

# How do we make arrangements to divide property?



FAMILY VIOLENCE LAW HELP

[www.familyviolencelaw.gov.au](http://www.familyviolencelaw.gov.au)

If you were married or in a de facto relationship, you can divide the property from your relationship after you separate. This is called a property settlement.

It does not matter if the property is only in one person's name. This is because a court can change who owns what to make sure that the property is divided fairly.

There are time-limits for doing a property settlement so you should get legal advice quickly.

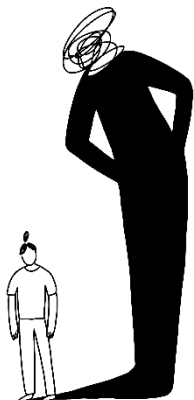


## If you agree about how to divide the property

You should always get legal advice to make sure your agreement is fair.

If you and your ex-partner can agree about how to divide your property, you can apply for Consent Orders or make a Binding Financial Agreement. You will need to get legal advice about your options.

Get legal advice if you are thinking about making an informal verbal or written agreement. An informal agreement will not end your financial relationship. It is not legally binding and can't be enforced if your ex-partner doesn't follow it.



If you have experienced domestic and family violence, it's important that you get legal advice before agreeing to a property division. Domestic and family violence sometimes continues after separation, and can make it difficult to negotiate a fair division. You should always get legal advice to make sure your agreement is fair.



## If you don't agree about how to divide the property

Get legal advice about what property you may be entitled to and what options you have. If you and your ex-partner don't agree about how to divide your property, you can:

- try Family Dispute Resolution (mediation)
  - to find out about government-funded services that offer free or low-cost Family Dispute Resolution for property matters, call the Family Relationship Advice Line on **1800 005 321**
  - you can also pay for a private Family Dispute Resolution service, you can find one through the [Family Dispute Resolution Register](#)
  - you can also do Family Dispute Resolution with the help of a lawyer. Talk to your local Legal Aid or Family Advocacy and Support Service to see if they can help you
- get a lawyer to help you negotiate with your ex-partner
- apply to court for property orders.



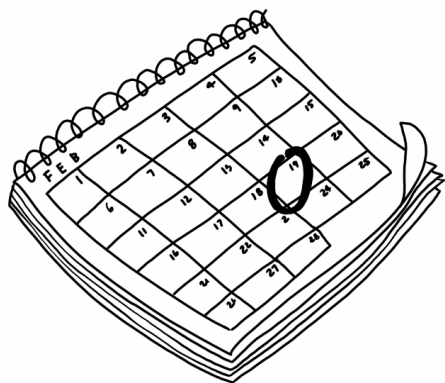
## How long do I have to sort out property issues?

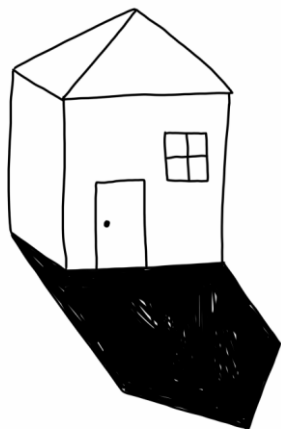
If you were married—you have 12 months from the date you got divorced to start court action about property or spousal maintenance. This time-limit may not apply to you if you have a legal divorce from overseas. Get legal advice.

If you were in a de facto relationship—you have 2 years from the date you separated to start court action about property or de-facto maintenance.

If you are outside the time-limit, you can ask the court for permission to apply out of time. The court will only allow this if you have a very good reason. Get legal advice.

If you are in Western Australia, get legal advice as the laws are a bit different for de facto couples.





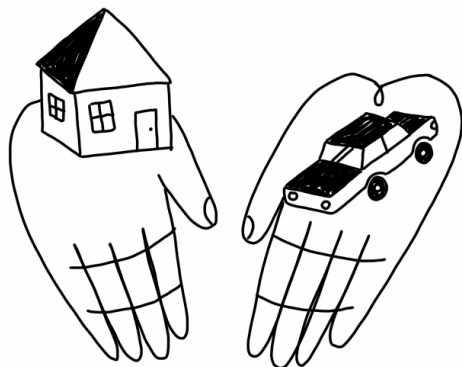
## What property can be divided?

Property includes all the things that you or your ex-partner owned (together or alone). It can include things like:

- cash and investments
- the family home, land and investment properties –this includes anything that either of you owned before the marriage
- the family business
- trusts, shares, stocks and bonds
- cars and other vehicles—such as caravans or boats
- personal property—such as jewellery and tools
- household items—such as furniture
- insurance policies
- gifts, inheritances and lottery wins
- redundancy or compensation payouts
- other entitlements—like long service leave and personal injury claims
- debts—including mortgages, loans, credit cards and personal debts
- superannuation

If you split superannuation, you usually don't get it until you retire. In Western Australia, the law is different for de facto couples and superannuation, so get legal advice.

Get legal advice about what else is included.



## How is property divided?

There is no exact formula about how your property will be divided. The court does not have to split property 50:50.

The law does not look at why you separated or whose fault it was.

However, in some circumstances, the court may take domestic and family violence into account when it decides how to divide property.

As every case is different, it's important to get legal advice.

If the court thinks it is fair to divide up your property, the court will use a 4-step process to work this out.

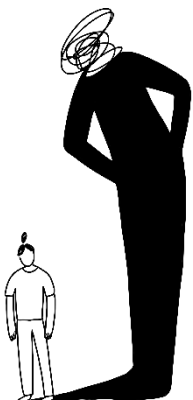


The court will:

1. work out what all the property that is in your name, your ex-partner's name or joint names is worth
2. look at what financial and non-financial contributions you and your ex-partner made
  - financial contributions can include things like income, inheritances or gifts of money from your family
  - non-financial contributions can include things like homemaker duties like cooking, cleaning, do-it-yourself renovations, working for no pay in the family business and looking after your children
3. look at what each person will need in the future. For example—the age and health of each person, their ability to work and who will look after your children
4. once the court has considered each of the above steps, it makes sure the division is fair and reasonable.



## Is domestic and family violence considered in a property settlement?

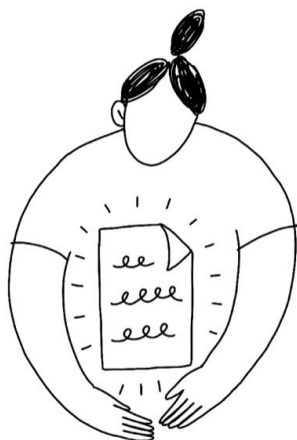


In some circumstances, domestic and family violence may be relevant in a property settlement. As every case is different, it's important to get legal advice.

It is important to tell your lawyer if you have experienced domestic and family violence as it may change the legal advice they give you, and it allows them to run your case in a safe way.

Domestic and family violence is also relevant if you need orders for your protection.

## I have experienced domestic and family violence – can the Family Courts make orders for my protection?



The Family Courts can order Personal Protection Injunctions. This can help protect you by ordering the other person not to do certain things.

A Personal Protection Injunction is different to a Domestic Violence Order. It's important to get legal advice about Personal Protection Injunctions and Domestic Violence Orders.

## What if someone breaks an injunction?



If you have a Personal Protection Injunction and the other person breaks the order you should get legal advice about the next steps. This may include reporting the breach to the police and telling the Family Courts.

If you, or someone you are with is in immediate danger - call police on Triple Zero (000).



## Getting legal advice

Before you see a lawyer about dividing property, try to do the following:

- write out a list of what property you and your ex-partner own (including what debts you both have) with your estimates of the value of all that property. [ASIC's MoneySmart - Asset stocktake calculator](#) may help you work this out
- if it is safe to do so, try to copy or collect important documents
- write down the history of your relationship including any history of domestic and family violence. Include important dates—like when you started living together, when you each worked, studied, looked after your children and when you separated.



When you see a lawyer you can give them this information and important documents. Giving a lawyer this information at the outset may help keep legal costs down.

You can get free legal advice from your local Legal Aid office, Family Advocacy and Support Service or community legal centre. Some private family lawyers offer you a free first appointment if you ask. To find a local service, visit [www.familyviolencelaw.gov.au](http://www.familyviolencelaw.gov.au)

## Can I get Legal Aid?



You may be able to get a lawyer who either works for Legal Aid or is paid by Legal Aid to represent you in your case. Legal Aid will look at what type of case you have, how much you earn and what you own, like property or money, when it decides if they will pay a lawyer to handle your case. This is called getting legal aid.

You can get legal aid even if the other side, like your ex-partner, is getting legal aid too. To find out if you are eligible for legal aid, contact your local Legal Aid office.