Property Settlement   
**Key legislation:**

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

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

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| --- | --- | --- | --- | --- | --- | --- |
| 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 | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | |
| **Cohabitation/de facto** | | | | | | | | | | | | | |
| When did you begin living together? | | | | | |  | | | | | | | |
|  | | | | | | | | | | | | | |
| **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: | |  |
|  | | | |  |
|  | | | | |
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| **(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: | |  |
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|  | | | | |
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| **(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.* | | | | |

|  |  |  |
| --- | --- | --- |
| 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 | | | | | | | | | | |
|  | | | | | | | | | | | |
|  | **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* | |
| $ |  | $ |  |  |  | $ |  | $ |  | |