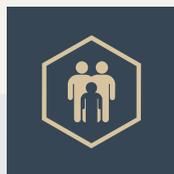


# Dividing Property

Who gets what after a separation



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## Introduction

**Have you tried and so far failed to reach a 'settlement' or a deal with your ex spouse or partner to avoid going to court?**

**We can help.**

### **Don't blame yourself**

### **Don't speculate about the desired outcome for your ex-partner**

### **Do get advice from qualified experts**

Planning your approach with the assistance of experts who can give you a road map to help achieve the best outcome for you. Consider speaking to your:

- ▶ Accountant
- ▶ Lawyer
- ▶ Financial planner
- ▶ Counsellor
- ▶ Doctor

Experts can give you a road map to help achieve the best outcome for you.

### **THE PROCESS**

The property settlement process (whether achieved through negotiation or court) is profoundly simple in outline but tremendously complex in application.

The Court system applies 4 steps to be used as the principles for most court cases involving the division of property. In some cases the method may vary but this is our template for how to structure out of court settlements that everyone prefers to a court case:

1. Put a dollar value on every asset/ liability and financial resource
2. Work out the various contributions to the marriage of each spouse, expressed as a percentage, importantly including homemaking and parenting as well as money making (looking back)
3. Work out the future needs of each spouse, expressed as a percentage (looking forward)
4. Ensure that the application of steps 1-3 achieves a fair and equitable result for each party.

### **Sounds easy, right?**

**Read on for a more in depth guide as to what is behind each step.**

# 1

## Assigning Dollar Values to Assets & Liabilities

### *Here are some relevant considerations:*

How much is your home or business worth? Either both spouses agree on its value or a valuer is appointed jointly or by the judge if a court case has started. Once you get the valuation, if you think the valuer has it wrong you can challenge it.

Sydney's courts often deal with family law disputes over the value of assets, including – for example – valuation of the family business. Forensic accountants often adopt a different process to work out asset values compared with the approach taken by the owners of the business. Sometimes judges will order an asset to be sold if they are not satisfied with the evidence that has been presented regarding its value. They are reluctant to do so when one spouse has earned their income from a business for many years.

Finding out what an asset is really worth can involve looking at, for example:

- ▶ its tax losses
- ▶ whether it generates cash that is not declared
- ▶ whether the family members are paid wages that are not in line with the market (in the case of a business asset)
- ▶ whether a family trust is really “your” asset
- ▶ What amount of a grandparent’s loan has not been repaid over recent years? Is it really a gift?
- ▶ What proportion of an inheritance paid just before or just after you split should be included?



### *There have been many court cases regarding these types of issues.*

Assets such as trusts, long service leave payments, and share options that will vest after future years of service are all tricky to place a value on today. The right lawyer for you will check off these items and let you know what documents are needed to assess the value accurately.

Superannuation is a category of its own, and it is an asset of increasing importance and value in every marriage. It is critical to treat it correctly so that its division between spouses is handled tax effectively, even in a dispute.

It is important to note that an experienced and diligent family lawyer will spend some hours with you learning who you are and understanding your financial history before offering any advice.

## ***Who has contributed what?***

In most cases, this is not an easy question to answer.

In short marriages with no children involved, identifying various contributions is a web that may be relatively easy to untangle. In more complicated situations however, a lawyer with some years of experience under their belt is likely to be required to help sort this out, after gathering the necessary information to assess it.

Here are some examples of categories that help us work out each person's contribution to the marriage:

### ***Initial contribution***

This is relatively straightforward. What did you have as assets/ liabilities at the time the relationship began?

### ***Financial contributions during the marriage***

This is a complex category with many factors to consider, for example:

- ▶ tax losses
- ▶ wages/income
- ▶ living rent free with your parents until you got a deposit together
- ▶ gifts, inheritances or "loans" from one's spouse and family
- ▶ babysitting/child care by a grandparent/s for one or more days a week so that the other parent could work
- ▶ personal injury payouts, redundancy payouts or other lump sums

### ***Domestic contributions during the marriage***

This is another whole category that is separate to and as significant as financial contributions to the marriage. Examples of domestic contributions are cooking, cleaning, washing, ironing, collecting the groceries, renovating, designing, maintenance, mowing the lawn and looking after the pool. We need to figure out who did what proportion of these activities.

### ***Parenting***

- ▶ depending on the ages of the kids, the following is taken into account:
- ▶ Who changes/changed the nappies?
- ▶ Who does/did the bedtime stories, baths, takes and picks up the kids from the doctor, school, play dates or sport?
- ▶ Who helps with homework?
- ▶ Who was a sporting coach?
- ▶ Who goes to parent teacher nights?
- ▶ Who travelled for work and hence was not around as much?
- ▶ Who travels on holidays with or without the kids?
- ▶ Which grandparents, if any, are involved?

### ***Non-financial contributions***

This includes manual labour or project management for renovations to property, share speculating, or other special skills or contributions that results in a significant increase to the asset pool.

### ***Post separation contributions***

Examples include:

- ▶ Paying the mortgage or rent after separation
- ▶ Caring for the children most of the time so that the other income-earning spouse can keep up the long work hours to pay the mortgage or rent.
- ▶ Paying the ongoing health insurance premiums.

### *“Negative” contributions*

Are extreme cases that involve a significant loss to the marital pool of assets, arising from gambling addictions, alcoholism, drug dependency, domestic violence or extreme examples of indolence, making the household extremely difficult to remain in. In these cases, adjustments may be made to the percentages.

A family lawyer weighs up all of the above and will tell you how much the contributions of each spouse will affect how the marital pool is divided.



## 3

### Future Needs

The Family Law Act provides a checklist of topics that judges ought to consider – but it is not exhaustive and it doesn't tell you what percentage applies to each item. Only an experienced family lawyer can give you a guide about how your particular combination of factors is likely to play out.

Some of the main considerations are:

- ▶ If there are children of this marriage or another relationship and they are with you more time than they are with the other parent, then depending on how many children there are, their ages, your income and assets, you will almost certainly get an extra percentage adjustment in your favour of the Pool of assets.
- ▶ Your health, and critically, its impact on your capacity to work
- ▶ Your age
- ▶ Your career path – are you well established in a long standing job? Do you need to enter the workforce now, having been a stay at home parent for some years?
- ▶ Is there a disparity of income between spouses? For example, if she is a neurosurgeon on \$400,000 per year and he is a cabinet maker earning \$70,000 per year, there could be a percentage adjustment for him.

There are many other factors that come into play. When your lawyer learns your story they should be able to identify these and explain them to you.

# 4

## Achieving a Fair Result

This step is not always relevant, but its significance is great.

Some types of cases where this step features:

### *1. If there is hardly anything to divide up.*

In this case, expect the parent most responsible for care of the children to get the majority share of the assets.

### *2. In situations where there is say more than \$10 million to divide up.*

Courts will generally conclude that there is plenty to go round, everyone will be wealthy and “special” contributions might be considered.

### *3. Where one spouse has behaved badly.*

Petty “getting even” behaviour or minor heat of the moment retaliation (for example cutting up all his business ties) probably does not warrant too much comment from a judge. But a campaign of starving out your own kids, and cancelling phones/electricity and medical insurance are “stunts” that will not win you friends at court and can expose you to the risk of percentage adjustments being made against you by the Judge.

### *4. Where a spouse has hidden something.*

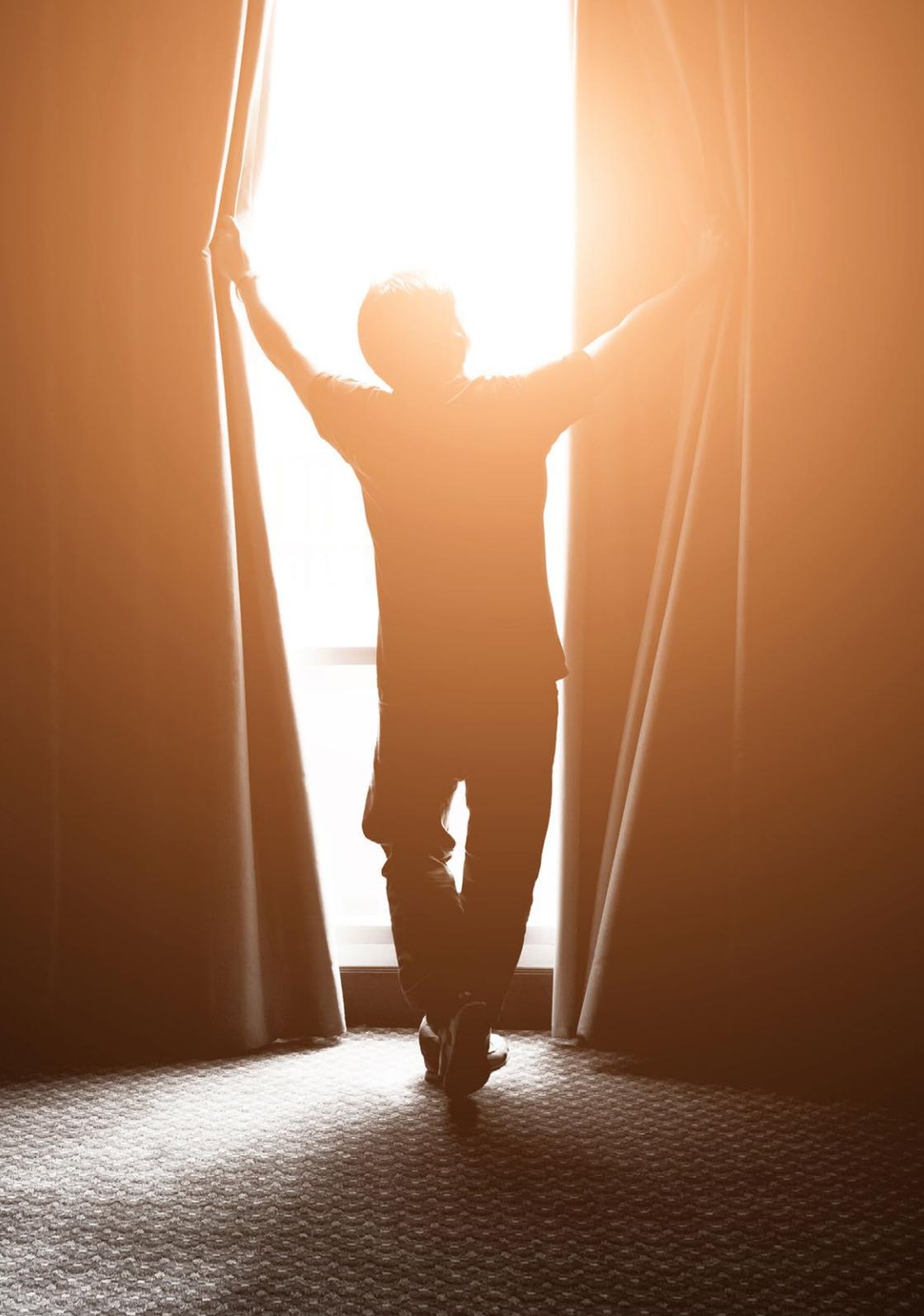
If you get caught out – the \$20,000 put in a friend’s bank account is more likely to bring more harm to your case than mentioning it to begin with. The judge assumes that if you’ve lied about this, you have probably overstated lots of other things. This will inevitably lead to much more than the \$20,000 being taken off you in the percentage adjustment.

The existence of this step enables the court to apply discretionary powers. This step tells the judge not to be scientific, but to be “fair” (whatever that might mean).

The Judge employs their own subjective approach to assess what he or she thinks a percentage adjustment should be made. You doing the parenting of a 10 year old from your spouse’s 1st marriage for the last 8 years for instance might be important.

A judge who is a grandfather might see it differently to a judge who is a single mum; it’s subjective. The attitude you show to the spouse and the court is important.





## Summary

The best thing you can do to achieve a fair and speedy outcome in your case is to give your lawyer the information they need. This means giving them sufficient time, and answering the sometimes boring, historical, backward-looking questions in careful detail so that they can get a good profile of you and help you put your best foot forward.

The family law team at Clinch Long Woodbridge can help you with any questions you may have regarding the complex topic of dividing up property.

We offer expert advice in all aspects of property settlements, helping you to reach a result that is in your best interests and in the interests of those you care about.

### FINAL WORDS

**Don't despair.** About 90% of court cases that start in family court settle before a hearing. This firm's results are at about 97%. Your chances of going to court are very low!

A 'consent' order is almost always better than a judge imposing a decision – see our booklet on the methods of settlement.

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