

A photograph of a person's hands signing a document on a wooden desk. A laptop is open to the left, and a set of keys lies on the desk. In the bottom right corner, a small model of a house is visible. The image is overlaid with a semi-transparent dark grey rectangle containing the title and subtitle.

THE PROPERTY SETTLEMENT ROADMAP

What Actually Happens, from Separation to Settlement



FIERCELY HUMAN. FEARLESSLY STRATEGIC. LAW DONE DIFFERENTLY.

“

Welcome

If you're reading this guide, chances are you're asking yourself one simple question.

"What happens now?"

- Perhaps you've recently separated.
- Perhaps you've been separated for months.
- Perhaps you've started discussing finances but have no idea whether you're receiving fair advice.

Whatever has brought you here, one thing is certain. Property settlement is one of the most significant financial events most people will experience. It is about far more than dividing assets. It is about protecting your future, your financial security and your ability to move forward with confidence.

Unfortunately, many people begin the process feeling overwhelmed. They worry about who keeps the family home.

- Whether they will lose their superannuation.
- Whether they will have enough to start again.
- Whether they will have to go to Court.

The uncertainty often feels worse than the legal process itself. The good news is that understanding the process removes much of that uncertainty.

This guide explains, step by step, what happens during a property settlement, what your options are, and how you can protect your position from the very beginning.

Every family is different. Every financial situation is different. But understanding the roadmap will help you make informed decisions with confidence.



MELANIE VAIRAWANATHAN
FOUNDER AND PRINCIPAL LAWYER

15+ YEARS
EXPERIENCE IN FAMILY LAW

*"Helping people
move forward
with clarity,
confidence and
practical legal
advice."*

WHAT WE CAN DO FOR YOU

Property settlement is rarely just about dividing assets. It involves understanding your legal rights, identifying risks, protecting your financial future and developing a strategy that reflects your individual circumstances.

At Melmark Law, we can:

- Explain your legal rights and likely entitlements from the outset.
- Develop a clear strategy tailored to your circumstances and financial goals.
- Ensure all relevant assets, liabilities and financial resources are properly identified and disclosed.
- Advise you regarding the family home, investment properties, businesses, trusts, companies, superannuation and complex financial structures.
- Assist with urgent applications where assets require immediate protection.
- Negotiate directly with your former partner or their lawyers with the aim of achieving an efficient and practical resolution.
- Represent you at mediation and throughout settlement negotiations.
- Prepare legally binding Consent Orders or Binding Financial Agreements.
- Represent you throughout Court proceedings where litigation becomes necessary.
- Guide you through every stage of the process with practical, commercially focused advice so you can move forward with certainty.

BEFORE YOU START

Know Your Time Limits

One of the most common misconceptions is that property settlement can be dealt with whenever you feel ready.

Unfortunately, that is not always the case. Australian family law imposes strict limitation periods.

If you were married

You generally have **12 months from the date your divorce becomes final** to commence Court proceedings for a property settlement.

If you were in a de facto relationship

You generally have 2 years from the date of separation to commence Court proceedings. If these time limits expire, you may need the Court's permission to proceed. That permission is not automatically granted. If you are unsure about your time limits, obtain legal advice as early as possible.

STEP 01

Understanding Your Financial Position

Before discussing who receives what, it is important to understand exactly what exists. Many people assume property settlement is simply about the family home. In reality, it includes every aspect of your financial relationship.

The asset pool may include:

- the family home
- investment properties
- bank accounts
- savings
- offset accounts
- businesses
- companies
- trusts
- shares
- managed funds
- cryptocurrency
- motor vehicles
- caravans
- boats
- personal belongings of significant value
- superannuation

It also includes liabilities, such as:

- mortgages
- personal loans
- tax debts
- credit cards
- business liabilities

Everything must be identified before meaningful negotiations can begin.

➔ **PROPERTY SETTLEMENT MYTHS**

MYTH

Only assets held in joint names are divided.

FACT

Assets held solely in one person's name may still form part of the property pool.

MYTH

Superannuation belongs solely to the person whose name it is in.

FACT

Superannuation is treated differently from other assets but is still considered during property settlement.

MYTH

If my former partner controlled the finances, there is nothing I can do.

FACT

The law requires both parties to provide full and frank financial disclosure. There are legal processes available to obtain financial information where necessary.



STEP 02

Financial Disclosure

One of the most important stages of every property settlement is disclosure. Both parties are legally required to provide complete and honest information about their financial circumstances. This obligation continues throughout the matter. Disclosure helps ensure that negotiations are based on accurate information rather than assumptions.



→ Documents You Should Start Gathering

- Bank statements
- Credit card statements
- Mortgage statements
- Superannuation statements
- Tax returns
- Notices of Assessment
- Payslips
- Property title documents
- Business financial statements
- Trust deeds
- Vehicle registration papers
- Share portfolios
- Cryptocurrency records
- Loan agreements
- Existing valuations

Having these documents available early can save considerable time and legal costs.

→ WHY DISCLOSURE MATTERS

Property settlement is only as fair as the information available. If assets are overlooked, hidden or undervalued, the outcome may not accurately reflect the parties' true financial position. Where appropriate, additional information can be obtained through formal disclosure processes, subpoenas or independent experts. Transparency provides the strongest foundation for meaningful negotiations.

STEP 03

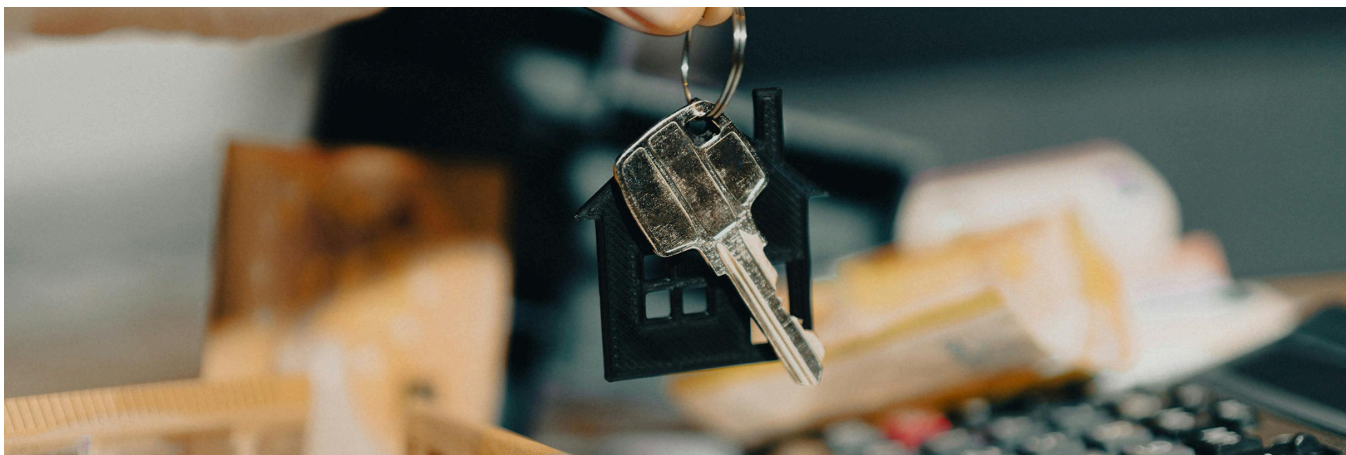
Identifying the Asset Pool

Once disclosure has occurred, the next step is determining the total value of the parties' assets and liabilities. Sometimes this is straightforward. Other matters require specialist assistance.

Examples include:

- real estate valuations
- business valuations
- forensic accounting
- taxation advice
- superannuation valuations

Obtaining accurate values ensures negotiations are based on reliable financial information rather than estimates.



→ REAL CLIENT SCENARIO

"We thought we knew what everything was worth."

A separating couple agreed on the value of their investment property without obtaining an independent valuation. Months later, a formal valuation revealed the property was worth substantially more than both parties had believed. Had they finalised their agreement earlier, one party would have received significantly less than they were entitled to.

Lesson:

Independent valuations can prevent costly mistakes.



STEP 04

How the Court Assesses Contributions

One of the most common questions we hear is:

"Who gets what?"

The answer is rarely straightforward. Contrary to popular belief, Australian family law does not apply a fixed formula or automatically divide property equally. Instead, each matter is assessed individually. The Court looks at the contributions made by each party throughout the relationship. These contributions are not limited to who earned the higher income. The law recognises that relationships function in many different ways, and every contribution has value.

→ **FINANCIAL CONTRIBUTIONS**

Financial contributions are often the easiest to identify.

They may include:

- Employment income
- Savings brought into the relationship
- Deposits used to purchase property
- Mortgage repayments
- Gifts from family members
- Inheritances
- Business income
- Investment income

→ **NON-FINANCIAL CONTRIBUTIONS**

Not every valuable contribution involves money.

The Court also recognises contributions such as:

- Renovating the family home
- Managing investment properties
- Working in a family business without receiving wages
- Completing significant maintenance or improvements
- Managing financial affairs

These contributions may significantly increase the value of the parties' assets.

→ **HOMEMAKER AND PARENTING CONTRIBUTIONS**

Many people underestimate the importance of caring for children and managing a household. Australian family law recognises these contributions as equally important.

Examples include:

- Caring for children
- Preparing meals
- Cleaning
- Managing household responsibilities
- Supporting the other party's career
- Caring for extended family members

Without these contributions, many families would not have been able to accumulate the assets they did.

➔ **THERE IS NO SCORECARD**

Property settlement is not about counting who contributed more. Every relationship is different. Some people contribute financially. Others contribute by raising children, managing the household or supporting a family business. The Court considers the entire relationship when assessing contributions.



STEP 05

Considering Future Needs

Property settlement is not simply about recognising what each person contributed in the past. The Court must also consider what each person will need moving forward. This is often referred to as considering each party's future needs.

Relevant factors may include:

- Age
- Health
- Income
- Capacity to earn an income
- Responsibility for caring for children
- Financial resources
- The practical impact of returning to the workforce

For example, a parent caring for young children may have reduced earning capacity compared with someone working full time. Similarly, a person with ongoing health issues may require additional financial support to meet their future needs. Every case is different.

➔ **HOW PROPERTY SETTLEMENTS ARE REALLY DECIDED**

The Court generally works through four broad questions.

1. What property exists?

Identify all assets, liabilities and financial resources.

2. What did each person contribute?

Financial, non-financial, and homemaker contributions.

3. What does each person need moving forward?

Future needs and personal circumstances.

4. Is the proposed outcome fair?

The overall settlement must be just and equitable in all the circumstances. This framework is applied to every matter, although the outcome will always depend on the individual facts.



STEP 06

Negotiating a Resolution

The vast majority of property settlement matters resolve without the need for a Judge to decide the outcome. There are several different ways an agreement may be reached.

➔ **NEGOTIATION**

Often, negotiations begin through correspondence between lawyers. This allows both parties to exchange proposals, discuss settlement options and work towards an agreement. Negotiation is generally the quickest and most cost-effective pathway where both parties are willing to engage constructively.

➔ **MEDIATION**

Where negotiations reach an impasse, mediation may be recommended. A mediator is an independent professional who assists the parties to have productive discussions. The mediator does not make decisions. Instead, they facilitate negotiations and help the parties explore practical settlement options. Many matters are successfully resolved during mediation.

➔ **COLLABORATIVE LAW**

Collaborative Law is a voluntary process where both parties and their lawyers commit to resolving the dispute without Court proceedings. The process focuses on respectful communication, transparency and finding practical solutions. It is particularly well suited to separating couples who wish to preserve an ongoing relationship, especially where children are involved.

→ COURT PROCEEDINGS

Sometimes Court proceedings become necessary.

Examples include:

- One party refuses to provide financial disclosure.
- Assets require urgent protection.
- Significant disputes exist regarding the value of property.
- Negotiations have completely broken down.

Commencing Court proceedings does not necessarily mean your matter will proceed to a final hearing. In fact, many matters resolve during the Court process through negotiation or mediation.

→ REAL CLIENT SCENARIO

“We thought we had no choice but to go to Court.”

A separating couple had been arguing about their property settlement for almost twelve months. Communication had completely broken down. Following mediation, they were able to reach an agreement in a single day.

Lesson:

Court is not always the next step.

Sometimes the right process simply hasn't been attempted yet.



STEP 07

Making Your Agreement Legally Binding

Once an agreement has been reached, it is important to ensure it is legally enforceable. There are two common options.

→ **CONSENT ORDERS**

Consent Orders are filed with the Federal Circuit and Family Court of Australia for approval. If the Court is satisfied the agreement is just and equitable, Orders are made without requiring the parties to attend Court. Consent Orders provide certainty and are enforceable by law.

→ **BINDING FINANCIAL AGREEMENTS**

A Binding Financial Agreement is a private agreement between the parties. Unlike Consent Orders, it does not require Court approval. However, strict legal requirements apply. Both parties must obtain independent legal advice before signing. If those requirements are not satisfied, the agreement may not be enforceable. Choosing the most appropriate option depends on your individual circumstances and should always be discussed with your lawyer.



STEP 08

Implementing Your Settlement

Even after an agreement has been reached, there are still practical steps to complete.

These may include:

- Transferring ownership of property
- Refinancing mortgages
- Selling real estate
- Paying settlement monies
- Splitting superannuation
- Transferring motor vehicles
- Closing joint bank accounts
- Updating your Will
- Updating beneficiary nominations

Completing these steps promptly helps ensure both parties can move forward with certainty.



TOP FIVE MISTAKES PEOPLE MAKE

1. Waiting too long to obtain legal advice

Early advice often prevents expensive mistakes.

2. Assuming everything should be divided equally

Every family is different. There is no automatic 50/50 division.

3. Relying on informal agreements

Unless your agreement is properly documented, it may not be legally enforceable.

4. Allowing emotions to drive financial decisions

Property settlement is one of the largest financial transactions many people will ever undertake. Commercial decisions generally produce better long-term outcomes than emotional ones.

5. Assuming your former partner has disclosed everything

Disclosure is a legal obligation. If information appears incomplete, there are legal processes available to obtain further disclosure.

FREQUENTLY ASKED QUESTIONS

Do I have to go to Court?

Not necessarily. Most property settlement matters resolve through negotiation or mediation without a final hearing.

Is everything divided equally?

No. Every matter is assessed individually based on contributions, future needs and what is just and equitable.

What happens to superannuation?

Superannuation is considered during property settlement and may be divided between the parties in appropriate circumstances.

Can we reach an agreement ourselves?

Yes. However, any agreement should be properly documented to ensure it is legally binding and enforceable.

How long will property settlement take?

Simple matters may resolve within weeks or a few months. More complex matters involving businesses, trusts, multiple properties or Court proceedings may take considerably longer.

FINAL CHECKLIST

Before progressing your property settlement, ask yourself:

- ☐ Do I understand the limitation period that applies to me?
- ☐ Have I identified all assets and liabilities?
- ☐ Have I gathered my financial documents?
- ☐ Do I understand my legal rights?
- ☐ Have I obtained independent legal advice?
- ☐ Do I have a clear strategy moving forward?

If you answered "no" to any of these questions, obtaining legal advice now may save you significant time, stress and expense later.



YOU DON'T HAVE TO NAVIGATE THIS ALONE

Separation is never easy. Property settlement can feel overwhelming, particularly when emotions are high and the future feels uncertain. Understanding your rights is the first step towards making informed decisions and protecting your financial future.

At Melmark Law, we provide strategic, compassionate and practical advice tailored to your individual circumstances. Whether your matter is straightforward or highly complex, our focus is on helping you move forward with confidence.

Need Advice Specific to Your Situation?

Melmark Law provides strategic, trauma-informed advice for mothers navigating separation and family violence.

Book a confidential consultation today.

Ring (03) 9098 8749.



☎ (03) 9098 8749 ✉ info@melmarklaw.com.au

📍 Level 40, 140 William Street, Melbourne VIC 3000

🌐 www.melmarklaw.com.au

⚠ Important Disclaimer

This guide provides general information only and does not constitute legal advice. Every family and financial situation is different. The information contained in this guide should not be relied upon as a substitute for obtaining independent legal advice tailored to your individual circumstances.