

## 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.