A fair share

Negotiating your property settlement



Relationships™ AUSTRALIA

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We acknowledge Aboriginal and Torres Strait Islander peoples as the Traditional Owners and Custodians of the land and waters on which we live and work, and we pay our respect to Elders, past, present and emerging.

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About this guide



Most married and de facto couples acquire assets (such as real estate and motor vehicles) and liabilities (debts) during their relationship. Finalising arrangements for property (and for children if you have them) can cause conflict and tension, and be emotionally draining.

While the majority of couples resolve things satisfactorily and move on with their lives, it does take time.

This guide will help you with the process of dividing up your property. The main emphasis is on how family dispute resolution (FDR) can help you through this process.

Who is this guide for?

This guide is for all married or de facto heterosexual, gender diverse and sexually diverse couples who separated on or after 1 March 2009, (or, in South Australia, on or after July 2010) with or without children.

De facto and married couples who separated before these dates can choose to settle matters of property division or adult financial support (spousal maintenance) under their own state or territory laws or under the Australian *Family Law Act 1975 (Cth)*. A lawyer can advise which path is most suitable for you.

While the Family Law Act applies across the majority of Australia, in Western Australia de facto and married couples remain subject to state law about property division and adult financial support. Affected couples should discuss this with their lawyer.

Things to know before you get started

The importance of legal or financial advice

This guide gives general information about the law. It does not replace the need to seek appropriate legal or financial advice.



Where you see this exclamation mark symbol in this guide, it means that we recommend you gain legal or financial advice on the topic.

Contacting a legal information service or advice line is usually considered to be different from obtaining 'independent legal advice' (defined on page 35) from a lawyer.

Even if there is very little dispute between you and your former partner, the same lawyer cannot act for both of you. To avoid a conflict of interest each of you should engage a separate lawyer.

Having children does not affect your ability to finalise property

You may have children together or your children may be from a previous relationship. You may have been part of a blended family. None of these circumstances affect your ability to finalise your property.

Defining the 'Court'

In this guide, 'Court' refers to both the Federal Circuit and Family Court of Australia and to the Family Court of Western Australia.

Glossary

Some terms used in this guide carry a specific legal meaning. For more information, see the glossary on page 34.

Client testimonials

All names used in client testimonials in this book have been changed for privacy reasons.

⚠ Not covered in this book:

Living arrangements for children



Negotiating children's living arrangements can be difficult and emotional. Relationships Australia's booklet *Share the care: Parenting plan—Collaborative parenting apart* offers some assistance with this process.

Other Relationships Australia handbooks that may help at this time are:

- Men and separation—Navigating the future
- Women and separation—Managing new horizons

To download digital copies, scan the QR code or visit relationships.org.au/ra-information-booklets

For printed copies, call 1300 364 277.

Adult financial support (spousal maintenance)

While we recommend that you seek individual advice specific to your situation, general information about spousal maintenance is available at fcfcoa.gov.au/fl/fp/spousal-maintenance

An introduction to property



What is 'property of a relationship'?

Most couples have some idea as to what is classed as 'property' but there are also some common misconceptions about what is considered 'property of a relationship' when negotiating a property agreement.

Property of a relationship will include:

- all assets (things you own) held by you and your former partner in joint or separate names such as your:
  - family home
  - holiday home
  - cars and boats
  - household effects ranging from stereo, TV and home theatre through to cups and saucers
  - personal items like jewellery and clothing.
- all assets under your own or your former partner's control such as:
  - a business
  - superannuation
  - a share in an extended family business or investment property held under a family trust.
- all liabilities (things that you owe money on) in joint or separate names such as:
  - mortgage debts
  - credit cards
  - 'buy now, pay later' credit services
  - hire purchase agreements.

It may also include property you held in your own name before entering into the relationship, or property you have acquired since separation.

Property includes companion animals (pets) where parties dispute the ownership of a companion animal after separation.

Your property agreement

Relationships Australia works every day with separating couples on property matters through our family dispute resolution (FDR) services. We believe that negotiating your own mutually acceptable property agreement (where safe to do so) may be the best way to finalise the separation of assets and liabilities.

See page 15 for more information about FDR.

What is a property agreement?

A property agreement is a document that sets out how you and your former partner will divide up your property.

What are the advantages of negotiating a property agreement?

- It minimises the cost of lawyers and avoids adversarial Court processes.
- It allows you to be part of the process rather than having a decision imposed on you by a Court.
- It can provide a speedy resolution.
- There is likely to be less emotional toll or impact on children.
- It is an important step towards ending the financial relationship between you and your former partner.

How do we negotiate a property agreement?

A property agreement is best negotiated using FDR (see page 15) with advice from lawyers or financial planners as required.

Many initial services are available at low or no cost.

To get started, contact:

- the Family Relationship Advice Line on 1800 050 321
- Relationships Australia on 1300 364 277.

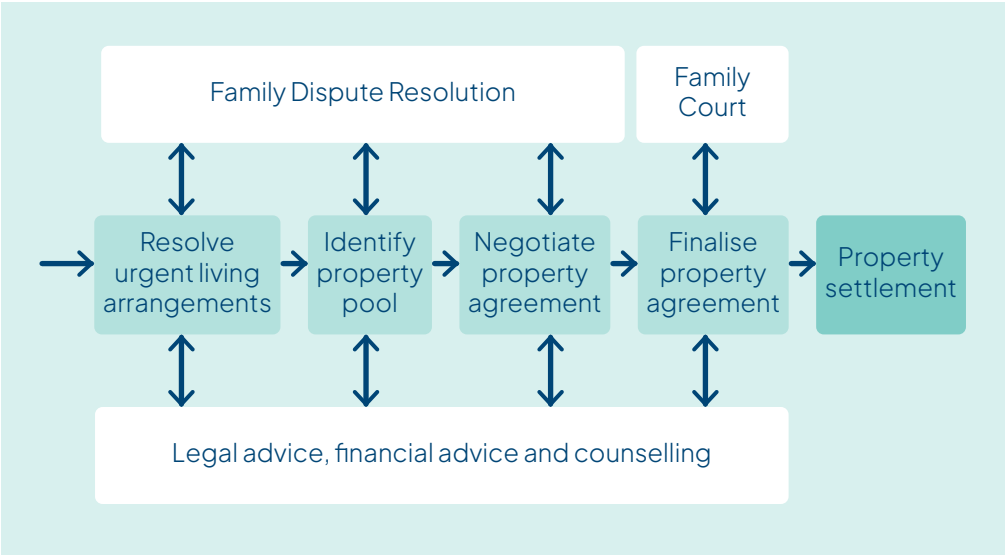
Sometimes people benefit from emotional support when they are negotiating financial settlements. A counsellor can be a good person to talk to if you find the process of financial separation emotionally difficult.

To find a counsellor, lawyer, or financial planner see 'Where to get more support', page 49.

What is the process?

The process that most people follow from separation to their property settlement involves:

- identifying what is included in the property pool
- negotiating the division of the pool by way of a property agreement
- formalising the agreement to achieve a property settlement.



Your process may have some differences. The important thing to remember is that legal advice, financial advice and other support services are available along the way. See 'Where to get more support', page 49.

What if we can't agree in FDR?

There are other options for resolution (see 'Alternatives to FDR', page 31). However, these normally involve lawyers and may involve significantly more time and cost.

When separation happens

First, resolve urgent living arrangements

Separation may have been coming for quite a while or it may come as a total shock. Resolving your new living arrangements is vital. This means agreeing with your former partner on a temporary living arrangement. Once this is done you can start thinking about your property agreement.

At this time it is easy to be overwhelmed by a thousand feelings and questions. It may be helpful to talk about the options with someone who is not your former partner.

The following services are a good place to start.

- Family Relationship Advice Line: 1800 050 321
- Relationships Australia: 1300 364 277

To find additional support services, see page 49.

Who should leave the home?

There are no rules about who should move out. We advise you to consider factors such as who will have primary care of children in the short term, and your individual financial circumstances.

It's also important to consider the effect any move may have on children, and whether there are risks to the safety of you or your children from ongoing conflict between you and your former partner.

Should I stay or should I go?

- Consider leaving the home if staying there is affecting your own or your children's safety.
- Leaving your home will not affect your legal entitlements to a share in the property of a relationship.
- Leaving your home may limit your future access to property or personal or financial documents, particularly if family violence is involved. Consider taking photographs of furniture and making copies of important documents if you plan to leave (see 'Financial checklist', page 37).

What if we can't agree?

If you are unable to agree, seek family dispute resolution (FDR) (see page 15) or legal advice (see page 17).

Case study: Peter and Belinda

Peter and Belinda have 2 children. Peter works full-time and Belinda is a casual worker with primary care of their children.

After some discussion they agree that the children should stay in the family home.

As Peter is working full-time, he will move into rental accommodation until they have finalised their property issues. They also agree that Peter can access some of their joint savings to cover rent and the purchase of basic furniture and household items to set up his accommodation.

Keep track!



It is important to keep track of all your property until your property agreement is finalised and settlement is reached. This can sometimes be difficult, particularly if not all the assets are in joint names. You may need to seek legal advice before separation about how to protect your existing property until your property settlement is completed.

Who will pay the bills if one of us moves out of the house?

There are no set rules about this. It will depend on you and your former partner's financial circumstances.

It is important to deal with the bills, debts and ongoing costs of maintaining the property of the relationship as soon as possible. This way you will minimise penalties or costs associated with non-payment of debts.

Can we be separated under the same roof and still finalise our property agreement?

Yes. You may or may not still be living together as a couple (cohabiting).

Sometime couples cease their intimate relationship but continue to both stay in the family home.

You can still finalise your property agreement during this period and attend FDR if you wish.

Case study: John and Aneetha

Who should pay the mortgage?

John and Aneetha both work, but John earns substantially more than Aneetha. Over the years, bills and mortgage payments for the family home have been paid out of a joint account into which both have paid their income. Although Aneetha is still in the home, she is unable to cover the mortgage payments and contribute to bills on her income alone.

To ensure that the costs associated with the home are covered, they do a budget and at their first FDR session they discuss what they can each afford to pay. John and Aneetha agree that John will pay the mortgage payments, whilst also paying rent for his alternative accommodation until the home is sold.

Arrangements and decisions about family pets

Under Australian family law, a 'companion animal', more commonly known as a family pet, is an animal that is kept primarily for companionship. It does not include animals kept for assistance, business or scientific reasons.

Most couples will be able to work out arrangements for their family pets after separation including who will own, care for and take responsibility for any associated costs relating to pets.

Decisions about pets and other animals you own, are usually sorted out as part of property settlement. However, if you and your former partner are unable to reach agreement about your family pet in FDR, Australian family law allows parties to apply to the Court to determine who will own the pet going forward. The Court will not make decisions about arrangements to share the care of pets.

If you would like to make decisions regarding your family pet in FDR (see page 15), please talk to your FDR practitioner. The practitioner may recommend you seek legal advice specifically in relation to your family pet and the nature of the issues you wish to mediate.

How does separation affect my will? ⚠

If you're married, a divorce may automatically render your existing will invalid. Separation however, does not automatically revoke a will, whether you are married or in a de facto relationship.

Therefore, any will that is valid at the time of separation will continue to be valid after that date, and so any property you have left to your former partner may pass to them if you died.

You may wish to amend your existing will or make a new one soon after separation to reflect your changed circumstances.

Financial assistance for separating parents

If you think you may be eligible for assistance as a single parent, contact the Services Australia Families Line on 13 61 50 or visit servicesaustralia.gov.au

For information about your eligibility or liability for child support, call the Services Australia Child Support Enquiry Line on 131 272 or visit servicesaustralia.gov.au/separated-parents

Family dispute resolution

It is worth seeking family dispute resolution as early as possible during separation. It can:

- assist you to work out a viable short-term plan while you are finalising your property agreement
- help you resolve short-term issues and set the scene for future planning.

Read more on page 15.

‘I was so glad I listened to my counsellor and attended FDR soon after we separated. We were able to agree to share the bills until the house was sold and I stopped worrying so much.’

—Rosie

Family dispute resolution (FDR) and your property agreement



What is family dispute resolution?

Family dispute resolution (FDR) is the term used to describe a service provided by accredited FDR practitioners to support parties who wish to try to resolve disputes outside of Court.

FDR is also sometimes referred to as 'mediation'. In FDR the separating couple is assisted by a qualified, accredited and impartial FDR practitioner to reach a mutually satisfactory agreement about property.

The role of the FDR practitioner

The FDR practitioner is an impartial person whose role is to assist you in reaching an agreement.

The practitioner is not able to give legal advice and will not dictate to you what options you should be considering. It is the FDR practitioner's role to ensure you are both supported during the process and that you each feel able to negotiate freely.

A fair process

In FDR, each person has the opportunity to speak without interruption, and respond to matters that the other person puts forward.

The process is designed to:

- meet both parties' needs—you have the opportunity to negotiate arrangements that meet your needs as a separating couple
- aid negotiation—if you maintain a fixed position and are not willing to negotiate, you may not reach agreement in this process.

FDR can be delivered with both parties in the same room (joint) or in separate rooms (shuttle).

Even if you can't reach agreement in FDR, agreement may still be possible with the assistance of lawyers. Any work you have done to identify the issues in dispute can still be useful in a more legal setting. For detailed information about the FDR process, see page 21.

Is FDR compulsory?

As at July 2026, it is not compulsory for couples to attend FDR for property and financial matters, although this requirement may change in the future.

Attempting FDR is, however, one of the ways to meet the Court's requirements for starting a financial or property case. For more information, see 'Pre-action procedure for financial or property cases', available at fcfcoa.gov.au/fl/pubs/pre-action-financial

Is FDR right for every situation?

FDR may not be right for every situation. Situations where FDR is not recommended include:

- where there is family violence or child abuse and these factors impact your ability to negotiate freely, for example, where one person cannot make decisions on an equal basis with the other because they feel intimidated or unsafe
- in urgent situations, for example, if children have not been returned from a visit, or if one party thinks that the other might take or damage property that they are entitled to
- where one person refuses to participate in FDR
- where the ability of one or both people to negotiate freely is affected by mental illness or a drug or alcohol abuse problem
- where there is a concern about non-disclosure of relevant information.

Seek legal advice if you are in one of these situations.

See 'Where to get more support', page 49.

Safety

If you or someone you know is in danger, call emergency services on 000.

Legal advice—Before FDR and along the way

Most people are not clear about how family law operates in relation to property division. Information from well-meaning friends or relatives can lead to misunderstanding or confusion about your own situation.

FDR practitioners recommend that you seek legal advice before you begin FDR and at appropriate times throughout the process.

Proper legal advice:

- avoids unrealistic expectations about the possible outcomes
- speeds up the negotiation process
- ensures you are informed and prepared before making decisions.

You should inform your lawyer that you are intending to use the FDR process to try and resolve your issues.

How to find a family lawyer

- Ask friends and family if there is someone they recommend, or contact your state or territory law society (see page 54).
- Contact your local legal aid office or legal aid commission to find out whether you're eligible for legal aid (see page 55).

Questions to ask your lawyer



- What are the best, worst and most likely possible legal outcomes and the likely costs?
- How long is the process likely to take and when should I come back for further advice?

Any advice you receive from your lawyer should be in writing.

How to minimise your legal costs

See pages 37–48 for types of financial and property information you need to take to your lawyer.

Financial advice—Before FDR and along the way

You may need to get some independent financial advice from a financial planner or accountant or speak to your lending institution before you start family dispute resolution. Good advice can help you understand the financial impact of different ways of dividing property.

During the FDR process financial advice may be required again, particularly regarding proposals for allocating superannuation.

Financial services that can help are listed on page 52.

Questions to ask your financial planner

- Am I in a financial position to buy my former partner out?
- Could I obtain a mortgage that would enable me to finance myself into another property?
- Can I access any portion of my superannuation before I retire?
- Can I refinance to manage my debts?

Am I ready for FDR? Things to consider

	Y	N
• Have I resolved my urgent living arrangements, including:		
◦ housing?		
◦ financial assistance?		
◦ child support?		
• Can I think clearly and talk constructively about the issues?		
• Is my former partner willing to participate?		
• Do I have enough information about my rights and obligations?		
• Do I feel safe to attend FDR in the same space as my former partner without being intimidated by them?		
• Do I feel safe to attend FDR in a different space from my former partner without being intimidated by them?		
• Have I sought legal and/or financial advice?		

If you're unsure whether you're ready to participate in FDR with your former partner, an initial meeting with an FDR practitioner on your own can be helpful. This is usually the first step in FDR (see page 21).

Choosing an FDR practitioner or service

FDR services are provided by organisations such as Relationships Australia in all Australian states and territories, and through Family Relationship Centres which are funded by the Australian Government.

While Family Relationship Centres deal primarily with parenting disputes, they may also assist with more straightforward property matters.

To find an FDR practitioner in your area:

- visit familyrelationships.gov.au
- call Relationships Australia on 1300 364 277 or visit relationships.org.au/contact

You do not need to have children to access FDR. All separated couples can access the service.

Accessing counselling for more support

Feeling supported throughout the FDR process is important.

Attending counselling before or during the process may assist you in looking after your emotional wellbeing. See 'Where to get more support', page 49.

Alternatively, you may choose to see your general practitioner (GP) to discuss options to support your health and wellbeing.

> 'I realised after talking to my FDR practitioner that I was just too angry about my partner leaving to be able to discuss money stuff. I spoke to my GP who referred me to a counsellor. Now I am much more in control of my emotions and ready to think about the future.'
>
> —Anoop

The FDR process: What to expect

Intake

Before any joint sessions, you will usually meet separately with the FDR practitioner for an individual session. This way the practitioner can obtain background information that will assist you both during the process.

The practitioner will also give you information about the nature of the FDR process, their role and how you can best prepare and participate.

The practitioner will then decide if you are both ready for the dispute resolution process, able to look after your own interests and able to negotiate freely. Sometimes it may be appropriate to postpone FDR and refer one or both of you to other services for assistance with coping with the separation first.

The 'Dos' and 'Don'ts' of FDR

Your behaviour towards your former partner in the FDR process can play an important role in determining the success of the process.

Do:

- be prepared to listen
- avoid expressing highly emotive opinions such as 'You've never even worked!' or 'You've always spent too much money'
- be open to negotiation.

Don't:

- deliberately antagonise your former partner
- interrupt or talk over your former partner
- maintain a stubborn fixed position.

Full disclosure

FDR is more effective when parties have fully and frankly disclosed to each other their relevant financial information and documents during the FDR process.

You have an ongoing duty to give this full and frank disclosure when:

- you are preparing for a Court proceeding; or
- you are a party to a Court proceeding.

If your matter proceeds to Court at a later date, you will also have a duty to give this full and frank disclosure to the Court.

Parties who are preparing for or engaged in a Court proceeding in relation to their financial or property dispute may face legal consequences from the Court if they have not provided full and frank disclosure of all relevant financial information.

Where a party has failed to provide full and frank disclosure during Court proceedings or the preparation for Court proceedings the Court may:

- take this into account in a property settlement order
- make orders in relation to costs against the person who failed to disclose
- make orders in relation to disclosure
- impose sanctions for contravention of an order
- punish a party for contempt of Court
- stay or dismiss the proceedings.

A property settlement may be 'set aside' (cancelled) if it is established later on that there was not full disclosure at the beginning.

You are not, however, expected to know everything about your former partner's financial information. Sometimes one former partner is not fully aware of the other's financial affairs such as superannuation details, actual salary, family investments or debts in that person's name alone. This can often be the case even if you have joint accounts and have a regular bill-paying system.

If you have concerns about financial disclosure, or if participating in financial disclosure could increase risk to your safety or your children's safety, you can talk to your FDR practitioner or obtain legal advice.

The first session after intake: Identifying your property pool

The first session after intake is usually a joint session. If you or your former partner don't feel ready for a joint session, of if there are safety risks, other options are available.

This might be individual sessions, or 'shuttle mediation' in which you and your former partner are seen in separate rooms by the same FDR practitioner, or even by 2 different practitioners.

To start with, the FDR practitioner(s) will try to identify the property of the relationship. This list of assets and liabilities is what is commonly called the 'property pool'.

This includes not only things you own, but things you owe money on. They may be owned individually or jointly or by a family trust or family company or business. It can include property you brought to the relationship and property you had when it ended.

The value of an asset is not what you paid for it during the relationship; it is the 'current market value' at the time of your negotiations or at any hearing of the Court.

> 'My car went into the property pool. I thought it was mine because I paid for it and it was in my name. But it went in just the same.'
>
> —Fatima

How can I establish the value of the assets?

- For some items such as real estate or cars you can obtain market appraisals from agents or auctioneers, or use recent valuations obtained for refinancing or insurance.
- You may agree with your former partner to engage a qualified valuer to assess the current market value of assets. You may then agree to share the costs jointly with your former partner.
- To determine the value of superannuation you may need the help of a superannuation expert if you have a complex scheme.

What goes into the property pool? 

All property of the relationship is considered part of your 'property pool'.

Assets may include:

- real estate, including the family home
- cash in bank accounts, both joint and separate
- shares
- superannuation
- certain life insurance policies
- motor vehicles, boats, trailers
- household items including items of value, such as antiques or artwork
- jewellery
- tools of trade
- capital gain on real estate – i.e. gain in market value
- assets in business, former partnership, company
- windfalls or winnings.

Liabilities may include debts such as mortgages, loans, credit cards, hire purchase agreements and personal debts.

Ongoing sessions

Once you have identified your property pool, the practitioner will help you identify your main concerns and wishes over your property division. Usually couples need more than one session to negotiate their property agreement.

Further sessions usually involve:

- gathering more information
- negotiating
- considering options.

For example, you may want to avoid selling the family home to ensure that your children remain in familiar surroundings.

You may wish to consider contributions and your personal future needs. Your practitioner can help you identify what's important to you.

> 'Robert said his super was important to him. I said, "Fair enough, but I need to be able to buy another home." I was pleased that we were both able to make this clear.'
>
> —Sancia

Contributions 

The way the property pool is divided can be affected if you or your former partner have made significant contributions to the relationship initially or during your relationship.

Contributions may be financial, non-financial, homemaker or parenting in nature, for example:

- salary or wages
- housekeeping
- child care
- maintenance
- gardening
- renovation
- dinner parties for business clients
- bookkeeping or organisation of clients for family business.

This is where the 'homemaker' contribution is considered. For example, if one partner worked full-time for a wage or salary and the other cared for the children, both the financial and the homemaker contributions must be considered.

Sometimes, contributions may not have been made directly by the parties themselves, for example:

- inheritances or gifts from family, including monetary gifts and valuable household items such as artwork or antiques
- loans from relatives
- redundancy payments
- compensation and damages payments relating to employment or personal injury

For some people, making contributions during a relationship was made more difficult because of certain experiences or events during the relationship. You may wish to discuss factors that have impacted your ability to make contributions such as the effect of family violence by one party to the other. Some contributions are harder to assess or 'give a dollar value' than others. It may help to seek legal advice and/or financial advice to support your decision-making in relation to these types of contributions.

Dollars and sense



When negotiating a property settlement in FDR , don't try and calculate your contributions down to the last dollar. It can be counter-productive, particularly as there are a range of non-financial contributions that Australian family law sees as valuable but which are not easily measured.

Your current and future circumstances

You may also want to consider factors such as:

- each party's age and state of health
- each party's income earning capacity and future financial resources
- each party's reasonable future standard of living
- parenting arrangements and care of children under the age of 18
- current and likely future financial support of your children
- the need for either person to provide appropriate housing for a child of the marriage who is aged under the age of 18
- the effects of any family violence (from one party to the other) on your current and future circumstances. Read the fact sheet 'Family law (property) changes from 10 June 2025', available at ag.gov.au/families-and-marriage/publications
- the impact of any material wastage of property or financial resources, such as harmful gambling and whether this was caused intentionally or recklessly by either party
- any liabilities incurred by either or both of the parties, the type of liability and the circumstances relating to the liability.

Concluding sessions

While participating in FDR may support you to reach agreement on a financial division of property, it's important to take additional steps to ensure your agreement is legally binding (see page 29).

Before you sign on the dotted line ⚠



It can be tempting to breathe a sigh of relief after you reach an agreement about property settlement in FDR. However, it's very important to seek legal advice and support to finalise your property settlement agreement in a way that is legally enforceable (see page 29). We suggest that you obtain legal and financial advice before signing any documents prepared in relation to your property settlement.

Once a binding financial agreement has been signed or a consent order has been accepted by the Court, it is not generally possible to change your mind and seek a different property agreement.

Important questions to consider

- Is it possible for me to carry out this proposed agreement, both financially and legally?
- Is it realistic and can I afford the proposed repayments on debts such as a mortgage?
- Have I considered all the costs associated with making a legally binding agreement such as legal fees and any other fees associated with transferring property?
- Do I need the assistance of a financial planner, accountant or other specialist advisor to understand the consequences of the proposed agreement?
- How long will it take to put the proposed agreement in place and can I manage my finances adequately during that time?

Once you and your advisors are satisfied, you can sign the agreement. This is a key milestone in moving forward.

To learn about ways you can finalise your agreement see the next section 'Finalising your property agreement'.

Finalising your property agreement



While you may have reached agreement and have a document in your hands, your agreement is not legally binding unless it is put into one of the following formats:

- Consent orders, approved by the Court
- A binding financial agreement, organised outside of Court

This is a completely new and different phase of the process, which is unrelated to the FDR process you have just completed.

Consent orders

With lawyers

We recommend that you use lawyers for advice and assistance to draft consent orders. This can help ensure that the documents are completed correctly before being filed in Court.

To find a lawyer, see page 54.

Without lawyers

If you and your former partner have reached an agreement between yourselves about how to divide your property, you may wish to apply directly to the court together for a consent order. Forms and information about how to apply for consent orders are available:

- in most states and territories from the Family Circuit and Family Court of Australia at fcfcoa.gov.au
- in Western Australia at familycourt.wa.gov.au

These websites provide information about how to complete the application for consent orders, examples of the orders you may be seeking, and the additional documents you are required to file with your application.

If you're unsure about how to complete the forms or want more information about other options available for finalising your agreement, you can contact your local legal aid service or advice line. See page 54.

What does the Court consider when I apply for consent orders?



The Court will consider the overall effect of consent orders on you and your former partner.

Here the Court stands back and considers the actual assets, liabilities and superannuation each of you would end up with, as well as the proposed percentage split of assets and superannuation to determine whether the proposed outcome would be just and equitable.

The Court has a wide discretion over this and there is no standard formula.

What does this mean for me?

There are a range of legally acceptable outcomes depending on your particular circumstances.

Ask your lawyer about your best, worst and most likely outcomes. If you know what your former partner's perspectives or proposals might be, it can be helpful to share this with your lawyer when seeking advice.

A binding financial agreement



A binding financial agreement is negotiated and finalised through lawyers. It must be in writing.

- Advantages: It does not have to be approved by the Court, and is legally binding.
- Disadvantages: You must engage a lawyer which can be expensive.

Property settlement, the end of the process



With Consent orders or a binding financial agreement in place you have completed the process and achieved your property settlement.

Alternatives to FDR



While this guide focuses on FDR as the preferred means to negotiate your agreement, there are other methods you can use:

- Make an informal arrangement.
- Use lawyers to propose an agreement.
- Obtain a Court-ordered property settlement.

Make an informal arrangement

You and your former partner may decide to divide up all assets and liabilities between you without any assistance or formal written arrangements. You may find resources available online that are helpful for your situation.

Advantages

Minimal use of lawyers. Low cost.

Disadvantages

If you need to transfer real estate or assets such as vehicles into different names, you may incur government charges and fees on the transfer.

Informal arrangements are not legally binding. This means that at some future time either of you may pursue further claims in Court.

If one of you does not stick to your informal arrangement you may have to make an application to the Court. You must do this:

- within one year from the date your divorce is final if married or
- within 2 years from the date your de facto relationship ended.

You should seek legal advice about the risks of this approach.

> ‘My settlement was completed privately two years ago using an informal agreement. Now my ex wants half of my super! This was not discussed by us at the time. Now I wish I had got advice about how to make the agreement binding.’ —Theo

Use lawyers to propose an agreement

If your former partner has not been willing to participate, or you have been unable to negotiate an agreement in FDR, you may wish to engage a lawyer to provide advice and negotiate on your behalf.

This would normally mean your lawyer dealing with your former partner's lawyer to resolve the dispute prior to applying to the Court.

Your lawyer may suggest arbitration or collaborative law as alternative ways of resolving your property dispute. Both these options involve parties having legal representation but are designed to be more cost effective and faster alternatives to the Court system.

- Arbitration: A process outside the Court system in which parties to a dispute present arguments and evidence to an arbitrator, who makes a determination to resolve the dispute.
- Collaborative law: A non-adversarial approach to resolving disputes in which parties, their lawyers and other experts enter into a formal agreement to focus on settlement rather than litigation.

You should seek advice from your lawyer about whether these options are available in your state or territory, and whether they are suitable for your circumstances.



Advantages

You do not have to negotiate directly with your former partner.

Disadvantages

Higher legal fees and less control over the process.

Obtain a Court-ordered property settlement 

This option is a last resort if:

- your former partner will not participate in any discussion or dispute resolution with you or
- you cannot agree on the division of property, even after FDR or lawyer-assisted negotiation.

This is inevitably a costly process and it is likely to lower the value of the property pool, if settlement is not reached in the early stages of Court proceedings.

Sometimes this option is unavoidable, particularly if there is an urgent need to protect property that your former partner may be trying to hide, sell or give away to avoid it being included in the property pool. You will need to get legal advice in this situation.

Glossary



Adult financial maintenance or spousal maintenance

Financial support sought, or paid, by one partner for the support of the other partner in the relationship.

Assets

Items of value owned by either party to the relationship. Assets can be physical items of value such as vehicles, real estate, furniture or jewellery, or may be things such as shares or superannuation that have a realisable value.

Cohabitation

An arrangement whereby 2 people decide to live together on a long-term or permanent basis in an emotionally and/or sexually intimate relationship. The term is most frequently applied to couples who are not married.

Consent order

A legally-enforcable document signed by both parties and approved by the Court which sets out agreements between parties.

Court

The term used in this guide to refer to both the Federal Circuit and Family Court of Australia, and the Family Court of Western Australia.

De facto

A couple relationship between 2 people, who are not married or related by family, but who live together as a couple on a 'genuine domestic basis'.

Divorce

The dissolution of a marriage under the Family Law Act. An application for divorce does not deal with the alteration or division of property between parties but simply brings a legally recognised end to the marriage.

Family dispute resolution (FDR)

A structured process such as mediation, where a qualified and accredited FDR practitioner helps parties, who may be affected by separation or divorce, to resolve some or all of their disputes with each other. FDR is sometimes referred to as mediation.

Family dispute resolution practitioner

A practitioner who has been accredited under the *Family Law Act 1975 (Cth)* to provide FDR services.

Family Law Act 1975 (Cth) and *Family Court Act 1977 (WA)*

The Australian laws that cover all issues relating to families and separating couples, such as divorce, property, spousal maintenance and all issues concerning the living and care arrangements of children of a relationship after separation of their parents.

Federal Circuit and Family Court of Australia Courts have the power to deal with legal issues resulting from the breakdown of marriage and specified de facto relationships.

Independent legal advice

Full and comprehensive advice from a legal representative/lawyer.

A legal representative or lawyer cannot properly advise both parties to a dispute. Independent legal advice means that each party has received full and comprehensive advice regarding their rights from their own separate legal representative/lawyer.

Marriage

The union of 2 people to the exclusion of all others, voluntarily entered into for life. To be a valid marriage, the union must meet the legal requirements set out in the *Marriage Act 1961 (Cth)*.

Property

Any assets (things you own) or any liabilities (debts you may have or anything you owe money on). The use of the term 'property' does not just relate to real property (real estate), but to other items of value you may have acquired.

Property agreement

An agreement finalising the division of the property of the relationship, reached by you and your former partner through negotiation or family dispute resolution, but prior to taking any steps to create a binding arrangement.

Property pool

This is the value of the property that is available for division after payment of all debts that are agreed to be a joint responsibility.

Sometimes the property pool is called the net property pool.

Property settlement

A term commonly used where parties finalise their agreement under the Family Law Act to create a binding arrangement.

Separation

A situation where the parties to a relationship cease to co-habit as a couple, and where one or both of the parties deem that the relationship has irretrievably broken down. There is no distinction between marriage and de facto relationships in relation to the issue of separation.

The tools

Microsoft Word versions of the tools in this section are available to download if you need extra copies or more space to write. Visit relationships.org.au/a-fair-share or scan the QR code.

Financial checklist

Save time and money by having these details available for your FDR practitioner and lawyer.

Details of the financial history of your relationship including:	✓
• a list of assets (cash, real estate etc.) and liabilities (loans, credit cards etc.) that you brought to the relationship (your initial contribution)	
• a recent valuation or market appraisal on any real estate	
• a list of all the other assets of the relationship, such as vehicles, investments, shares and valuable household goods in your name, joint names or your former partner's name, including the approximate market values	
• a recent valuation or market appraisal on any real estate	
• details of any benefits or windfalls received such as redundancy or inheritances and the dates and amounts received	
• details of any assets or liabilities acquired since separation	
• a list of all household items that you have not already been able to split	
• details of any existing or anticipated financial resources (i.e., employee benefits, anticipated benefits from deceased estate, beneficiary of a trust)	
• details of any disposal/sale of property in the 12 months prior to separation, or after separation.	

Details of your income and superannuation entitlements in your name, joint names, or your former partner's name including:	✓
• Details of all outstanding liabilities in your name, joint names, or your former partner's name including:	
◦ mortgage or home loan documentation	
◦ vehicle loans (including anticipated payout figure)	
◦ credit cards	
◦ hire purchase agreements, including hire or rental agreements for household items	
◦ 'buy now, pay later' liabilities	
◦ tax liabilities	
◦ outstanding bills or accounts for which you have been unable to agree who is responsible.	

Details of your non-financial contributions to the relationship	✓
• Care arrangements for children	
• Household duties	
• Home modifications and renovations	

Property information

List all property owned by you and your former partner, estimating the value of each in the Equity column.

Column definitions:

- 'Legal owner': The legal owner, person with legal responsibility or person the property is registered to. This may be you, your partner, or both of you (joint).
- 'Market value': The current estimated market value of the property in Australian dollars.
- 'Amounts owing': Any amount owed on the property, such as a mortgage, in Australian dollars.
- 'Equity': 'Market value' minus 'amounts owing'.

Real estate address 1:			
Legal owner:	Market value:	Amounts owing:	Equity:

Real estate address 2:			
Legal owner:	Market value:	Amounts owing:	Equity:

Real estate address 3:			
Legal owner:	Market value:	Amounts owing:	Equity:

Funds held in bank accounts, building societies, credit unions or other financial institutions:			
Legal owner:	Market value:	Amounts owing:	Equity:

Motor vehicles (include year, make, model and registration):			
Legal owner:	Market value:	Amounts owing:	Equity:

Shares:			
Legal owner:	Market value:	Amounts owing:	Equity:

Businesses you run or share (include business name, ABN and any other relevant information):			
Legal owner:	Market value:	Amounts owing:	Equity:

Furniture, household goods, shed/garage contents:			
Legal owner:	Market value:	Amounts owing:	Equity:

Anticipated tax refunds:			
Legal owner:	Market value:	Amounts owing:	Equity:

Other (e.g., time share, boat, caravan, paintings, antiques, jewellery):			
Legal owner:	Market value:	Amounts owing:	Equity:

Insurance policies with cash surrender value (i.e., can be cashed in):			
Legal owner:	Market value:	Amounts owing:	Equity:

Superannuation fund 1:			
Legal owner:	Market value:	Amounts owing:	Equity:

Superannuation fund 2:			
Legal owner:	Market value:	Amounts owing:	Equity:

Superannuation fund 3:			
Legal owner:	Market value:	Amounts owing:	Equity:

Total equity:

List of debts

List all debts owed by you, your former partner or both of you (joint).

Description	Owed by	Debt amount
Credit cards:		
Other personal loans:		
Any amounts owing on purchases (hire purchase, 'buy now, pay later' schemes):		
Present or anticipated tax liabilities (i.e., income tax, capital gains tax):		
Other debts or loans not included above:		
	Total amount:	

List of companion animals

List companion animals (family pets) where ownership is disputed between you and your former partner.

Name / description of companion animal	Relevant information about the history of the companion animal's care and ownership.

Seek legal advice if you need further support to understand the relevant factors relating to property disputes involving companion animals.

Contributions and future needs

Please complete the sections below based on your own understanding and access to information. Some questions will ask you about the other party but if you don't have the information, you can leave that part blank.

About you

Name	Date of birth

Your employment and income

Employer	Full-time or part-time	Gross salary	Value of employee benefits

Do you have any other income sources (e.g., superannuation, Centrelink, investments)?

Do you have any health and or wellbeing concerns that could impact on your capacity to earn an income in the future?

About your relationship

How long was your relationship?

At the start of the relationship, did either of you contribute significant resources?

Did either of you receive any 'windfall' benefits during the relationship (e.g., inheritances, redundancies/termination benefits, gambling/lottery winnings, Transport Accident Commission or WorkCover payments etc.)?

Did either of you make negative financial contributions to the relationship (e.g., were substantial resources of the relationship directed to gambling, alcohol or substance addictions etc.)?

Did family violence impact your ability to make contributions?

Have either of you made substantial contributions post separation (mortgage repayments, rate payments, renovations etc.)?

Have either of you used significant resources post separation (removed funds from accounts, sold assets etc.)?

About your children

What are the names and ages of your children?

What are the current care arrangements for your children?

What are the current child support arrangements/payments?

Are there any other arrangements/payments for expenses relating to children (apart from child support)? e.g., extra-curricular or school fees.

Do any of your children have any health or wellbeing concerns e.g., disability or health issues?

Where to get more support



Safety

Emergency services 000

If you or someone you know is in immediate danger, call 000 for police and ambulance.

1800RESPECT

National 24/7 sexual assault, family and domestic violence counselling and safety planning. Call 1800 737 732 or visit 1800respect.org.au

Counselling and mental health

Relationships Australia

Australia-wide relationship support services for individuals, families and communities. Call 1300 364 277 or visit relationships.org.au

13YARN

Talk 24/7 with an Aboriginal or Torres Strait Islander crisis supporter. This is a confidential, culturally safe space to yarn about your needs, worries or concerns, without judgement. Call 13 92 76 or visit 13yarn.org.au

Beyond Blue

Learn more about anxiety, depression and suicide prevention, or talk through your concerns with Beyond Blue's 24/7 support service. Trained mental health professionals will listen, provide information and advice, and point you in the right direction so you can seek further support.

Call 1300 224 636 or visit www.beyondblue.org.au/get-support

Kids Helpline

Free, confidential telephone and online counselling for children and young people aged 5 to 25.

Call 1800 55 1800 or visit kidshelpline.com.au

Lifeline

24/7 crisis support and suicide prevention services.

Call 13 11 14 or visit lifeline.org.au

MensLine Australia

A free national 24/7 phone and online counselling service for men concerned about relationships, mental health and wellbeing.

Call 1300 78 99 78 or visit mensline.org.au

QLife

Provides anonymous and free LGBTIQ+ peer support and referral for people in Australia wanting to talk about sexuality, identity, gender, bodies, feelings or relationships. Visit qlife.org.au

Suicide Call Back Service

A free nationwide service providing 24/7 phone and online counselling to people affected by suicide.

Call 1300 659 467 or visit suicidecallbackservice.org.au

Children and parenting

Australian Government Department of Social Services

Information about programs and services administered by the Department, including programs for families and children.

Visit dss.gov.au/families-and-children

Australian Government—Services Australia

Helps separated parents to provide the necessary support for their children's wellbeing. The website includes information about legal services, services in your local area and calculators for child support.

Visit servicesaustralia.gov.au/separated-parents

Raising Children Network

Provides parenting videos, articles and apps backed by Australian experts. Visit raisingchildren.net.au

Family relationships and family dispute resolution

Relationships Australia

Australia-wide relationship support services for individuals, families and communities.

Call 1300 364 277 or visit www.relationships.org.au

Family Relationship Advice Line

A free helpline to assist with family law problems for those unable to attend a Family Relationship Centre. Provides information about options and locations of family services for separating families, including Family Relationship Centres.

Call 1800 050 321.

Family Relationships Online

Provides information about and services to assist all families to manage relationship issues, including agreeing on appropriate arrangements for children after parents separate. Includes a national directory of support services, including Family Relationship Centres.

Visit familyrelationships.gov.au

Family and Relationship Services Australia

The national peak body for family and relationship services provides a directory of member services and locations.

Visit frsa.org.au/member-directory

Family violence

1800RESPECT

1800RESPECT is the national domestic, family and sexual violence counselling service. It supports people experiencing, or at risk of, sexual or family violence, their family and friends, and front-line workers and professionals. It also provides information on family violence, legal, housing and finance and other support services in your state or territory.

If you need an interpreter, you can call 1800RESPECT and ask them to organise this, or contact the telephone Translating and Interpreting Service on 131 450 and ask them to contact 1800RESPECT.

Call 1800 737 732 or visit 1800respect.org.au.

Men's Referral Service

The national counselling, information and referral service for men who use violence and abuse and want to change their behaviour.

Call 1300 766 491 or visit mrs.org.au

Financial

Centrelink

Information about government benefits, assistance and allowances, including payment information for families receiving family assistance.

Call 13 61 50 or visit servicesaustralia.gov.au/centrelink

MoneySmart

Free online resources and tools to help you manage your money.

Visit moneysmart.gov.au

National Debt Helpline

Free financial counselling and online advice about debt and managing your money. Call 1800 007 007 or visit ndh.org.au

Gambling Helpline

Call 1800 858 858 to speak to a gambling counsellor 24/7 across Australia or visit gamblinghelponline.org.au for free online support.

Mob Strong Debt Help

A free nationwide legal advice and financial counselling service for Aboriginal and Torres Strait Islander people.

Call 1800 808 488 or visit mobstrong.org.au

Small Business Debt Helpline

A free service for small business owners in financial difficulty

Call 1800 413 828 or visit sbdh.org.au

Rural Financial Counselling Service

Free and independent financial counselling for eligible farmers, fishers, foresters and small related businesses experiencing, or at risk of, financial hardship.

Visit agriculture.gov.au/agriculture-land/farm-food-drought/drought/rural-financial-counselling-service

Interpreters

Translating and Interpreting Service (TIS National)

An interpreting service for people who do not speak English and for agencies and businesses that need to communicate with their non-English speaking clients.

Call 131 450 or visit tisnational.gov.au

National Relay Service

This service can help you if you're d/Deaf or find it hard to hear or speak to hearing people on the phone.

Visit accesshub.gov.au

Legal

Australian Government Attorney-General's Department

Information about Australia's family law system and services such as family dispute resolution. Visit www.ag.gov.au

Community Legal Centres Australia

Links to organisations in each state and territory that may be able to assist you with a legal problem. Visit clcs.org.au/legal-help

Federal Circuit and Family Court of Australia

Information and procedural advice, forms and brochures, and referral advice to community and support services. The website includes a free, live chat option.

Call 1300 352 000 or visit fcfcoa.gov.au

Family Court of Western Australia

Information about Court services, applications, forms and resources.

Call (08) 9224 8222 or visit familycourt.wa.gov.au

Law societies and institutes

Contact your state or territory law society or institute below for help finding a lawyer.

- Australian Capital Territory: Visit actlawsociety.asn.au
- New South Wales: Visit lawsociety.com.au
- Northern Territory: Visit lawsocietynt.asn.au
- Queensland: Visit qls.com.au
- South Australia: Visit lawsocietysa.asn.au
- Tasmania: Visit lst.org.au
- Victoria: Visit liv.asn.au
- Western Australia: Visit lawsocietywa.asn.au

Legal aid commissions

Contact your state or territory legal aid commission below for information about legal assistance, and advice and referral to appropriate services for separating couples.

- National: Visit nationallegalaid.org.au
- Australian Capital Territory: Call 1300 654 314 or visit legalaidACT.org.au
- New South Wales: Call 1300 888 529 or visit legalaid.nsw.gov.au
- Northern Territory: Call 1800 019 343 or visit legalaid.nt.gov.au
- Queensland: Call 1300 651 188 or visit legalaid.qld.gov.au
- South Australia: Call 1300 366 424 or visit lsc.sa.gov.au
- Tasmania: Call 1300 366 611 or visit legalaid.tas.gov.au
- Victoria: Call 1800 677 402 or visit legalaid.vic.gov.au
- Western Australia: Call 1300 650 579 or visit legalaid.wa.gov.au

Notes



Use this section to note down additional information and thoughts.

Relationships™
AUSTRALIA

1300 364 277

www.relationships.org.au

Relationships Australia is a leading, not-for-profit provider that supports individuals, couples, families and communities to have safe and respectful relationships.

We provide counselling, family dispute resolution, trauma support, mental health services, and a diverse range of other family and community support, professional training and education programs. These are delivered through a network of over 100 service locations across all Australian states and territories. Our work is informed by our 75 years of experience and our knowledge of the crucial role of relationships in protecting and enhancing mental health and wellbeing.

As a community-based organisation with no religious affiliations, our services are for all members of the community, regardless of religious beliefs, age, gender, sexual orientation, cultural background or economic circumstances.