FOR CLIENTS · PROPERTY MEDIATION · LAST REVIEWED SEPTEMBER 2026

Dividing Property After Separation

What gets taken into account — a plain-language guide from Mediation Institute

When a couple separates and needs to divide their property, there is no fixed formula — no automatic 50/50, and no set percentage for any one thing. Instead, the Family Law Act sets out a pathway of matters to work through. This guide explains, in everyday terms, what those matters are, so you can come to mediation understanding how a fair outcome is reached and what will help your discussion.

How the decision is worked through

Whether you reach agreement in mediation or a court decides, the law asks the same four questions:

Is it fair to adjust things at all?

The court must be satisfied that making an order to change who owns what is **just and equitable** in all the circumstances. Sometimes the fair answer is to leave things as they are. This isn't a box ticked at the start — fairness is the test the whole outcome has to pass.

What is there, and what is owed?

Identify everything you each own or have an interest in — the **property pool** — and all the debts and liabilities, whether held in one name or together, in Australia or overseas.

What did each of you contribute?

Look back over the relationship at what each of you put in — money, work, and care of the home and children. This also includes whether one person's ability to contribute was limited by family violence, so that their contributions were made more difficult.

What does each of you need going forward?

Look ahead at your **current and future circumstances**. Depending on your situation this can include your age and health; your income, resources and capacity for suitable work; the care of children and the housing they need; the length of the relationship and its effect on earning capacity; any effects of family violence; any money that has been wasted or dissipated; debts either of you carries; pension or benefit eligibility; a reasonable standard of living after separation; and whether a change would help someone retrain or become self-supporting.

What counts as a "contribution"

Contributions are not only about who earned or paid for what. The law treats financial and non-financial contributions as genuinely able to be weighed against each other. They include:

CONTRIBUTIONS (s 79(4))

- **Financial contributions** — money you brought in or put toward property, directly or indirectly (wages, savings, gifts or inheritances, paying the mortgage or bills).
- **Non-financial contributions** — work that added value without changing hands as money, such as renovations, maintenance or unpaid work in a family business.
- **Care and homemaking** — looking after the home and caring for the children and family. This carries genuine weight and is not treated as less important than earning an income.
- **The effect of family violence** — where family violence has made it harder for one of you to contribute, that can be taken into account.
- **Other family law orders and child support** already paid for a child of the relationship.

Your current and future circumstances

Because two people can be in very different positions after separation, the law also looks ahead. Depending on your situation, this can include:

CURRENT & FUTURE CIRCUMSTANCES (s 79(5))

- The effects of family violence on your circumstances now and in future.
- Each person's age and health.
- Your income, property, financial resources and your capacity for suitable work.
- Any money that has been wasted or dissipated (for example gambled away, or spent recklessly after separation).
- Any debts or liabilities either of you has taken on.
- The care of children — including the need to provide suitable housing for children who live with you.
- Your commitments to support yourself and anyone else you are responsible for.
- Eligibility for, and the rate of, any pension, allowance or benefit.
- A reasonable standard of living after separation or divorce.
- Whether a change would help someone retrain, study or start a business to become self-supporting.
- The effect of any order on a creditor's ability to recover a debt.
- Each person's contribution to the other's earning capacity or resources.
- The length of the relationship and its effect on earning capacity.
- The need to protect a parent who wishes to keep caring for children.
- Any new relationship you are living in, and your financial circumstances within it.
- Any existing agreements or orders — including binding financial agreements — and child support that is or may become payable.
- Any other fact or circumstance that fairness requires be taken into account.

For de facto couples, the same considerations appear in s 90SM of the Act.

Family violence is now expressly considered

Family law now makes clear that economic and financial abuse — such as controlling access to money, assets or employment — is a form of family violence. Where it is relevant, its effect can be considered both in the assessment of contributions and in your future needs. If this is part of your situation, it helps to be able to explain how it actually affected things — for example your ability to work, save or take part in financial decisions.

Being open about your finances

You both have a duty to give **full and frank disclosure**. That means honestly sharing all your assets, debts, income and financial resources — held in your name, jointly, through a company or trust, in Australia or overseas. This duty applies from the very start, including during mediation. Hiding or holding back information tends to backfire: it costs time and money, damages trust, and a court can make decisions on the version of events least favourable to the person who withheld.

Bringing your documents — recent statements, payslips, tax returns, superannuation details, loan and card balances — helps mediation move forward and gives you both confidence you are working from the full picture.

Pets and companion animals

Pets are now dealt with specifically. A companion animal can be kept by one of you, transferred to another person who agrees to take it, or sold — but ownership cannot be “shared” by an order. In deciding, matters such as how the animal was acquired, who has cared and paid for it, any family violence, any cruelty toward the animal, each person’s attachment (including a child’s), and who can realistically care for it in future are considered.

Time limits can apply

If you were in a **de facto relationship**, an application to court for property settlement must generally be made within **2 years of separation**. If you were **married**, a 12-month limit starts only if and when a divorce order takes effect — until then, no clock is running. In both cases a court can allow a late application in limited circumstances, and parties can also apply by consent. Agreement reached in mediation can be formalised at any time — but if court may be needed, get advice about your time limit early.

What this means for you

- There is no formula and no guaranteed percentage — be cautious of anyone who promises a specific figure.
- Both the past (contributions) and the future (needs) matter, and they are weighed together.
- Come prepared to share your finances openly — it is expected of you, and it makes agreement easier.
- If family violence is part of your situation, think about how it affected you financially, and raise it — mediation can be set up to support a fair, safe conversation.
- Mediation lets you shape your own outcome around what matters to your family, rather than leaving it to a court.

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This guide reflects the Family Law Act 1975 as amended from 10 June 2025. Last reviewed September 2026.
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