

Preparing for mediation: property

This infosheet is for separated couples who need to work out how to divide their property, and who have booked in to attend family dispute resolution (mediation). Find out what to expect and how to prepare for mediation.

What is mediation?

Family dispute resolution is also known as mediation. This is a process where you, your ex-partner and a third person who is a qualified mediator, talk about what happens with property after separation.

The mediator's job is to be impartial and not take sides. They keep the conversation respectful and focused on resolution and the future.

When do you go to mediation?

You can use mediation when you cannot agree with your ex-partner about how to divide your property after separation.

You and your ex-partner may disagree on things such as who keeps the house, who drives which car, if one person gets paid a sum of money, if any superannuation needs to be split, and other issues.

You can use mediation soon after separating, before going to court and when you are going through court proceedings. As long as you both agree, you can attend multiple mediation sessions.

Confidentiality

All discussions at mediation are confidential and cannot be raised by either person in court or in any documents for court.

There are exceptions to confidentiality, such as if the mediator reasonably believes disclosing something to the authorities is necessary to protect a child or a person from harm, or to prevent a criminal offence.

Safety

Your physical and emotional safety is a priority. The mediator will only book a joint mediation session if they assess that it is safe to do so.

Intake sessions

Before you can attend a mediation with the other person, a mediator will need to assess whether your case is suitable for mediation, in an intake session. Each person is interviewed separately.

Each person will be asked questions about the history of the relationship, any safety concerns, family violence, risk issues such as mental health, drug and alcohol abuse, cultural issues and more.

If the mediator is satisfied that mediation is appropriate and any identified risks can be safely managed, they will book in the parties for a joint mediation session. If the mediator is not satisfied that mediation is appropriate or safe for each person, they will not conduct a mediation.

Do I need a lawyer?

It is important for both parties to get legal advice from separate lawyers before going to mediation.

You can seek advice about family law property settlement from Legal Aid WA if you are eligible, from community legal centres, or from a family lawyer working in a law firm or as a sole practitioner.

You can also use [amica](#), a secure online tool developed by National Legal Aid that uses artificial intelligence to provide a suggested split of assets.

The lawyer will advise you on the property settlement process, what your rights and responsibilities are, and what you may be entitled to receive. They will also advise you on what to do next if the matter does not resolve at mediation and if you need to go to court.

Mediations at community organisations such as Relationships Australia, Anglicare and Centrecare usually don't have lawyers involved. You should get legal advice before the mediation about your options, and after the mediation about the effect of any agreements made.

Mediations at Legal Aid WA are legally assisted, so each person has a lawyer. Mediations through a private mediator can be legally assisted or not, depending on the preference of the people attending.

Before the joint mediation session

Both parties need to exchange their financial documents, so each knows what property the other person owns and what debts they owe. This process is known as disclosure.

The following are some examples of the types of documents you and your ex-partner may need to disclose to each other, at least 14 days before the mediation.

Disclosure list

Real estate: Certificate of Title, market appraisals or joint sworn valuation

Home loan: home loan statement from bank or financial institution

Money in bank accounts: bank statements

Income: payslips and employment contract, last 3 tax returns and notices of assessment

Government benefits: statements from Centrelink or relevant agency showing the amount received

Motor vehicles: vehicle license renewal notice, [Redbook](#) valuation

Credit cards: credit card statements

Superannuation: annual and most recent superannuation statement

Self-Managed Superannuation Fund: copy of trust deed, most recent financial statement

Shares: CHES holding statements

Cryptocurrency: details of all cryptocurrency and digital assets, and agreed value as at date of mediation

Debts: credit card statements, personal loan statements, student loan statements

Business/Private company/Trust/Partnership: copy of constitution/trust deed/partnership agreement, recent financial statements (showing balance sheets, profit and loss accounts, depreciation schedules and tax returns)

What if we haven't exchanged documents?

If you or your ex-partner have not exchanged disclosure documents prior to mediation, it's unlikely that you will be able to resolve your dispute.

Often, the mediator will not agree to conduct the joint mediation session until you have satisfactorily exchanged disclosure documents with each other. This prevents time being wasted during mediation trying to agree on values or arguing about further documents which need to be provided.

If you are not satisfied with the disclosure your ex-partner has provided, it is important to get legal advice about how to proceed.

Joint asset and liability schedule

It is useful to have an agreed schedule of assets and liabilities prepared before the mediation. If you have a lawyer they will help draft this for you. Work out the values of total assets and total liabilities.

Calculate the net assets by subtracting the total assets from total liabilities. You can then work out the percentage split by dividing each person's net assets by the total net assets. For example, Party A retains 40% of the net assets, and Party B retains 60% of the net assets.

Bring the asset and liability schedule to the mediation and use it to work out different options and proposals.

At the joint mediation session

In person mediations

It is preferred for both parties to be present in person for mediations. There is a joint conference room where everyone sits, and the parties will usually have a separate break-out room where they can sit by themselves or with their lawyer.

The mediator decides how to conduct the session.

The mediator can decide whether both parties should sit in the conference room, or whether the parties should sit in their separate break-out rooms and have the mediator move from room to room, relaying what the other person says (this is known as a shuttle conference).

If you do not feel comfortable being in the same room as the other party you can let the mediator know and ask to remain in the separate room.

Online mediations

Mediations can be conducted via video conferencing online, or via telephone, where the parties live regionally or are unable to meet in person. The mediator decides whether to hold a joint conference call or joint video meeting, or whether to speak to the parties separately and relay information (similar to a shuttle conference).

If you do not feel comfortable speaking to the other person directly, you can let the mediator know and ask to do a shuttle conference.

Can I bring a support person?

This will depend on the mediator or organisation; there may be policies about whether support people are allowed to participate in mediation or not.

Often, both people need to agree on a support person being present.

The role of the support person is to provide emotional support only, not participate in the joint mediation session or give their views.

The support person will usually remain in the separate break-out room.

Topics to discuss at mediation

Before coming to mediation, carefully think about what you hope to discuss with the other party. Below are some useful topics to discuss at mediation.

Real estate:

- Who is keeping the house, or should the house be sold?
- Can whoever is keeping the house afford the home loan repayments?
- Do they have approval from the bank to refinance the home loan to their sole name?
- If the house needs to be sold, the real estate agency and conveyancer needs to be agreed.
- How should the sale proceeds be divided, after any home loan, outstanding rates, bills and fees are deducted?

Payout:

- Does one person need to be paid a sum of money, in order for the division of property to be fair?

Superannuation:

- Does one person need to transfer an agreed amount from their super fund to the other person's super fund, in order for the division of property to be fair?

Motor vehicles:

- Who keeps which motor vehicles?
- Do any registrations need to be transferred?
- If there is a car loan, how will it be paid, and does the loan need to be transferred?

Shares and cryptocurrency:

- Will any shares or cryptocurrency need to be transferred?

Bank accounts:

- Do any joint accounts need to be closed?
How will any joint funds be divided?

Business/company:

- If the parties have a joint business together, how will the business continue or change?
- Will one person take over, and if so, pay the other person out an agreed amount?

Debts:

- If there are joint debts, who will take over the debt?
- Do any loan accounts need to be transferred?

Spousal maintenance:

- Is one person seeking to be paid an agreed amount of money, usually for a set period of time and in instalments, for the purpose of spousal maintenance?

Is the overall division fair?

- Taking into account all the assets and liabilities to be retained by each person, is the overall division of property fair to both parties?

What can't we discuss at mediation?

Usually topics about parenting arrangements and child support are not discussed during a mediation for property matters.

Both parties can get specific legal advice about a Binding or Limited Child Support Agreement.

Both parties can attend mediation for parenting matters in a separate session.

Discussions during mediation

The mediator will ensure discussions during mediation remain respectful. It is common for people to be emotional. The mediator may suggest taking a break or either party can request a break.

You cannot be forced to agree to anything. If you are feeling pressured or intimidated let the mediator know and they may stop the session. You can return to the session when you feel ready or say you do not want to continue the session.

Be prepared to listen to the other person's point of view without interrupting, and expect to have the same courtesy returned to you. Stay focused on the future rather than what happened in the past.

The mediator will help you keep the conversation focused on how best to divide property in a way that is fair to both parties.

After mediation

What happens if we reach agreement?


If you can agree on some or all issues during mediation, it is a good idea to apply for consent orders from the Family Court of WA. This formalises your agreement and makes it legally binding. A lawyer can draft consent orders or you can draft them yourself.


You can also use [amica](#) to generate the court documents needed for consent orders, and file them yourself. See the factsheet '[Property: Consent Orders](#)' on the Legal Aid WA website.

What happens if we don't reach agreement?

The next step may be getting legal advice about going to court, to ask the court to decide on how to divide your property. See the infosheet '[Property Settlement: Preparing to see a lawyer](#)' on the Legal Aid WA website.

LEGAL AID WA CONTACTS

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