

Property Settlement: Preparing to see a lawyer

This information sheet will help you prepare for your first appointment with a lawyer if you are separating and seeking advice about dividing property. It has a list of questions to help you gather information to give to your lawyer. Work your way through the list of questions that apply to you and bring this information with you to your appointment.

What are the benefits of being prepared for your first appointment?

Being prepared for your first appointment will help to make the most of the time you have, and if you are paying a private lawyer, will help to keep costs down.

By having the information your lawyer needs ready, your lawyer will spend less time gathering information and more time explaining your options and giving you advice.

What if you don't know the answers to questions about your ex-partner's finances?

Your lawyer will need information about your ex-partner's finances.

Try to answer the questions about your ex-partner's finances as best as you can.

If you don't know the answer to a question, your lawyer will be able to tell you what steps you can take to gather the missing information.

Background information

Your lawyer will need to know:

- the date you started living together,
- the date you were married,
- the date you separated,
- the full names of any children of the relationship and dates of birth, and
- the full names of any child from other relationships, and their dates of birth.

What types of contributions will my lawyer need to know about?

There are three main kinds of contributions:

- financial contributions,
- non-financial contributions, and
- contributions as a homemaker and parent.

Financial contributions can include:

- real estate, savings, motor vehicles and superannuation owned by a person,
- income earned by a person,
- inheritance or gifts received, and
- payouts received (for example, motor vehicle accident compensation, redundancy payout, workers compensation payout).

Non-financial contributions are usually in the form of one person's labour improving the value of real estate through renovations. The renovations should lead to a significant increase in the value of the real estate and need to be more than general maintenance or decoration.

Contributions as homemaker and/or parent include cooking, cleaning, maintaining real estate or raising children.

Recent amendments to the law allow the court to consider family violence when assessing contributions for married couples. Where relevant, the court will consider the effect of family violence on the ability of a party to make financial or non-financial contributions or contribute to the welfare of the family.

Initial contributions

The assets and liabilities that each person already had when they first started living together are known as 'initial contributions'. Your lawyer will need to know:

- how much money you each earned per year,
- if you each worked full time or part time,
- if either of you had any savings, and if so, how much you each had,
- if either of you had a car, and if so, how much the car was valued,
- if either of you had superannuation, and if so, how much superannuation you each had, and
- if either of you had a child or children from a previous relationship:
 - how old they were,
 - who was the child or children's main carer,
 - how much time they spent with the other parent, and

how the child or children were financially supported.

Real estate

Your lawyer will need the following information about any real estate owned by you or your ex-partner at the time you started living together:

- the address,
- the purchase price,
- an estimate of what the real estate was valued at when you started living together,
- an estimate of how much the mortgage was when you started living together, and
- whether you or your ex-partner still own the real estate, and if so, its value.

Contributions made during the relationship

Your lawyer will need information about the contributions made by you and your ex-partner during your relationship.

Real estate

Your lawyer will need the following information about any real estate bought during the relationship (including property bought together and property bought separately):

- the address,
- the purchase price,
- who paid the deposit - if more than one person helped to pay the deposit, how much they paid (for example, if your parents or your ex-partner's parents helped with the deposit),
- how much the initial mortgage was,
- who paid the mortgage during the relationship,
- if the mortgage was paid jointly, was it in equal amounts,
- who was responsible for maintenance (for example, repairs, gardening, cleaning), and
- were any renovations made to the property and who paid for them.

Employment

Your lawyer will need the following information about you and your ex-partner's employment during the relationship:

- did either of you work outside the home,
- if either of you worked outside the home, was this work full time or part time, and
- how much did you each earn.

Home

Your lawyer will need the following information about duties at home:

- who was responsible for most household duties (for example, cooking, cleaning, laundry and gardening),
- how the household duties were divided between you,
- were there any renovations or improvements made to the real estate, and if so, how it was paid for, and
- if either of you did any renovations or improvements to the real estate yourselves.

Children

Your lawyer will need the following information about the care of a child or children during the relationship:

- who was primarily responsible for looking after the children,
- how was the care of the children usually divided between you and your ex-partner,
- who did the school drop off and pick-up,
- who took the children to extra-curricular activities, and
- who organised and took the children to medical appointments.

Inheritances, gifts and winnings

Your lawyer will need to know the following about any inheritances, gifts from family and lottery winnings received during the relationship:

- who it was from,
- how much it was,
- how it was spent, and
- if there is any left, and if so, how much.

Payouts

Your lawyer will need the following information about any payouts that either you or your ex-partner received during the relationship (for example, workers compensation payout, redundancy payout or motor vehicle accident payout):

- the type of payout,
- how much it was,
- how it was spent, and
- if there is any left, and if so, how much.

Contributions made after separation

Your lawyer will need information about the contributions made by you and your ex-partner after your relationship ended.

Real estate

If any real estate has been sold after separation your lawyer will need to know the following:

- how much the sale proceeds were,
- how the sale proceeds were divided, and
- where the sale proceeds have been deposited.

Motor vehicles

Your lawyer will need to know the following information about you and your ex-partner's motor vehicles following separation:

- who kept which motor vehicles,
- whose name the vehicle is registered in, and
- if there any car loans, how they are being paid and whose name is on the loan.

Living arrangements

Your lawyer will need to know about living arrangements after separation including:

- who moved out of the family home, and how long after separation they moved out,
- who is paying the rent and how much, and
- who is paying the mortgage and how much.

Current and future needs

Your lawyer will need to know about the current and future needs of you and your ex-partner including:

- your ages,
- any health issues and whether these affect your ability to earn an income,
- your incomes,
- if you're receiving Centrelink benefits, and if so, how much the benefits are,
- if either of you has re-partnered, and
- if you have children together who are under the age of 18 years:
 - who the children live with and the care arrangements in place, and
 - if you have a parenting plan or Family Court orders.

Recent amendments to the law in relation to married couples have expanded the current and future circumstances the court can take into account including:

- any current or future economic effects on a party who was subjected or exposed to family violence,
- wastage - where a party intentionally or recklessly caused any wastage of property or financial resources,
- any future financial impact on the parties as a result of liabilities incurred by one or both of them, and
- the need for either party to provide appropriate housing for a child under 18.

Financial resources

A financial resource is a future or potential financial benefit a person may receive.

Your lawyer will need to know about your and your ex-partner's financial resources.

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), and
- overseas or Australian pension funds that have a benefit only when a person is of retirement age or meets eligibility criteria.


Property division

When it comes to discussing your options with your lawyer about dividing property it is a good idea to think carefully about each of the questions below as part of your preparation:

- What is your plan for dividing property?
- Do you want to keep the house (this will usually mean keeping the home loan)?
- Do you want to sell the house and split the proceeds from sale between you and ex-partner?
- Do you want to transfer the house to your ex-partner and get a cash payment?
- What is the plan for the debts?
- Can you afford to pay the home loan, credit card, personal loan?

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