

MY PARTNER AND I HAVE SEPARATED. HOW DO WE DIVIDE OUR PROPERTY?

Once you have separated from your partner, you are able to seek a property settlement, or a division of your joint property, and interim financial support by agreement or through making an application to the Family Court of Australia, or Federal Circuit Court of Australia.

What is “property”?

For the purpose of the *Family Law Act 1975* (“the **Act**”), property includes any asset in which either you or your partner have an interest. This may include assets held solely in your name, or in your partner’s name or together with any other person (such as your family members).

Typically the assets involved in a property settlement can include your home, any investment property, shares, cars, savings, and furniture.

Superannuation benefits are also considered to be property and the Court has the power to divide superannuation interests between parties as part of any final property settlement.

In determining the asset pool, the Court will also take into consideration any liabilities you and your partner might have, which may include your mortgage, credit card liabilities, personal loans, loans or family members or tax liabilities.



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How do I secure my property until there is a property settlement?

If your home is held in your sole name, or together with someone other than your partner, your partner is able to lodge a Caveat over that property which protects the property from being dealt with in any way. This means that the property will not be able to be sold or refinanced.

If you are concerned that funds in joint bank accounts will be removed without consent, then you can arrange for a bank account to be “frozen” by immediately contacting the bank to request all future withdrawals from the account require the joint signature of each party. This ensures that neither party can draw down funds (including on a joint mortgage with a re-draw facility) without the consent of the other party.

If there is a risk that an asset might be sold or disposed of without your consent, then an urgent application can be made to Court for an injunction to be put in place which restrains that party from dealing with that asset in any way. This can often be done at short notice and listed before the Court with urgency.

How do I obtain interim financial support for me and my child?

The reality of separation is that one household needs to become two, and this can often mean a duplication of expenses. There is an obligation on both you and your partner to continue to pay your income towards joint expenses until such time as there is a property settlement.

This may mean that parties choose to remain living under the one roof for a period, so that a property settlement can be obtained before a physical separation takes place. In that instance, income needs to be shared to ensure that all family expenses are met, including mortgage repayments/rent, utility expenses, school fees and the like.

If your partner stops meeting your joint expenses, and you do not have sufficient income or savings to meet your day to day needs (or those of your child), you may be able to make an urgent application for maintenance from your partner.

Maintenance, is different from child support, and involves a payment to you for you to meet your personal needs. In order to be successful in obtaining an order for maintenance, you must establish that you do not have the capacity to meet your own financial needs, and that your partner has the ability to assist financially.

An order for maintenance can be made by the Court on an urgent basis, by way of a weekly/monthly (periodic) payment, or as a lump sum (for example from savings).

Child support is a separate obligation to maintenance and is a payment from one parent to the other to assist with the financial support of children. Child Support is generally paid on a weekly/monthly basis, and if the amount cannot be agreed, then it can be determined by an application to the Child Support Agency. For further information please visit the “MyGov” website (<https://my.gov.au/>).

The Child Support Agency will assess the amount of child support to be paid by taking into account your taxable income (from your previous tax return), your partner’s taxable income, and the amount of nights the children are in your respective care.

You may also be entitled to benefits from Centrelink including Parenting Payments, Family Tax Benefit ‘A’ and Family Tax Benefit ‘B’. All applications for these payments can be made online through the “MyGov” website.

You can also enter into a private child support agreement with your partner. This should be documented if possible as a Limited Child Support Agreement, or a Binding Child Support Agreement, to ensure that it is enforceable.

Otherwise you should retain all receipts for expenses for the children, and otherwise ensure that all payments for child support are made via direct deposit through a bank account, rather than cash, so they are recorded.

What is a property settlement and how do we go about dividing our assets?

The Court adopts a four-step process when assessing property settlement claims, which includes an assessment of contributions (both financial and non-financial contributions, and homemaker/parent contributions) throughout the relationship (and after separation), and also takes into consideration an assessment of each parties’ future needs. Ultimately the Court will make orders, which it considers to be “just and equitable” in the circumstances of each case.

Once property settlement matters are resolved or finalised, they must be legally documented by way of Minutes of Consent orders or a Binding Financial Agreement to ensure that it is binding and enforceable, and to prevent any further future claims.

Contact us

Our Family & Relationship Law team can provide you with advice regarding your financial/property settlement, and other family law matters. Please contact us for an obligation free discussion.



MONICA BLIZZARD
DIRECTOR

✉ mblizzard@khq.com.au
☎ (03) 9491 8404



GREG OLIVER
PRINCIPAL SOLICITOR

✉ goliver@khq.com.au
☎ (03) 9491 8482



WINNING WANG
SENIOR ASSOCIATE

✉ wwang@khq.com.au
☎ (03) 9491 8492



STEFAN PANTELLIS
SENIOR ASSOCIATE

✉ spantellis@khq.com.au
☎ (03) 9491 8446



ISABEL BRITTEN-JONES
LAWYER

✉ ibjones@khq.com.au
☎ (03) 9491 8429