

MASTER MY NEGOTIATION

PROPERTY SETTLEMENT PREPARATION HANDBOOK

Prepare like a boss.
Negotiate with confidence.
Achieve your desired outcome.
Take your power back.



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BARTON FAMILY LAWYERS

The Family & Federal Circuit Court determines what is a ‘just and equitable’ division of assets for you and your ex-partner, using the following 5 step process:

1. Is it just and equitable to make an order adjusting the current interests in property?

In most relationships, the answer to this question is yes, but every case is different. There is no automatic right to a property settlement. Contact our office on 3465 9332 and book a reduced rate consultation with one of our experienced family lawyers to discuss whether you qualify for a property settlement order in the circumstances of your case.

2. What is the property pool to be divided between the two of you?

This includes all assets, liabilities and superannuation in your name, your ex-partner’s name or in joint names. Complete the table below to work out what your ‘property pool’ is.

NON-SUPERANNUATION ASSETS	Owned by	Value
Total Non-Superannuation Assets		\$ _____

SUPERANNUATION	Owned By	Value
Total Superannuation		\$ _____

LIABILITIES	In the name of	Value
Total Liabilities		\$ _____

NET POOL = Assets + Superannuation – Liabilities

= \$ _____

3. What were the contributions of the parties to the property pool?

Contributions at the beginning of the relationship:

Ask yourself - what assets, liabilities and superannuation did I bring into the relationship when we started living together? What were their values at that time?

House – value? Mortgage?

Super – value? Cash?

Other assets of significance?

What assets and liabilities did the other party bring into the relationship when we started living together?

House – value? Mortgage?

Super – value? Cash?

Other assets of significance?

Financial contributions during relationship:

What were your job roles and the income you received?

Year/s (e.g. 2000 – 2007)	Job Title (or if unemployed)	Full time / Part time	Income per annum / reason for unemployment e.g. kids

What were your ex-partner’s job roles and the income they received? Include periods of unemployment

Year/s (e.g. 2000 – 2007)	Job Title (or if unemployed)	Full time / Part time	Income per annum / reason for unemployment e.g. kids

What major assets did we purchase/sell during the relationship? For how much? When?
 If purchased, where did the money come from? If sold, how were the sale proceeds utilized?

Year of purchase/sale	Asset purchased/sold	Purchase/Sale price	If purchased – deposit? From savings? Gift?	If sold, utilization of sale proceeds
		\$		
		\$		
		\$		

How were the living expenses paid? Including rent, mortgage repayments and outgoings

Was it from joint funds or from one person’s bank account?

Was one party the primary/greater financial provider?

Did you have separate accounts during the relationship? If so, how did the parties contribute to the payment of the rent/mortgage/living expenses? Who paid for what?

Did one party pay for all the living expenses and the other party stayed at home with the children?

Did either of you receive any Windfalls during the relationship? If so what? For example, inheritances, lotto wins, personal injury payouts, redundancy payouts. How was the windfall utilized? E.g. was it deposited onto mortgage? Was it used to pay for an asset? Or was it used for living expenses?

Windfalls you received

Year of Windfall	Nature of Windfall	Utilisation of the windfall

Windfalls your ex-partner received

Year of Windfall	Nature of Windfall	Utilisation of the windfall

Did you or your ex partner make any non-financial contributions during relationship?

For example, you are a carpenter and you build a house therefore saving the parties the money of paying someone else to do it. Any other self-performed renovations that increased the value of the property? If so by how much?

What were the contributions of you and your ex partner to the welfare of the family i.e. as parent and homemaker (cooking, cleaning, yard work, taking care of the home)?

Was one of you the primary carer for the children? If so who and what were the care arrangements?

Was one of you the primary homemaker or did you share those duties equally?

Were you sick for a period of time and you took care of your ex-partner or vice versa?

**Contribution based entitlement (%) = _____% - _____% for you
_____ % - _____% for the other party**

Your Contribution based entitlement, usually expressed as a range (e.g. 40 – 50% of the property pool), is an assessment by the Court, expressed as a percentage, that each of you can be said to have contributed both financially and non-financially to the property pool that exists today.

Whilst it is important to point out that the breadwinner contributions are considered on an equal footing to the parent/homemaker contributions, there are a variety of factors that affect how the Court would assess your contribution-based entitlements.

Contact Barton Family Lawyers on (07) 3465 9332 and book in a reduced rate initial consultation with one of our experienced family lawyers and we will be able to give you preliminary advice as to your contribution-based entitlements.

4. What are the future needs of you and your ex-partner?

Future needs factors are the factors that are relevant to your future. They include things such as age, health, your income earning capacity, who is caring for the children, whether you have a new partner that is supporting you, and whether, for example, you will receive an inheritance in the near future.

Age:

You:

Other party:

Health issues:

You:

Other party:

Income & earning capacity:

You: I currently earn \$ _____ pa as a _____ working FT/PT

I can/cannot earn more with my current income/qualifications:

If you can earn more – my greatest income capacity is \$ _____ pa as a _____ FT/PT

Other party: I currently earn \$ _____ pa as a _____ working FT/PT

They can/cannot earn more with their current income/qualifications:

If they can earn more – their greatest income capacity is \$ _____ pa as a _____ FT/PT

Property of each party:

What primary assets are you each going to take away from the relationship? E.g. house/super?

You:

Other party:

Care of the children:

What are the current care arrangements for the children?

If you could have your way, what would the care arrangements for the children in the future be and will you be pursuing those care arrangements e.g. through mediation/court?

Are either of you in new relationships? Do those partners support you/the other party?

Are there any other matters you believe need to be taken into consideration? E.g. future inheritance for you/the other party?

Adjustment for you/other party's future needs = _____% - _____% to you
_____% - _____% to the other party

Depending on your answers to the above questions, it may be appropriate for the Court to make an 'adjustment' in your favour/the other party's favour if one party has greater future needs.

Contact Barton Family Lawyers on (07) 3465 9332 and book in a reduced rate initial consultation with one of our experienced family lawyers and we will be able to give you preliminary advice as to whether you are entitled to an adjustment because of future needs factors.

5. What is the just & equitable split (%) of the property pool between you and the other party?

_____% - _____% to you
_____% - _____% to the other party

Having regard to all of the above factors, the Court will make an assessment as to the percentage of the property pool that you are entitled to. When your lawyer is giving you legal advice about your entitlements, they will usually express the advice as a range (e.g. 60% - 70% of the property pool). Your entitlements are expressed as a range because every judge is different and each judge has discretion, meaning that two judges reviewing the same facts, could make a slightly different decision.

As part and parcel with this step, the Court must review the current ownership of the assets, liabilities and superannuation between the parties and determine what actual assets you should each receive, including what adjustment, if any, is required to you/the other party (e.g. cash/super) to affect the percentage split that you are entitled to.

The final division of the actual assets is relevant to determining the justice and equity of the orders. E.g. if one party receives only super which they can only access at retirement, whilst the other party receives a house unencumbered, the Court may question whether such an order is just and equitable in all the circumstances.

Every case is different. Each case will be determined on its own facts. Contact Barton Family Lawyers on (07) 3465 9332 and book in a reduced rate initial consultation with one of our experienced family lawyers and we will be able to give you preliminary advice as to your range of entitlements.

Other important information for you:

Spousal Maintenance

In certain circumstances, separating couples may have an obligation to provide ongoing maintenance to their former partner.

In broad terms, you can be liable to pay ongoing support for your former spouse if:

- Your former spouse is unable to adequately support himself or herself so that their reasonable needs are met; and
- You have the capacity to support your former partner.

Or if you meet any of the criteria above, your former spouse may be liable to support you if you are unable to meet your reasonable needs and your former spouse has the capacity to meet them.

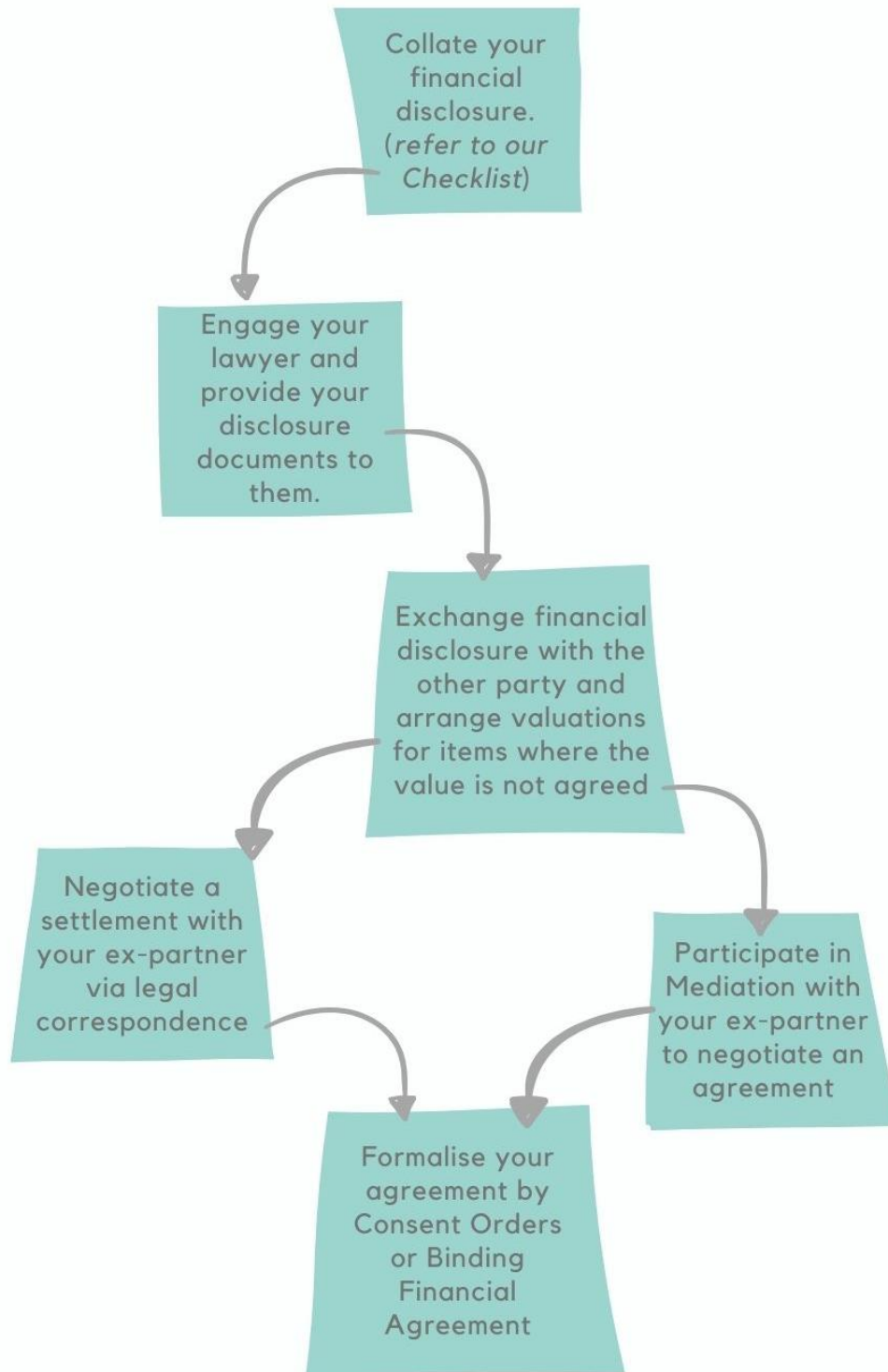
Managing Estate Affairs

You should ensure that your estate affairs are in order. We recommend:

- (a) You execute an up to date Will;
- (b) You ensure that the beneficiaries of any superannuation fund or life insurance policies are up to date; and
- (c) You consider whether it may be appropriate to appoint an attorney pursuant to an enduring power of attorney and/or advanced health directive;
- (d) If there is jointly owned real property, you consider whether it may be appropriate to sever any joint tenancy.

What is my Case Plan?

If you have not yet settled the division of your assets, the following is the appropriate pathway, in most circumstances, to negotiate an agreement with your ex-partner.



Why is it necessary for me to formalise our agreement?

No matter how you come to an agreement, it is important that you legally formalise your agreement as a consent order / binding financial agreement for a number of reasons, including:

1. It makes your agreement legally binding so the other party can't back out;
2. It protects you in future from a claim by the other party;
3. If you are retaining a house, you can claim an exemption from stamp duty.

Is negotiation/mediation not appropriate in your case?

Are you of the view that negotiation/mediation is not appropriate in the circumstances of your case?

Court is always the option of last resort and there are a number of pre-action procedures that must be followed first before a court application can be filed, except where limited exceptions apply.

Speak to one of our experienced family lawyers about whether an exception applies such that a court application is appropriate in the circumstances of your case.

Are there any other special factors/issues I need to make my lawyer aware of that may affect my case?

What are my estimated legal costs?

What other costs do I need to take into account when negotiating the division of my assets?

***** All information in this document is general information only. For legal advice in relation to your specific matter, contact our office on (07) 3465 9332 to book a reduced rate initial consultation with one of our experienced family lawyers, who will fight for you to achieve the best practical outcome that makes a positive difference to your life.