



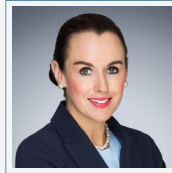
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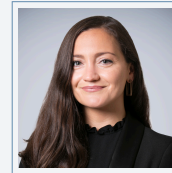
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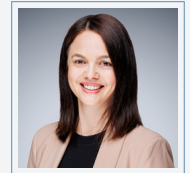
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## MY PARTNER AND I HAVE SEPARATED. HOW DO WE DIVIDE OUR PROPERTY?

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, through making an application to the Federal Circuit and Family Court of Australia, or by negotiation (including mediation). The relevant legislation is the *Family Law Act 1975* (Cth) (**Family Law Act**) which is federal legislation and applies to all states within Australia excluding Western Australia (which has standalone legislation, being the *Western Australia Family Court Act 1997*).

When you separate you may be entitled to the following:

- **A property settlement**, which deals with a division of the assets/liabilities (including superannuation).
- **Maintenance**, which is a periodic payment typically ordered where one party is unable to support themselves from their own income.
- **Child support**, which are payments related to the support of children and can include periodic payments and third party payments such as school fees, extracurricular fees and medical/dental expenses.

## WHAT IS "PROPERTY"?

For the purposes of the Family Law Act, property includes any asset or liability in the name of the parties, or in which they hold an interest. 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.

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**"Property" includes any asset in which either you or your partner have an interest.**

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## HOW DO I SECURE MY PROPERTY UNTIL THERE IS A PROPERTY SETTLEMENT?

There are a number of ways to secure assets pending a final settlement.

- If you own a home with your former partner, but it is in one party's sole name, you can lodge a caveat over the property which will prevent it being sold/transferred, or a loan being refinanced.
- You can freeze bank accounts by contacting your bank and requesting that they be frozen or for both parties to become joint signatories to the account.
- 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.

## 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. Parties may 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. 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. Typically an order for maintenance is made for a short period of time, to enable a party to re-establish themselves.

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. Typically child support is resolved in one of two ways:

- Pursuant to a child support assessment via Services Australia. This applies a formula taking into account your respective taxable income and the amount of nights the children are with you both. Visit <https://www.servicesaustralia.gov.au/how-to-apply-for-child-support-assessment> for further information.
- By way of a private child support agreement, which is a private agreement negotiated between the parties, which documents child support and frequently includes periodic and non-periodic amounts, including amounts for school fees/medical/dental and extracurricular expenses. This can be documented as a Limited Child Support Agreement, or a Binding Child Support Agreement.

## HOW DOES THE COURT APPROACH PROPERTY DIVISION?

The Court typically adopts a four-step process which includes identifying and valuing the assets/liabilities, undertaking 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.

## FAMILY VIOLENCE CONSIDERATIONS

Family violence experienced by a party can impact a property settlement adjustment particularly if it can be shown that one party demonstrated violent conduct towards the other party, which had a "discernible impact" on the other, and contributions were made substantially more arduous as a result (Kennon).

On 22 August 2024, the *Family Law Amendment Bill 2024* was introduced to parliament. It seeks to include consideration of family violence in property settlements by:

- including 'economic or financial abuse' as a behaviour that may constitute family violence
- explicitly including family violence as a factor which can impact a person's ability to make financial and non-financial contributions, and
- recognising the impact which family violence has, or could have, on current and future circumstances of the parties.

## 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 on (03) 9663 9877 (or via email at [adminfamily@khq.com.au](mailto:adminfamily@khq.com.au)) for an obligation free discussion.