

HARRINGTON FAMILY LAWYERS



PROPERTY SETTLEMENT- MARRIED COUPLES

[“Money is like a sixth sense without which you cannot make a complete use of the other five.”](#)
Somerset Maugham “Of Human Bondage” 1915.

The Family Court says that there are four key steps:

I. IDENTIFY AND VALUE THE ASSET POOL

The portion that you or your spouse might receive will depend on the type and size of the asset pool. Often this can be a tricky process, as parties disagree with what property is owned by each of them, or how much that it is worth. This process includes identifying and valuing any liabilities of either of the parties, and establishing whether they should be included as liabilities to be included in the pool.

Sometimes parties agree on what percentage each should receive, but fundamentally disagree on what property should be included in the pool, or the value of that property. It is essential that the identity and value of the property is sorted out as quickly as possible. We will assist through this process, and seek to identify any items of property over which agreement can be quickly reached, and those items of property or liabilities in which there might be difficulties.

2. ASSESS AND VALUE THE CONTRIBUTIONS OF EACH OF THE PARTIES

The Family Law Courts here have to consider both the financial and non-financial contributions of each of the parties. The courts have long held that there needs to be a balancing and weighing up of the various different contributions. In a traditional marriage, for example, the husband may have made a greater financial contribution, but the wife may have made a greater non-financial contribution as homemaker and carer for the children.

Difficulties can arise as to what weight ought to be given to a number of factors including:

- initial contributions
- the care of children during the marriage and post-separation
- financial impacts in blended families
- windfall gains, such as inheritances, lotto wins, personal injury payouts and redundancies
- gambling, drinking and wastage

the effects of domestic violence

The courts have long emphasised that every case is different and needs to be decided on its own merits.

There is *no* presumption that parties will receive an equal division of property, based on a long term marriage.

Contributions are sometimes known as section 79 matters, as they are contained in section 79(4) of the Family Law Act.

3. MAKE ANY ADJUSTMENTS FOR FUTURE FACTORS

The Family Law Act then provides that a series of factors may be taken into account, to consider whether or not there ought to be any adjustment for the future. These are contained in section 75(2) of the Family Law Act:

75(2) [Matters]

The matters to be so taken into account are—

- (a) the age and state of health of each of the parties;
- (b) the income, property and financial resources of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment;
- (c) whether either party has the care or control of a child of the marriage who has not attained the age of 18 years;
- (d) commitments of each of the parties that are necessary to enable the party to support:
 - (i) himself or herself; and
 - (ii) a child or another person that the party has a duty to maintain;
- (e) the responsibilities of either party to support any other person;
- (f) subject to subsection [\(3\)](#) the eligibility of either party for a pension, allowance or benefit under—
 - (i) any law of the Commonwealth, of a State or Territory or of another country; or
 - (ii) any superannuation fund or scheme, whether the fund or scheme was established, or operates, within or outside Australia,and the rate of any such pension, allowance or benefit being paid to either party;
- (g) where the parties have separated or divorced, a standard of living that in all the circumstances is reasonable;
- (h) the extent to which the payment of maintenance to the party whose maintenance is under consideration would increase the earning capacity of that party by enabling that party to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income;

(ha) the effect of any proposed order on the ability of a creditor of a party to recover the creditor's debt, so far as that effect is relevant; and

(j) the extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party;

(k) the duration of the marriage and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration;

(l) the need to protect a party who wishes to continue that party's role as a parent;

(m) if either party is cohabiting with another person — the financial circumstances relating to the cohabitation;

(n) the terms of any order made or proposed to be made under [section 79](#) in relation to:

(i) the property of the parties; or

(ii) vested bankruptcy property in relation to a bankrupt party;

(na) any child support under the *Child Support (Assessment) Act 1989* that a party to the marriage has provided, is to provide, or might be liable to provide in the future, for a child of the marriage; and

(o) any fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account; and

(p) the terms of any financial agreement that is binding on the parties.

75(3) [Entitlement to pension]

In exercising its jurisdiction under [section 74](#), a court shall disregard any entitlement of the party whose maintenance is under consideration to an income tested pension, allowance or benefit.

4. MAKING AN ORDER THAT IS FAIR

After looking at steps 1 to 3, the court then needs to make an order that is fair, or in the words of the Family Law Act “just and equitable”. This may mean a further adjustment.

BUT NOW THERE ARE TWO FURTHER STAGES:

5. SUPERANNUATION

The Family Court has held that when parties have superannuation, the same process of steps 1 to 4 must occur separately for the superannuation owned by one or both parties. It also means that a complex process can potentially become more complex, as there may be disputes about the distribution of superannuation or other property or both.

6. SPOUSAL MAINTENANCE

On occasion, in addition to property settlement, a spouse might be ordered to financially maintain the other spouse. This may be by a lump sum (in other words, a further adjustment on the property settlement), or by making periodic payments.

7. TIME LIMITS

Applications for property settlement and spousal maintenance **must** be brought within one year of divorce. Outside that time, they cannot be brought without first obtaining permission of the court, and that permission is not guaranteed. It is therefore essential that if the time limit is approaching to start proceedings, so that your rights are not lost forever. Please alert us immediately to any possible time limit problems.

Harrington Family Lawyers pride ourselves on our accurate advice to clients. This brochure is of a general nature only, and may not reflect your specific needs. For specific advice in your matter, you should contact us, so as to ensure that the advice for you is accurate.

HARRINGTON FAMILY LAWYERS

Level 12,
239 George Street,
Brisbane Qld 4000

All Correspondence to:
PO Box 12135
Brisbane Qld 4003

Phone: (07) 3221 9544
Fax: (07) 3221 9969
E-mail:

admin@harringtonfamilylawyers.com

