



MEDIATING Property Division Following Separation

A guide for participants

Dividing your Assets and Liabilities following the breakdown of a relationship is a 4 step process.

1. Identify the Assets and Liabilities;
2. Identify and assess the Contributions of the parties;
3. Identify and assess the future needs of the parties;
4. Divide the Assets and Liabilities taking into account the first 3 steps.

During your mediation you will need to consider these steps if you intend to have your agreement approved by the Family Court. There are benefits to formally documenting your property settlement. You should speak to your legal advisor about these benefits and your options for property settlement.

How to prepare for mediation

Disclosure

The Family Law Act 1975 requires both parties to provide “*full and frank*” disclosure about their assets and liabilities. This means that you need to exchange details of and provide the supporting documents about the current value of any assets and liabilities that you own or control.

Types of Assets and Liabilities often include:

- Homes/investment properties;
- Bank accounts/savings
- Investments, shares, bonds, crypto;
- Businesses;
- Companies;
- Trusts;
- Motor vehicles, boats, caravans etc
- Superannuation;
- Furniture, jewellery, artworks;
- Mortgages;
- Loans;
- Credit Cards;
- Tax liabilities;
- HELP/HECS/student debts;
- Store cards;
- After pay/zip pay etc.

If you are unsure about the current values of your assets or liabilities consider getting advice from a professional valuer or expert.

1. Make a list or spreadsheet setting out your assets and liabilities for example;

Asset Description	Ownership	Value	Comments
<i>Eg. 1 Family Street, Brisbane</i>	<i>Joint</i>	<i>\$500,000</i>	<i>Disputed value; want to keep this</i>

2. Identify the date or source of the valuation of each item;
3. Make some notes about what assets and liabilities are important to you and why;
4. Consider some options about how you want to deal with the assets and liabilities;
5. Consider what might be important to the other party;
6. Think about some options that might appeal to the other person;

Contributions



Contributions include Financial and Non-financial Contributions.

Financial Contributions can include:

- Direct monetary contributions from wages, income, allowances;
- Gifts
- Windfalls – eg lottery win;
- Personal injury payout;
- Redundancy;
- Inheritance;

Non-financial contributions can include:

- tasks, roles, input that has assisted the management of the family or household; or
- supporting the other party to improve their financial circumstances or qualifications;
- improving or maintaining the assets with labour or skills;

Negative contributions can include:

- Gambling;
- Substance abuse;
- Domestic violence;

Timing of Contributions

- **Initial contributions**
 - What assets and liabilities did you bring to the relationship?
 - What assets and liabilities did the other party bring to the relationship?
- **Financial contributions**
 - Who made them?
 - When were they made?
 - How much were they worth? and
 - How were they utilized during the relationship?

- **Parenting**

- Who was responsible for the primary care of the children?
- Did either parent take maternity leave?
- How did the parenting arrangements impact each parents employment?
- Are there any health/medical issues that impact the children?
- Are there any special needs/interest that impact the children?
- Were other family or friends regularly involved in the care of the children?

- **Homemaker**

- Who did the cooking, cleaning & laundry?
- Who did the general household maintenance and management?

- **Renovations or improvements to properties/assets**

- Who/what paid for the renovations?
- Were they conducted by trades persons?
- Did either party apply their labour and skills to improve the properties?
- Did the improvements have a positive, negative or neutral effect on the value of the asset?

- **Future Needs**

- Income earning capacity
- Health issues
- Care of children
- Child support
- Care of other dependents
- Financial resources
 - future anticipated windfalls, gifts, inheritances
 - trust/profit distributions

Interim Issues

- servicing of liabilities pending final settlement
- bank accounts
- living arrangements including re-establishment costs
- changes to children's arrangements



- transport/motor vehicles

Questions for legal advisors:

- What might a judge decide?
- How does a judge decide?
- What are the strengths and weaknesses in my case?
- How much will it cost?
- What further evidence do I need?
- Will I have to pay the other party costs?
- How long will it take for a judge to decide?
- What is the best type of agreement for my circumstances?

Questions for Financial Advisors:

- Are there any tax consequences if assets are sold or transferred?
- How will the division of assets and liabilities affect my retirement plans, income and/or financial resources?
- What is the most effective way to restructure the assets and liabilities?
- Budget assistance – Can I afford what I want from the settlement?

Questions for Mortgage Brokers:

- What is my borrowing capacity?
- Do I qualify for a loan and how much will the banks lend?
- What are the borrowing costs?
- How much are the repayments

Consider your Options and Possible Solutions

- What is your best possible outcome?
- What is your worst possible outcome?
- What other options might work?
- What might the other party want?
- What will happen to your family if you can't resolve at mediation?

Confidentiality

Mediation, is a confidential process.

This means that any offers, concessions, verbal agreements, information exchanges during the mediation process cannot be used in court proceedings.

If you are unsure about confidentiality please obtain further legal advice or raise your concerns with your mediator.

Useful Links/Information

Family Court of Australia - <https://www.fccoa.gov.au/>

Relationship Australia - <https://www.relationships.org.au/>

Family Relationship Centre - <https://www.familyrelationships.gov.au/>

Attorney General - <https://www.ag.gov.au/families-and-marriage/families/family-dispute-resolution>