



What are the assets of a Marriage?



gotocourt.com.au

Get a Good Lawyer. Fast.

Phone: 1300 636 846

Website: gotocourt.com.au

Email: solicitors@gotocourt.com.au



In a family law **property settlement**, the property pool is the total value of the marriage assets – ie, assets that arise out of the marital relationship. It will include marriage assets that are in either party's name, in both party's names and all assets that are under either party's control.

Usually, it will only be the assets that existed at the time the parties separated, unless those assets were used by one party to create a new asset after the **separation**. That new asset will then also be included in the pool of assets.

The pool will usually include things such as the matrimonial home, any investment properties, savings accounts, motor vehicles, shares and all other items of value, such as superannuation.

The law that governs the division of the property pool is the **Family Law Act 1975 (Cth)**.



Superannuation

Superannuation has been considered to be a marriage asset since 2003. It is part of the pool of marriage assets considered in the distribution, although it can only be accessed in accordance with the superannuation fund rules.

There are 3 ways that superannuation can be taken into consideration when dividing the property pool:

1. The Court may order that the person who has the benefit of the Superannuation scheme can have all of that benefit, and the monetary amount to which the non-member may have been



entitled under the split is added to the share they receive in other assets (for example, in a greater share of the home).

2. The Court may make a 'Splitting Order'. The Superannuation fund of the contributing member is split between the parties at an agreed percentage or amount.
3. The Court may make a 'Flagging Order'. The agreed amount is given to the non-member spouse when the Superannuation Fund is able to be accessed.

Superannuation is considered to be property arising out of the marital relationship



How does the court divide the marriage assets?

Ultimately, the Court must make an Order that it considers is fair and reasonable in all of the circumstances. Once the court has found out what assets there are to distribute, they will look at the contributions made by each of the parties towards getting, maintaining and conserving them. The Court will essentially use a 3 step process in working out how to distribute marital assets:

1. It will consider the value of all of the assets and any liabilities, and find what is left after the payment of those liabilities.
2. The Court will look at the contributions made by each party towards getting and looking after the marital assets. There are 3 things they consider here:
 - Direct financial contributions.
 - Non-financial contributions made either directly or indirectly on behalf of the party to the marriage or a child of the marriage, such as repairs and maintenance of the home.
 - Contributions to the families' welfare, including any contribution made in the capacity of a parent and/or home-maker.
3. Finally the Court must look at the factors set out in section 75(2) of the [Family Law Act 1975 \(Cth\)](#) which looks at the needs of the parties. This includes things like the amount of time for which each will have the [care and control](#) of a child or children under the age of 18, the health and mental capacity of each of the parties and their ability to find employment, and the effect that any proposed order will have upon the earning capacity of each party. The Court can attach as much weight to those factors as it thinks is appropriate in the circumstances



➤ Consent Orders

If you reach an agreement with your ex-spouse, consent orders can be drafted setting out the terms of the agreement.

To have orders made, an application must be filed together with the terms of [settlement](#). If the court agrees that the orders are fair to the parties they will be approved. They then become orders of the court which are [enforceable](#).



➤ Filing an application in the court

Before an application can be filed in court the parties are required to have made a real attempt to resolve their matter.

The parties are required to make a full and frank disclosure of all of their financial matters. This means that each must provide to the other all information relevant to the issues of the case in regard to their direct and non-direct financial circumstances. They must show all sources of their earnings, interest, income, property and any other financial resources.

This duty to disclose continues until the case is finalised. Failure to disclose could result in the orders being set aside. The matter will be placed in the Court's current list of matters and it may take a year or even longer from the date that an application is filed to have a final court hearing.



Everyone's situation is different...

Where you go from here depends on your own situation as everyone has their own individual priorities and has demands on their life that they need to deal with.

This information guide points you in the right direction as to what options might be available to you so you can get the outcome that you need - options that many of our clients are not aware of before talking to us.

If you would like some personal advice on your particular situation and would like to talk directly with a lawyer in your local area who is also a specialist in family law, then please call our lawyer hotline on **1300 636 846 (Free Call, No Obligations).**

"Get A Good Lawyer. Fast."

- ✔ *Guaranteed availability - all Australian courts*
- ✔ *Simple, upfront rates - no hidden costs*
- ✔ *Expert advice and strong representation*

Civil | Criminal | Family | Drink Driving | Traffic | Immigration

NATIONAL LEGAL HOTLINE

1300 636 846
7am to Midnight, 7 Days

Call now on

1300 636 846

and speak direct with a Family Lawyer to get your property settlement questions answered.

You can also request a callback at gotocourt.com.au/family-law

When you call the hotline you will speak directly with a lawyer. Your conversation will be treated with the strictest of confidentiality and sensitivity. At the end of the call you will have some clarity on the steps you need to take next and how you can have the best chance at an outcome that will ensure you and your children are looked after.

Scan this QR code to find more details about family law:

