



A SIMPLE GUIDE TO

PROPERTY SETTLEMENT

*Find out what it is, how to get one &
the time limits you need to be aware of.*

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INTRODUCTION

When people separate, they usually have to figure out who gets what.

Who gets the family home?

Who gets the cars?

The money in your joint account?

What happens to the family business?

And it's not just assets you need to consider. You also need to figure out how you are going to divide your debts and financial resources.

Figure out who's going to pay off the mortgage.

Who's going to pay back the credit card debt.

How distributions from your family trust or an imminent inheritance will impact who gets what.

It may seem tedious but these are just some of the many things people need to consider when doing a property settlement.

It's also the tip of the iceberg when it comes to how the Family Court determines who gets what.

Which is why it is so important that you understand:

- What a property settlement is;
- How you get one; and
- The time limits that apply to getting a property settlement.

All of which is covered in the next 22 pages.

THE AUTHORS

PIERCE CARSTENSEN

Principal | Family Law



Pierce assists clients who have a particular goal in mind that may not fit the traditional scope of family law settlements.

Pierce's view is that it is not sufficient to merely get the best result, but rather to achieve the best result delivered in a way that furthers the client's financial and other goals.

Pierce's communication, negotiation and problem solving skills set him apart from other lawyers within the industry.

Qualifications

- Bachelor of Laws/ Bachelor of Commerce
- Graduate Diploma in Legal Practice, College of Law, Queensland
- Solicitor of the Supreme Court of Queensland
- Solicitor of the High Court of Australia

Expertise

- Property Settlements
- Spousal Maintenance
- Binding Financial Agreements
- Parenting Agreements
- Litigation (going to court)



MONTANA GIBSON

Associate | Family Law

Practicing exclusively in family law since her admission, Montana has helped her clients settle their family law matters privately in a negotiated way through mediation.

However, if necessary Montana has no hesitation in taking her opposition to court to protect her client's rights.

Montana was also nominated in Doyle's guide 2017 as a "Rising Star" due to her effort in always striving to go the extra mile in finding a solution and delivering a successful result.

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- Parenting and Child Support Agreements
- Divorce

CONTENTS

02	Introduction
03	The authors
06	What is a property settlement?
11	How to apply for a property settlement
17	Time limits to apply for a property settlement
18	What to do if you are out of time
20	Further information
21	Contact
22	Disclaimer



WHAT IS A PROPERTY SETTLEMENT?

A property settlement is how two people decide to divide their assets, debts and financial resources, after they have separated or divorced.

WHAT IS INCLUDED IN A PROPERTY SETTLEMENT?

A property settlement takes into consideration an array of things including:

- Any assets, debts and financial resources you have;
- Your financial and non-financial contributions; and
- Your future needs.



A property settlement is also not limited to the property acquired during the relationship, it also takes into consideration pre and post relationship.

For example:

After separating, if you performed renovations to your family home getting it ready for sale then this is a non-financial contribution you made, even though it was after the relationship had ended.

THREE WAYS TO DO A PROPERTY SETTLEMENT:

1. Negotiate Yourself.

When figuring out who gets what between yourselves is obviously going to be the cheapest option when doing a property settlement.

If you can sit down and reach an agreement on how much each person gets and the logistics around who will take what assets and what debts then it's going to save you time and money.

The only risk you may potentially face with this option is that you might not know what you actually deserve and what is a fair split for your situation. However, this can be easily fixed by initially speaking to a lawyer just to check what you should be roughly asking for.

From there it's just a matter of transferring ownership if necessary and finalising what you have agreed upon through a binding financial agreement or consent orders.

Binding Financial Agreement =

A Binding Financial Agreement is a legal contract between you and your former partner that sets out how your assets, debts and financial resources will be split.

It does NOT go through the courts. But it DOES need to go through a lawyer on each side. It needs to go through a lawyer because, in order to be legally binding, a lawyer needs to sign off on the fact that you understand the contract you are signing and how it affects you.

Consent Orders =

A consent order is a written agreement that is approved by a court. So you apply to the court to have it approved. The court will check that the split is fair before they approve the agreement. Once approved the agreement becomes legally binding.



Get help **FINALISING** your property settlement

2. Let a lawyer negotiate for you.

If you and your former partner can't initially reach an agreement on who gets what, or you are concerned you might not be getting your fair share, then it's probably best to hire a lawyer to negotiate on your behalf.

Yes, this will cost you more than if you were to do it yourself but it's also going to get you what you deserve - which is probably more than what you would get negotiating on your own.

If you are also in a situation where your property pool is made up of multiple assets, trusts, businesses etc then it also probably a good idea to involve a lawyer. There may be significant tax consequences you are not aware of.

Large property pools with many financial variables can be hard to figure out on your own. Disclosure in these situations can take a while without help even if you are both civil and willing to reach an agreement between yourselves.

In these situations a lawyer can save you a lot of time and effort by getting things moving straight away. By not dragging things out longer than they need to.

They will also be able to help you finalise your agreement either through a binding financial agreement or consent orders. Which you usually need a lawyer for anyway.



Get help **NEGOTIATING** your property settlement

3. Apply to the Court to determine your property settlement.

If you and your former partner cannot not agree; you have tried negotiating yourself, you have tried using lawyers and neither of you will compromise, then you may need to apply to the court for a property settlement.

What this means is that the federal circuit or family court will determine who gets what on your behalf.

You will both argue your case and the judge will make a judgement on who and how much each person will get.

This process of going to court is costly and can take some time. Because costs can rack up pretty quickly when going to court we recommend trying to sort out as many issues as possible before going to court. This way you are only getting the court to make a decision on a few matters, not everything - significantly reducing the time and money involved.



HOW TO APPLY FOR A PROPERTY SETTLEMENT

When you **agree** on how to split things it's simply a matter of finalising this agreement either through a binding financial agreement or consent orders.

As mentioned earlier to get a binding financial agreement you will need to go and see a lawyer. To get consent orders you will have to apply to the court, outlining the terms of your settlement.

On the other hand, if you and your former partner **can't reach an agreement** on how to split things then you will have to apply to the court for a property settlement.

This is where the court makes a set of orders regarding how your assets, debts and financial resources are separated.



To apply for a property settlement you will need to complete the following five (5) steps:

1. Complete the Initiating Application;
2. Complete a financial statement;
3. Complete an Affidavit;
4. Submit these documents to the court;
5. Serve these documents on your former partner.

1. COMPLETE THE INITIATING APPLICATION

The first thing you will need to do when you don't agree on how to split things is complete the initiating application.

This application will include 'interim orders' (the orders you want the court to make now) and 'final orders' (the orders you want the court to make to finalise the split).

For example:

Your initiating application might request that your former partner pays you \$1000 a fortnight in spousal maintenance until the property settlement is finalised. This would be the interim orders you want the court to make.

Your initiating application might also request that you are given 60% of the property pool, with specific requests for ownership of the family home and its contents. This would be the final orders you want the court to make when it's all said and done.

Initiating Application Kit

2. COMPLETE A FINANCIAL STATEMENT

The next thing you need to complete a financial statement.

A financial statement is a document that sets out your financial circumstances. So your income, expenses, assets, liabilities, and your financial resources.

When you complete the financial statement you must answer every item applicable to you, even if it just an estimated value.

The information provided must also be related to your **current** financial circumstances and **NOT** your financial circumstances when you separated.

You are also required to fully disclose your finances - so that means including every single asset, debt and financial interest you have. If you do not you may:

- be fined;
- have to pay your former partner's legal costs;
- be charged with contempt of court;
- have to file further documents.

If your financial circumstances change significantly (e.g. you inherit \$100,000) after completing this financial statement then you will need to complete and submit a new financial statement.

Financial Statement Kit

3. COMPLETE AN AFFIDAVIT

The last document you will need to complete is an affidavit.

An affidavit is a written statement that sets out the facts/ evidence of your situation that you will rely on when arguing your case.

So you will need to include the history of your relationship and any financial and non-financial contributions you have made as well as your future needs.

Pretty much just anything that you think is relevant and will support the orders that you are asking the court to make.

Anything that is not included in an affidavit **cannot** be used as evidence when arguing your case. Which is why this step is so important to get right as it can make or break your case.

Affidavit

4. SUBMIT THESE DOCUMENTS TO THE COURT

Once you've completed those three steps, you need to file (submit) all these documents to the court.

You need to submit enough copies for each person and for the court. So a copy for you, your former partner and the court.

You will also need to pay a filing fee unless you're exempt from paying the fee.

Guidelines for exemption of court fees

The fee will depend on whether you're seeking interim and final orders and whether you're including parenting orders with your property orders.

The fee will range from around \$350 up to around \$695.*

Before you submit your initiating application you and your former partner will also need to read the following prescribed brochure that gives you information about the steps you need to take before applying for a property settlement.

Before you file - pre-action procedure for financial cases

*filing cost 2019. For more information on court fees click [here](#).

5. SERVE (GIVE) THE DOCUMENTS ON YOUR FORMER PARTNER

The final step you need to take after submitting the documents is to serve these documents on your former partner.

What this means is you simply need to give them a copy of the documents so they are aware you have applied to the court for a property settlement.

You must give your former partner the documents as soon as you can

after submitting them to the court.

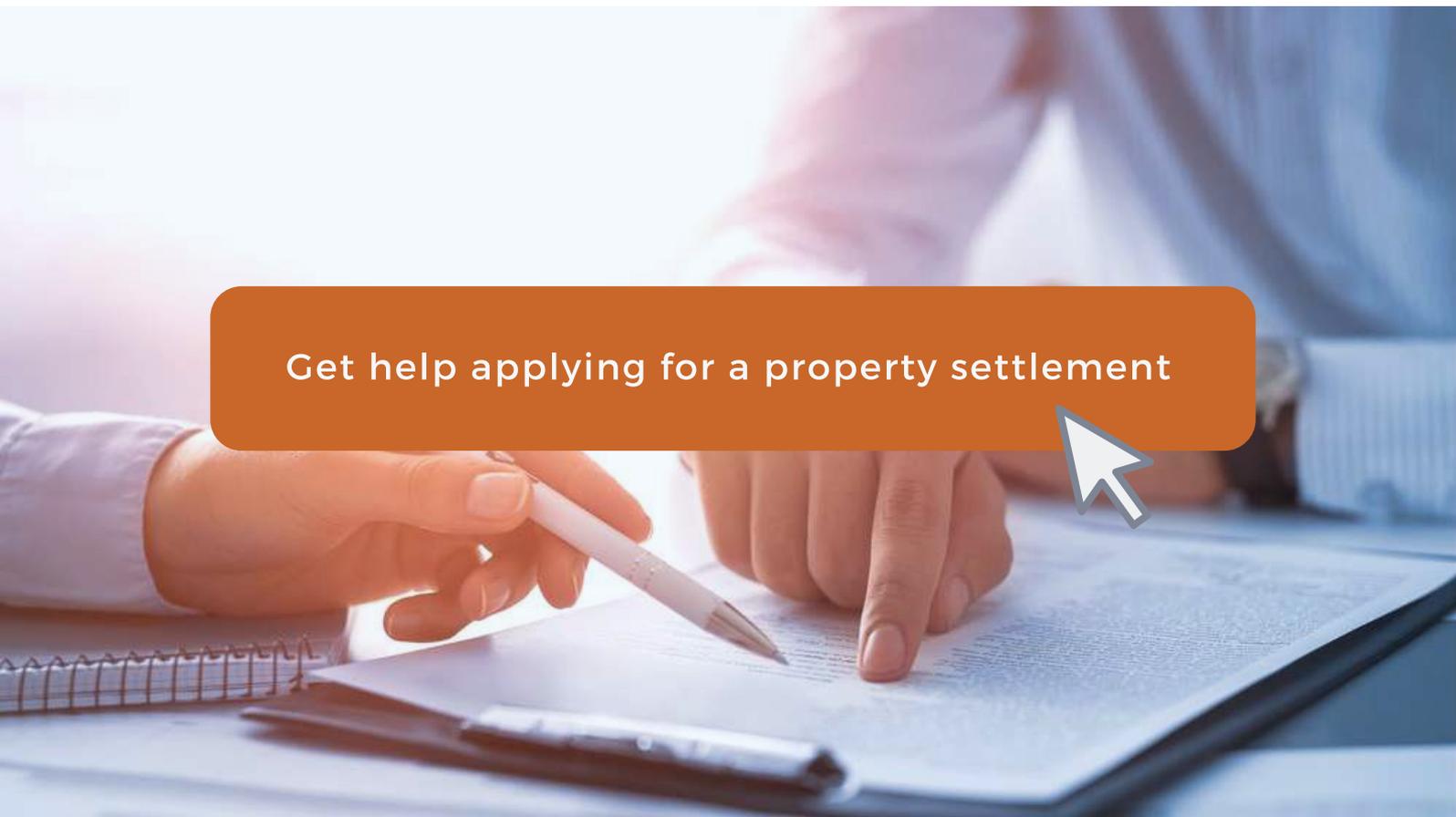
When you serve the documents you need to get your former partner to sign an *Acknowledgement of service*. This is to show the court that your former spouse has actually received the documents.

Now this doesn't mean you have to serve the documents yourself.

You can get anyone over the age of 18 to hand deliver the documents for you. You can also hire a professional sever (a process server) to deliver the documents on your behalf.

Once served you will need to complete the *Affidavit of service* and submit both the *Affidavit of service* and the *Acknowledgement of service* to the court.

Service Kit



Get help applying for a property settlement

TIME LIMITS TO APPLY FOR A PROPERTY SETTLEMENT

WHEN YOU ARE MARRIED / SEPARATED

If you were married and have since separated but you have NOT formally divorced, you can apply for a property settlement at any time.

WHEN YOU ARE DIVORCED

If you were married and have since formally divorced, you have 1 year from the date the divorce took effect to apply for a property settlement.

WHEN YOU ARE OR WERE IN A DE FACTO RELATIONSHIP

If you were in a de facto relationship then you have 2 years from the date of your separation to apply for a property settlement.



WHAT TO DO IF YOU ARE OUT OF TIME

If you find yourself in a situation where your time limit has already expired, then you may still be entitled to make an application for a property settlement.

In order to do this the Court must grant you 'leave'. Leave is just like permission to proceed with your application.

The Court will only grant permission if you can successfully complete the following two part process:

PART 1

Before you are allowed to continue your property settlement application out of time you must demonstrate to the Court that:

- hardship will be caused to you or a child of the relationship if a property settlement did not go ahead.

AND

- that your property settlement claim has a real probability of success.



PART 2

Once hardship is established in part one, the Court will then look at other factors like:

- the length of the delay.
- whether there has been a reasonable explanation for the delay.
- whether any prejudice (harm) will be caused to your former partner (the respondent) in allowing you to proceed out of time.

After looking at these factors the Court will then make a judgement on whether or not you should be granted leave (permission).

If leave is granted then you will be able to continue with your property settlement even though the time limit has expired.

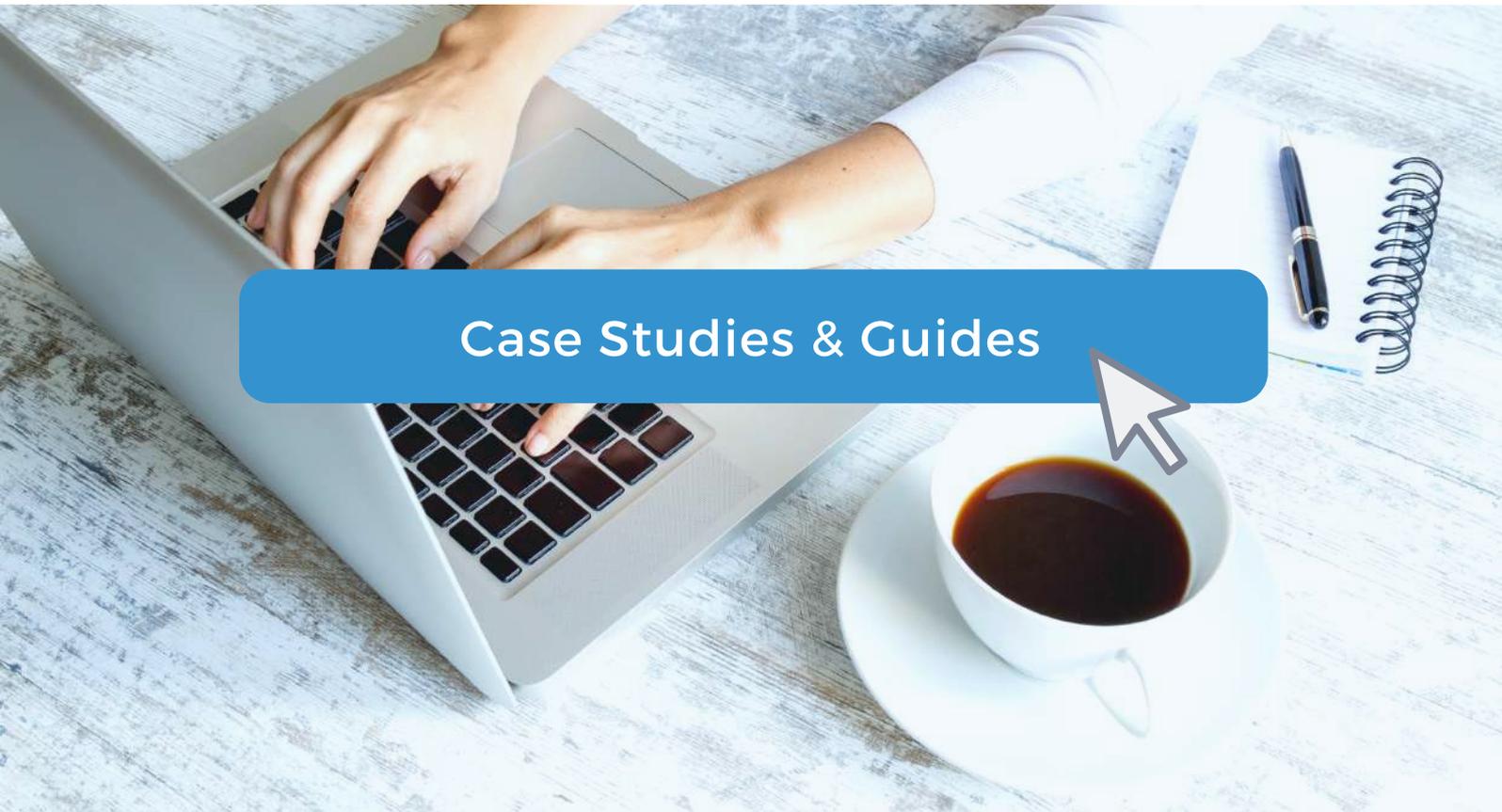
FURTHER INFORMATION

For more information on:

- How to get a divorce in Australia
- How to determine your share of the property pool
- Spousal maintenance
- De facto relationships
- Binding Financial Agreements
- Consent Orders

and much more click the button below or go to our case studies and guides page on our website.

<https://mcwfamily.com.au/family-law-case-studies-and-guides/>



Case Studies & Guides

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