

Property

Your rights and responsibilities



- What can I do about the property from the relationship?
- What if I can't afford a solicitor for my property settlement?
- How do I apply for child support and do I need to?
- Am I entitled to maintenance?



What can I do about the property from the relationship?

If you and your ex have very little property and you can come to an agreement about who will get what, you can make an **informal agreement** without going to court. This could be a verbal or written agreement between you and your ex. While this can save you lawyer fees, the downside is that this is not legally binding. Therefore if your ex changes their mind about the property, there is no way to enforce the agreement.

A property settlement is legally binding

A property settlement is legally binding, and enforceable. It divides the property that you and your ex shared, during the course of your relationship. This includes debts, and who will need to pay them. There are two ways to get a property settlement:

- If you have come to an agreement with your ex, you can ask the court to stamp it in order to make it legally binding. This is known as consent orders; or
- You can go to court and the court will make a decision about what is fair.

A property settlement rather than an informal agreement, is recommended if there has been domestic violence in the relationship. You should not try to negotiate informally with your ex about property if it is not safe to do so. A safer option is seeing a solicitor who can negotiate on your behalf.

It's important to seek legal advice if:

- You own property with your ex, as you are at risk of losing your share if your ex stops making repayments.
- You own joint property, even if you and your ex are not currently arguing about it.
- Your name is not on the property, and you are contributing to it.

What is "property"?

Property includes real estate, money, shares, cars/other vehicles, furniture, jewellery, and superannuation. The "property pool" for a property settlement also includes debts. You should make a list of any property you can think of, and if possible gather your financial documents, such as bank statements, payslips and loan documents. Property does not need to be registered in your name, to be included in a property settlement.

Can I apply for a property settlement?

If you were married or in a de-facto relationship with your ex partner, you can apply for a property settlement. You should obtain legal advice about this. There are fees involved with applying to the court, however, if you are experiencing financial hardship you should mention this - as you may be eligible for a reduced fee.

When should I apply for a property settlement?

You must be separated from your ex before you can apply for a property settlement. Instances of marriage, you must apply for a property settlement within 12 months of the final divorce order. If you were in a de-facto relationship, you have two years from the end of the relationship to apply. You need to obtain permission, "leave" from the court to apply for a property settlement after these dates.

How do I know what I am entitled to?

There is no set formula for dividing property. However, the Family Law Act 1975 sets out the principles that are used to reach a fair outcome. This includes looking at the financial and non-financial (including housework and looking after children) contributions that each party made in the relationship, as well as the future needs and resources of the parties. A solicitor can discuss this with you.

What if we only have debts between us?

A property settlement should make clear who will be responsible for paying any debts. However, if you and your ex only have debts, it may be too expensive for you to have a property settlement through the courts. Talk with a lawyer about your options. The fact sheet "Debt and Separation" has further information.

Do I lose any rights if I move out of the property or leave property behind?

No you do not. However, it is best to initiate a property settlement as soon as possible, after your separation to safeguard your rights to the property.

I have left my personal belongings behind. How can I collect them?

Your safety is the number one priority in this scenario. It is important for you to consider whether you need police, or a support person to help you with this. If you have an Intervention Order application in court, the order may stipulate the return of your property - which allows you to retrieve your personal belongings from the home with police protection. This must be done at the Court, when the Intervention Order matter is heard. If you do not have an Intervention Order in place, you can still ask the police if they are willing to help you collect your belongings.

What if I can't afford a lawyer for my property settlement?

Lawyers can be expensive, however some will negotiate payment after the property settlement has been finalised (when you have access to money). Legal Aid is only offered for property matters in limited circumstances. There are some community legal centres (such as Women's Legal Service (SA) Inc), who can provide telephone legal advice on property settlement, or refer you to other services who can further assist you.

What should I do, if I get a letter from my ex's lawyer about property?

If you receive any letters or documentation about property settlement, you should seek legal advice as soon as possible.

Where else can I go for further information and assistance?

Family Law Courts: National Enquiry Line	1300 352 000
Legal Services Commission of SA	1300 366 424
Women's Legal Service (SA) Inc.	(08) 8221 5553 or 1800 685 037

To find your nearest legal centre, go to www.clcsa.org.au



WOMEN'S LEGAL SERVICE (SA)
Achieving justice for women



Community Legal Centres
Australia

Please note: This factsheet contains general information only. It does not constitute legal advice. If you need legal advice, please contact a solicitor. Acknowledgement: This resource was adapted by the Women's Legal Service (SA) Inc. Originally developed by the National Association of Community Legal Centres, Community Legal Centres NSW and a number of community legal centres including Macarthur Legal Centre and Women's Legal Services NSW with the assistance of an Australian Human Rights Framework – Education Grant from the Australian Government. Last updated: May 2020