

Family Law Property Settlements

Is a 50/50 split the starting point?

Following the breakdown of a marriage or de facto relationship, it is common for separated parties to be unsure and therefore anxious about their entitlements in a property settlement, and the assets that they are likely to retain.

There are many factors to consider which are sometimes complicated and often emotional. The number and ages of children, contributions before and during marriage and the ability of the parties to financially recover from the separation are just some of the areas that need to be considered. Each separation and the combination of the above are different. That is what makes Family Law complicated. Advice from a "backyard" lawyer can often be confusing and more often than not, inaccurate.

Automatic entitlement – a popular myth

Contrary to popular belief, there is no presumption that assets should be divided 50/50, 60/40 or in any other subjective proportion. The Family Court maintains a discretion.

People often receive "advice" from well-meaning friends or family as a result of their own experiences. This advice is often misleading and can be unhelpful when it creates a false expectation.

Each person's situation is different and should be carefully assessed by a Family Lawyer qualified to give proper advice.

No two cases are decided the same and there is no presumption of any kind in relation to a financial settlement when it comes to percentage entitlements. It is important to realise that one person's settlement will probably be different from yours and others you may have heard about.

Factors to be taken into account

The factors which must be taken into account when the Family Law Courts consider how property is to be divided are set out in the *Family Law Act*.

A lawyer practising in Family Law will know exactly what is taken into consideration by the Court when providing detailed and specific advice to clients. There is no universal equation applied. A final property settlement is based on all of the information provided and the discretion of the Court in deciding the matter.

To decide how to distribute the assets, the Family Court will usually take into account factors including, but not limited to, the following:-

- The current value of the assets and liabilities. The Court will require all assets and liabilities to be identified to establish a 'net asset pool'. This includes superannuation entitlements, as well as assets held personally, in partnership or by trusts, or companies.
- The direct financial contributions made by each person to the acquisition of assets or the preservation, improvement or maintenance of those assets. This will include assets owned at the commencement of the relationship.
- The indirect financial contributions made by each person in the relationship, for example, the giving up of a career to allow the other person to further their own career.
- The non-financial contributions by each person, like caring for children, being the homemaker and maintaining or improving the assets by personal exertion such as individual efforts in renovations that increase the value of an asset.
- Identifying the future needs of the parties, for example, age, health, financial resources, superannuation, care of children and income earning capacity.

After considering the above and other factors relevant to the particular case, the Court will consider whether any proposed property settlement is 'just and equitable' in the circumstances.

No particular factor is given priority over another, meaning that someone who is the sole income earner will not necessarily be entitled to a greater financial settlement than the other person who was a stay at home parent to the children of the relationship. It is more likely to work the other way.

Summary

It is important to remember that there is no presumption of equality (like a 50/50 split) as a starting point in respect of contributions and that each matter will be decided upon *the particular circumstances of that case*.

The Family Court has broad powers to make Orders for a just and equitable division of assets.

It is important for anyone considering separating from their spouse, or who has already separated, to obtain independent legal advice from experienced Family Law lawyers about their likely property settlement entitlements.

If you would like advice, guidance or assistance about property settlement entitlements following the breakdown of a marriage or relationship, contact us on (03) 9347 0355 or email us at info@schembrilawyers.com.au.



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