



This fact sheet summarises the Ask LOIS webinar on this topic presented on 2 June 2021 by Rishika Pai, Senior Solicitor & Family Law Accredited Specialist, Women's Legal Service NSW. To view this webinar for free, or to access other resources, visit www.asklois.org.au

This factsheet will cover the following:

- [The Family Law Act](#)
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Family Law

The Family Law Act covers:

- Divorce
- Children
- Financial matters

These are all dealt with separately under the law. The Act also covers married and de facto relationships.

Financial Matters After Separation:

The *Family Law Act* applies to:

- Married couples
- De facto couples including same sex couples who separated after 1 March 2009

The types of matters include:

- Division of property
- Spousal maintenance
- Child support

Time limits apply depending on the type of relationship:

- For married couples, it must be within 12 months of divorce.
- For de facto couples, it must be within 2 years of separation.

Establishing a De Facto Relationship:

- Length of relationship
- Nature and extent to which parties lived together
- Existence of a sexual relationship
- Financial dependence / interdependence
- Ownership, use and acquisition of property
- Degree of mutual commitment to a shared life
- Whether relationship is or was registered under a prescribed law of a state or territory
- Care and support of children
- Reputation and public aspects of the relationship

When are de facto couples eligible for property settlement?

The court must be satisfied that:

- The relationship lasted for two years or more; or
- A child is born of the relationship; or
- One party has made a substantial contribution to the relationship and there would be a serious injustice if an order or declaration was not made; or
- The relationship was or is registered under a prescribed law of a State or Territory.

Property Settlement

What is property of a relationship?

Property includes all property of the parties (whether held solely or jointly) as at the date of agreement or court order, including (but not limited to):

- Real property (house, land)
- Superannuation
- Business or company
- Cash and bank accounts
- Trusts
- Cars, caravans and boats
- Gifts and inheritances
- Lottery wins
- Compensation payouts
- Insurance policies
- Furniture and household items

Loans and debts are also considered property. Personal things like clothing are unlikely to be included.


Division of Property – four steps:

1. Identify and value property of the relationship
2. Consider contributions of both parties:
 - Financial and non-financial contributions

- Homemaker / parenting contributions
 - In exceptional circumstances negative contributions may be considered (e.g., DV, gambling, drug and alcohol addiction)
 - Initial and post-separation contributions
3. Consider present and future needs of both parties
 4. Is it just and equitable in the circumstances?

Staying in the Property:

If the person's name is on the lease or title they can continue to live in the family home unless there is a court order, including:

- AVO exclusion order
- Sole/exclusive occupation court order under the  *Family Law Act*

Considerations when leaving the home:

- Safety is always paramount
- Consider expenses and whether you want to keep the home
- Get legal advice to weigh up your options

Preserving Property Rights:

If there are concerns that the property may be disposed of in any way (including the imminent death of an ex-partner), seek urgent legal advice about:

- Injunction - an application to court to stop someone from doing things like selling or mortgaging the property.
- Caveat:
 - A form filed the LPI that creates a notice on the title of the property that prevents the registration of dealings
 - A family law interest is NOT a caveatable interest
 - A person should obtain an injunction before applying for a caveat on a property

Caution! Compensation may have to be paid if a caveat is lodged without a good reason and causes financial loss.

Bank Accounts:

- Anyone who is a signatory can legally withdraw all the money in the account
- Anything withdrawn will be factored into a property settlement
- Contact the bank or lender to:
 - freeze the account
 - require both signatures for any withdrawal
 - open an account in your name

Mortgage Payments:

- Anyone who is a signatory can legally withdraw all the money in the account
- Anything withdrawn will be factored into a property settlement
- If mortgage is in joint names → joint and several liability. If mortgage unpaid:
 - Affects both parties' credit history
 - Mortgagee repossession

Spousal Maintenance

Relevant to both married and de facto relationships. Two-limb test:

1. Is the Respondent reasonably able to maintain the other party?
2. Is the Applicant unable to support him/herself adequately?

Types of Spousal Maintenance:

- Urgent
- Interim
- Periodic
- Lump sum
- Final

Court Considerations:

The court will consider:

- How long will the applicant require maintenance?
- Both parties' expenses
- Evidence of need e.g., medical evidence
- Lump sum or periodic?
- When should the SM end?
- Section 75(2) – future needs factors

Practical Considerations:

- Does the client have a need? Does the other party have the capacity?
- How should the SM be paid?
 - Transfer to Applicant's bank account
 - Mortgage repayments
- Note time limits – same as property settlement.

Ways to Document a Property Settlement:

- Informal agreement
- Consent Orders
- Binding Financial Agreement
- Where no agreement: Court orders
 - Pre-action procedures
 - Full and frank disclosure of financial circumstances

Legal Advice:

- Legal advice from a family lawyer – ideally a Family Law Accredited Specialist
- Legal advice from Legal Aid
- You can search for a lawyer in your area here: <https://www.lawsociety.com.au/for-the-public/find-a-lawyer>
- You can contact the Solicitor Referral Service and request a private lawyer in your area: <https://www.lawsociety.com.au/for-the-public/going-court-and-working-with-lawyers/solicitor-referral-service>

Legal Representation/ Family Dispute Resolution (FDR):

- Family Relationships Centres
- Private FDR providers
- If asset pool is < \$500,000 (not incl super) – Legal Aid could assist with FDR

Legal Fees:

- Check whether private family lawyer will accept deferred fees (paid from the property settlement)
- In some circumstances, you can file court applications for:
 - Interim property distribution for legal fees
 - Other party to pay your legal fees