



## We've separated and want to divide our property

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When your marriage or de facto relationship ends, all the property owned by you and your former partner should to be divided in a way which is fair to both of you.

### What is considered property of a relationship?

Property includes assets such as:

- houses;
- cash;
- shares;
- bank accounts;
- furniture;
- cars, boats, caravans, motorcycles;
- gifts and inheritances;
- lottery wins;
- compensation payouts;
- a business;
- a trust; and
- superannuation.

Property also includes any loans and debts.

Property of a relationship includes property that is in your name, your former partner's name and both your names.

Property also includes property each of you brought into the relationship, property acquired during the relationship and property purchased after your relationship ended.

### What if we agree on how to divide our property?

If you agree on how to divide your property, you have three options:

1. You can have an informal agreement. You and your former partner do not have to go to court or have a written agreement about how you are dividing your property. However, an informal agreement will not be binding, which means it cannot be enforced if one of you fails to follow your agreement.
2. You can ask a Court to turn your agreement into consent orders by completing an Application for Consent Orders and lodging it in Court. When the Court makes the orders they become legally binding. This means that neither you nor your former partner can make any further claims on the property. It is very important to get your own legal advice prior to signing consent orders.
3. You can turn your agreement into a binding financial agreement. This agreement must comply with specific formal requirements in order for it to be legally binding. You must receive your own legal advice before signing the agreement.

## What if we can't agree on how to divide our property?

In most cases you will need to try to reach an agreement by doing mediation before you apply to a Court for property orders.

However, you might not have to do mediation if there has been family violence, if your former partner refuses to negotiate, if there has been fraud or if there is urgency (eg the property is not in your name and your former partner is about to sell it).

If you need a Court to help you sort out your property, there are time limits you need to keep in mind.

If you were married and you apply for a divorce, you must apply to the Court within 12 months of your divorce being finalised.

If you were in a de facto relationship, you must apply to the Court within 2 years of your separation. De facto relationships include same sex relationships.

If your matter goes to Court, the Court will consider the following 4 principles in order to make a decision about the fair division of your property:

1. Identify all of your property. See the list above for a description of the things that are considered property. Once you have identified all of your property, calculate its value and then deduct any debts (such as a mortgage, credit card debt and car loans).
2. Identify the contributions made by each of you during the relationship. This includes financial and non-financial contributions (eg household tasks, care of the children).

3. Identify each of your future needs. This includes who will have primary care of the children, each of your earning capacities and the financial resources available to each of you.
4. Ensure the property division is fair to both of you.

## Can I apply to Court for spousal maintenance?

You can apply to Court for an order that your former partner continue to financially support you, however before an order for spousal maintenance will be made, the Court will consider each of your financial positions.

The Court will only make an order for maintenance if you cannot financially support yourself and your former partner is able to provide financial support. Typically, a maintenance order will only be made for a limited period of time.

The same time limits for property division apply to applications for spousal maintenance.

## Do I need a lawyer?

We recommend that you see a lawyer to get some advice about your property division. You should ask your lawyer whether they recommend you have a lawyer assist you with negotiating the division of your property, and / or drafting any agreement.

Don't forget to ask your lawyer how much it will cost for them to represent you. You can also ask your lawyer if they are happy to wait to be paid out of your property settlement funds.

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