

Family law property settlement the four (4) - step process

1. Identify & value the assets & liabilities

- property owned when relationship started
- capital gain of property already owned
- property acquired during relationship
- property acquired after separation
- employment entitlements
- superannuation
- life policy surrender values
- business interests, company or trust interests
- money owing to the parties
- compensation & damages awards
- inheritances
- lottery wins (see windfalls in step 2)
- notional property that needs to be added back
- debts and mortgages
- borrowing capacity

2. Assessing each person's contribution to the relationship property (s. 79(4) Family Law Act)

- financial contributions direct or indirect
- non-financial contributions
- contributions as a homemaker or parent
- effect of orders on earning capacity
- s. 75(2) matters (see list at step 3)
- any orders affecting a party or child
- child support
- windfalls
- special contributions
- waste or negative contributions
- effect of domestic violence

3. Identify future needs & resources factors (s. 75(2) Family Law Act) "the s. 75(2) factors"

- age & health of the parties
- income, property & earning capacity
- financial resources
- whether caring for children
- commitments to support themselves, children or another
- pension entitlements
- a standard of living that is reasonable
- enabling a course of education
- extent of contribution to the earning capacity of the other
- duration of marriage & how that affected earning capacity
- protection of the role of parent
- if cohabiting with another, the financial circumstances relating to that
- effect of the proposed orders
- any child support
- any other factors it would be just to take into account
- any binding financial agreements

4. Overall justice & equity (s. 79(2) Family Law Act)

"The court shall not make an order ... unless it is satisfied that, in all the circumstances, it is just and equitable to make the order."

Note

- Full & frank disclosure is required
- Finality of orders
- Recorded for future reference