Property Settlement
**Key legislation:**

[Family Law Act 1975](https://www.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/fla1975114/)

|  |  |  |
| --- | --- | --- |
| Date: |  |  |

|  |  |
| --- | --- |
| Client contact | Also, complete *Client Details and Verification of Identity.* |
| Name: |  |
|  |  |
| Preferred method of contact: | [ ]  Email [ ]  Post [ ]  Phone [ ]  Other: |  |
| Email: |  |
| Address: |  |
| Phone: |  |  |
| [ ]  Conflict of interest checked |  |

|  |
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| Nature of work |
| [ ]  Married | *Also:* |  [ ]  Children *See separate Retainer Instructions.* |
| *[ ]* De facto |  |  [ ]  Divorce *See separate Retainer Instructions.* |
| ***Time limitation for proceedings without leave**** *Two years after de facto separation.*
* *One year after divorce.*
 |
|  |
| ***The four step process***1. *Identify the asset pool.*
2. *Assess the contributions.*
3. *Consider* [*s 75(2)*](https://www.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/fla1975114/s75.html) *factors.*
4. *Pursuant to* [*s 79(2)*](https://www.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/fla1975114/s79.html) *consider whether the orders to be made are just and equitable.*
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| The relationship |
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| **Cohabitation/de facto** |
| When did you begin living together? |  |
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| **Marriage** |
| Date: |  | Town and country: |  |
| Marriage Certificate: *Certified copy is sufficient.* | [ ]  Supplied |  [ ]  Client to bring in | [ ]  We will order  |
| [ ]  Other: |  |
|  |
| **Separation** |
| Date of final separation: |  |  |
|  |
| **Divorced?** |
| [ ]  Yes Date of divorce: |  |  Where divorced? |  |
| [ ]  No If no, instructions to prepare the documents: | [ ]  Yes [ ]  No |

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| Other side |
| Name: |  |
|  |  |
| Address: |  |
|  |  |
| Postal address: | As above [ ]  or |  |
|  |  |
| Contact: | W: |  | H: |  | Fax: |  |
| Mobile: |  | Email: |  |

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| Solicitor for other side |
| Firm name: |  |
| Contact name: |  |
| Address: |  |
|  |  |
| Postal address: | As above [ ]  or |  |
| Contact: | Phone: |  | Fax: |  |
|  | Mobile: |  | Email: |  |

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| --- |
| Client’s accountant |
| Firm: |  |
| Address: |  |
| Postal address: | As above [ ]  or |  |
| Contact: | Name: |  | Phone: |  |
|  | Email: |  | Mobile: |  |

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| Will and severance of joint tenancies |
| *Any beneficial gift in favour of, or appointment as executor of, a former spouse is revoked by termination of a marriage.* |
| Does the client wish to make a new will? | [ ]  Yes [ ]  No |
| Does the client wish to sever any joint tenancies? | [ ]  Yes [ ]  No |
| Are there any real property assets in one name only? | [ ]  Yes [ ]  No |
| If yes, details: |  |
|  |  |
| Is a caveat required to protect the non-owner’s interests? | [ ]  Yes [ ]  No |
| If yes: | [ ]  Implied trust *Contributed financially to the acquisition of the property.* |
|  | [ ]  Constructive trust *A joint endeavour, therefore unconscionable for one to take the whole interest.* |

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| Cases and orders |
| Are there any ongoing cases in this or any court that involve the parties or any of the children listed? | [ ]  Yes [ ]  No |
| *Note: Any case that concerns family law, child support, family violence or child welfare.* |  |
| If yes, brief details including court, next date, parties and nature: |
|  |
|  |
|  |
| Are there any existing orders, agreements, parenting plans or undertakings to a court about family law, child support, family violence or abuse in relation to a child, including family violence orders which have applied to a child or a member of the child’s family, or child welfare issues concerning any of the parties or children listed in this application? | [ ]  Yes [ ]  No |
| If yes:  | [ ]  Order [ ]  Parenting plan [ ]  Undertaking [ ]  Agreement |
|  | [ ]  Copies attached OR |
|  | [ ]  Brief details including court, next date, parties and nature: |
|  |  |
|  |  |
| Have the parties previously entered into a financial agreement or a superannuation agreement? | [ ]  Yes [ ]  No |
| *Note: Under the Family Law Act or under any relevant state or territory legislation.* |  |
| If yes:  | [ ]  Copy of the agreement attached  |
|  |
| If either party has a superannuation interest, has the non-member spouse served a waiver notice on the trustee under [s 90XZA](https://www.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/fla1975114/s90xza.html) of the Act for a payment split? | [ ]  Yes [ ]  No |
| If yes:  | [ ]  Copy of the notice attached |
|  |
| Is there a payment flag in operation in relation to either party’s superannuation interest? | [ ]  Yes [ ]  No |
| If yes:  | [ ]  Copy of the order/agreement creating flag attached |
|  |
| Is any party currently bankrupt or currently a debtor in bankruptcy proceedings started by either a creditor’s or a debtor’s petition or currently a debtor subject to a personal insolvency agreement? | [ ]  Yes [ ]  No |
| If yes:  | [ ]  Copy of the order/agreement attached |
|  |
| Is there a proceeds of crime order or current forfeiture application in relation to any of the property of any of the parties? | [ ]  Yes [ ]  No |
| If yes:  | [ ]  Sealed copy of the order/application attached |
|  |
| Is there any person entitled to become a party to the case under [s 79(10)](https://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s79.html) or [s 90SM(10)](https://www.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/fla1975114/s90sm.html) of the Act? | [ ]  Yes [ ]  No |
| If yes, has written notice been given to that person? | [ ]  Yes [ ]  No |
|  |
| *The following are entitled to become a party to proceedings in which an application is made for an order under this section:** *a creditor of a party to the proceedings if the creditor may not be able to recover his or her debt if the order were made;*
* *a person who is in a de facto relationship with a party and who could apply, or has an application pending, for an order under* [*s 90SM*](https://www.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/fla1975114/s90sm.html)*, or a declaration under* [*s 90SL*](https://www.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/fla1975114/s90sl.html)*;*
* *a person who is married to a party and who could apply, or has an application pending, for an order under* [*s 79*](https://www.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/fla1975114/s79.html)*, or a declaration under* [*s 78*](https://www.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/fla1975114/s78.html)*;*
* *a person who is a party to a financial agreement, that is binding on the person, with a party;*
* *any other person whose interests would be affected by the making of the order.*
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| Children |
| [ ]  No children |
| [ ]  All over 18 years | [ ]  Children under 18 years – please complete the following: |
|  |
| **Full name** |  | **Age** | **Gender** | **Primary care giver** |
| 1. |  |  |  | [ ]  Male [ ]  Female |  |
| 2. |  |  |  | [ ]  Male [ ]  Female |  |
| 3. |  |  |  | [ ]  Male [ ]  Female |  |
| 4. |  |  |  | [ ]  Male [ ]  Female |  |
|  |
| ***Notes****:* *Consider contribution factors and* [*s 75(2)*](https://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s75.html) *factors e.g. children requiring special needs, who else lives with the children.* |
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| *If a parenting plan or any orders are required see separate* ***Retainer Instructions – Children****.* |

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| Steps 1 and 2 – Asset pool and contributions |
| **Identify the assets held and record full details of each asset below:** |
| *Assets may include real estate, motor vehicles, furniture and furnishings, funds in banks, building societies, or other financial institutions, business ownership, investments including shares and life insurance policies.* |
| *An additional assets page is available at the end of this form.* |
|  |
| **Asset 1** |  |
| Description: |  |
| Legal ownership: |  |
| Estimated value: | *At cohabitation* | $ |  | *Now* | $ |  |
| Amount of liability: | *At cohabitation* | $ |  | *Now* | $ |  |
| Liability owed to: |  |
| Contribution by wife: |  |
| Contribution by husband: |  |
|  |
| **Asset 2** |  |
| Description: |  |
| Legal ownership: |  |
| Estimated value: | *At cohabitation* | $ |  | *Now* | $ |  |
| Amount of liability: | *At cohabitation* | $ |  | *Now* | $ |  |
| Liability owed to: |  |
| Contribution by wife: |  |
| Contribution by husband: |  |
|  |
| **Asset 3** |  |
| Description: |  |
| Legal ownership: |  |
| Estimated value: | *At cohabitation* | $ |  | *Now* | $ |  |
| Amount of liability: | *At cohabitation* | $ |  | *Now* | $ |  |
| Liability owed to: |  |
| Contribution by wife: |  |
| Contribution by husband: |  |
|  |
| **Asset 4** |  |
| Description: |  |
| Legal ownership: |  |
| Estimated value: | *At cohabitation* | $ |  | *Now* | $ |  |
| Amount of liability: | *At cohabitation* | $ |  | *Now* | $ |  |
| Liability owed to: |  |
| Contribution by wife: |  |
| Contribution by husband: |  |
| Additional sheets used: [ ]  Yes [ ]  No |
|  |
| **Superannuation** |
|  | **Wife’s primary fund** |  |  | **Husband’s primary fund**  |
| Name of fund: |  |  |  |  |
| Type of interest: |  |  |  |  |
| ***Estimated value*** |  |  |  |  |
| At cohabitation: $ |  |  |  $ |  |
| Now: $ |  |  |  $ |  |
|  |
|  | **Wife’s secondary fund** |  |  | **Husband’s secondary fund** |
| Name of fund: |  |  |  |  |
| Type of interest: |  |  |  |  |
| ***Estimated value*** |  |  |  |  |
| At cohabitation: $ |  |  |  $ |  |
| Now: $ |  |  |  $ |  |
|  |
| **FINANCIAL RESOURCES** *– For example, trusts, expected inheritance, personal injury claims.* |
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| **Tax** |
| *Normally if transferring between parties pursuant to court orders, taxes and duties are not payable. Otherwise normal considerations apply.* |
| Is there a need to consider? |
| GST: | [ ]  Yes [ ]  No [ ]  Exempt |
| CGT: | [ ]  Yes [ ]  No [ ]  Exempt |
| Stamp duty: | [ ]  Yes [ ]  No [ ]  Exempt |

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| Step 3 – Section 75(2) factors  |
| *For full details see* [*s 75(2)*](https://www.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/fla1975114/s75.html) *Family Law Act 1975 – Matters to be taken into consideration in relation to spousal maintenance.* |
|  |
| **The matters to be so considered are:** |
|  |
| 1. Age and state of health of the parties:
 |
|  | Wife: |  |
|  | Husband: |  |
|  |
|  |
| 1. Income, property, financial resources and physical and mental capacity of each for gainful employment:
 |
|  | Wife: |  |
|  | Husband: |  |
|  |
|  |
| 1. Care of children under 18 years:
 |
|  | Details: |  |
|  |  |  |
|  |
|  |
| 1. Commitments of each necessary to enable support of self and children:
 |
|  | Wife: |  |
|  | Husband: |  |
|  |
|  |
| 1. Responsibility to support others:
 |
|  | Wife: |  |
|  | Husband: |  |
|  |
|  |
| 1. The eligibility of either party for a pension, allowance or benefit:
 |
|  | Wife: |  |
|  | Husband: |  |
|  |
|  |
| 1. Is reasonable standard of living an issue? [ ]  Yes [ ]  No
 |
|  | Details: |  |
|  |  |  |
|  |
|  |
| 1. Extent to which the payment of maintenance would increase the earning capacity of that party by enabling them to undertake a course of education or establish a business or otherwise obtain an adequate income:
 |
|  | Wife: |  |
|  | Husband: |  |
|  |
|  |
| **(ha)** Effect of any proposed order on the ability of a creditor of a party to recover the creditor’s debt: |
|  | Details: |  |
|  |  |  |
|  |
|  |
| 1. Contribution to the income, earning capacity, property and financial resources of the other party:
 |
|  | Details: |  |
|  |  |  |
|  |
|  |
| 1. Duration of marriage and effect on earning capacity:
 |
|  | Details: |  |
|  |  |  |
|  |
|  |
| 1. Protect party who wishes to continue role of parent:
 |
|  | Details: |  |
|  |  |  |
|  |
|  |
| 1. Cohabiting with another person – financial circumstances relating to cohabitation:
 |
|  | Wife: |  |
|  | Husband: |  |
|  |
|  |
| 1. Terms of any orders under [s 79](https://www.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/fla1975114/s79.html) in relation to property of parties:
 |
|  | Details: |  |
|  |  |
|  |
|  |
| **(naa)**Terms of any orders under [Part VIIIAB](https://www.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/fla1975114/#s90q) in relation to property of parties: |
|  | Details: |  |
|  |  |  |
|  |
|  |
| **(na)** Any child support a party has, or might be liable, to provide for a child of the marriage: |
|  | Details: |  |
|  |  |  |
|  |
|  |
| 1. Any fact or circumstance justice requires to be taken into account:
 |
|  | Details: |  |
|  |  |  |
|  |
|  |
| 1. Terms of any financial agreement binding on parties:
 |
|  | Details: |  |
|  |  |  |
|  |
|  |
| 1. Terms of any [Part VIIIAB](https://www.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/fla1975114/#s90q) financial agreement binding on parties:
 |
|  | Details: |  |
|  |  |  |

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| Step 4 – Just and equitable outcome |
| *Note: Consider client’s aspirations, notes and proposed orders.* |
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| Costs |
| Discussed costs: | [ ]  Yes [ ]  No | Estimate: | $ |  |  |
| Initial fees required: | [ ]  Yes [ ]  No | If yes: | $ |  |  |
| Forward costs agreement: | [ ]  Yes [ ]  No |  |
|  | [ ]  Send using Electronic Signatures *Will incur a fee.* |

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| Other services |
| Wills required: | [ ]  Yes [ ]  No |
| Powers of attorney and guardianship required: | [ ]  Yes [ ]  No |
| Other: |  | [ ]  Yes [ ]  No |
| Please open file and make appointment for instructions: | [ ]  Yes [ ]  No |

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| Source of work |
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| *For example, existing client.* |  |

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| Notes |
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| Additional sheet – Assets page |
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|  | **ASSET** \_\_\_ |  |  | **ASSET** \_\_\_ |
| Asset description: |  |  |  |  |
| Legal ownership: |  |  |  |  |
| Estimated value: | *At cohabitation* |  | *Now* |  |  | *At cohabitation* |  | *Now* |
| $ |  | $ |  |  |  | $ |  | $ |  |
| Liability to: |  |  |  |  |
| Amount of liability: | *At cohabitation* |  | *Now* |  |  | *At cohabitation* |  | *Now* |
| $ |  | $ |  |  |  | $ |  | $ |  |
| Contribution: | *By Wife* |  | *By Husband* |  |  | *By Wife* |  | *By Husband* |
| $ |  | $ |  |  |  | $ |  | $ |  |
|  |  |  |  |  |  |  |  |  |  |  |
|  | **ASSET** \_\_\_ |  |  | **ASSET** \_\_\_ |
| Asset description: |  |  |  |  |
| Legal ownership: |  |  |  |  |
| Estimated value: | *At cohabitation* |  | *Now* |  |  | *At cohabitation* |  | *Now* |
| $ |  | $ |  |  |  | $ |  | $ |  |
| Liability to: |  |  |  |  |
| Amount of liability: | *At cohabitation* |  | *Now* |  |  | *At cohabitation* |  | *Now* |
| $ |  | $ |  |  |  | $ |  | $ |  |
| Contribution: | *By Wife* |  | *By Husband* |  |  | *By Wife* |  | *By Husband* |
| $ |  | $ |  |  |  | $ |  | $ |  |
|  |  |  |  |  |
|  | **ASSET** \_\_\_ |  |  | **ASSET** \_\_\_ |
| Asset description: |  |  |  |  |
| Legal ownership: |  |  |  |  |
| Estimated value: | *At cohabitation* |  | *Now* |  |  | *At cohabitation* |  | *Now* |
| $ |  | $ |  |  |  | $ |  | $ |  |
| Liability to: |  |  |  |  |
| Amount of liability: | *At cohabitation* |  | *Now* |  |  | *At cohabitation* |  | *Now* |
| $ |  | $ |  |  |  | $ |  | $ |  |
| Contribution: | *By Wife* |  | *By Husband* |  |  | *By Wife* |  | *By Husband* |
| $ |  | $ |  |  |  | $ |  | $ |  |