

The Four Step Approach to Property Settlement

While every family law case is unique, a property settlement needs to follow a four step process. The process starts when you engage a lawyer and is based on what a Judicial Officer (a Judge or Magistrate) might decide if the matter runs to a final hearing. The process is used in both de facto and marriage relationships when they breakdown.

STEP 1 – Creating and determining the asset pool of the relationship

To create the actual (net) asset pool, all the assets and liabilities of the relationship will need to be identified. This includes all personal assets and liabilities. It is essential that you are honest to ensure that all proceedings are fair. If you are not honest and try to hide assets there can be serious consequences. It is also important that you are honest so that we can provide correct family law advice about your situation.

Assets are things that you own (jointly or in your name alone) and can include:

- Real estate – including investment properties
- Cars
- Furniture
- Jewellery

Liabilities are your debts, where money is owed by you (also jointly or in your name alone). These include:

- Mortgages
- Car loans
- Personal loans
- Credit card balances

Once we have all this information a net asset pool can then be calculated. Generally, this will be:

Total Assets – Total Liabilities = Net Asset Pool.

The Net Asset Pool is what will be divided to achieve your property settlement.

If you cannot agree on the value of an item(s), for example, a house, an expert will need to be brought in to value it/them.

Step 2 – Each person’s contributions to the relationship

Once the Net Asset Pool is determined the court looks at how each party contributed to the relationship. The contributions are broken down into four specific groups:

- Financial
- As a Parent
- As a Homemaker
- Non-Financial

1. *Financial Contributions*

These include all monetary contributions made during the relationship. Financial contributions include, but are not limited to:

- Wages and income from working or other sources
- The amount of money each person had at the start of the relationship
- Any windfalls – for example from Lotto winnings,
- Retrenchment/Termination payments
- Inheritances received during the relationship
- Any large awards of money received.

2. *Parenting Contributions*

These are the amount of parenting done during the relationship. They will include helping children with homework, taking them to school or extracurricular activities, generally spending time with children, or other active involvement. If one party works full-time and the other party does not, but fulfils the parenting role, the contributions can be seen as being equal.

3. *Homemaker contributions*

These are very similar to parenting contributions and include things like housework, who did the vacuuming, cooking, washing or other household chores.

4. *Non-Financial Contributions*

Non-financial contributions include things that one party has done during the relationship that have added value. An example of these are renovations to the family home or an investment property. The value of non-financial contributions can be assessed by determining how much it would have cost to get someone to do the renovations or other work.

Step 3 – Identifying the needs of each party

During any property settlement, each party’s current and future needs must be taken into account. The list of these needs the court will consider sill include:

- Age – of each party and whether they are similar
- State of health, and whether one party has particular health needs or concerns
- Income – current and future potential earning capacity
- Other resources – such as real estate or financial resources available to a party
- Physical or mental capacity of a party to gain employment in the future
- Parental responsibility for a child under the age of 18 years
- Commitments necessary to ensure each party can provide for themselves or a child(ren)

- Any responsibilities a party may have to care for and support another person
- What each party needs to have a reasonable standard of living
- The duration of the marriage or de facto relationship
- The need to protect a party
- Whether or not one party is living with a new partner
- The terms of any order made or proposed in relation to not only the property, but also any bankruptcy or child support provided

Once the individual needs of each party is identified the court will look at the cost of those needs and the Net Asset Pool can be divided.

4. Is the division 'Just and Equitable'?

Once the previous steps have been followed, and the assets divided, the court will then look to see whether the percentage division and the allocation of the assets is 'just and equitable'. That is – is this settlement as fair as it can be to each of the parties?

Note:

- It is important to remember that although this document refers to what a court would do, this is the process used in all property settlements, even when the matter doesn't go to court. Family lawyers provide advice on the basis that if the matter does not settle by consent, they must consider what a Judicial Officer might do if the matter were to proceed to a final hearing.
- No-one can ever predict what a Judicial Officer will decide in any particular case. Each case is considered unique on the facts and a final decision would only be made after all the evidence is heard.
- If you consider that the other party is not providing you with full and frank financial disclosure, we will endeavour to get this information. If this is not easily achieved, we may need to engage an expert such as a forensic accountant to investigate their financial situation or get a Court to order that they provide the documents.
- There is no one formula used to divide and settle property matters in family law. As we have stated elsewhere in this document, each case is considered individually.

Disclaimer:

The information in this document is intended as a general guide for family law property matters. You should discuss your individual situation and needs with your lawyer.