

Negotiating property settlement – what's a fair share?

Author: Bridget Schultz
Email: bridget@ealawyers.com.au
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E&A Lawyers has made the decision to no longer provide family law services. While we no longer take on any new family law matters, we are happy to assist by referring you to lawyers specialising in this area. Please don't hesitate to contact us if you would like a referral.

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Have you and your former partner discussed what your life after separation will look like? A common comment we hear is "we have decided to split the assets 50:50 as that is fair". On the surface, this may look fair but delving deeper, it may not be in your best interests and it may not be what the Court considers just and equitable.

Examples of when a 50:50 split may not be fair

Scenario 1

- One party has given up their career to be the full-time homemaker undertaking the bulk of parenting duties for young children;
- They cannot return to the workforce in a full-time capacity due to childcare requirements;
- This results in a loss of wage-earning potential;
- It also results in a loss of superannuation guarantee payments.

Scenario 2

- You were both in a 'short' relationship;

- One party made greater initial contributions (primarily financial) to the relationship.

How to determine what is fair?

If you engaged a lawyer, we will take detailed instructions from you and then apply the ‘four-step process’ to make an assessment to reach a range of just and equitable entitlements.

The four-step process summarised

Step 1

Identify and value the current property, liabilities and financial resources of the parties.

Step 2

Assess the parties' contributions throughout the relationship. Contributions include financial contributions, non-financial contributions and homemaker and parenting contributions.

Step 3

Assess whether there should be any adjustment on account of 'future needs'.

These include matters such as the responsibility to care for children under the age of 18 years, the future income earning potential of each party relative to the other, health and any other matters which affect the ability of each party to support themselves in the future.

Step 4

Finally, globally assess whether the actual division of property proposed is just and equitable in all circumstances. For example, a property settlement where one party received all superannuation and no other cash or assets whilst the other party received all the cash and assets, and no superannuation would likely be deemed as not just and equitable. This would be dependent on a few factors; for example, the value of cash and assets and how close the parties were to retirement and access to super funds.

Get help from a family lawyer

It is crucial to obtain legal advice before entering into a formal, binding agreement (with Consent Orders or through a Binding Financial Agreement) with your partner, to ensure what you are agreeing to is actually fair to your unique circumstances.

Feel free to get in touch directly with today's blog writer, Bridget Schultz, for advice and assistance.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

02 9997 2111

info@ealawyers.com.au

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