

# FAMILY LAW FACTSHEET 7: PROPERTY AND FINANCES

## WHAT IS PROPERTY?

Property can include real estate, cars, boats, money, furniture, investments and in some cases superannuation. It is best to try to come to an agreement together about what to do with your property and finances when a relationship breaks down. An agreement with the other party can then be made into a legally enforceable Order by the Court called a Consent Order.

*It is better to resolve things out of Court but if you can't reach an agreement with the other party, the Court can assist by making an Order*

## PRE-ACTION PROCEDURES

Before making an application, you need to comply with the pre-action procedures. Pre-action procedures are ways to try and help you resolve your property matters. If a case goes to Court, the Court will look at whether the pre-action requirements were followed and where a party fails to follow the procedures, there may be consequences such as paying the other party's costs.

### 3 STEP PRE ACTION PROCEDURE

1. FAMILY DISPUTE RESOLUTION
2. SETTING OUT YOUR POSITION
3. MEETING YOUR DUTY OF DISCLOSURE

### 1. FAMILY DISPUTE RESOLUTION (FDR)

As with Parenting Orders, the Court would prefer if couples tried to resolve their property matters together before going to Court. PCLS can assist you to find an FDR service. If you come to an agreement after FDR then you can apply to the Court for a Consent Order to make the agreement formal. If no agreement is reached, you will need to complete the next Steps before you can apply to the Court.

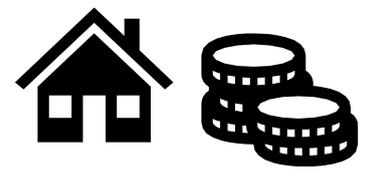
### 2. EXCHANGE LETTERS SETTING OUT YOUR POSITION

You should deliver a letter to the other party setting out:

- ✓ The issue in dispute
- ✓ The orders that you will seek if a case is started
- ✓ A genuine offer to resolve the issue in dispute
- ✓ A time (at least 14 days after the date of the letter) within which the other party is required to reply to the notice

The other party must respond within the time stated and say whether they accept the offer. If an agreement is reached, you should seek Consent Orders from the Court. If no agreement is reached or the other party does not respond, you may apply for Property Orders.

*Disclaimer: This factsheet provides general information and is not to be taken as legal advice. Published 2019.*



### 3. EXCHANGE DOCUMENTS SETTING OUT YOUR FINANCIAL POSITION

If you did not resolve the dispute through the exchange of letters and want to apply to the Court for Property and Financial Orders, you need to exchange documents with the other party. You need to do this at the earliest opportunity. Examples of documents may include a schedule of assets, income, liabilities, a list of documents in the party's possession or control relevant to the dispute and a copy of any documents required by the other party.

### PROPERTY AND FINANCIAL ORDERS

Property and Financial Orders fairly divide your property based on the contributions that you and your partner made to the relationship. When applying, each party is to file a Financial Statement (**Form 13**) which will show the Court each party's finances. There is no presumption that the Court will split things 50/50.

### WHAT ARE 'CONTRIBUTIONS'?

- ✓ Direct and indirect financial contributions including property brought into the relationship
- ✓ Wages, gifts, inheritances received after the relationship commenced
- ✓ Non-financial contributions such as work done to improve property
- ✓ Contributions to the welfare of the family including as a parent and homemaker

### 4 STEP PROCESS THE COURT WILL USE

#### 1. **Identify and value the existing assets and liabilities of the parties**

Each party is required to file a Financial Statement (Form 13) which will show the Court the financial position of each party.

#### 2. **Consider contributions**

The Judicial Officer will consider the direct and indirect financial contributions brought into the relationship and received after the relationship started.

#### 3. **Further adjustment**

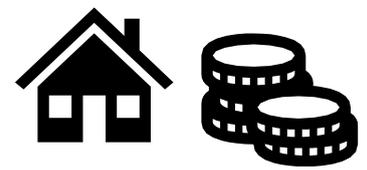
The Court may make an adjustment based on the future needs of the parties, earning capacity and responsibilities for caring for any children.

#### 4. **Just and equitable**

The Court will make an assessment about the overall outcome and assess if it will be just and equitable.

See the 'Financial Statement Kit' on the Family Court of WA website [www.familycourt.wa.gov.au](http://www.familycourt.wa.gov.au) to help with your application

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## TIME LIMITATIONS FOR APPLYING FOR ORDERS

To apply for property and financial orders, you need to have been in a relationship that meets the legal criteria and apply within the proper time limits. For married couples, you must apply within 12 months of divorce. For de facto couples, you must apply within 2 years of the breakdown of the relationship.

## FAMILY HOME

You do not lose your right to a share of the family home or other property if you leave the house. The Court will make a determination about what happens to the family home using the 4 step process outlined above.

## SPOUSAL AND DE FACTO MAINTENANCE

Maintenance is when a partner has to maintain their ex-partner financially after a relationship ends. If you cannot adequately support yourself with your income or personal assets, the other party may be obligated to pay maintenance. This may be due to having responsibility for the care of a child, your age or state of health prevents you from gaining appropriate employment or the duration of the relationship and the extent to which it affected your earning capacity. The Court will decide whether to make a Maintenance Order by looking at the circumstances such as age, income, children, standard of living, capacity to gain employment, eligibility for benefits.



## DE FACTO RELATIONSHIPS

If you are applying for Property or Maintenance Orders after the breakdown of a de facto relationship, you must provide evidence of the relationship such as where you lived, length of relationship and connection to Western Australia.

### EVIDENCE OF A DE FACTO RELATIONSHIP

- ✓ Lived in a de facto relationship together for at least 2 years
- ✓ Lived in a de facto relationship for less than 2 years but there is a child of the relationship and failure to make orders would result in injustice to the party caring for the child
- ✓ Lived in a de facto relationship for less than 2 years but the partner applying for orders has made substantial contributions and failing to make orders would result in injustice

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