

## Family Dispute Resolution (Mediation) Service

### What Documents are required First Property Mediation?

As part of the Full Disclosure requirement, it is vital that you submit all documentary evidence of assets and liabilities to be verified at the first FDR session. These will be pre-recorded, tabled, and sighted by all parties. We are unable to prepare a written Agreement until all documentary evidence has been sighted, recorded, and verified by both parties. Examples of information required are listed below:

#### Assets:

**Real Estate** – Address, Certificate of Title Volume and Folio numbers, all financial interests (Bank/financial institution or other person) as well as the value of the property. These can be found on:

- Bank documents, Lands Titles Office or Rates notice.
- Current market value - appraisals (Real Estate agent -free), paid valuation from a licenced valuer.
- If sold or under contract - a Settlement Statement or one interest transferred to the other.

The information/documents required for mediation are:

Volume and Folio numbers from the Certificate of Title	Evidence of transfer if property transferred
Appraisals/valuations if no agreement as to value	Settlement statement if property sold

**Motor vehicles** (+ boats, bikes, caravans, trailers etc.) – The year of manufacture, make, model, registration number, registered owner and the value. [www.redbook.com.au](http://www.redbook.com.au) Provides estimates of similar models which can be printed or screenshot for proof of value. The documents required for mediation are:

Registration papers – car and owner details	Redbook printout or screenshot with date visible
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**Household Furniture/Contents/tools/equipment** – second-hand values for these joint assets can be divided equitably between you, either through a mutual verbal agreement or itemised and used in the division.

Lists of items retained, or wish to retain, or mutual agreement value, or share retained by each party
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**Bank Accounts** – The financial institution, account number, name on account and balance. Joint accounts - current value if still used, if closed – amount, date at closure and proof where/how money was distributed. Individual accounts- valued at the date of separation. The documents required for mediation are:

Joint accounts - Current bank statements	Individual accounts – Statement - date of separation
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**Businesses** – Any interest in any business in either name. The name of business, ABN, and value of all equipment (second-hand) or stock (current) and income it generates (proof provided from an accountant or ATO) are recorded. The documents required for mediation are:

ATO statements of amount owing prior to separation	Australian Business Number - ABN
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Official evidence from accountant/ATO of income	Value of business and any plant, stock and equipment
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**Shares/Investments** – The name or type of investment, account/ID numbers, name on title and current value. The documents required for mediation are:

Most recent statement and current sale value	Screenshot of daily stock exchange rate with date visible
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**Life Insurance Policies** – separate from Superannuation with a redeemable value. considered an asset.

Surrender Value on statement showing company and Policy Number
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**Jewellery/Art/Other Valuable Items** – Any items of significant value that were purchased during the relationship.

Valuation reports
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**Any other asset disposed of** – The value of assets disposed of by either party, or joint monies withdrawn post-separation. The documents required for mediation are:

Receipts for sale of items	Bank statements for cash withdrawals/transfers
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**Inheritances, Gifts or Significant Contributions**– Any inheritance, gift or significant contributions received by either party prior to separation, who received them, when and what has happened to them: The documents required for mediation are:

Documentary confirmation	Bank statements
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**Superannuation** – Considered a joint asset requiring disclosure of name super fund/s, Member No/s and the current balances. If a short relationship, seek legal advice and determine what part is to be considered. Bring supporting documentation stating balances from the start and end of the relationship and the current balance. Any superannuation intending to be split or flagged requires the completion of a Form 6 Superannuation Kit (see separate handout). The documents required for mediation are:

Current Super statement/s	Short relationship – statements @ beginning, end and current
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**Pensions – Defence or Government** –The name of your pension fund/s, Member Number/s and the current and ongoing value of the pension. If the relationship was very short, the accrued amount only can be considered after legal advice. The documents required for mediation are:

Documentary evidence of the pension and the value	Short relationship – statements @ beginning, end and current
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## Liabilities:

**Mortgages** – Name of the financial institution, names on mortgage, account number and current amount owing. The document required for mediation is:

Current bank statement	Screen shot with date visible
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**Loans, credit card debts and any other debts** – Name of financial institution/ company, Account name and number, current amount owing and/or amount owed at separation. The documents required for mediation are:

Credit card statements – current or @ separation	Any other statements confirming debts
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**Hire Purchase or lease** – name of company, identifier and amount owing. The documents required for mediation are:

Current statement of lease and the share owing
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**Private debts - to family members etc.** – Amounts owing to family members, supported by documentary evidence that it was intended as a loan and proof that an attempt to repay it was made. The documents required for FDR are:

Statutory Declaration by lender	Bank statement identifying payments made for loan
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**Potential liabilities for Capital Gains Tax or ATO debts** – Official documents of debts, TFN and other relevant identifying details. The documents for mediation are:

Documentary evidence of potential debt
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**HECS Help debts** – Official document of debts, name, date debt accrued and value at separation.

Documentary evidence of debt and identifying number and name – ATO, Institution invoice
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**Financial Resources:** Interest in any Trust, or expectation of receiving money from a personal injury claim, court case or from a deceased estate. The documents for mediation are:

Documented proof of whom and what will be received and for what purpose
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You will either be requested to provide this information via the following table at least **5-7 business days** before your first FDR appointment or complete this via the invitation emailed and added via the 'Family Property' software/app.

This information will be collated by your practitioner ready for the first FDR appointment or you will be contacted about pre-mediation appointment where individual issues or concerns can be discussed and clarified in preparation for the first FDR appointment where you will both be present.

### CHECK LIST FOR FIRST PROPERTY MEDIATION SESSION

As the first session of a property mediation is about verifying the assets and liabilities from the relationship and agreeing on values, please make sure you have provided as much of the information on the data table sent to you at least 5-7 days prior to your appointment and have ready the correct documents to table during your first FDR appointment.

<b>Assets</b>	<b>Value</b>	<b>Check</b>
Real Estate – Volume & folio numbers, names If sold	Current Settlement statement	
All Motor Vehicles – year, make model, Rego number	Current 2 <sup>nd</sup> – hand Value	
Household Contents	2 <sup>nd</sup> hand value	
Shed/equipment/tools	2 <sup>nd</sup> hand value	
All bank accounts and the balances – name & a/c number DOS = date of separation	Joint - Current Individual - DOS	
Business/es – name & ABN	Current & if ongoing total value	
All Stock, Equipment and Tools	2 <sup>nd</sup> hand value	
Shares or investments – ID number, amount & Sale price	Current Market Value	
Redeemable Life insurance policies – organisation & number	Current	
Inheritances/gifts/significant contributions	Proof of with dates	
Any other assets – eg boats, bikes, caravans etc	Current/2 <sup>nd</sup> hand value.	
Assets disposed of since separation	sale notice	
Superannuation Fund – Name & ID number	Current	
Pensions – name & ID number	Current	
Financial resources – expectation of money	Value	

<b>Liabilities</b>	<b>Value</b>	<b>Check</b>
Mortgages – bank, a/c number, names	Current	
Credit cards – joint & Individual, a/c number, balance	DOS & amount paid by whom	
Store cards – Joint/Individual – a/c number, balance	DOS & amount paid by whom	
Loans – Organisation/bank & a/c number; balance	Current or as agreed	
Hire Purchase/Lease – organisation and identifiers	Current	
Joint Debts from prior to separation paid by one person	DOS & amount paid since	
Private debts – to whom, amount, date & proof of repayment	Statutory declaration	
Capital Gains Tax – ATO number, name, balance owing	Current	
ATO debts – Tax file number, name, balance owing	DOS	
HECS/HELP – ID number, name, balance owing	DOS	
Any other liabilities		

## Family Dispute Resolution (Mediation) Service

# Information Regarding Legally Inclusive Practice

In accessing our FDR Service, there is an option for a legal practitioner to provide you with legal advice during the FDR process. This occurs where appropriate, following request from our clients, a legal practitioner or on advice from your Family Dispute Resolution practitioner.

If both parties and your practitioner decide that Legally Inclusive FDR may be beneficial, there is some important information you need to know about your appointments:

**Individual Confidential Appointments** – as per the usual FDR process, either in person or over the phone for 60 mins.

- A fee is payable at the completion of the appointment.
- A full assessment and screening process is undertaken, and general concerns or queries are addressed during this time.
- All aspects of the process and dispute are discussed.
- The presence and roles of the practitioner and legal representative are discussed and clarified.
- Documentation requirements are explained, and agreements completed.
- Information about engaging with a legal representative is discussed, confirmed and contact information clarified.
- Client is advised to request the legal representative contact the office if not from the existing pool already clarified by Centacare.
- Parties are granted access to software for property FDR to complete and return information regarding the asset and liability pool to be verified at the first FDR appointment.

The suitability to continue with Legally Inclusive Practice (LIP) is at the discretion of the FDR Practitioner and will be advised once both parties' individual appointments have concluded.

Letter advising dates for future appointments will be sent to both parties to confirm and clarify with their legal representatives.

**The Discovery appointment** – for property FDR only, can take 1-1.5 hours.

- The fee for the remainder of the process is payable at the beginning of this appointment.
- Both parties attend in person in the same or separate rooms
- The asset and liability pool are clarified and verified, and each party takes a copy to their legal representative to discuss and prepare for the LIP FDR appointment.

### **Individual Legal Advice:**

- Both parties attend a confidential appointment with their legal representatives to discuss the discovery, to seek legal advice about options and prepare for the LIP FDR appointment.
- Fees for legal representation are managed separately from the LIP FDR process.
- Client confirms availability for LIP FDR appointment and advises Centacare.

### **Legally Inclusive FDR Appointment – 3 hours**

- Fees are payable at the beginning for Parenting FDR
- Both parties attend with their legal representatives in separate rooms.
- Family Dispute Resolution practitioner (FDRP) facilitates the discussions between the parties and manages the process.
- Parties can obtain real time legal advice from their representatives between contact with the FDRP.
- FDRP records agreements and outcomes and discusses options for documentation.

### **Legally Inclusive Practice Cannot Happen When:**

- Only one party agrees/consents.
- If one party is unable to financially manage legal representations
- If there is not full and frank disclosure of all assets and liabilities
- FDRP deems it not suitable
- If the legal representative declines to fully engage with the FDR process to resolve the issues in dispute.
- If the legal representative or either party discloses that their intention is to proceed to court proceedings prior to attending the LIP FDR appointment.

### **Please refer to our brochures for further information.**

If you have any queries not answered by this information, please note it for when you speak to the FDRP or your legal representative at your interview.

## Family Dispute Resolution (Mediation) Service

### Factors Relevant in Property Settlement

The Family Law Act 1975 (Cth) (FLA) requires that any property settlement be fair and equitable depending on various factors. It is always important to obtain legal advice about your property settlement prior to mediation to enable you to negotiate from an informed position. Furthermore, it is also a requirement that parties maintain an ongoing duty of “Full and Frank Disclosure” during the process.

In Property mediation, we will follow the same principle of the 4-step process in line with the FLA. This process allows us to:

- 1) Gather basic facts about the relationship and current employment and incomes and identify the Asset and Liability pool
- 2) Consider the Financial and Non-Financial contributions to the relationship
  - Financial contributions are any monetary contributions made by the parties to the marriage or relationship and include contributions made before the marriage, during the marriage/relationship or after separation.
  - Non-Financial contributions are contributions made which have contributed to the accumulation of the asset pool i.e. care and management of the family, children and home.
- 3) Consider the future needs of each party
  - Respective incomes
  - Future earning capacity
  - Care arrangements for children
  - Future employment opportunities
  - Age and State of health of each party
- 4) Outcome to be fair and equitable
  - The outcome to be fair and equitable and suitably reflect the relevant circumstances of the parties

It is very important to understand that your practitioners will not be able to give you legal advice about your specific circumstances and must facilitate discussions that are considered fair and equitable under the FLA. However, if any of the factors listed above are relevant (or any other issue your lawyer considers relevant) then those may be discussed and included in negotiations on how to share your assets and liabilities. Please bring written proof of any special considerations already discussed with your lawyer.

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## Information about Superannuation/Family Law

1. On 28.12.02 changes to Family Law Act 1975 (Cth) regarding superannuation came into force.
2. Superannuation is considered a joint asset of the relationship and must be included in the asset pool.
3. If you wish to, and you both agree, you may “split” or “flag” your superannuation interests.
  - 3.1 **A Splitting Agreement**

This allows both parties to split a current superannuation entitlement or interest in proportions, if it is over \$5,000.00 in value. There is also a provision for pension splitting.
  - 3.2 **A Flagging Agreement**

This prevents the Trustee of the superannuation fund from dealing with the superannuation interest until the payment flag has been lifted.
4. It is strongly recommended that parties:
  - 4.1 Seek financial advice on the value of superannuation, taking tax into account, and
  - 4.2 Seek legal advice in relation to their proposed ‘splitting’ or ‘flagging’ order.
5. Parties who intend to split or flag their superannuation and make their property settlement legally binding, must complete a Form 6- Superannuation Kit, which is available from a lawyer, the Family Court and/or the Family Court website at [www.fccoa.gov.au](http://www.fccoa.gov.au).
  - 5.1 This is then sent to the relevant superannuation fund and is valued by the fund for Family law purposes.
  - 5.2 Most superannuation funds will charge a fee for this service.
6. It is important to be aware that procedural fairness will need to be accorded to the superannuation fund’s trustees. This means that the trust is to be provided with **at least 28 days’ notice** of an intention to seek splitting orders. Therefore at least a 28 day period may elapse before you have the information necessary to finalise your mediation agreement.