it may be appropriate to postpone FDR and refer one or both of you to other services for assistance with coping with the separation first.

The Dos and Don'ts of FDR

Your behaviour towards your former partner in the FDR process can play an important role in determining the success of the process.

Do:

- be prepared to listen
- avoid highly emotive statements
- be open to negotiation.

Don't:

- deliberately antagonise your former partner
- butt in and talk over your former partner
- maintain a dogged fixed position.

Full disclosure

You are expected to provide full and frank disclosure of all your financial information, as you would in any legal setting.

A property settlement may be 'set aside' (cancelled) if it is established later on that there was not full disclosure at the beginning.

You are not expected to know everything however! Sometimes one former partner is not fully aware of the other's financial affairs such as superannuation details, actual salary, family investments or debts in that person's name alone. This can often be the case even if you have joint accounts and have a regular bill paying system.

First Session

The first session after intake is usually a joint session. If you or your former partner don't feel ready for a joint session, other options are available. This might be individual sessions or 'shuttle mediation' in which you and your former partner are seen in separate rooms by the same practitioner, or even two different practitioners.

To start with, the practitioner(s) will try to identify the property of the relationship. This list of assets and liabilities is what is commonly called the property pool (refer next page).

This includes not only things you own, but things you owe money on; they may be owned individually or jointly or by a family trust or family company or business. It can include property you brought to the relationship and property you had when it ended.

The value of an asset is not what you paid for it during the relationship; it is the 'current market value' at the time of your negotiations or at any hearing of the Court.

My car went into the property pool. I thought it was mine because I paid for it and it was in my name. But it went in just the same.
Morgan

How can I establish the value of the assets?

- For some items such as real estate or cars you can obtain market appraisals from agents or auctioneers, or use recent valuations obtained for refinancing or insurance.
- You can pay a registered valuer to give you an estimate of the current market value of assets. You could share this cost with your former partner.
- To determine the value of superannuation you may need the help of a superannuation expert if you have a complex scheme.

What goes into the property pool?▲

All property of the relationship is considered part of your 'property pool'.

For example:

Assets:

- Real estate, including the family home
- Cash in bank accounts, both joint and separate
- Shares
- Superannuation
- Certain life insurance policies
- Motor vehicles, boats, trailers
- Household items including items of value, such as antiques or artwork
- Jewellery
- Tools of trade
- Capital gain on real estate – i.e. gain in market value
- Assets in business, former partnership, company
- Windfalls or winnings.

Liabilities:

Debts such as mortgages, loans, credit cards, hire purchase agreements and personal debts.

Ongoing sessions

Once you have identified your property pool, the practitioner will help you identify your main concerns and wishes over your property division. For example, you may want to avoid selling the family home to ensure that your children remain in familiar surroundings.

You may wish to consider contributions and your personal future needs. Your family dispute resolution practitioner will help you identify ones that are important to you.

Contributions

The way the property pool is divided can be affected if you or your former partner has made significant contributions to the relationship initially or during your relationship.

Contributions may be financial, non-financial, homemaker or parenting in nature e.g.:

- salary or wages
- inheritances
- gifts, either monetary or items of value e.g. art
- housekeeping
- child care
- maintenance
- gardening
- renovation
- dinner parties for business clients
- bookkeeping or organisation of clients for family business.

This is where the 'homemaker' contribution is considered. For example if one of you worked full time for a wage or salary and the other cared for the children, both the financial and the homemaker contributions must be considered.

Other contributions can be difficult to assess. ⚠

- Inheritances or gifts from family, including monetary gifts and valuable household items such as artwork or antiques
- Loans from relatives
- Redundancy payments
- Compensation and damages payments relating to employment or personal injury
- Complex superannuation schemes.

Your future needs

You may also want to consider other personal factors, such as your own and your former partner's:

- age and state of health
- income earning capacity and future financial resources
- reasonable future standard of living

as well as:

- parenting arrangements and care of children under 18
- current and likely future financial support of your children.

Dollars and sense

When you are attempting to negotiate a property settlement in family dispute resolution, don't try and calculate your contributions down to the last dollar. It can be counter-productive, particularly as there are a range of non-financial contributions that are seen as valuable under family law but are not easily measured.

Concluding sessions

Usually couples need more than one session to negotiate their property agreement. Further sessions usually involve:

- gathering more information
- negotiating
- considering options.

Successful participation in family dispute resolution should allow you to agree on a final division of the property. Once in the appropriate format and signed by both of you, this then becomes your property agreement.

Robert said his super was important to him. I said 'Fair enough, but I need to be able to buy another home.' I was pleased that we were both able to make this clear.
Sancia

Before you sign on the dotted line! ⚠️

It is tempting to breathe a sigh of relief and sign the property agreement but it is very important to seek further legal or financial advice before you accept any proposal. Once legal documents have been signed, it is not generally possible to change your mind and seek a different property agreement.

Some important questions:

- Is it possible for me to carry out this proposed agreement, both financially and legally?
- Is it realistic and can I afford the proposed repayments on debts such as a mortgage?
- Have I considered all the costs associated with making a legally binding agreement such as legal fees and any other fees associated with transferring property?
- Do I need the assistance of a financial planner, accountant or other specialist adviser to understand the consequences of the proposed agreement?
- How long will it take to put the proposed agreement in place and can I manage my finances adequately during that time?

Once you and your advisers are satisfied, you can sign the agreement. This is a key milestone in moving forward!

The last stage is to finalise your agreement with the Court (see next section Finalising your Property Agreement).

Finalising your property agreement

While you may have reached agreement and have a document in your hands, your agreement is not legally binding unless it is put into:

- Consent Orders or
- a binding financial agreement.

This is a completely new and different phase of the process, unrelated to the FDR process you have just completed.

Consent orders: Do-it-Yourself Kits

Do-it-Yourself Consent Order Kits are available from the Family Court of Australia in your state or from www.familycourt.gov.au. They provide information about how to complete the Application for Consent Orders, examples of the orders you may be seeking, and the additional documents you are required to file with your application.

Only one Application is required which both former partners need to sign.

If you are unsure about how to complete the forms or want more information about other options available for finalising your agreement, you can contact your local Legal Aid Service or Advice Line. Refer to Contacts, pages 39-40.

Consent orders: using lawyers

If you do not feel confident to use the Kit it is recommended that you use lawyers to draw up orders on behalf of you both.

Q: What does the Court consider when I apply for Consent Orders?

A: The Court will consider the overall effect of Consent Orders on you and your former partner.

Here the Court stands back and considers the actual assets and superannuation each of you would end up with, as well as the proposed percentage split of assets and superannuation.

The Court has a wide discretion over this and there is no standard formula.

What does this mean for me?

- There are a range of legally acceptable outcomes depending on your particular circumstances.
- Ask your lawyer about your best and worst case outcomes. Your lawyer's advice is likely to be different from your former partner's.

A binding financial agreement ▲

A binding financial agreement is negotiated and finalised through lawyers. It must be in writing.

Advantages: It does not have to be approved by the court.
It is legally binding.

Disadvantages: You must engage a lawyer. Higher legal fees.

Property settlement, the end of the process ▲

With consent orders or a binding financial agreement in place you have completed the process and achieved your property settlement.

Alternatives to Family Dispute Resolution

While this guide focuses on FDR as the preferred means to negotiate your agreement, there are other methods you can use:

- Make an informal arrangement
- Use lawyers to propose an agreement
- Obtain a court ordered property settlement

Make an informal arrangement

You and your former partner may just decide to divide up all assets and liabilities between you without any assistance or formal written arrangements.

Advantages

Minimal use of lawyers. Low cost.

Disadvantages

If you need to transfer real estate or assets such as vehicles into different names, you may incur government charges and fees on the transfer.

Informal arrangements are not legally binding. This means that at some future time either of you can pursue further claims in Court.

If one of you does not stick to your informal arrangement you may have to make an application to the Family Court. You must do this:

- within one year from the date your divorce is final if married or
- within 2 years from the date your de facto relationship ended.

You should seek legal advice about the risks of this approach. ⚠

“My settlement was completed privately two years ago using an informal agreement. Now my ex wants half of my super! This was not discussed by us at the time. Now I wish I had got advice about how to make the agreement binding.”
Theo

Use lawyers to propose an agreement

If your former partner has not been willing to participate, or you have been unable to negotiate an agreement in family dispute resolution, you may wish to engage a lawyer to provide advice and negotiate on your behalf.

This would normally mean your lawyer dealing with your former partner's lawyer to resolve the dispute prior to applying to the Court.

Your lawyer may suggest arbitration or collaborative law as alternative ways of resolving your property dispute. Both these options involve parties having legal representation but are designed to be more cost effective and faster alternatives to the court system.

Arbitration is a process outside the court system in which parties to a dispute present arguments and evidence to an arbitrator, who makes a determination to resolve the dispute.

Collaborative law is a non-adversarial approach to resolving disputes in which parties, their lawyers and other experts enter into a formal agreement to focus on settlement rather than litigation.

You should seek advice from your lawyer about whether these options are available in your state or territory, and whether they are suitable for your circumstances. ⚠️

Advantages

You do not have to negotiate directly with your former partner.

Disadvantages

Higher legal fees. Less control over the process.

Obtain a court ordered property settlement ▲

This option is a last resort if:

- your former partner will not participate in any discussion or dispute resolution with you or
- you cannot agree on the division of property, even after FDR or lawyer-assisted negotiation.

This is inevitably a costly process and it is likely to lower the value of the property pool, if settlement is not reached in the early stages of Court proceedings.

Sometimes this option is unavoidable, particularly if there is an urgent need to protect property that your former partner may be trying to hide, sell or give away to avoid it being included in the property pool. You will need to get legal advice in this situation.

The Tools

Glossary

Adult Financial Maintenance or Spousal Maintenance

Financial support sought, or paid, by one partner for the support of the other partner in the relationship.

Assets

Items of value owned by either party to the relationship. Assets can be physical items of value such as vehicles, real estate, furniture or jewellery, or may be things such as shares or superannuation that have a realisable value.

Cohabitation

An arrangement whereby two people decide to live together on a long term or permanent basis in an emotionally and/or sexually intimate relationship. The term is most frequently applied to couples who are not married.

Consent Order

A document signed by both parties setting out agreements between them for which they require legal enforceability. Enforceability is achieved by the Family Court making orders in terms of the agreement with the prior consent of the parties.

Court

Family Court of Australia/Federal Circuit Court of Australia.

Divorce

The dissolution of a marriage under the Family Law Act. An application for divorce does not deal with the alteration or division of property between parties but simply brings a legally recognised end to the marriage.

De facto

A couple relationship between two people of the same or different genders, who are not married or related by family, but who live together on a 'genuine domestic basis'.

Independent legal advice

Full and comprehensive advice from a legal representative/lawyer.

A legal representative or lawyer cannot properly advise both parties to a dispute. Independent legal advice means that each party has received full and comprehensive advice regarding their rights from their own separate legal representative/lawyer.

Family Dispute Resolution (FDR)

A process such as mediation, where a qualified FDR practitioner helps parties, who may be affected by separation or divorce, to resolve some or all of their disputes with each other.

Family Dispute Resolution Practitioner

A person, such as a mediator, who has been accredited under the Family Law Act 1975 (Cth) to provide FDR services.

Family Law Act

The Australian law that covers all issues relating to families and separating couples, such as divorce, property, spousal maintenance and all issues concerning the living and care arrangements of children of a relationship after separation of their parents.

Family Court of Australia/Federal Circuit Court of Australia

Federal courts that have the power to deal with legal issues resulting from the breakdown of marriage and specified de facto relationships.

Marriage

'The union of a man and a woman to the exclusion of all others, voluntarily entered into for life.' (*Marriage Act 1961*)

Property

Any assets (things you own) or any liabilities (debts you may have or anything you owe money on). The use of the term 'property' does not just relate to real property (real estate), but to other items of significant value you may have acquired during a relationship.

Property Agreement

An agreement finalising the division of the property of the relationship, reached by you and your former partner through negotiation or family dispute resolution, but prior to taking any steps to create a binding arrangement.

Property pool

This is the value of the property that is available for division after payment of all debts that are agreed to be a joint responsibility.

Sometimes the property pool is called the net property pool.

Property Settlement

A term commonly used where parties finalise their agreement under the Family Law Act to create a binding arrangement.

Separation

A situation where the parties to a relationship cease to co-habit as a couple, and where one or both of the parties deem that the relationship has irretrievably broken down. There is no distinction between marriage and de facto relationships in relation to the issue of separation.

Financial checklist

Save time and money by having these details available for your FDR practitioner and lawyer.

Details of the financial history of your relationship including:	<input checked="" type="checkbox"/>
• a list of assets (cash, real estate etc) that you brought to the relationship (your initial contribution)	<input type="checkbox"/>
• a recent valuation or market appraisal on any real estate	<input type="checkbox"/>
• a list of all the other assets of the relationship, such as vehicles, investments, shares and valuable household goods in your name, joint names or your former partner's name. Include approximate market values	<input type="checkbox"/>
• details of any benefits or windfalls received such as redundancy or inheritances and the dates and amounts received	<input type="checkbox"/>
• details of any assets or liabilities acquired since separation	<input type="checkbox"/>
• a list of all household items that you have not already been able to split.	<input type="checkbox"/>
Details of your income and superannuation entitlements in your name, joint names, or your former partner's name including:	
• Details of all outstanding liabilities in your name, joint names, or your former partner's name including:	
- mortgage or home loan documentation	<input type="checkbox"/>
- credit cards	<input type="checkbox"/>
- hire purchase agreements, including hire or rental agreements for household items	<input type="checkbox"/>
- any outstanding bills or accounts you have been unable to agree on who is responsible for.	<input type="checkbox"/>
Details of your non-financial contributions to the relationship.	<input type="checkbox"/>

Property checklist

List all property owned by you and your former partner, estimating the value of each in the Equity column.

Details	Legally responsible (you, your former partner or joint)	Current estimated market value \$	Less any amounts owing e.g. mortgage \$	Equity (market value less amounts owing) \$
Real estate Address 1 Address 2				
Funds in cheque accounts, savings accounts or other investments				
Motor vehicles				
Shares				
Insurance policies				
Businesses you run or share				
Furniture, household goods, shed/garage contents				
Anticipated tax refunds				

(continued)

Property checklist *(continued)*

Description	Legally responsible (you, your former partner or joint)	Current estimated market value \$	Less any amounts owing e.g. mortgage \$	Equity (market value less amounts owing) \$
Other e.g. time share, boat, caravan, paintings, antiques, jewellery				
Superannuation				
			Total	

List of debts

List all debts owed by you and your former partner.

Description	Legally responsible (you, your former partner or joint)	Debt amount \$
Credit cards		
Other personal loans		
Any amounts owing on purchases		
Other debts or loans not included above		
		Total

Contacts and further assistance

Counselling

Relationships Australia
1300 364 277
www.relationships.org.au

Anglicare
www.anglicare.asn.au
for local contact details

Lifeline Australia
13 11 44
www.lifeline.org.au

Family Issues and Family Dispute Resolution Providers

Family Dispute Resolution:

Relationships Australia
1300 364 277
www.relationships.org.au

Family Relationship Centres:

To find a Family Relationship
Centre or Family Dispute Resolution
Practitioner near you go to:

Family Relationship Advice Line
Advice and information for parents
who are separating 1800 050 321 or
www.familyrelationships.gov.au

Family Relationships Online
Information on the Australian Family
Law system, family relationship issues
and services available to assist families
www.familyrelationships.gov.au

Financial

Centrelink
Information about government
benefits, assistance and allowances
Payment information for families
receiving family assistance
13 61 50
www.humanservices.gov.au

Interpreting

**Translating and Interpreting
Service (TIS)**
13 14 50

Legal

**Australian Government Attorney
General's Department**
www.ag.gov.au

For information on specific aspects of
your family:

Community Legal Centres

Free legal advice, referral and assistance
See www.naclc.org.au for local contact
details

Family Court of Australia/Federal Circuit Court of Australia

Information about the family law
system
1300 352 000
www.familycourt.gov.au
www.federalcircuitcourt.gov.au

Family Court of Western Australia
(08) 9224 8222
www.familycourt.wa.gov.au

(continued)

Find a Lawyer:

Contact your nearest Law Society:

ACT Law Society

www.actlawsociety.asn.au

Queensland Law Society

www.qls.com.au

The Law Institute of Victoria

www.liv.asn.au

The Law Society of South Australia

www.lawsocietysa.asn.au

The Law Society of New South Wales

www.lawsociety.com.au

The Law Society of the Northern Territory

www.lawsocietynt.asn.au

The Law Society of Tasmania

www.taslawsociety.asn.au

The Law Society of Western Australia

www.lawsocietywa.asn.au

Legal Aid Commissions:

Information about legal assistance, and advice and referral to appropriate services for separating couples

www.nla.aust.net.au

Legal Aid ACT

1300 654 314

www.legalaidACT.org.au

Legal Aid NSW

1300 888 529

www.legalaid.nsw.gov.au

Northern Territory Legal Aid Commission

1800 019 343

www.ntlac.gov.au

Legal Aid Queensland

1300 651 188

www.legalaid.qld.gov.au

Legal Services Commission of South Australia

1300 366 424

www.lsc.sa.gov.au

Legal Aid Commission of Tasmania

1300 366 611

www.legalaid.tas.gov.au

Victorian Legal Aid

1800 677 402

www.legalaid.vic.gov.au

Legal Aid Commission of Western Australia

1300 650 579

www.legalaid.wa.gov.au

Relationships Australia provides family dispute resolution, family skills and parenting courses, family violence prevention, and other relationship services.

Branches in all Australian states and territories 1300 364 277

A Fair Share is a guide for separated couples seeking to resolve disputes and finalise their property arrangements through family dispute resolution.

While attendance at FDR is not currently compulsory in disputes about property matters, this booklet will assist you in your journey through the process.

Relationships Australia, July 2016

Relationships Australia.

www.relationships.org.au
1300 364 277