



JERESYN LEGAL
FAMILY LAW INFORMATION
PACK



PROPERTY & FINANCIAL MATTERS

Division of Assets and Liabilities: Navigating Property Settlements

In Australia, when a marriage or relationship comes to an end, the process of property settlement begins. This process involves dissecting the financial and material aspects of the union to achieve a fair allocation between the separating parties. The property settlement encompasses a broader scope than just physical assets or bank balances—it includes vehicles, investment accounts, real estate, shares, inheritances, liabilities, superannuation, cryptocurrency holdings, and other resources.

How Property Is Viewed Under Australian Family Law

Australian law defines "property" expansively to include all assets acquired or shared during a relationship, irrespective of whether they are held in individual names or jointly.

This includes:

- › Financial savings and investment portfolios
- › Real estate, such as homes and investment properties
- › Personal assets like vehicles and luxury items
- › Business shares, trusts, and other commercial interests
- › Cryptocurrency holdings
- › Loans, mortgages, or credit card debts
- › Gifts and inheritances accumulated while the relationship was intact.
- › Superannuation balances.

These assets and liabilities form the "property pool," which acts as the foundation for settlement discussions.

Starting a Property Settlement

The property settlement process can commence upon separation, even if both parties remain living under the same roof. Initiating a settlement does not require the couple to be divorced. The laws, however, impose strict time frames:

- › For de facto couples: Proceedings must begin within 24 months after separation.
- › For married couples: Proceedings must begin within 12 months of obtaining a divorce order.

Failure to commence proceedings within these time limits may require court permission to proceed, which is not guaranteed.

How Is Property Divided?

Contrary to common belief, property division is not based on rigid percentage formulas. The division considers several factors, including:

- 1. Contributions made by each party:** Financial contributions (e.g., employment income, investments) and non-financial input (e.g., homemaking, child-rearing) are equally valued.
- 2. Future needs:** Consideration is given to factors such as health, age, earning capacity, childcare responsibilities, and lifestyle.
- 3. Liabilities:** Debt, regardless of who incurred it, is included in calculations.
- 4. Overall equity:** A balance is sought to avoid disproportionate disadvantage to either party. Models of division are often tailored to the couple's circumstances, with negotiations or mediation serving as tools to achieve more amicable settlements. A rigid percentage-based approach is avoided in favour of creative solutions that reflect individual circumstances and future goals.

Steps in the Property Settlement Process

The legal property settlement progresses through structured stages:

- Step 1: Identifying All Property and Resources:** The first step involves disclosing all financial records, assets, and liabilities. A balance sheet is then created to provide clarity about the property pool.
- Step 2: Assessing Contributions:** Parties evaluate the contributions—both financial and non-financial—that were made during the relationship. Homemaking and caregiving roles are treated on equal footing with monetary contributions.
- Step 3: Considering Future Needs:** Lawyers explore life plans, income-earning potential, healthcare concerns, and financial obligations to determine future needs.
- Step 4: Reaching an Agreement:** Using negotiations, mediation, or other methods, the division terms are agreed upon and formalised through Consent Orders or Binding Financial Agreements (BFAs).



CHILDREN and PARENTING MATTERS

Parenting Arrangements Following Separation

Children's welfare lies at the heart of family law in Australia. When couples separate, determining the appropriate living arrangements for children can be one of the most emotionally complex issues. It is crucial that children remain shielded from disputes and can maintain loving relationships with both parents.

At Jeresyn Legal, we adopt a child-focused approach, ensuring decisions are made in the best interests of the children while supporting the parents through the legal processes.

Options for Parenting Arrangements

Several options exist for resolving parenting disputes, either informally or through legal orders. These include:

Parenting Plans

Parenting Plans are non-binding agreements made between parents, outlining the care and responsibilities of children post-separation. They typically include:

- › Schedule of time a child spends with each parent.
- › Arrangements for school holidays, extracurricular activities, and religious practices
- › Health and wellbeing decisions
- › Time with extended family, such as grandparents

Parenting Plans work best in co-operative relationships as they rely on mutual consent and flexibility. However, they do not carry legal enforceability.

Consent Orders

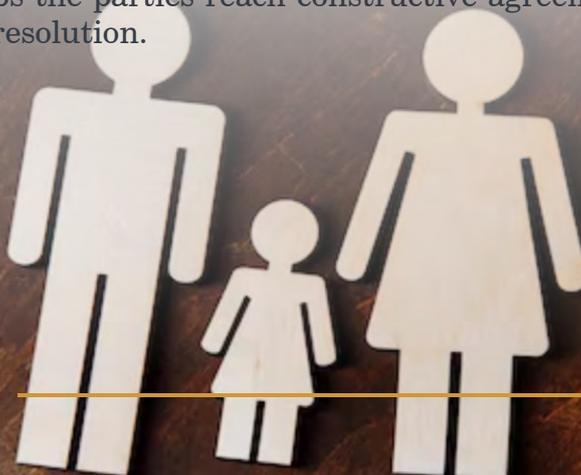
Consent Orders, on the other hand, are similar to Parenting Plans but are approved by a court to become legally binding. To secure a Consent Order, parents must agree on the terms, and the court must deem them to be in the child's best interests. This option provides enforceability but also requires thorough preparation and documentation.

Court Orders

Court Orders are issued where parents fail to agree amicably. These orders, determined by the courts, must be strictly followed and are focused on the child's welfare.

Grandparent and Relative Access

Time spent with extended family can be included within Parenting Plans or Consent Orders. Australian law encourages the involvement of grandparents and family members to sustain healthy relationships with children. Dispute resolution through mediation is highly favoured as it offers impartiality and helps the parties reach constructive agreements. Where disputes linger, court orders provide a final resolution.





GENERAL MATTERS

Resolving Legal Disputes with Consent Orders

Consent Orders are a preferred route for settling financial and parenting disputes without prolonged litigation. The Federal Circuit and Family Court requires applications for Consent Orders to meet certain criteria before granting approval.

Advantages and Limitations

Consent Orders offer the benefit of legal enforceability and reduced risk of being overturned by the court compared to BFAs. However, they require detailed disclosure of resources and often involve court filing fees. Delays may occur while awaiting judicial approval.

Critically, proposed Consent Orders must pass the court's "just and equitable" test, ensuring that neither party is unfairly disadvantaged, particularly in scenarios involving financial imbalances or childcare arrangements.

Binding Financial Agreements

BFAs provide couples with the ability to formalise financial matters following separation, outside of court processes. These agreements are enforceable under the Family Law Act, provided both parties receive independent legal advice. A poorly drafted BFA risks being invalidated by the court.

BFAs can be created:

- Prior to cohabitation, as prenuptial agreements
- During the relationship
- After separation or divorce (post-nuptial agreements)

Such agreements detail financial matters such as the division of assets, spousal maintenance, and superannuation. As both parties maintain control over the terms, BFAs often save time compared to court proceedings.

KEY INFORMATION ABOUT FAMILY LAW PROCEEDINGS

Initial Court Process: First Return Hearing

When a matter is first brought before the Federal Circuit and Family Court of Australia (FCFCOA), no final decision is made during the initial appearance. Instead, the Registrar oversees procedural steps for case management. These actions may include:

- › Directing the filing of necessary documents and evidence exchange.
- › Establishing timelines for progressing the case.
- › Referring parties to mediation or family dispute resolution to seek early settlement.

The Registrar's role involves ensuring both sides understand the procedural requirements leading up to subsequent court appointments. In situations requiring urgent attention, interim orders may be issued – addressing temporary parenting or property arrangements – to manage immediate concerns until a full resolution is achievable. Should the parties fail to resolve issues at this stage, additional hearings are scheduled to continue the case efficiently.

Interim Hearings: Addressing Urgent Matters

Interim Hearings are designed to resolve urgent matters between the parties while waiting for the final decision. During these hearings, temporary court orders are made to address immediate needs, such as child custody arrangements or asset management. These orders stay in effect until all evidence is comprehensively reviewed at the Final Hearing and a permanent ruling is issued.

The Judge or Senior Judicial Registrar reaches decisions at Interim Hearings based on Affidavits provided by both parties. The focus is on agreeing to uncontested facts and identifying points of dispute. However, the court does not evaluate the credibility of contested claims. Instead, decisions rely on independent evidence, such as official reports or subpoenaed documents, as cross-examinations are rarely permitted during this stage.

Consent Orders: Finalising Agreements During Proceedings

Throughout the course of court proceedings, parties can opt to negotiate and reach mutual agreement: these agreed terms can be formalised by submitting Consent Orders to the court for approval. Once approved as "just and equitable" for property matters or in the "best interests of the children" for parenting cases, these orders become legally binding Final Orders.

Consent Orders avoid ongoing litigation and provide a structured resolution agreed upon by both parties, reducing complexity and facilitating an amicable settlement process.

Final Hearing: The Conclusion of Family Court Proceedings

The Final Hearing represents the ultimate stage in family law litigation. At this hearing, the presiding Judge reviews all evidence provided by the parties and witnesses. Prior to this stage, Affidavits are filed by all parties involved, setting the foundation for the case. During the Final Hearing:

- › Witnesses, including those responsible for family reports, provide their testimony and undergo cross-examination.
- › Legal representation is often strengthened by appointing barristers who make final submissions, articulating why the court should issue orders favourable to their clients.

Judgments are rarely delivered on the same day as the hearing. Typically, the decision is reserved, with rulings handed down two to three months later.

Family Dispute Resolution (FDR): Facilitating Amicable Outcomes

Family Dispute Resolution (FDR) is an alternative approach to settling disputes outside the courtroom. FDR Practitioners are trained professionals specialising in mediation techniques and solutions tailored to family law conflicts. Acting as impartial mediators, they:

1. Help participants maintain composure during negotiations.
2. Identify issues causing disputes and explore potential resolutions.

This neutral third-party facilitation simplifies communication, paving the way for meaningful agreements on contentious issues.

Appealing a Family Court Decision

If an individual disagrees with a Family Court judgment, there is an established framework to lodge an appeal under *Division 4 of the Family Law Act 1975 (Cth)*. Appeals target decisions made by Federal Circuit and Family Court judges concerning matters like child custody or support disputes.

The appeal process provides an opportunity for rulings to be reviewed, ensuring decisions align with legal principles and broader family law objectives.

NAVIGATING DIVORCE IN AUSTRALIA

A divorce application can be initiated after 12 months of separation if reconciliation is unlikely. The process can be filed jointly or solely, with benefits ranging from faster resolution to reduced costs when agreed upon.

DIVORCE

Divorce Documentation Requirements

Applications for divorce require submission of:

- Marriage certificates
- Identification documents, such as passports, change of name certificates, or visas.
- Affidavits may be needed to clarify separation or living arrangements (e.g., separated but under one roof).

Procedure and Court Attendance

Court attendance may be necessary in situations involving children under 18, contested applications, or technical matters like substituted services. Divorce hearings are often conducted electronically, ensuring convenience.

WHY CHOOSE JERESYN LEGAL?

Selecting the right legal team is crucial when navigating complex family law matters. At Jeresyn Legal, we pride ourselves on delivering tailored, empathetic, and effective services to meet your needs. Here is why we stand out:

Clear and Practical Legal Advice

- › We communicate complex legal principles in straightforward terms, ensuring you have a solid understanding of your rights and options.
- › Our lawyers are approachable, making all aspects of your matter as seamless and stress-free as possible.

Swift and Efficient Resolutions

- › At Jeresyn Legal, your time matters. We focus on achieving timely and impactful solutions to prevent unnecessary delays and minimise ongoing legal costs.

Strategic Representation

4. Every case is unique, and we understand the nuances involved. Our lawyers develop comprehensive strategies designed to advance your interests and deliver meaningful outcomes.
5. Whether through negotiation, mediation, or court representation, we adopt a tactical approach tailored to the particulars of your matter.

Dedicated Advocacy

- › We are committed to fighting for your rights. Whether the matter involves parenting arrangements, property settlements, or divorce proceedings, our legal team advocates with determination from start to finish.

Specialised Knowledge Across Family Law

- › With extensive experience in Australian family law, Jeresyn Legal offers an unmatched depth of knowledge. From Consent Orders to Family Dispute Resolution, Binding Financial Agreements, and representation at hearings, we provide legal services that meet the highest standards.
- › We provide holistic support, leveraging our expertise in related fields like commercial law and litigation where necessary.

Empathy and Support

- › Understanding the emotional toll of separation and family court matters, our lawyers approach clients with compassion and professionalism.
- › We act as your partner throughout the journey, ensuring your interests remain the top priority while promoting amicable resolutions where possible.

We offer Fixed Costs with Jeresyn Legal

At Jeresyn Legal, we understand the importance of financial certainty, especially during emotionally charged legal matters. That is why we offer fixed-cost services, allowing you to proceed with confidence, knowing exactly what your matter will cost from start to finish.

Benefits of Fixed Costs:

- › **Transparency:** From the outset, you will know the total cost of your legal matter – no hidden fees, no unexpected charges.
- › **Budget Certainty:** Our fixed-cost structure empowers you to plan your finances without fear of unforeseen legal expenses.
- › **Peace of Mind:** Eliminating cost-related surprises means you can focus on resolving your matter, not worrying about escalating fees.
- › **Fairness:** We clearly define what is included in your fixed fee and provide upfront disclosure of any excluded charges, such as court filing fees or third-party expenses.

Our Promise: No Hidden Costs, No Surprises

At Jeresyn Legal, clarity and client satisfaction are at the core of everything we do. By providing a fixed-cost model tailored to your matter, we ensure a straightforward and stress-free experience throughout the legal process.

By partnering with Jeresyn Legal, you gain access to a team dedicated to reducing complexity, advancing your rights, and achieving the best possible result for you and your family.



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