

Property, Child Support and Maintenance

Your Rights and Responsibilities

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What can I do about the property from the relationship?

If you and your ex have very little property, or you agree about who will get what, you can make an **informal agreement** without going to court. This could be a written or verbal agreement between you and your ex. The downside is that if your ex changes their mind later, there is no way to make your ex stick to the agreement (it is not legally binding or enforceable, and it does not legally finalise financial arrangements between you).

A **property settlement** is legally binding and enforceable. It divides up any property that you and your ex built up during your relationship. This includes who will have to pay any debts. There are two ways to get a property settlement:

- If you have come to an agreement with your ex, you can ask the court to stamp it so that it is legally binding. This is known as "consent orders"; Or
- You can go to court and the court will make a decision about what is fair.

A property settlement, rather than an informal agreement, is generally recommended if there has been domestic violence in the relationship. You should not try to negotiate informally with your ex about property if it is not safe. A safer option is to see a solicitor who can negotiate on your behalf.

An alternative to a property settlement is entering into a Financial Agreement. There are strict legal requirements that must be met for a financial agreement to be legally binding and enforceable and they can be expensive to obtain. If drafted properly they can be easy to enter into but difficult to have set aside. Therefore, it is essential to carefully consider the financial and future implications before entering into a Financial Agreement. If you continue to own property in joint names, you risk losing your share if your ex partner stops making debt repayments. You should seek legal advice if you own joint property, even if you and your ex are not currently arguing about it.

What is "property"?

Property includes real estate, money, shares, cars/other vehicles, furniture, jewellery, and superannuation. The "property pool" for a property settlement also includes debts. You should make a list of any property you can think of, and if possible gather your financial documents such as bank statements, pay slips and loan documents. Property does not have to be registered in your name for it to be included in the property settlement.

Can I apply for a property settlement?

If you were married or in a de-facto relationship with your ex partner, you can apply for a property settlement. You should obtain legal advice about this.

There are fees involved in applying to the court, but if you are experiencing financial hardship ask about the "reduced fee".



When should I apply for a property settlement?

You must have separated from you ex before you can apply for a property settlement. If you were married and then divorced, you must apply for your property settlement within 12 months of the final divorce order. If you were in a de-facto relationship, you have two years from the end of the relationship to apply. You need to obtain permission (“leave”) from the court to apply for a property settlement after these times.

How do I know what I am entitled to?

There is no set formula for dividing property. However, the Family Law Act sets out principles to help reach a fair outcome. This includes looking at both people’s financial and non-financial contributions (including housework and looking after children) and their future needs and resources. A solicitor can discuss this with you.

What if we have only debts between us?

A property settlement should make clear who will be responsible for paying any debts. However, if you and your ex only have debts, it may be too expensive to have a property settlement through the courts. Talk with a lawyer about your options. The fact sheet “Debt and Separation” has further information.

Do I lose any rights if I move out of the house or leave property behind?

No, however it is best to start action for a property settlement as soon as possible after separation to safeguard your rights to the property.

I have left my personal belongings behind. How can I collect them?

Firstly, consider your safety. Do you need the police or a support person to assist you with this?

If you have an application for protection order before court, you can apply for an order for the recovery of your personal property, which allows you to retrieve your personal belongings from the home with police protection. This must be done at the court, when the matter is heard.

If you do not have current protection order proceedings, you can still ask the police if they are willing to help you collect your belongings.

If you are applying for a property settlement, you can ask for specific orders which relate to the division of personal property as part of your proposal for the division of the property pool.

What if I can’t afford a solicitor for my property settlement?

Solicitors can be expensive, but some will accept payment for their fees after the property settlement has been finalised (when you may have access to money). Legal Aid is only available for property matters in very limited circumstances.

What should I do if I get a letter from my ex’s solicitor about property?

If you receive any letters or documents about a property settlement, you should seek legal advice as soon as possible.

Am I entitled to Spousal Maintenance?

It is possible to apply for spousal maintenance if you are in need of financial support and your ex has capacity to pay. Get advice from a solicitor.

Child Support – How do I apply for child support and do I need to do this?

If you receive Centrelink benefits, Centrelink will usually ask you to seek child support from your child’s other parent. However, if your ex has been violent towards you, it may not be safe to do so. You can speak to a Centrelink Social Worker about obtaining an exemption from claiming child support. This does not prevent you from applying for child support in the future.

If you decide to apply for child support, you can telephone the Child Support Agency and ask them to register a child support case. You should let the CSA know that there is a history of domestic violence and ask them to collect child support from the other parent on your behalf.

If you have problems applying for Child Support, the Legal Aid Child Support Service can provide free advice.



Where else can I get further information and assistance?

Family Law Courts: www.familylawcourts.gov.au National Enquiry Line 1300 352 000

Legal Aid QLD: www.legalaid.qld.gov.au 1300 65 11 88

QLD Law Society: www.qls.com.au 1300 367 757

Child Support Agency: 131 272

Community legal centres: www.qails.org.au (07) 3392 0092



Community
Legal Centres
NSW



Women's Legal Service

www.wlsq.org.au

Please note: This factsheet contains general information only. It does not constitute legal advice. If you need legal advice, please contact a solicitor. **Acknowledgement:** This resource was adapted by the Women's Legal Service in QLD. Originally developed by the National Association of Community Legal Centres, Community Legal Centres NSW and a number of community legal centres with the assistance of an Australian Human Rights Framework – Education Grant from the Australian Government. The flower artwork has been kindly provided by Sista Girl Yarnz Group in Campbelltown, New South Wales; a group of Aboriginal women who seek to support and empower women affected by domestic or family violence. **Last updated:** June 2014.



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