

HARRINGTON FAMILY LAWYERS



PROPERTY SETTLEMENT- FOR GAY AND LESBIAN COUPLES

“Money is like a sixth sense without which you cannot make a complete use of the other five.”
Somerset Maugham “Of Human Bondage” 1915.

WHICH COURT?

Unlike married couples, whose property settlement matters are dealt with in the Family Court or the Federal Magistrates Court, your property settlement matter is dealt with in the Queensland courts – the Supreme, District or Magistrates Courts.

If you have children, the property matter will remain in the Queensland courts, although your children’s matter will be in the Family or Federal Magistrates Courts.

Property disputes for gay and lesbian couples are governed under case based law (called either *equity* or *common law*) and under a Queensland Act called the Property Law Act. Sometimes you may hear your case described as Part 19 proceedings. This is the part of the Property Law Act that covers de facto property settlements.

There are four key steps:

I. IDENTIFY AND VALUE THE ASSET POOL

The portion that you or your spouse might receive will depend on the type and size of the asset pool. Often this can be a tricky process, as parties disagree with what property is owned by each of them, or how much that it is worth. This process includes identifying and valuing any liabilities of either of the parties, and establishing whether they should be included as liabilities to be included in the pool.

Sometimes parties agree on what percentage each should receive, but fundamentally disagree on what property should be included in the pool, or the value of that property. It is essential that the identity and value of the property is sorted out as quickly as possible. We will assist through this process, and seek to identify any items of property over which agreement can be quickly reached, and those items of property or liabilities in which there might be difficulties.

Unlike married couples, superannuation is usually considered not to be property, but a financial resource which cannot be split or included as part of the pool, but which can be taken into account.

2. ASSESS AND VALUE THE CONTRIBUTIONS OF EACH OF THE PARTIES

The courts here have to consider both the financial and non-financial contributions of each of the parties. The courts have long held that there needs to be a balancing and weighing up of the various different contributions. **Example:** One party may have made a greater financial contribution, but the other may have made a greater non-financial contribution as homemaker and carer for the children.

Difficulties can arise as to what weight ought to be given to a number of factors including:

- initial contributions
- the care of children during the relationship and post-separation

- financial impacts in blended families
- windfall gains, such as inheritances, lotto wins, personal injury payouts and redundancies
- gambling, drinking and wastage
- the effects of domestic violence

The courts have long emphasised that every case is different and needs to be decided on its own merits.

There is *no* presumption that parties will receive an equal division of property, based on a long term relationship.

Although the factors under the Property Law Act are almost identical to those under the Family Law Act covering married couples, it should not be assumed that they will necessarily be decided the same way.

3. MAKE ANY ADJUSTMENTS FOR FUTURE FACTORS

The Property Law Act then provides that a series of factors may be taken into account, to consider whether or not there ought to be any adjustment for the future. The factors are:

The effect of any orders on future earning capacity

Child support

Other orders concerning the parties or their children

Age and state of health of each of the parties

The income, property and financial resources of each of the parties

The physical and mental capacity of each of them for appropriate gainful employment

Whether either has the care of any of their children under 18 years

Necessary commitments of themselves and to support any other person

Whether either is in receipt of a pension (though ordinarily this has to be discarded)

Appropriate standard of living

Contributions each has made to the other

Length of the relationship

Effect of the relationship on earning capacity

Financial circumstances of cohabitation

Any other relevant fact or circumstance

MAKING AN ORDER THAT IS FAIR

After looking at steps 1 to 3, the court then needs to make an order that is fair, or in the words of the Property Law Act “just and equitable”. This may mean a further adjustment.

TIME LIMITS

Applications for property settlement **must** be brought within two years of separation. Outside that time, they cannot be brought without first obtaining permission of the court, and that permission is not guaranteed. It is therefore essential that if the time limit is approaching to start proceedings, so that your rights are not lost forever. Please alert us immediately to any possible time limit problems.

Harrington Family Lawyers pride ourselves on our accurate advice to clients. This brochure is of a general nature only, and may not reflect your specific needs. For specific advice in your matter, you should contact us, so as to ensure that the advice for you is accurate.

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