



**Hannah McSharer
Solicitor**

THE 5 STEP PROCESS

Following your separation, you may find yourself asking “what am I entitled to?” or friends and family asking you “how much will you get?”. There is no ‘one size fits all’ answer to this question, and the answer will depend on a range of factors specific to the individual circumstances of your case.

SO WHAT’S INVOLVED?

It is important to remember that there is no family law calculator that provides a number that each party can expect to receive from their property settlement. There are variations in each matter, and each party’s entitlement will differ.

Whilst there is no calculator, what we do have is the specific provisions of the Family Law Act 1975 and the decisions of case law to guide the calculation of how property is divided and who gets what in property settlement matters. It is not an easy process and there are a number of factors that need to be considered, so it’s important that you get advice from lawyers who specialise in family law.

The following questions need to be answered when determining a property settlement: -

- Is a property settlement necessary?
- What property is available for division between the parties?
- What has each person contributed to the relationship?
- What are the future needs of each party?
- Is the property settlement just and equitable?

STEP 1: IS THE PROPERTY SETTLEMENT NECESSARY?

In some cases, a property settlement may not be just and equitable. This could arise in a range of circumstances, for

example, if the relationship was short, or when there is no intermingling of finances throughout the relationship.

In the case of *Chancellor v McCoy*, the Court held that although the parties had been in a very long relationship, their finances had been kept somewhat separate throughout the relationship, and therefore a property settlement was not just and equitable in the circumstances.

It is important to remember that each relationship is different. Just because one of these factors is present does not mean that you are ineligible. It is important that you receive advice that is tailored to your circumstances.

STEP 2: WHAT IS THE PROPERTY POOL?

This is an important part of the process. During any settlement negotiations, it is crucial that all parties are working off an agreed asset pool – and one that includes all of the assets and liabilities of the relationship.

Sometimes, in circumstances where one party controls all of the finances of the relationship, or parties have kept that majority of their assets separate, it can be hard to determine the extent of the property pool. That is why the process of financial discovery is so critical. Financial discovery is the exchange of documents which prove the income, expenditure, assets, liabilities and interests that each party has.

Generally, the types of documents that may be requested will be specific to the issues in each case, so it is important to get advice from a family lawyer at the start.

STEP 3: WHAT CONTRIBUTIONS DID EACH PARTY MAKE?

This step involves a consideration of the financial, non-financial, homemaker and parenting contributions made by each party, at the start of the relationship, during and post-separation.

In assessing financial contributions, this will include an analysis of whether either party received any gifts, windfalls or inheritances, the income of both parties, and any other financial contributions which might be relevant.

In assessing non-financial contributions, this will include an analysis of whether one party has improved or renovated a property, and any other non-financial contributions which might be relevant. In assessing the homemaker and parenting contributions, this will include an analysis of whether one parent has remained at home with the children, sacrificing their own career, but allowing the other parent's career to improve, and any other homemaker and parenting contributions which might be relevant.

It is important to remember that the contributions of each party at the start of the relationship, during the relationship, and any contributions post-separation will be factored in. Only then, once all of the contributions have been included, will there be a consideration of whether there ought be an adjustment in favour of one party or another, due to the contributions they have made.

STEP 4: WHAT ARE EACH PARTY'S FUTURE NEEDS?

This step involves a consideration of a number of factors based on the parties' current and future circumstances.

There are a range of factors which will impact upon the advice that you receive from your family lawyer, including; the age and health of the parties, who has the care of children under 18 years, income earning capacity and the financial resources of each, as well as a number of other important factors.

Your lawyer will then consider whether there should be an adjustment to either party based on their future needs. This is an important step, as it helps you look into the future. It is important that your family lawyer considers your individual future needs.

STEP 5: IS THE OVERALL OUTCOME JUST AND EQUITABLE?

Finally, and after assessing each of the steps at 2 to 4 above, you will receive a percentage and an answer to your question "what am I entitled to?". The percentage needs to be just and equitable to each of the parties, taking into account the circumstances of your individual case. It's important to think about your property

settlement as an investment – when finalised in a binding and enforceable way, it's the only property settlement you will achieve. That's why it's important to get good quality advice from the start – otherwise, you may be cutting yourself short.

OTHER IMPORTANT POINTS

- You do not have to be divorced before you finalise your property settlement. It is important to note however that there are time limits for property settlement. If you were married, then you only have 12 months after the date your divorce Order is granted to file a property application in Court. However, if you were in a de facto relationship, then you have two years after the date of separation to do so.
- It is important to finalise your property settlement in a binding and enforceable way. An informal agreement that you and your partner have agreed upon, whether that be verbal, or through email exchange is not binding and enforceable, and may come back to haunt you many years from now.
- Going to Court does not have to be your only option, and you can finalise your property settlement by way of a Financial Agreement or a Consent Order. Depending on your circumstances, we may recommend that you enter into one over the other.

WANT TO KNOW MORE?

If you would like further assistance with your property settlement, please phone us on (07) 5458 9000 for a free chat with one of our solicitors.

GET STARTED
anywhere,
any time with
our online
questionnaire

- ◆ DIVORCE & SEPARATION
- ◆ PROPERTY SETTLEMENT
- ◆ CHILDREN & PARENTING
- ◆ RELATIONSHIP AGREEMENTS
- ◆ DOMESTIC VIOLENCE
- ◆ WILLS & ESTATES

working together

P. 07 5458 9000
E. reception@pippacolman.com
A. 19 First Avenue, Maroochydore
www.pippacolman.com