

Property Settlement:

The 4 Step Process



This resource outlines the four-step process used by the Courts to determine a just and equitable Property Settlement. When the Court decides on the division of property, and if any alterations are necessary, a Court Order will be made.

This Court Order may or may not however relate to an individual party's own sense of justice and equitableness.

Once the decision is made to proceed with alteration of the property interests, the Court adopts a four-step process:

01



Identifying the matrimonial assets and liabilities

Step One of the Four Step Process is to identify and value all the property of the parties. The Family Court will consider the assets, liabilities, and resources of the parties at the time of trial, this forms the "property pool" that is available for division. 'Property' is given a broad definition so to include every possible interest a party may have.

- **Assets** will include tangible property such as real estate, furniture, boats, antiques, or intangible property such as the good will of a business.
- **Liabilities** will include the outstanding mortgage on real estate, credit card debts, finance owed on a vehicle, personal loans, student loans etc.

- **Resources** can include property with actual or anticipated value such as royalties, a beneficial interest in a trust or an anticipated inheritance.

An independent valuation may be required if the parties cannot agree on the current market value for an item of property.

02



The contributions of the parties

Two of the Four Step Process is to consider three types of contributions made by the parties to the acquisition, conservation, and improvement of the property pool:

- Financial contributions.
- Non-Financial contributions; and

- Homemaker and welfare contributions.

No one type of contribution is more important than the other two, what is important is the time that the contribution was made and its impact on the property pool.

This step considers the financial contribution, non-financial contribution, and contributions made to the welfare of the family as a parent and homemaker of each party and how that has directly or indirectly contributed to the acquisition, conservation, or improvement of any of the property the marriage.



03



Future needs

Step Three of the Four Step Process is to consider any factors which may require an adjustment to the proposed percentage made in step 2.

Factors to consider are the length of the relationship, whether a party is the primary carer of a child of the relationship, the health and age of the respective parties, each parties income and capacity to continue to work, and the relationships effect on their capacity to earn.

Depending on the future needs of each party, it may be appropriate to adjust the percentage of the property division made.

04



Implementation of the orders in a just and equitable way

Finally, the Court must consider whether the orders it proposes to make after completion of the previous steps are just and equitable and the longer-term effects of the proposed orders on each party.

If you're recently separated, get in touch with the family law team today to get the most out of your property settlement.

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