



LEGAL AID
WESTERN AUSTRALIA

Family Law Property Starter Kit



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This publication contains general information only and is intended as a general guide about the law.

You should not rely on this information as legal advice. We recommend that you talk to a lawyer about your situation if you need advice.

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This information was last reviewed on 27 March 2026.

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Who is this kit for?

This Kit is for people who were married or in a de facto relationship, who have separated and need to make arrangements about their property. Use this Kit to guide you through the property settlement process, from finding out what property there is to divide, to reaching agreement on how to divide that property, and what to do if you don't have agreement.

All property from the relationship can be divided, including superannuation. All property is to be considered - it makes no difference who legally 'owns' the property, who bought it, or who used it.

You may be able to reach an agreement about dividing property, and other financial arrangements, by discussing these matters directly with your ex-partner, or by attending Family Dispute Resolution (FDR).

If you are unable to reach an agreement with your ex-partner, you may need to make an application to the Family Court of WA for a decision about how property from the relationship should be divided.

When is this kit not suitable?

This Kit does not deal with Binding Financial Agreements, which are another way of recording an agreement between parties.

This Kit may not be suitable for people who have experienced family violence, or have a Family Violence Restraining Order against their ex-partner, or who do not feel comfortable or safe sharing information with their ex-partner. You should get specific legal advice about this situation.

Keys words and legal terms

- **Asset pool:** the legal term for all assets (property that people own) and liabilities (debts that people owe) belonging to you and your ex-partner.
- **Court:** refers to the Family Court of Western Australia which has the power to make decisions about property settlement for married and de facto couples.
- **De facto:** couples who have been in a relationship and living together for at least 2 years, or have a child together, or have made substantial contributions to the property of the relationship.
- **Disclosure:** the act of exchanging financial documents with each other. The duty of disclosure is ongoing, so you are required to provide disclosure as your financial circumstances change, up until you settle the matter or get a final decision by the court.
- **Family Dispute Resolution:** a form of mediation specifically for family law disputes, conducted by a qualified mediator.

- **Property:** includes real estate, money in bank accounts, shares, cash, cryptocurrency and digital assets, superannuation, companies, trusts, partnerships, personal effects and furniture.
- **Property settlement:** the act of reaching agreement on how to divide property after separation, or the act of asking a court to make a decision on how to divide property after separation.
- **The law:** for married couples, the law refers to the *Family Law Act 1975* (Cth). For de facto couples, the law refers to the *Family Court Act 1997* (WA). The *Family Law Rules 2021* (WA) apply to both married and de facto relationships.

Get legal advice

In most cases separated couples are able to reach an agreement about how to divide their property without needing to go to court.

Even if you think you will be able to reach agreement with your ex-partner about property without going to court, it is important to get legal advice about your situation. A lawyer can help you understand your legal rights and responsibilities.

Getting legal advice at an early stage in your property settlement will help when negotiating with your ex-partner. You should also get legal advice before signing documents or transferring property. See more information on [getting legal advice](#) below on page 15.

How to get started: pre-action procedures

Before you can start negotiating with your ex-partner about how to divide property, you need to know what there is to divide. The law requires separated couples to take certain steps known as 'pre-action procedures' before starting a property case in court. The aim of pre-action procedures is for people to make a genuine attempt to work out their property dispute outside of court.

Are there any exemptions to pre-action procedures?

You may be exempt from complying with the pre-action procedures if one of the following applies:

- there are allegations of family violence
- the application is urgent
- the time limit is close to expiring
- there are allegations of fraud
- there is a genuinely intractable dispute
- you would be unduly prejudiced if required to comply with pre-action procedures

- there is a genuine dispute about whether there was a de facto relationship.

You will be required to explain why you should be exempt from pre-action procedures in any affidavit filed in support of an application in court.

Should I settle our property or our parenting arrangements first?

It may be easier to sort out parenting arrangements such as care of the children, before sorting out property. This is because parenting arrangements affect the court's consideration of how property should be divided.

Sometimes, it may not be possible to sort out parenting arrangements first if there is a dispute or one person starts a parenting case in court. In that case, property settlement can still occur, either simultaneously, or before the parenting case is sorted. The children's care arrangements at the time of agreement or court decision will be taken into account for property settlement.

Do I need to be divorced first?

If you were married and have separated, you do not need to be divorced to start the property settlement process. You can begin the property settlement process at any time after separation. Either you or your ex-partner can apply for a divorce 12 months after separation, regardless of whether property settlement has been sorted out. The property settlement process is separate from divorce, parenting arrangements and child support.

Are there time limits I need to be aware of?

There are strict time limits to observe when starting a property settlement case in court. If you are negotiating with the other party and getting close to the time limit, you should get legal advice about starting a case in court to preserve your position.

If you were married, and you have been divorced, you need to start a property case within 1 year of the date of divorce.

If you were married, have separated but are not yet divorced, there is no time limit to start a property case.

If you were in a de facto relationship, you need to start a property case within 2 years of the date of separation.

In rare cases, the court may allow you to start a property case if you are outside these time limits, if you can show that you or your child would suffer hardship.

Step 1: Exchange disclosure documents

The first step in 'pre-action procedures' is gathering information. You do this by writing to your ex-partner, and inviting them to exchange financial documents with you, in a process known as disclosure. Sharing information about property and finances helps to work out what the asset pool is and gives you a clear picture of what will need to be divided between you and your ex-partner. Give the other party at least 14 days to respond. If there is no response, follow up on the letter and give the other party another 7 days to respond.

You can use this example below.

Sample disclosure letter

[YOUR ADDRESS]

[OTHER PARTY'S ADDRESS]

[DATE]

Dear [name]

FAMILY LAW MATTER

I am writing to you to discuss our property settlement.

I summarise the history of our relationship:

- We began living together on [date]
- We were married on [date] – delete if not applicable
- We separated on a final basis on [date]
- We were divorced on [date] – delete if not applicable
- We have [number] children of the relationship: – delete if not applicable
 - X born on [date]
 - Y born on [date]

Under the *Family Law Rules 2021 (WA)*, parties who are involved in a family law case have a duty to give full and frank disclosure of all relevant information to the other party. This process assists in narrowing the issues in dispute and often results in a negotiated outcome.

Please provide the following documents to me within 14 days. I will provide the same documents to you, upon your request.

- a) Valuations for any real estate in your name or owned jointly with any other person;
- b) Valuations and registration details for any motor vehicle/s registered in your name;
- c) Statements for all bank accounts, credit cards, personal loans, home loan accounts operated by you (or in which you have an interest – including accounts held jointly with any other party), for the last 12 months;
- d) Personal tax returns and notices of assessment for the last 3 financial years;
- e) Your 3 most recent payslips and a copy of your most recent employment contract;

- f) Your most recent superannuation statement relating to your interest in any superannuation fund/s;
- g) If you are a member of a Self-Managed Superannuation Fund:
 - i. financial statements for the past three financial years; and
 - ii. a copy of the trust deed and any amendments.
- h) Any documents (including statements) relating to loans that third parties owe you;
- i) Details of any shares you own in publicly listed companies (and related documents, including holding statements);
- j) Details of any cryptocurrency and digital assets you own, and their value;
- k) If you operate a business as a sole trader, business activity statements for the previous 12 months;
- l) If you have an interest in a company/trust/partnership:
 - i. financial statements for the past three financial years, including balance sheets, profit and loss accounts, depreciation schedules and taxation returns;
 - ii. business activity statements for the previous 12 months;
 - iii. a copy of the company's most recent annual return that lists all the directors and shareholders; and
 - iv. a copy of the company's constitution/ trust deed / partnership agreement [select applicable one], including any amendments.
- m) Any other documents, records, or paperwork which will assist in determining your income, expenses, assets, liabilities and financial resources.

I look forward to hearing from you within 14 days.

Kind regards

[YOUR NAME]

What if I don't know what assets and liabilities my ex-partner has?

Your ex-partner is required to tell you about their assets and liabilities when you are working out how to divide your property. You can ask your ex-partner to provide information and documents about their assets and liabilities when you start negotiating about how property will be divided and throughout the property settlement process. If your ex-partner is not disclosing their assets and liabilities, you should get legal advice. See Legal Aid WA's factsheet '[Property: Disclosure](#)' for more information.

What about financial resources?

Your ex-partner is also required to tell you about any financial resources they are entitled to. A financial resource is a future or potential financial benefit a person may receive. Some examples of financial resources include:

- a future inheritance a person is likely to receive
- long service leave that can be cashed out
- if a person gets money from a trust fund that they do not control (this is called being the beneficiary of a trust fund)
- overseas or Australian pension funds that have a benefit only when a person is of retirement age or meets eligibility criteria.

Create a disclosure list

Once you start receiving financial documents from the other party and sending your own financial documents, it can be helpful to keep track of the documents in a disclosure list. You can keep track of what document was sent, the date of the document, and when it was sent or received.

Having a disclosure list makes it easier to cross-check what documents are missing and what documents need to be updated. You can use the example below:

Description	Date of document	Date sent to OP	Date received
Real estate appraisal 1			
Real estate appraisal 2			
Certificate of title			
Payslip for Party A			
Payslip for Party B			
Tax return and notice of assessment for Party A			
Tax return and notice of assessment for Party B			
Bank account statement (Acc number: XXX)			
Bank account statement (Acc number: XXX)			
Bank account statement (Acc number: XXX)			
Redbook valuation of car (reg: XXX)			
Redbook valuation of car (reg: XXX)			

Description	Date of document	Date sent to OP	Date received
Shares/cryptocurrency holding statement			
Superannuation Fund A (Member number: XXX)			
Superannuation Fund B (Member number: XXX)			
Home loan account statement (Acc number: XXX)			
Credit card (Acc number: XXX)			
Personal loan (Acc number: XXX)			
Student loan (Acc number: XXX)			
Other			
Other			

Create an Asset & Liability Schedule

An Asset & Liability Schedule is a useful tool to record what property there is to divide and what percentage of the asset pool each person receives. Adjusting the Schedule when making offers and counter-offers of settlement allows you to calculate how much each person would receive. You can use the example below:

Description	Value	Party A retains	Party B retains
ASSETS			
Family home			
Other real estate			
Motor vehicles			
Home contents			
Bank accounts			
Bank accounts			
Bank accounts			
Shares/cryptocurrency			
Superannuation			
Business			
Cash payment			
<u>TOTAL ASSETS</u>			

Description	Value	Party A retains	Party B retains
LIABILITIES			
Mortgage on family home			
Other mortgage			
Credit cards			
Personal/car loans			
Tax debts			
Student loans			
Other			
<u>TOTAL LIABILITIES</u>	\$	\$	\$
<u>NET ASSETS</u>	\$ [total net assets]	\$ [Party A's net assets]	\$ [Party B's net assets]
Percentage			

To calculate each party's percentage of property division, divide that party's net assets with the total net assets.

Step 2: Get advice about your range of entitlement

It is important to get legal advice about your range of entitlement to the asset pool. A family lawyer can take instructions on the history of your relationship, what financial and non-financial contributions each person made to the relationship, including as homemaker and parent, and what current and future needs each person has. They will also take instructions on the history of any family violence and if any Family Violence Restraining Orders exist. See Legal Aid WA's infosheet '[Property Settlement: Preparing to see a lawyer](#)' for more information.

They will then be able to give you a 10-15% range of what you are entitled to, based on your instructions. For example, you could be entitled to between 40 – 50% of the net asset pool.

The lawyer's advice will be based on what the law says and what the courts say should happen in similar cases. Keep in mind that this range can change depending on the disclosure that is received from the other party and if your circumstances change. Use the tables below to write down important factors that will assist your lawyer to give you advice about your range of entitlement to the asset pool.

Another option is to use [amica](#), a secure online tool developed by National Legal Aid that helps separating couples reach amicable agreements about property. amica uses artificial intelligence and can provide a suggested split of assets. [amicaone](#) is a single-sided version of amica that you can use to find out how amica works and get an estimate of what your property settlement might look like, without involving your ex-partner.

Initial contributions

Use this table to work out the assets brought by you and your ex-partner into the relationship. Use an estimate of the value of the assets when the relationship started. Explain what happened to the asset. For example, was it sold, given away, or do you or your ex-partner still have it? If it was sold, what happened to the money from the sale?

Table 1

Description of asset	Who owned it?	Value of asset when relationship started	What happened to the asset?
Real estate			
Car			
Savings			

Description of asset	Who owned it?	Value of asset when relationship started	What happened to the asset?
Superannuation			
Personal effects			
Other			
Other			

Use this table to work out the liabilities brought by you and your ex-partner into the relationship. Use an estimate of the value of the liabilities when the relationship started. Explain what happened to the liability. For example, was it paid off, when was it paid off, who paid it off, or is the liability still owing?

Table 2

Description of liability	Who owned it?	Value of liability when relationship started	What happened to the liability?
Home loan			
Car loan			
Personal loan			
Credit card/s			
Tax liability			
Student loan			
Other			

Contributions during the relationship

Use this table to work out the financial and non-financial (including homemaker and parent) contributions made by you and your ex-partner during the relationship. Where possible, use an estimate of the value but be aware that many contributions may not have a financial value.

Some questions to consider are:

- Who worked outside the home during the relationship? How much did they earn?
- Who stayed home to look after any children?
- Who organised and took the children to school, medical appointments, extra-curricular activities?
- Who undertook domestic tasks like housework, cooking, cleaning, laundry?
- Who paid for household expenses or was it shared?
- Did either of you improve any property, such as by undertaking repairs and renovations?
- Did either of you receive any inheritance, or gifts from family members?
- Did either of you receive any compensation payout or windfall such as lottery?
- Are there allegations of family violence, and if so, what has been the effect of the family violence on one person's ability to make contributions?

Table 3

Description of contribution	Who made the contribution?	\$ Value (if any)

Contributions after separation

Use this table to work out the contributions made by you and your ex-partner after the relationship ended. Use an estimate of the value of the contributions where possible.

Some questions to consider are:

- Who stayed in the home and who moved out and/or rented?
- How was the mortgage paid?
- Who paid for any repairs or renovation to the home?
- Who paid for school fees, medical expenses and other costs?
- Who pays child support and how much?
- Who is caring for children or dependent family members?
- Did either of you sell, give away or dispose of any assets? If so, what happened to the asset and/or the money from the sale?

Table 4

Description of contribution	Who made the contribution?	\$ Value (if any)

Assessment of contributions

This step involves carefully considering the contributions in Table 1 – 4 and deciding what percentage split would be a fair division of property based on contributions alone. For example, the parties made equal contributions such that a 50/50% division is fair, or Party A made greater contributions such that a 70/30% division is fair.

Current and future needs

Use this table to work out what current and future needs you and your ex-partner have.

Some questions to consider are:

- What are your ages, and what is the status of both your mental and physical health?
- Do either of you work and how much do you earn?
- How much could either of you earn in the future?
- Are either of you responsible for the care of any children, or other dependent person?
- Are either of you eligible for a pension, allowance or benefit?
- Are either of you paying child support and how much?
- How long was the relationship and how did that affect each person's ability to earn income?
- Are there allegations of family violence and if so, what is the effect of the family violence on a person's current and future needs?

Table 5

Important factors	Who is affected?	\$ Value (if any)

Assessment of needs

This step involves carefully considering the current and future needs of both people in Table 5 and deciding what percentage should be added or subtracted from the percentage split earlier.

Overall assessment of property division

Use this table to update assets and liabilities acquired during the relationship.

Table 6

Description of asset/liability	Who owned it?	Value of asset/liability when acquired	What happened to the asset/liability?

Your lawyer will consider the factors in [Section 79](#) of the *Family Law Act 1975* (for married couples) and Sections [205ZD](#) and [205ZG](#) of the *Family Court Act 1997* (for de facto couples). They will make an assessment of whether the court would consider the overall percentage division of property between the two parties to be just and equitable.

For example, both parties contributed equally during the relationship, so a 50/50% division of property is fair. Taking into account the parties' current and future needs, a 10% adjustment to Party A is necessary, so overall a 60/40% division of property in Party A's favour is just and equitable.

The term "just and equitable" has a special meaning in family law, and is based on the law and previous cases that have been decided. The court considers a wide variety of factors when deciding whether the proposed division of property is just and equitable.

Step 3: Negotiating and making offers

Once you have exchanged disclosure with the other party and have gotten advice about your range of entitlement to the asset pool, it is time to begin negotiations.

Negotiations can occur in writing by exchanging letters with the other party, or by attending FDR with the other party.

Some common ways that property can be divided (either by people reaching an agreement or by the court making a decision) are:

- one person makes a cash payment to the other person (this could be paid in a lump sum or over time)
- one person keeps the home (and usually the home loan)
- both people decide to sell the home and divide the sale proceeds
- one person splits their superannuation and transfers an amount into a superannuation account in the other person's name
- one person transfers a motor vehicle to the other person
- both people agree to be responsible for their own debts, and
- both people agree to keep the money and personal items which belong to them.

It is a good idea to include an Asset & Liability Schedule with the suggested split of assets in your negotiation letter. You can use the example below.

It is common to exchange at least two offers and counter-offers with the other party. If you are unable to progress further however, the next step is to invite the other party to FDR.

It is suggested to use the words “Without prejudice save as to costs” in any offer letter. This means you are making a confidential offer during negotiations, without affecting your legal rights in court. A letter marked as ‘without prejudice’ cannot be used by the other party as evidence in court.

There may be times when you wish to make an ‘open offer’, that is an offer that can be used by either party as evidence in court. This can be when you want the court to know you made a reasonable offer and if you are seeking costs, for example.

Sample offer letter to your ex-partner

[YOUR ADDRESS]

[OTHER PARTY'S ADDRESS]

[DATE]

“Without prejudice save as to costs”

Dear [name]

FAMILY LAW MATTER

I am writing to you to discuss our property settlement. We have exchanged disclosure documents contained in the **attached** Disclosure List as at [date].

In an effort to resolve this matter amicably and without the need for litigation, I extend a genuine offer to settle our property dispute on the following terms:

[outline the proposed offer of settlement e.g. specific division of assets and liabilities]

[outline what financial, non-financial and homemaker/parent contributions have been made by each person]

[outline what current and future needs each person has]

I **attach** an Asset & Liability Schedule showing the terms of the above offer of settlement. My offer results in a division of ___/___ % in my favour/your favour. [example of wording: 60/40% in my favour]. I believe this is in line with what the court would consider is a fair division of property.

If you agree with my offer of settlement, please let me know within 14 days. I propose that we make an application for consent orders in the Family Court of WA. This will mean we have final orders without needing to go to court.

If you do not agree with my offer of settlement, I propose that we attend Family Dispute Resolution with [name of service] so that we can discuss our proposals further.

I look forward to hearing from you within 14 days.

Kind regards

[YOUR NAME]

enc. Disclosure list

Asset & Liability Schedule

Step 4: Attending Family Dispute Resolution

If you have exchanged disclosure documents and made offers of settlement without success, the next step is to attend FDR. FDR is a voluntary process where you, your ex-partner and a third person who is a qualified mediator, talk about what happens with property after separation. All discussions at mediation are confidential and cannot be raised by either person in court or in any documents for court. There are exceptions for when there is a risk of harm to a person or child or risk of a criminal offence being committed.

At FDR you can discuss topics such as who keeps the house, does the house need to be sold, who drives which car, if one person gets paid a sum of money, if any superannuation needs to be split or not, and other issues.

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

Do I need a lawyer for Family Dispute Resolution?

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.

Step 5: We have reached agreement

If you can reach agreement, 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. For example, if the orders require a person to list a house for sale or sign transfer papers but they fail to do this, you can ask the court to enforce the orders. 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 Legal Aid WA's factsheet '[Property: Consent Orders](#)' and [Consent Orders Kit](#) for more information.

You will need an [eCourts portal](#) login to file the consent orders. You can agree to share the cost of the filing fee, or pay it yourself, or seek an exemption from paying the filing fee if both parties have a Commonwealth Concession Card.

Step 6: We can't reach agreement – what next?

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 '[Property Settlements – How the court decides](#)' on the Legal Aid WA website for more information.

You can get legal advice from Legal Aid WA if eligible, or a community legal centre, or a family lawyer working in a law firm or as a sole practitioner.

Legal Aid WA can give legal advice and assistance in relation to parenting matters and non-complex property settlement. Note: in most circumstances Legal Aid WA does not assist with preparation of documents relating to property settlement– only legal advice can be provided.

Phone the Infoline on 1300 650 579 for free information about the law, to ask about our services and to find out how we can help you.

First Nations callers can phone Legal Yarn on 1800 319 803 to access a culturally safe telephone information service for Aboriginal and Torres Strait Islander People; staffed by mob, for mob.

The Infoline and Legal Yarn are open Monday - Friday from 9.00 am to 4.00 pm (Western Standard Time), except on public holidays.

If you are deaf or have a hearing or speech impairment, calls to the Infoline and Legal Yarn can be made using the [National Relay Service](#).


We have a duty lawyer service at the Family Court of WA. The service is for people with urgent family law matters or who have a court date that day. The service is mainly for parenting matters. Whether the service can help you will depend on your situation, the urgency and seriousness of your matter, and the needs of other people using the service on the day. This is a free drop-in service (no appointment required).

The service is available at the Family Court at Perth, Monday to Friday, 9.00am to 4.00pm, and in regions when the Family Court is on circuit in Broome, Kalgoorlie, Geraldton, Bunbury and Albany.


Alternatively, you can visit one of Legal Aid WA's office locations.

See more at Legal Aid WA's [Get Legal Help](#) page.

LEGAL AID WA CONTACTS

 **Infoline:** 1300 650 579

Interpreting and relay services to help you contact us:

 **Legal Yarn:** 1800 319 803 (for First Nations callers)



Translating & Interpreting Service: 131 450

 **Website/InfoChat:** www.legalaid.wa.gov.au



National Relay Service: 133 677

Perth office

32 St Georges Terrace,
PERTH WA 6000
1300 650 579
(08) 9261 6222

Great Southern Office

Unit 3, 43 – 47 Dukie Street,
ALBANY WA 6330
(08) 9892 9700

Southwest Office

7th Floor, Bunbury Tower,
61 Victoria Street,
BUNBURY WA 6230
(08) 9721 2277

Midwest & Gascoyne Office

Unit 8, The Boardwalk,
273 Foreshore Drive
GERALDTON WA 6530
(08) 9921 0200

Goldfields Office

Suite 3, 120 Egan Street,
KALGOORLIE WA 6430
(08) 9025 1300

Pilbara Office

28 Throssell Road,
SOUTH HEDLAND WA 6722
(08) 9172 3733

West Kimberley Office

Upper Level, Woody's Arcade,
15 – 17 Dampier Terrace
BROOME WA 6725
(08) 9195 5888

East Kimberley Office

98 Konkerberry Drive
KUNUNURRA WA 6743
(08) 9166 5800

Indian Ocean Office

Administration Building,
20 Jalan Pantai, Christmas
Island, INDIAN OCEAN WA
6798 (08) 9164 7529

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