

FAMILY LAW

PROPERTY SETTLEMENT



WORKBOOK

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Common terms used in this workbook

| Term | Meaning |
|-----------------------|---|
| Capacity | The ability of a person to do something. For example, the capacity of a person to make regular payments may depend on what they can afford to pay. |
| De facto Relationship | Two people are in a de facto relationship if they are not legally married to each other, and they are not related by family, and they live together as a couple on a genuine domestic basis. They can be same-sex or opposite-sex partners. |
| Domestic Violence | See 'Family Violence' below |
| Family Violence | Family or domestic violence means violent or threatening behavior, and any other behavior that coerces or controls a member of the person's family or causes the family member to be fearful. This includes assault, sexual abuse, stalking or intentionally damaging property. Coercion or control can include if your partner won't give you money to pay for reasonable expenses like food or children's medical bills when you rely on him entirely for money, or stops you from keeping in touch with your family, friends or culture. |
| Homemaker | Person who stays at home and does household duties like cleaning, cooking and mowing the lawn. |
| Legally Enforceable | If a document is 'legally enforceable,' the terms of the document are binding, and if a person does not obey the terms they may be held accountable in a court. |
| Liabilities | Debts including bank loans, credit card debt, loan from another family member |
| Maintenance | Paying money to support another person. This may be child maintenance to support children of a relationship, or, spousal maintenance to support an ex-partner even if you don't have any children together. |
| Mediation | An informal process where both parties attend a confidential conference with a mediator with the intention of resolving their dispute. The mediator is a neutral person who will assist the parties to discuss their dispute and negotiate a solution that both parties find acceptable. |
| Mortgage | Loan from a bank/credit union to purchase a house or land |
| Property | Property means assets and liabilities. Assets include houses, land, money in bank accounts, cars, boats, money or cars owned by a family business, furniture, jewellery and superannuation. A liability may be a mortgage, credit card debt, personal loan, bank loan, business debt or loan. |
| Property Settlement | This is the final or settled details of how property will be divided between a couple after the end of their relationship. |
| White Goods | White goods include washing machines, clothes dryers, dishwashers, refrigerators and freezers. |
| Will | A document in which you name the people who you want to receive your property and possessions when you die. |

How can this workbook help me?

This workbook can help if you have separated from your husband or partner and are:

- Trying to mediate with your partner to reach a property settlement
- Preparing an application to a court for a property settlement

How do I complete this workbook?

When you go for mediation or to the Family court for a property settlement there are four main steps to working out who gets what. This workbook helps you prepare for each of the different steps in the property settlement process.

To complete this workbook and prepare for these different steps you will need to:

- **Complete the Personal Overview Form**

Complete Table 1 Current Assets

Complete Table 2 Current Liabilities

- **Work out the total net worth of the property**

Complete Table 3 Assets brought by you into the relationship

Complete Table 4 Liabilities brought by you into the relationship

Complete Table 5 Assets brought by your ex-partner into the relationship

Complete Table 6 Liabilities brought by your ex-partner into the relationship

Complete Table 7 Contributions made by you during the relationship (both financial and non-financial)

Complete Table 8 Contributions made by your ex-partner during the relationship (both financial and non-financial)

Complete Table 9 Contributions made by you after separation (both financial and non-financial)

Complete Table 10 Contributions made by your ex-partner after separation (both financial and non-financial)

- **Provide details of any important factors you think should be considered to help work out each person's future needs**

Complete the Personal Overview Form

These details will be used to help your solicitor to understand the situation.

| Please provide the following details | |
|--|--|
| Your name | |
| Your date of birth | |
| Your ex-partner's name | |
| Your ex-partner's date of birth | |
| Do you receive a social security payment? If yes, what type of payment and amount per fortnight? | |
| Are you employed? If you are employed how much do you earn each week/fortnight? | |
| Does your ex-partner receive a social security payment? If yes, what type of payment and amount per fortnight? | |
| Is your partner employed? How much do they earn each fortnight? If you don't know exactly, try to provide an estimate. | |

| If you were married please answer the questions below | |
|--|---------------------------------|
| How long was your relationship (include when the relationship first started)? | |
| When did you get married? | |
| When did you separate? | |
| Do you have any children from this relationship or any other relationship? Please provide their names and date of birth. | Children of this relationship |
| | Children of other relationships |

| If you were in a de facto relationship please answer the questions below | |
|--|---------------------------------|
| How long was your relationship (include when the relationship first started)? | |
| When did you separate? | |
| Do you have any children from this relationship or any other relationship? Please provide their names and date of birth. | Children of this relationship |
| | Children of other relationships |

Some important things to understand when you complete this workbook

- Many things are considered when deciding who gets what property – like if any children need support and what contributions were made by both people during the relationship.
- It may not matter whose name is on the document (such as a home title) or who purchased an item or made the debt. If your home or any other real estate is only in your ex-partner's name you should get legal advice about how you can protect your rights in relation to that property.
- If your ex-partner is disposing of (selling or hiding) property or money you should get legal help immediately. A lawyer can give advice on how the sale of a property might be stopped.
- Even if you earn little or no income you may still be entitled to property.
- Property can include things you got before the marriage or relationship started and also after it ended, not just at separation.
- The law does not look at who left the relationship. Regardless of whether you mediate or go to court, the aim of the law is to make sure people reach a just and fair property settlement that meets each person's future needs.



What if I was in a de facto relationship?

If you were in a de facto relationship you can still use this workbook to help you negotiate or apply to a court for a property settlement. De facto partners may be same-sex partners or opposite-sex partners.

What does the law say about de facto couples trying to reach a property settlement?

The law about dividing property between de facto couples differs from married couples in that you will usually need to show that you were living together for at least 2 years. If your de facto relationship lasted less than 2 years you may still claim if:

- There is a child of the relationship, or
- You are caring for a child of the other party, and the failure to make a property order would result in serious injustice to you, or
- You made substantial contributions (financial or personal) for which you will not receive adequate compensation if the court does not make a property order, and the failure to make an order would result in serious injustice to you.

To decide how property will be divided, a court will take into account the financial and non-financial contributions of each party, including any contributions as a parent and homemaker. The court will also take into account any difference in your financial positions because of income differences or obligations for the care of children.

When can I apply for a property settlement?

If you were in a de facto relationship

A claim must be made within 2 years of the de facto relationship ending. In some circumstances you may be able to apply outside the 2 year period if the court gives permission. It is best for the claim to be made within 2 years of the end of the relationship.

If you were married

Most settlements are resolved by agreement between the two parties with "consent orders" being made by a family law court. (See 'Consent Orders' in this Workbook to learn about consent orders.) A property settlement may be finalised at any time after separation and before either spouse applies for divorce. However, if you were married and get a divorce you must seek a property and maintenance order within 12 months of your divorce becoming final.

Time limits

If you do not apply to the court within the time limits mentioned above you will need to ask the court for special permission to have the matter determined by the court. This can be difficult to get. If the time limit has already passed, or the time limit is going to pass soon, you should seek legal advice immediately.

Can I claim maintenance for myself?

Under the *Family Law Act*, you can seek maintenance if you are unable to support yourself from your own resources and your partner has the capacity to pay maintenance to you.

A court will consider your partner's ability to pay when determining how much maintenance you may receive. Your entitlement may cease if you marry or enter into another de facto relationship.

What about superannuation?

In 2001 the Federal Government made major changes to the way superannuation can be treated as property and be split between married couples and de facto relationships after they separate. How a person's superannuation entitlement is split depends on a variety of matters including the type of superannuation scheme to which that person belongs.

You should consult a solicitor if superannuation is an issue in your matter.

What if I leave the house – do I lose my rights to property?

No. If you leave the family home, you do not lose your rights to a share of the house, or any other property, even if it is only in your ex-partner's name. If you can, it is a good idea to get legal advice before you leave. If the family home is only in your ex-partner's name, you should get legal advice about how to protect your rights in relation to that property, such as getting a caveat to prevent the home from being sold.

What rights do I have in circumstances of family or domestic violence?

The law will protect you if you are subject to violence or harassment even if your partner owns the house you live in. Family violence is a crime and should be reported to the police. The court may grant a restraining order (Apprehended Domestic Violence Order (ADVO)) if you are married, in a de facto relationship or in a domestic relationship.

An ADVO may be granted by the court to prevent the violent partner from entering your family home or workplace. The court will also protect a child of a de facto relationship in the same way as a child of a married couple.

You should advise the school of the existence of an ADVO and its conditions if your child goes to school and you think the child is at risk of being approached by the other partner. You should also contact Centrelink as you may be entitled to a Crisis Payment and referral to social workers.

Shoalhaven Contacts

Shoalhaven Staying Home Leaving Violence Project provides advice and assistance to women experiencing family or domestic violence including security up-grades to your home. Phone 0459 046 066 or 0459 046077, Monday-Thursday 8:30am – 4pm.

Nowra's Domestic Violence Intervention Service provides crisis support and follow-up to victims of domestic violence. Phone (02) 4421 9658 Monday to Friday 9am-5pm and on weekends.

Shoalhaven's 'Transport to Safety Project' provides taxi vouchers for women and children who want to leave a violent relationship but do not have access to transport. Phone (02) 44238507.

In the event of an emergency you should contact the police on 000.

Similar Domestic/Family Violence services operate around the state of NSW.

Contact the Domestic Violence Line on 1800 656 463 (24hr counselling, information and referral service) for details of services in your area.

I'm on a Temporary Partner Visa and my relationship has ended. Will I be forced to leave Australia?

If you are in Australia on a Temporary Partner Visa and your relationship ends before your visa has expired, you can apply for a permanent visa by completing and lodging an application. Your partner cannot cancel your visa. Normally you will be on a temporary visa for two years before being granted a permanent visa, however you may not have to wait the full two years if:

We are still living together

If you are still living together, you may be granted a permanent residence visa without having to wait the full two year waiting period if you can show one of the following:

- You have been in a married or de facto relationship with your partner for three years or more.
- You have been in a married or de facto relationship with your partner for two years or more and there are children involved.
- Your partner was granted a Protection visa or Permanent visa under the humanitarian program and you were in a relationship with your partner before the visa was granted and this relationship was declared to the department at the time.

We are no longer living together

You may be worried that if you leave your partner, your partner will be able to cancel your visa or that you will be forced to leave Australia. This is not true. Even if you are no longer living with your partner, you can apply for a permanent residence visa without having to wait the full two year waiting period if you can show:

- Your relationship has ended, and there was domestic violence or family violence by your sponsoring partner, or
- Your relationship has ended, and your sponsoring partner has died, or
- Your relationship has ended, and there are children involved.



If you or your child has experienced domestic violence or family violence by your sponsoring partner, safety is paramount. In the event of an emergency you should contact the police on 000. If you are no longer living with your sponsoring partner you should seek immigration and legal assistance. Centrelink offers urgent financial support in cases of domestic or family violence and Women and Children's Refuges or Housing NSW (in some circumstances) offer emergency accommodation. Listed at the end of this Workbook are details of organisations that can help support and protect you.

If you are no longer living with your partner, and you or your child has experienced domestic violence or family violence by your sponsoring partner, as soon as possible you must write and tell the Department of the existence of the violence, the ending of your relationship and your change of address. You can do this by completing and lodging a *Notification of Changes in Circumstances Form 1022* and a *Change of Address Form 929* with the Department of Immigration and Citizenship. Forms are online (www.immi.gov.au/allforms/application-forms) or phone 131881.

Anne's story

My husband sponsored me and my 2 children to come to Australia on a Temporary Partner Visa subclass 309. He set up a business and our income was from the business. I was the main worker for that business and he was the boss. He controlled all the money, he didn't want me to go out to meet friends, he didn't want me to learn English and he didn't want me to drive. He told me I didn't need to drive because he would drive me wherever I want to go. He told me I didn't need money because he pays for everything anyhow.

He didn't speak to me well and I often felt upset and sad. He often yelled at my children and only allowed them to eat what he wanted them to eat. It broke my heart because my children wanted to eat food from our home country but I wasn't allowed to cook our food for them. I could only cook what he wanted to eat.

He never hit me but my children and I felt that we were controlled by him. Everything we did, we had to ask him for permission. We often felt upset and had a lot of stress. There were so many times that I wanted to take my children away from the house but I didn't have any friends and I didn't know where to go. I was also worried because my husband told me that if I left he would tell Immigration and Immigration would send me back to my home country.

I contacted some of the organisations listed in this Workbook and got lots of advice and help. I found out that my husband's control over me and the children was a type of family violence. I was able to apply for a Permanent Residence Visa to stay in Australia without waiting the full two year waiting period. My children and I first stayed at a Women and Children's Refuge and now we are settled in a home on our own. I am doing English classes and making new friends and my children are happy at school.

Making our Property Settlement a Legally Enforceable Agreement

Following the breakdown of your relationship, you may want to enter into an agreement with your ex-partner that sets out all the details of your property settlement. If you want the agreement to be legally binding on you and your ex-partner, the three types of legally enforceable agreements available are 1) Binding Financial Agreements, 2) Consent Orders and 3) Court Orders. The type of agreement that will suit you will depend on your own particular circumstances.

1 Binding Financial Agreement

Under the *Family Law Act* before, during or after a de facto relationship or marriage you may enter into a legal contract which decides how financial and other affairs, including maintenance (financial support) and property rights, will be arranged. It can also include an agreement on your or your partner's superannuation. However, it does not cover parenting arrangements. It is important to know that unlike consent orders, a Binding Financial Agreement is not recorded on a central registry or court filing system, so care must be taken not to lose or destroy the Agreement.

To make a Binding Financial Agreement, you and your partner are required to separately obtain independent legal advice before signing the Agreement. Your lawyer and your partner's lawyer must each complete a certificate stating that independent legal advice was provided, and both certificates will be attached to the Agreement. Once you, your partner and the two lawyers sign the Agreement it is legally binding.

Only a binding financial agreement, made under the *Family Law Act*, is legally enforceable if your relationship ends. The Agreement must comply with very precise rules including the requirement of independent legal advice by both parties prior to the signing of the Agreement. For example, if a husband illegitimately pressures or threatens his wife into signing a financial agreement, or refuses to allow the wife to obtain independent legal advice, the financial agreement may be set aside by a court.

If a valid Agreement already exists before your relationship ends the court may enforce the terms/conditions of the Agreement. An Agreement may be altered by the court if substantial or significant changes to either party's circumstances have occurred between the signing of the Agreement and separation. Alternatively, the court may make changes with the consent of both parties.

2 Consent Orders

Consent orders can be entered into by married, divorced or de facto couples who have separated. These orders are entered into by agreement or consent of both parties. The consent orders will set out the details of your property settlement and if desired, can also set out the parenting arrangements of any children.

You and your partner will need to fill out an Application for Consent Orders which will detail each person's personal and financial information. In a separate document, the details of how each person's assets and liabilities (debts) are to be distributed between both parties are to be set out. You and your partner must sign both documents however you do not have to get legal advice. The two documents are then filed with the Family Court and once the Registrar checks that the orders appear to be a fair settlement, they will be stamped with a court seal and will become legally binding on both you and your partner.

3 Court Orders

Court orders have the same format as consent orders and can be entered into by married, divorced or de facto couples who have separated. Court orders are made by a court judge following a court hearing or trial where parties have not been able to reach an agreement between themselves. Court orders can deal with the property settlement, the parenting arrangements of any children, or both. Once the judge makes the court orders, they are legally binding on you and your partner.

What is Mediation?

When a relationship breaks down, sometimes the parties find it difficult to communicate with each other about financial matters or the parenting of children. Mediation is an informal process where both parties attend a confidential conference with a mediator with the intention of resolving their dispute. The mediator is a neutral person who will assist the parties to discuss their dispute and negotiate a solution that both parties find acceptable. The negotiations between each party are confidential and are not binding.

Mediation can assist separated couples to reach a property settlement without the need to go to court. It is usually a much cheaper and faster process than going to court. Often, parties will attend a preliminary conference which outlines the mediation process and the intended time line for mediation, before then attending the mediation session.

If a settlement is reached by the parties, it is written down and signed by each party. The agreed terms may be drawn up as a contract, or the party's lawyers may obtain an appropriate consent order. In this way, a legally enforceable agreement can be created. See 'Making our Property Settlement a Legally Enforceable Agreement.'

To find a qualified mediator, you may like to ask your own solicitor, Shoalcoast Community Legal Centre (02 4422 9529), Uniting Care's Unifam Mediation service (phone (02) 4423 7782), or the Law Society of NSW (phone (02) 9926 0214). Mediation is not free, so be sure to ask about the cost of the mediation process.

How does the law decide who gets what?

In dividing property the law looks at everything the couple owns and earns, as well as the contributions each person has made during the relationship.

All the property of the relationship is distributed according to what the law considers just and fair. It doesn't matter why your relationship ended. The law's main focus is on making future arrangements that are just and fair and will meet everyone's needs.

When you go to mediation or to the Family Court for a property settlement there are four main steps to working out who gets what. This Workbook will help you prepare for each of the different steps in the property settlement process.

What can I do if I am in financial hardship – should I agree to a property settlement to try and get some money?

No. You should never agree to a property settlement if you are in financial hardship and feel you have no other choice. You should only agree to a property settlement after:

1. you have got legal advice and financial advice
2. all the steps in the property settlement process have taken place
3. accurate and comprehensive information and documentation has been provided.

At the end of this Workbook is a list of organisations that can help if you are in financial hardship.

Documents you should try and find

It is a good idea to find documents that can:

- help support the information you provide in this workbook
- be used to identify you and any children

Listed below are some of the different documents you should try to provide. Exactly what documents you will need to find will depend on your individual circumstances. If you have to leave the family home you should try to take any documents you might need with you.

It is important that you do not put yourself or others at risk of harm in trying to find these documents or get copies of them. Don't worry if you cannot get all of these documents as your ex-partner may be required to make them available. Your ex-partner has a duty to disclose information and produce documents that are relevant to the property settlement and can face serious penalties if he gives misleading or false information.



Types of documents you should try and find

- Your birth certificate and any children's birth certificates
- Wills
- Passports
- Bank and cheque books
- Visas
- Title information for any property (regardless of whose name the property is in)
- Loan documents and bank statements for any property (regardless of whose name the property is in)
- Proof of ownership of any vehicles, motorbikes and boats etc (regardless of whose name the property or any document is in)
- Bank statements relating to both joint and individual accounts (how many and how far back you will need to go will depend on your individual circumstances – you should at least try and provide current statements)
- Tax returns and assessments for both you and your ex-partner (you should try and find tax returns and assessments for the last 3 years)
- Superannuation statements for both you and your ex-partner (it is a good idea to provide a current statement and a statement at the time of separation)
- Proof of earning for both you and your ex-partner, such as recent pay slips
- Proof of Centrelink payments, such as a government benefit statement
- Life assurance and life insurance
- Any receipts and invoices that can help you provide a picture of your financial situation
- Credit card statements (regardless of whose name that account is in)
- Documents providing information about any assets and liabilities relating to a business, company or family trust that either you or your ex-partner are connected to (for example if you or your ex-partner run a business or are a director of a company)

The four steps in the property settlement process

Before you start to fill in each stage of this Workbook, please read about the four steps of the property settlement process.

Step 1 – Identifying and valuing the property (also known as the property pool)

The property of the relationship (all assets and liabilities) is identified and valued.

NOTE: The value of the property is the current market value and not the purchase price of the property.

The property of a relationship can include:

- Assets like your family home, cars, any financial resources, furniture, jewellery and each person's superannuation, and liabilities or debts like mortgages, bank loans, personal loans and family business debts.
- Assets and liabilities you got before or after the marriage or relationship
- Assets and liabilities owned individually, with another person, or by a family trust, family company or business.

Step 2 – Who contributed what?

This step involves determining what each person has contributed (who put in what) to the relationship. This includes earnings, savings, gifts, inheritances or property owned before the relationship, improvements to property and contributions as a homemaker (like doing house work) and parent (looking after children).

Step 3 – Considering the future needs of each person

This step involves considering any other important factors to determine the future needs of each person, like:

- How much money each person currently earns or could earn in the future
- Age and health of each person
- Care and financial support of children
- Responsibility for looking after other people
- Length of relationship
- Eligibility for a pension, allowance or benefit, Centrelink payment

Step 4 – Is it just and fair?

This step involves working out what is just and fair for each person – considering all the circumstances. During this step the law does not look at who left the relationship or why. Regardless of whether you mediate or go to court, the aim is to make orders that are both just and fair and meet the future needs of each person.

Preparing for Step 1

Identifying and valuing all property of the relationship

This section of the workbook can help you identify and value any property (assets and liabilities) of your relationship. You need to do three (3) things in this workbook to prepare for Step 1. They are:

- **Complete Table 1 Current Assets**
- **Complete Table 2 Current Liabilities**

These Tables will help you to identify the current assets and liabilities owned by you and your ex-partner, as well as any assets and liabilities you own with another person or that are owned by a family trust or family company.

- **Work out the net worth of the property**

The total net worth is all the available property and money that can be divided between you and your partner. In other words, it is the difference between the total assets and the total liabilities. This is why it is important to identify all the current assets and liabilities of the relationship.

How do I complete Table 1 Current Assets and Table 2 Current Liabilities?

To complete Table 1 and Table 2 you will need to:

- Identify any assets and liabilities and provide a detailed description of them
- Provide a current market value of each asset and the value of each liability
- Explain who has possession of each asset and whose name the asset is in
- Explain whose name any liabilities are in

Here is some information to help you complete Table 1 and Table 2

What are assets?

Assets are things like:

- Real estate, including the family home
- Money held as cash or bank accounts
- Investments
- Shares
- Superannuation
- Vehicles like cars and motorbikes
- Boats
- Money owed to you by a company/trust
- Property owned by a family company or business
- Furniture and White goods (fridge, freezer, washing machine, clothes dryer)
- Jewellery
- Inheritances
- Insurance policies (if redeemable)

What are liabilities?

Liabilities are any debts like:

- Mortgages
- Personal loans
- Credit card debt
- Business debts
- Personal debts
- Business loans

How can I work out the current market value of any assets?

You will need to work out the current “market value” of any assets. Market value is not the replacement costs of the asset. It is what someone would be willing to buy your asset for if you sold it on the “open market” in its current condition.

Example

Working out current market value

Katie bought a new fridge and washing machine in 2006. The market value of her fridge and washing machine is not how much new ones would cost her to buy now.

To work out what someone might pay for her fridge and washing machine she has looked at the local Trading Post and the classifieds in her local paper. By looking at what other people are asking for similar fridges and washing machines Katie feels she can work out an accurate and reasonable market value for her own fridge and washing machine.

Here are some tips that can help you work out the current market value of any assets.

House

A real estate agent will be able to appraise your house (this means providing an estimate price for your house). It is a good idea to ask a minimum of three real estate agents to appraise the house. This may involve a cost and you should ask the agent about this before they do any work for you.

You may be able to get an idea of what your property is worth by comparing properties that have recently been sold in your area. Try www.realestate.com.au

Cars

You can get an online valuation for your car from websites like Red Book (www.redbook.com.au) or Glass’s Guide (www.glassguide.com.au)

Furniture and White Goods

A good way to get an indication of the market value of any furniture and white goods (such as dishwashers, clothes dryer, washing machine, fridge, freezer) is to look at:

- The classifieds section in your local papers, or
- The local Trading Post

Second hand dealers may also be able to provide you with an estimated market value for your furniture and white goods. Antique dealers may also provide you with an estimated market value of any antique furniture.

Jewellery

To work out the market value for your jewellery, you can ask a jeweller to value it (this may involve a cost).

What if we have been separated for a while and in that time major improvements have been made to our home or other properties?

The value of your home or other properties may have changed significantly from the time you separated as a result of major improvements. These major improvements are considered contributions. Speak to your lawyer about any improvements made to your home or any property.

How do I work out whose possession the asset is now in?

You need to include details about who actually has the asset now. You also need to provide any information about whose name the assets are registered in.



Table 1 - Current Assets

(remember you need to list the assets that exist now)

| Description of asset | Market Value | Whose name is the asset in? | Who has possession? |
|-------------------------|--------------|-----------------------------|---------------------|
| Home | | | |
| Investment property | | | |
| Vehicle 1 | | | |
| Vehicle 2 | | | |
| Superannuation | | | |
| Business/company assets | | | |
| Furniture | | | |
| White goods | | | |
| Shares | | | |
| Jewellery | | | |

| Description of asset | Market Value | Whose name is the asset in? | Who has possession? |
|---|--------------|-----------------------------|---------------------|
| Motorbike | | | |
| Boat / Trailer / Caravan | | | |
| Inheritance | | | |
| Family trust assets | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| <p>Now you need to add up everything you put in the Market Value column to get the total market value of current assets.</p> | | | |
| <p>Total Market Value of current assets</p> | | | |

Table 2 - Current Liabilities

| Description of liability | Value | Whose name is the liability in? |
|-----------------------------|-------|---------------------------------|
| Mortgage | | |
| Personal debts | | |
| Loan 1 | | |
| Loan 2 | | |
| Credit Card 1 | | |
| Credit Card 2 | | |
| Business / company debts | | |
| Debts owned by family trust | | |

| | | |
|------------------------------|--|--|
| Investment property mortgage | | |
| | | |

Now you need to add up everything you put in the Market Value column to get the total market value of current debts.

| | |
|--|--|
| Total Market Value of current liabilities | |
|--|--|

Working out the total net worth of the property

Why is it important to work out the total net worth?

When you know the total net worth you know the real value of the property of the relationship. The total net worth is everything actually available to divide between you and your ex-partner.

For example if you have a home valued at \$350,000 but you have a mortgage for \$260,000, the total net worth of the home is \$90,000. It is the total value of the asset (the home) less the total value of the liability (the mortgage over the home).

When you work out the total net worth you are subtracting your total liabilities from your total assets. It is very important to know the total net worth of all the property before you try and mediate, work out a consent order or go to court.

How do I work out the total net worth of the property?

You can do this by using the information in **Table 1 Current Assets** and **Table 2 Current Liabilities**.

You will need the total value of *current assets* you worked out at the bottom of **Table 1**.

You will also need the total value of *current liabilities* you worked out at the bottom of **Table 2**.

When you subtract the total value of *current liabilities* from the total value of *current assets* you get the total net worth of your relationship.

Use this calculation to work out the total net worth

Total value of *current assets* – total value of *current liabilities*
= **total net worth**

Insert here the total net worth you have calculated

\$.....

Example

Working out total net worth

When Katie used this workbook the total value of current assets of her and her ex-partner came to \$380,000 and their total value of current liabilities came to \$239,000.

To calculate their total net worth she used the formula:
Total value of current assets
– total value of current liabilities = total net worth.

Katie and her ex-partner's total net worth was
\$380,000 - \$239,000 =
\$141,000.

Preparing for Step 2

Working out what each person has contributed to the relationship

The law takes into account what each person has contributed to the relationship. This includes:

- Assets owned before the relationship
- Liabilities brought into the relationship, including personal loans and loans from other family members
- Any contributions as a homemaker, parent and carer (both financial and non-financial)
- Improvements made to any property
- Any inheritances or gifts received from other family members
- Any compensation payouts, wins or windfalls (such as lottery win)

This means you will need to work out:

- The assets and liabilities you brought into the relationship
- The assets and liabilities your ex-partner brought to the relationship
- What contributions you made during the relationship (both financial and non-financial)
- What contributions your ex-partner made during the relationship (both financial and non-financial)
- What contributions you and your ex-partner made after separation (both financial and non-financial)

You need to do the following things to prepare for Step 2 and to help you work out the contributions each of you made to the relationship. They are:

- Complete **Table 3 Assets** brought by you into the relationship
- Complete **Table 4 Liabilities** brought by you into the relationship
- Complete **Table 5 Assets** brought by your ex-partner into the relationship
- Complete **Table 6 Liabilities** brought by your ex-partner into the relationship
- Complete **Table 7 Contributions made by you during the relationship (both financial and non-financial)**
- Complete **Table 8 Contributions made by your ex-partner during the relationship (both financial and non-financial)**
- Complete **Table 9 Contributions made by you after separation (both financial and non-financial)**
- Complete **Table 10 Contributions made by your ex-partner after separation (both financial and non-financial)**

Complete Table 3 - Assets brought by you into the relationship

Initial contributions made at the start of your relationship are weighed against all other contributions during the relationship.

For example, if you were in a relationship for a long period of time, you and your partner will not automatically be entitled to get back the assets you each brought to the relationship. The financial and non-financial contributions you and your ex-partner made during the relationship will be taken into consideration.

Joan's story

My husband and I were married for 35 years. When we first started our relationship he owned a house. When we separated and applied to the court for a property settlement, the court took into consideration that he brought a house into the relationship. However, the court also considered all the other contributions made by each of us during our marriage. Even the years I stayed at home to take care of our children was taken into consideration as a non-financial contribution.

After the court worked out our total assets, liabilities and contributions, the court looked at what our individual future needs might be. The length of our marriage was taken into consideration, as well as the fact that I did not have a job for several years and would find it hard to get employment in the future. All of this meant that my husband was not automatically entitled to get the house back that he had owned at the start of our relationship. In the end, the court said that a just and fair settlement would be if we were to split our assets 50/50. After all we had been through I didn't want to keep the house, so we reached an agreement that he would get his house back and I would get other assets worth the same amount.

Table 3 - Assets brought by you into the relationship

To complete Table 3 you will need to:

- List the assets you brought into the relationship
- Estimate the value of the assets when the relationship started
- Explain what happened to the asset. For example was it sold, given away or do you or your ex-partner still have it? If it was sold, what happened to the money obtained from the sale?

| Description of asset | Value of asset when relationship started | What happened to the assets? |
|----------------------|--|------------------------------|
| Home | | |
| Gifts from family | | |
| Inheritances | | |
| Car | | |
| Investment property | | |
| Furniture | | |
| | | |
| | | |

Complete Table 4 - Liabilities brought by you into the relationship

To complete Table 4 you will need to:

- List the liabilities you brought into the relationship
- Estimate the value of the liability when the relationship started
- Explain what happened to the liability. For example did you have a liability like a mortgage that you paid off during the relationship? Or do you and your ex-partner still have responsibility for the liability? For example do you still make payments for a car or personal loan?

| Description of liability | Value of liability when relationship started | What happened to the liability? |
|---------------------------------|--|---------------------------------|
| Mortgage | | |
| Credit card debt | | |
| Personal loan | | |
| Loan from another family member | | |
| | | |
| | | |
| | | |
| | | |

Complete Table 5 - Assets brought by your ex-partner into the relationship

To complete Table 5 you will need to:

- List the assets your ex-partner brought into the relationship
- Estimate the value of the assets when the relationship started
- Explain what happened to the asset. For example was it sold, given away or do you or your ex-partner still have it? If it was sold, what happened to the money obtained from the sale?

Table 5 - Assets brought by your ex-partner into the relationship

| Description of asset | Value of asset when relationship started | What happened to the assets? |
|----------------------|--|------------------------------|
| Home | | |
| Gifts from family | | |
| Inheritances | | |
| Car | | |
| Investment property | | |
| Furniture | | |
| | | |
| | | |
| | | |
| | | |

Complete Table 6 - Liabilities brought by your ex-partner into the relationship

To complete Table 6 you will need to:

- List the liabilities your ex-partner brought into the relationship
- Estimate the value of the liability when the relationship started
- Explain what happened to the liability. For example did you or your ex-partner pay off a liability he brought into the relationship like a mortgage? Or do you and your ex-partner still have responsibility for the liability? For example do you still make payments for a car or personal loan?

Table 6 - Liabilities brought by your ex-partner into the relationship

| Description of liability | Value of liability when relationship started | What happened to the liability? |
|---------------------------------|--|---------------------------------|
| Mortgage | | |
| Credit card debt | | |
| Personal loan | | |
| Loan from another family member | | |
| | | |
| | | |
| | | |
| | | |
| | | |

Complete Table 7 - Contributions made by you during the relationship

(both financial and non-financial)

The law also considers contributions that aren't just assets and liabilities. It also takes into account things like staying home and looking after any children, as well as unpaid domestic tasks.

To complete Table 7 you will need to consider things like:

- Did you stay home to look after any children?
- Did you undertake domestic tasks like housework?
- Did you work during the relationship?
- Did you pay for any household expenses?
- Did you improve any property?
- Did you undertake unpaid work as part of a small business your ex-partner ran or both you and your ex-partner ran?
- Did you receive an inheritance or gift from other family members during the relationship?
- Did you receive a compensation payout?
- Did you receive proceeds from a windfall or win (such as lottery money)?

Sue's story

I got together with David at the beginning of 1998. We were de facto partners and separated after 10 years together. For the first seven years of our relationship I stayed at home and cared for our children while David worked. David has his own plumbing business.

While I looked after our children I would also do accounting and bookwork for David's business. I also did all the cleaning and cooking and anything to do with running the house.

After seven years I started working part-time for an accounting firm while the kids went to pre-school and school. I also did nearly all of the chores and work related to running the house.

When I filled out this workbook I sat down and really thought about everything I had contributed to our relationship. In Table 7, I included the contributions I thought would provide a good picture of:

- the time I spent caring for our children throughout the relationship
- all the domestic tasks I did throughout the relationship (including all the cleaning, cooking and household organising)
- the contributions I made to David's plumbing business like all the administration work and bookkeeping
- the wages I earned while working part-time at the accounting firm

I couldn't put a money value on a lot of my contributions. My lawyer said that this was ok and a lot of the time you can't put a dollar value on quite a few contributions. This is why my lawyer told me it was important to provide a detailed description of any of my contributions.

Complete Table 8 - Contributions made by your ex-partner during the relationship

(both financial and non-financial)

When you complete Table 8 you need to consider the financial and non-financial contributions your ex-partner made to the relationship. For example:

- Did your ex-partner work during the relationship?
- Did your ex-partner stay at home and look after the children during the relationship?
- Did your ex-partner undertake domestic tasks?
- Did your ex-partner pay for any household expenses?
- Did your ex-partner improve any property?
- Did your ex-partner undertake unpaid work as part of a small business that you ran or your and your ex-partner ran together?
- Did your ex-partner receive an inheritance or gift from other family members during the relationship?
- Did your ex-partner receive a compensation payout?
- Did your ex-partner receive a windfall or win (such as lottery money)?

Table 8 - Contributions made by your ex-partner during the relationship
(both financial and non-financial)

| Description of contribution | \$ Value (if any) |
|-----------------------------|-------------------|
| | |
| | |
| | |
| | |
| | |
| | |

Complete Table 9 - Contributions made by you after separation (both financial and non-financial)

When you complete Table 9 you need to consider the financial and non-financial contributions you made after separation. For example, after separation:

- Did you continue to pay the mortgage?
- Did you continue to live in the family home?
- Did you pay for repairs to the family home?
- Did you pay for your children's school fees, medical expenses or other costs?
- Did you give money to your ex-partner for child support?
- Did you need to give up paid employment to provide care for dependent family members?
- Did you sell, give away or dispose of any assets? If so, what happened to the asset and/or the money obtained from the sale?

Table 9 - Contributions made by you after separation (both financial and non-financial)

| Description of contribution | \$ Value (if any) |
|-----------------------------|-------------------|
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |

Complete Table 10 - Contributions made by your ex-partner after separation

(both financial and non-financial)

When you complete Table 10 you need to consider the financial and non-financial contributions your ex-partner made after separation. For example, after separation:

- Did your ex-partner continue to pay the mortgage?
- Did your ex-partner continue to live in the family home?
- Did your ex-partner pay for repairs to the family home?
- Did your ex-partner pay for your children's school fees, medical expenses or other costs?
- Did your ex-partner give money to you for child support?
- Did your ex-partner need to give up paid employment to care for dependent family members?
- Did your ex-partner sell, give away or dispose of any assets? If so, what happened to the asset and/or the money obtained from the sale?

Table 10 - Contributions made by your ex-partner after separation
(both financial and non-financial)

| Description of contribution | \$ Value (if any) |
|-----------------------------|-------------------|
| | |
| | |
| | |
| | |
| | |
| | |
| | |

Preparing for Step 3

Looking at the future needs of each person

During Step 3 the law considers any important and relevant factors to work out the future needs of you and your ex-partner, such as:

- age and health of each person, and any need for ongoing medical treatment
- how much money each person currently earns and could earn in the future and how easily they could find employment
- if you are responsible for the care of any children
- if you are responsible for another person (for example if you are someone's carer)
- length of the relationship
- your or your ex-partner's eligibility for a pension, allowance or benefit, including Centrelink benefits
- the standard of living you are used to
- if you have also made an application for spousal maintenance
- any child support you or your ex-partner are obliged to pay
- whether or not you have re-partnered

Provide details of any factors you think might be important for consideration in Step 3 (use the examples provided here as a guide).



Important factors

| |
|--|
| |
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| |

Step 4 - Is it just and fair?

This step involves working out what is just and fair for each person considering all the circumstances. A final decision is made by looking at all the circumstances including:

- the real value of all the property of the relationship (in other words the total net worth of the property)
- each person's contributions to the relationship
- all the other important and relevant factors

All the information you have prepared for Steps 1, 2 and 3 is now considered.

During Step 4 the law does not place any importance on who left the relationship or why. Regardless of whether you mediate or go to court, the aim is to make property settlement orders that are just and fair and meet each person's future needs.

Workbook ends

What should I do now I have finished this workbook?

You should now take your completed workbook to a lawyer so they can help you prepare for the next step in the property settlement process.

Organisations that can help you

Listed below are some organisations that can help if you are in financial difficulty, need accommodation urgently, need advice or are worried about your safety.

Payments

- **Centrelink**
 - 131 794 (for Urgent Financial Support, Crisis Payments)
 - 136 150 (Parenting Payment, Child Care Benefits)
 - 131 202 (Multi-lingual phone service for service and payment information)
 - 131 450 (Translating and Interpreting Service for Medicare and Child Support services)

Accommodation

- **Homeless Persons Information Centre**
 - 1800 234 566 (9am-10pm 7 days a week, closed 1pm-2pm)
- **Housing NSW – Crisis Temporary Accommodation**
 - (02) 4424 5411 (Suite 1, 70 Graham St, Nowra)
 - 1800 152 152 (Mon-Fri 4.30pm-10pm; Sat, Sun, Public holiday 12noon-10pm)
- **Shoalhaven Women and Children’s Refuge**
 - (02) 4421 8276 (if after hours, please call 1800 656 463)
- **Southern Cross Community Housing**
 - (02) 4421 5145 (69 Kinghorne St, Nowra)
 - (02) 4455 4543 (Shop 3 East Side Mall, 118-120 Princes Hwy, Ulladulla)
 - Secure, safe and affordable housing for people with low incomes and special needs
- **Women’s Refuge Referral**
 - 1800 656 463 (referrals through 24hr Domestic Violence Crisis Line)
 - 1300 36 36 22 (referrals through 24hr Salvation Army Care Line)

Violence

- **Domestic Violence Line**
 - 1800 656 463 (24hr counselling, information and referral service)
- **Nowra’s Domestic Violence Intervention Service**
 - (02) 4421 9658 Mon-Fri 9am-5pm and weekends (Support worker at Nowra Police Station offers crisis support for victims of domestic violence)
- **Police**
 - 000 (24hr, Emergency)
 - (02) 4421 9699 (24hr, 88 Plunkett St, Nowra)
- **Shoalhaven Staying Home Leaving Violence Project**
 - 0459 046 066 / 0459 046 077 (Mon-Thu 8.30am-4pm)
 - Advice and assistance for women experiencing family violence
- **Shoalhaven’s ‘Transport to Safety Project’**
 - (02) 44238507 (Taxi vouchers so you can leave a violent relationship)

- **Victims Access Line**
 - 1800 633 063 (24 hour service for victims of crime; eg domestic violence)
- **Women's Domestic Violence Support Service**
 - (02) 4423 8507 (Nowra)
 - (02) 4454 0407 (Ulladulla)
 - Support, information and referrals to other services that may help you

Immigration

- **Department of Immigration and Citizenship**
 - 131 881
- **Immigration Advice and Rights Centre**
 - (02) 9262 3833 (Tue and Thur 2pm-4pm, free immigration advice)
- **Illawarra Migrant Resource Centre**
 - (02) 4422 5933 (Information and assistance for migrants)
- **Telephone Translating and Interpreting Service**
 - 131 450 (24hrs, 7 days a week; if you are not confident in speaking English ask the interpreter to contact the organisation for you)

Counselling

- **Lifeline**
 - 13 11 14 (24hr crisis counselling)
- **Salvation Army**
 - 1300 36 36 22 (24hr crisis counselling)
- **AngliCare**
 - 1300 223 566 (Post Separation Support)
 - 4423 1018 (Nowra Community Care Centre)

Mediation and Legal

- **Nowra Family Relationship Centre**
 - (02) 4429 1400 (Counselling, Mediation for dispute resolution)
- **Uniting Care – Unifam Counselling & Mediation**
 - 4423 7782 (Assists separated couples to reach agreement on Property & Financial Settlements)
- **Legal Aid NSW (free legal advice)**
 - (02) 4422 4351 Nowra (Level 2, 59 Berry St, Nowra)
 - (02) 9219 5000 (Sydney-ask to speak to the immigration law section)
- **Shoalcoast Community Legal Centre**
 - (02) 4422 9529 (free legal advice, information and referral service)

Local Information

- Shoalhaven Neighbourhood Centre
 - (02) 4421 5077 (Mon-Fri 9am-3pm; 134 Kinghorne St, Nowra; information on what other agencies can help you)

Notes



Shoalcoast Community Legal Centre Inc.

Telephone 02 4422 9529

Facsimile 02 4422 7573

Free Call 1800 229 529

Email info@shoalcoast.org.au

Web www.shoalcoast.org.au

Location

Unit 10B - 2nd Floor - The Holt Centre
29-31 Kinghorne Street, Nowra NSW 2541



Wheelchair access and parking available

