

# **FAMILY LAW BASICS – PROPERTY SETTLEMENT**

## **AN OVERVIEW OF THE LAW RELATING TO PROPERTY SETTLEMENT**

Orders relating to property settlement are made pursuant to Section 79 of the *Family Law Act*. Practitioners should read this Section and be fully aware of the specific provisions in Section 79(1) and Section 79(4). Section 79(4) sets out the matters that the Court should take into account in making an Order for property settlement. Practitioners should also be aware of Section 79(2) which requires that the Order that the Court makes must be just and equitable.

The general approach that is taken by the Court, in ascertaining what is a just and equitable property settlement, is said to involve a 3-step process as follows:

1. Step 1 – Identify and value the net property of the parties available for division;
2. Step 2 – Identify, assess and evaluate the relevant contributions made by both parties to the marriage pursuant to Section 79(1)(a)(c); and
3. Step 3 – Assess and evaluate the remaining factors under Section 79(1)(d)-(g) including the Section 75(2) factors.

After going through the above 3-step process the Court must ensure that the Order it makes is still just and equitable.

The above process has been approved by the Full Court in cases such as **Ferraro and Ferraro (1993) FLC 92-335** and **McLay and McLay (1996) FLC 92-667**.

### **Step 1 – Identify and Valuing all Property**

It is important to remember in any property settlement matter that before you can even start to give advice to a client you need to ascertain what proprietary interests are owned by both the Husband and Wife and the estimated value of those interests. In effect, you need to put together a matrimonial balance sheet as at the current date.

The purpose of this paper is not to go into great detail as to the identification and valuation of property but to provide a general overview. Those practitioners who are starting out in Family Law or who have had little experience in Family Law should read either CCH or Butterworth annotated texts in relation to these issues.

The following, however, is a summary of some of the relevant principals relating to the ascertainment and valuation of property: -

- A capacity to borrow is not property;
- Usually a chose in action is regarded as property;
- In general circumstances, an interest in a Partnership is also property;
- Shareholding of a private company or in a publicly listed company is property;
- Long service leave and redundancy payments do not constitute property unless a capital was taken in lieu of actual leave or service;

- A party's interest in a Trust, depending upon the nature of that interest and the degree of control exercised by that party, can also be treated as property by the Family Court;
- A vested interest in an estate, even though postponed due to a life interest, is property;
- An option to purchase (depending upon the circumstances and wording of the option) can amount to property even though it may not be assignable;
- Since 28 December 2002, a party's superannuation interest is treated as property;
- The ascertainment of property also includes deducting proper liabilities from the gross value of the property (refer **Biltoff and Biltoff (1995) FLC 92-614** and **Ascot Investments -v- Harper (1981) FLC 91-000**);
- Depending upon the nature and type of the liability the Court can take up the whole value of a liability or if a liability is uncertain, contingent or unenforceable, the Court may discount the liability or disregard it totally in coming to a conclusion as to the net assets available for division;
- Realisation costs from the sale of assets and also taxation costs that attach to certain assets need (in most circumstances) to be taken up in the valuation of those assets. At the very least such costs (including tax consequences) should be identified and valued;
- Practitioners should be aware of the provisions of Order 17 Rule 3 and the duty of parties to make a full and frank disclosure of their financial circumstances;
- There is also the concept of "*notional property*" which is important to consider in determining the true assets available for division. This concept involves situations where one party expends monies for his/her own benefit which has had the result of diminishing the pool of assets available for division. In some circumstances the Court can notionally add that property back into the pool and treat it as if it hadn't been expended. Examples include expenditure of monies on legal fees, gifts for one's new De Facto etc (refer cases such as **D J M -v- J L M (1998) FLC 92-816** and **Townsend and Townsend (1995) FLC 92-569**);
- The valuation of real estate is usually conducted by a Registered Valuer and Accountants are usually engaged to value a party's interest in a business;
- When valuing a business it is important to remember that you need to value the particular item of property that conducts the business. For example, if a business is conducted in a Family Trust than you need to not only value the business but also value all the other assets and liabilities of the Trust. Similarly, if a business is conducted by a private company than you need to not only value the business but also value the other assets and liabilities relating to the shareholding in that company;
- Remember that property must be identified and valued at the date of the hearing and not at the date of separation. It is commonly misunderstood that assets that exist at separation are the only assets to be valued. However, this is incorrect and one must always identify and value assets as at the current date. If there has been a significant change in assets since separation then instructions should also be sought and evidence put before the Court as to what the assets were at separation and what brought about the changes in the identification or value of assets.

## Step 2 – The Assessment and Evaluation of Contributions

In considering contributions the Court is primarily concerned with both direct and indirect contributions of a financial and non-financial nature towards the acquisition, improvement and conservation of property. The Court is also concerned about contributions that both parties make to the welfare of the family including contributions made by a party as a homemaker and parent.

The concept of a direct contribution is a contribution made by that party themselves. An indirect contribution is a contribution made by a party as a result of an action by someone on behalf of that party or by that party doing something in the marriage that indirectly could be seen as a contribution to the acquisition of assets, etc, in another sphere. For example, a spouse who gives up a working career to care for the 3 children in a marriage can be said to have indirectly contributed to the financial build up of assets because by looking after the children it frees up the other party to then earn money and contribute towards the assets.

A relative of a spouse gifting monies or providing labour or other non-financial contributions can also be viewed as an indirect contribution by that spouse.

Contributions by a spouse to the other spouse's career such as looking after the children and working part time to enable the other spouse to do extra studies can also be seen as both a non-financial and also an indirect contribution.

The purpose of this paper is not to provide a detailed analysis of the law relating to contributions but some of the important matters to keep in mind are as follows: -

- There is no presumption of 50%/50% when assessing contributions;
- The Court must always look at each party's contributions in their relevant "*sphere*". For example, the Court cannot penalise a spouse because their contributions were primarily as a homemaker or parent as compared to a financial contribution. If, for example, both parties over a long marriage each make contributions to the best of their abilities in their different spheres (for example one is a parent and one is a breadwinner) then contributions would normally be regarded as being equal;
- Common sense dictates that in a lot of cases involving extremely long marriages contributions may be viewed as being equal, as both parties have usually made significant contributions in such long marriages. Obviously, in shorter marriages there is a need to be very careful about the evidence of what contributions each party made, particularly financial contributions at the commencement of such short marriages;
- There is no mathematical rule or principal that says that initial contributions should be excluded or that property received after a marriage ends should be excluded. Remember always that property should be identified and valued and brought to account in the property proceedings;
- It is always important to obtain instructions and look at the initial value and type of assets that each party brings into a relationship. It is a question of weight, in each individual set of circumstances, for the Court to weigh each party's initial contributions with all other relevant contributions of both the Husband and Wife during the relationship. Weight must also be given to the use of that particular asset during the relationship (refer **Pierce - v- Pierce (1999) FLC 92-844**);

- In most cases, the Court is not inclined to apportion blame for financial losses to one party or the other. If the losses were incurred during the marriage then usually they simply come off the total value of the assets available for division. However, where one of the parties has embarked upon a course of conduct designed to reduce or minimise the effect or value of an asset or one party has acted recklessly, negligently or wantonly with matrimonial assets, thereby reducing their value, then the Court has a discretion and power to apportion such losses to one party only (refer **Kowaliw and Kowaliw (1981) FLC 91-092**);
- Practitioners should be aware of a number of “*big money*” cases where the issues of contributions and concept of “*special contributions*” has been considered (refer for instance to **G E L & D J F (2001) FLC 93-075**, **Figgins and Figgins (2002) FAMCA688** and **Phillips and Phillips (1998) FAMCA1551**);
- The existence of violence and other forms of conduct can be relevant to the issue of contributions under Section 79. However, such conduct will only be relevant in exceptional cases. There may be cases where the violence is of such a nature and magnitude that it can be seen to have had a detrimental effect on one party, so as to have made their contributions more onerous (such as being a homemaker and a parent in an environment of domestic violence) or alternatively such violence or other conduct may have resulted in long term effects to that party’s health and therefore could be a factor to be considered under Section 75(2).

### **Step 3 – Assessment of Other Factors and in Particular a Consideration of Section 75(2) Factors**

This third step in a property settlement sometimes causes the most debate and confusion amongst practitioners.

After the Court has identified and valued the property and assessed each party’s contribution then the Court must look at the various factors set out in Section 75(2) of the Act and apply such weight as the Court deems appropriate to those various factors which are relevant to the particular facts in the case before it.

It is important to remember that there are no set rules or presumptions about adjustments that should be made in favour of one party or another pursuant to Section 75(2). In each case, the Court must look at each of these factors and the evidence and decide how much weight to place on each factor and what adjustments should be made (if any) in a party’s favour.

Typically, the most important factors that cause the Court to make adjustments to the percentage division under Section 75(2) include the following:

1. The age and state of health of the parties;
2. The current income earning ability and capacity of both parties;
3. The length of the marriage and how it has affected each party’s earning ability;
4. Whether either party has the care and control of any children under the age of 18 – in that context how many children and the age of each of the children is relevant.

In each case, the size of the asset pool available for division will often impact upon the size of any percentage adjustment made under Section 75(2). This is because the Full Court of the Family Court has said (see **Clauson and Clauson (1995) FLC 92-595**) that it is the

adjustment that is made in real dollars rather than a percentage adjustment that's important. Therefore, in a large property case involving say \$5 million then an adjustment of 10% is worth \$500,000.00 whereas in a case involving a pool of only \$200,000.00 an adjustment of 10% equals only \$20,000.00.

Therefore, one can typically find cases where adjustments pursuant to Section 75(2) take on more significance when the available asset pool is smaller, than in cases where the asset pool is much greater in size.

After considering the above three (3) steps the Court must look at its overall Orders and determine whether such Orders are just and equitable in the particular circumstances of the case.

## **TAKING INITIAL INSTRUCTIONS FROM A CLIENT – GATHERING THE FACTS FOR PROPERTY SETTLEMENT**

### **The Initial Interview**

When acting for any client in a Family Law dispute it is important that at the initial interview you gain your client's confidence and at the same time demonstrate your expertise and knowledge in this area. Remember, that your client has probably recently gone through a separation and in a lot of cases they may be extremely vulnerable and at times irrational.

It is always advisable when initially talking to clients to ask whether they have any urgent issues that need you to address immediately before going on to general advice. Once you have dealt with any urgent problems, then it is important to provide to the client a general overview of how a property settlement works. For example, tell them about the 3-step process and what needs to be done.

It is important to emphasise to clients in the initial interview that the property settlement exercise is a commercial one, whereby you need to gather information and facts from them so as to advise them what would be a fair outcome for them. It is then a matter of trying to negotiate a settlement that gives them a fair outcome as quickly as possible.

Explain logically how the process works to clients. By explaining this they will understand why they need to give you information about their assets and the value of such assets. By explaining the process to clients they'll understand why they need to tell you about various contributions that were made during their marriage and by explaining the process the client will understand why you need to know details about their current income, health etc.

It is often advisable (if you feel comfortable and experienced enough) to try to provide some feedback and some preliminary advices to a client even at an initial conference. This certainly shows your grasp of Family Law knowledge and gives the client more confidence in you. You can always preface your advice by simply saying "*subject to me getting more details from you and some more information from your spouse's Solicitor ... my preliminary views at this stage are ...*".

It is important that prior to the client seeing you that they have already filled out some general information (perhaps whilst they are waiting for their appointment) that then saves you having to ask a number of mundane questions to a client during the initial interview.

In an initial interview it is also important to raise the following issues with a new client:

- Inform the client that as they have separated they may need to consider doing a Will or changing their existing Will. Tell the client that whilst they have separated they are still legally married and may wish to urgently reconsider how they want to leave their property in the event of their death;
- You should also direct clients to enquire about their superannuation entitlements or life insurance policies and to consider changing any nominated beneficiaries. Point out to a client that if they were to die then their nominated beneficiary would receive entitlements irrespective of what's said in the Will;
- Clients may also wish to revoke any existing Powers of Attorney and consider severing any joint tenancy (converting to tenants in common) subsequent to their separation;

- Inform the client about general terminology such as divorce, property settlement, residence and contact (children's matters), etc. Demystify the process and explain quite succinctly what a divorce is to a client and what a property settlement is;
- Inform the client that it is important that their matter settles amicably and that is what you would like to achieve. Talk to them about Court and what it means. Tell them that the Court is only a last resort, or if negotiations have stalled;
- Make sure you inform clients about the process and particularly about the costs of your firm. Be up front and honest about costs. Raise it in the initial interview and tell clients bluntly what your charge out rate is, how often you bill and what monies they will be required to pay into Trust. This helps clients realise that this is a commercial matter and not just an emotional matter.

### **Gathering the Financial Facts**

It is usually impossible in an initial interview to gather specifics about each party's detailed financial affairs. Unless the matter is urgent you shouldn't attempt to do this. Confine yourself to gathering general facts about a party's assets so you can provide a very general preliminary verbal advise, Don't waste too much time asking for every bank account detail during an initial conference.

However, before you are in a position to prepare a Consent Order or to negotiate on a more detailed basis with an opponent, you will need to make sure that you have gathered as much detail about your client's financial affairs as possible. It is helpful to provide to the client a document for them to complete that covers relevant financial matters. This document could be a blank Form 17 Financial Statement or you could produce your own document.

**Annexed** to this paper at Schedule "A" is a copy of a document that my firm uses to extract initial financial information from a client. It is a useful form for clients to fill out and return to us so that we make sure that we don't miss any important financial details.

### **Gathering Facts about Contributions and Section 75(2) Factors**

It is very important not to neglect at an early stage in proceedings the task of gathering from your client relevant facts concerning the contributions and history of their marriage and facts about their current circumstances and matters under Section 75(2).

Some solicitors like to do this fact-gathering exercise during the course of a detailed conference. Or alternatively (as I prefer), it may be easier to send to the client a Questionnaire for them to work on over time and then confer with you after they have completed it so as to make sure everything has been covered.

Annexed to this paper at annexure "B" is a copy of a Questionnaire that we send to clients at my firm, on property matters. Depending upon the detail provided by clients we often follow up with a telephone or face to face conference to fill in all the gaps and make sure we have some detailed instructions from the client. Usually, we will then reduce a client's instructions to a draft statement in writing and have the client sign that statement. Whilst the signing of a statement is certainly not necessary in all cases, it is often helpful to have the client to commit to writing a detailed chronology and history of their marriage at an early stage.

Also, by gathering these facts early on in proceedings it helps you to make sure that you do not miss any relevant facts (that a client may not have told you in an interview) and ensures that you are able to provide a more specific written and detailed advice to a client. It also

may highlight areas where you need to ask for information/documents from the other party's solicitor.

All of the above tasks should really be completed as soon as possible once a matter commences. This enables you to revise any preliminary advice that you gave verbally during the initial conference and then provide a more detailed written advice to a client at an appropriate stage.

You will also find in matters that if you do the fact gathering exercise early and properly, that it will make it a lot easier and quicker to do more extensive documents (such as Affidavits) later in Court proceedings.



## SETTLING A PROPERTY DISPUTE

There are three (3) ways in which a Family Court property dispute can be resolved:

1. The matter proceeding to a contested hearing before a Judge or Federal Magistrate and the making of Orders;
2. The parties entering into and executing a Consent Order which is filed and approved by the Court; or
3. The parties entering into and executing a Binding Financial Agreement.

Obviously, the first option is the one which should be avoided at all times if possible. Proceedings in the Family Court are lengthy, often very costly, stressful to clients and rarely produce outcomes where both clients are happy.

The Family Court Judges and Federal Magistrates have a wide discretion as to what Order in the particular circumstances of the case is just and equitable. Whilst an experienced practitioner can usually be fairly accurate in their advice as to the range of possible outcomes in a property settlement, it is often common that experienced practitioners have different views on the actual specific outcome from a given set of facts.

Generally, 95% of matters settle by parties entering into Consent Orders and having these Orders approved by the Court.

When proceedings have not yet commenced then a Consent Order can be prepared and drafted and filed in Court together with an Application for approval of the Consent Orders in Form 12A.

When proceedings are on foot then a Minute of Consent Order can be drafted and lodged with the Court or if practitioners are appearing in Court, a copy of the Consent Orders can be handed up to the relevant Judge or Judicial Officer.

It is extremely important to remember that the above three (3) ways are the only ways in which a property settlement can be finalised in a legally binding manner. Practitioners should be aware that many clients have a misunderstanding that any other sort of written or verbal agreement will also be enforceable as being a final property settlement. That is not correct.

For instance, if the parties enter into a verbal contract or write something out that is signed by a Justice of the Peace and then execute the terms of that contract (for example, by selling a house and dividing proceeds) then this in itself does not give protection from either party (subject to time limits) later filing an Application for property settlement.

It is extremely important to make clients aware of this at an initial interview and ensure that they properly settle their matter by way of a Consent Order if at all possible.

Serious consequences could apply to a client if no Consent Orders are entered into, and after separation but within twelve (12) months of any divorce, a party's financial circumstances significantly change. For example, see the case of **Farmer -v- Bramley (2000) FLC 93-060**.

When drafting a Consent Order for property settlement the following are some helpful points:

- Prepare a list of bullet points of what you want to achieve for your client in the settlement document. In other words, before drafting the actual detailed Order write out a list of things that must be covered in the Orders;
- Make sure that you include time limits in the Orders by which things must be done;
- When drafting clauses consider appropriate default clauses if a party does not comply with the terms of an Order;
- Consider what documents need to be signed and therefore what Orders need to be drafted to make sure that parties are directed to sign or do things necessary to carry out the terms of the Order;
- Make sure that the Orders cover who is to assume responsibility for liabilities;
- Check for contingent/hidden/other liabilities that may impact upon your client. For example, consider the following:
  - Stamp Duty implications of the Orders;
  - Any capital gains tax implications;
  - Where do the tax liabilities fall?
  - Are there any Guarantees signed by the parties to a third party or financial institutions?
  - Are there loan accounts in Family Trusts, etc, that need to be considered?
  - Are there any GST considerations?

The drafting of the Orders is an important process in finalising your client's financial affairs. Too often, the Orders are done haphazardly or with little regard for detail. It is important to plan the drafting of the Orders and to look at all different factors to make sure that everything has been covered.

**Attached** to this paper at Annexure “**C**” is a draft example of a simple Order for property settlement. **Attached** to this paper at Annexure “**D**” is a more complex Order relating to property settlement. These Orders are provided as an example only and you should be cautious at all times not to slavishly follow precedents. In each case, you need to put your mind to what has to be achieved in the drafting of the Order and don't be afraid to draft your own appropriate clauses that achieve that purpose.

Another method available to practitioners to settle a matter is by way of the parties entering into a Binding Financial Agreement.

An example of a Binding Financial Agreement entered into by parties to settle property settlement and spousal maintenance after separation is **attached** to this paper as Annexure “**E**”.

It is my experience that parties are rarely using Binding Financial Agreements to effect a property settlement after separation. It is important to realise that these Agreements can be used by parties, and practitioners should be aware of the provisions of Part VIIIA of the *Family Law Act*.

A Binding Financial Agreement can not only be entered into by parties after separation, but more importantly even before they marry and whilst they are married. Practitioners should be aware of the specific terms contained in Part VIIIA of the *Family Law Act* that must be observed to make the financial agreement a binding agreement.

Importantly, it is suggested that the Agreement be executed as a Deed of Agreement between the parties. The Agreement must contain a full disclosure by both parties of all their assets, financial resources and liabilities. The Agreement must be in writing and each party must have received independent legal advice and had a solicitor execute the appropriate certificates at the back of the Binding Financial Agreement.

It is my experience that the Binding Financial Agreements are being used by some parties prior to marriage, but very rarely by parties who are happily married. In some cases, parties who have been married before have found it useful to enter into these Binding Financial Agreements to protect assets that they each bring into the marriage, or assets that may have been gifted or inherited by them.

## **PREPARING AND RUNNING A PROPERTY MATTER IN THE FAMILY COURT**

In relation to the practice and procedure of the Family Court and the various stages that the matter progresses through, practitioners should read and be familiar with the Case Management Directions. These are detailed and cover all aspects of the Court procedure for the initial filing of an Application through to a Trial.

The purpose of this paper is not to provide a detailed analysis of the Case Management Guidelines but to provide a general overview of the basic steps encountered in a Family Court matter and some practical advice for new practitioners in handling a matter in the Family Court.

### **Initiating Proceedings – Case Conference**

Initially when you file an Application for property settlement you usually prepare and file a Form 3 Application setting out the specific Orders that your client seeks. In addition, it will be necessary for your client to complete, swear and file a Form 17 Financial Statement.

A Form 17 Financial Statement is an important document. It is a document whereby your client must (under oath) fully disclose all of their financial interests to the Court. It is not a document that should be prepared lightly. You should go through this document carefully with your client and make sure that they are aware of the implications if they do not disclose any assets.

Usually, in a property settlement case you will only seek “*final*” Orders and it won’t be necessary to seek any interlocutory Orders. However, there will be instances where you may need to seek interlocutory injunctions. For example, to preserve property being disposed of by a spouse prior to the final Trial.

In most cases, however, you will be filing an Application for final orders for property settlement together with a Financial Statement.

Once the Application is filed and served then the Court will usually allocate a Case Conference. The Court may usually also allocate a time for your client to attend an Information Session. The Court will usually forward you information about this and you should onforward this to your client and inform your client about the Information Sessions, which are held on the Ground Floor of the Family Court in Brisbane.

The Case Conference is usually a short 20 – 30 minute hearing conducted by a Registrar of the Family Court.

At this Case Conference, the Registrar will ensure that both parties have filed their material. If you are the Respondent you would have filed a Form 3A Response and Form 17 Financial Statement prior to the Case Conference.

The Registrar will enquire as to whether any negotiations have occurred and enquire about whether there is any possibility of settlement.

If it is unlikely that the matter will settle at the Case Conference, then the Registrar will usually appoint a date for a Conciliation Conference to take place and make some further directions for both parties to disclose documents and to conduct valuations of any assets (the values of which may be in dispute).

It is important that you prepare yourself well in advance for the conduct of a Case Conference. It is suggested that the following should be attended by you prior to the Case Conference:

1. Ensure that all material has been properly filed and served.
2. Prepare for yourself a short written summary of the relevant assets and liabilities together with the relevant points concerning contributions and Section 75(2) factors that are important in this matter.
3. Prepare a list of documents that you need the other side to disclose so as to better advise your client. Be aware of the documents that each party must disclose pursuant to Annexure B of the Case Management Guidelines. However, there may be other documents that are relevant and you should prepare a written list of those documents and give it to the other side prior to the Case Conference and ask for their agreement to produce those documents.
4. Look at what assets will need to be valued. Look at the values which can be agreed. Consider whether an appraisal or registered valuation is necessary at this stage.
5. Consider making any offers of settlement (even at this early stage) if you have enough information to be able to specifically advise your client about settlement prospects.

Before attending the Case Conference it is equally important that you make sure that your client is prepared for this Conference. This should involve the following:

1. Immediately after you file your Application (or Response) write to your client and give them a detailed advice about what the purpose of the initial Case Conference is and what will occur at this Conference. Inform your client fully as to the process and what will occur on that day. Don't just presume that they will be okay. Clients are often extremely nervous about going to Court and they need to be fully informed by you. Follow up your letter with a phone call.
2. Explain to the client (in writing) what documents you will be seeking the other side to disclose and why. Explain to the client why it is relevant to get certain documents and why it is relevant to conduct valuations.
3. Provide an update (if necessary) of any previous written advice you have given to your client.
4. Inform your client about costs that have been incurred to date and provide details about further costs your client can expect to incur up to and including the Case Conference and beyond.

## **CASE CONFERENCE – CONCILIATION CONFERENCE**

If your matter does not settle at the initial Case Conference then there is a very good prospect that it will settle at or before the Conciliation Conference.

The Conciliation Conference, is usually chaired by a Registrar or Deputy Registrar of the Family Court and in a way is conducted like a Mediation. Both parties and their solicitors should attend and a genuine attempt is made over a period of about two (2) hours to try and settle the matter.

The Conference is held on a “*Without Prejudice*” basis and offers and counter-offers can be freely exchanged.

The Registrar attempts to encourage parties and their representatives to come to a compromised agreement by the end of the Conference.

By the time you attend a Conciliation Conference you should be substantially more prepared and better informed about your client’s case and the possible settlement outcomes than you were at the Case Conference.

In relation to your own preparations, it is important that you should have attended to the following prior to the Conciliation Conference:

1. Write to your client after the earlier Case Conference and inform them of the outcome and what must be done and the timetable for doing things.
2. Follow through with your client and make sure that valuations/appraisals are done. Make sure that your client produces documents they are supposed to produce in a timely fashion.
3. Follow up the other party and make sure that they provide to you documents that they are supposed to provide in a timely fashion.
4. At an early stage after the Case Conference is concluded you should start preparation of the relevant parts of the Case Summary Document to be submitted prior to the Conciliation Conference. This is a document that summarises the relevant assets and liabilities, contributions and Section 75(2) factors. It is a document that is signed by you as a solicitor and read by the Registrar at the Conciliation Conference, but does not form part of a Court file.
5. In my opinion, it is often prudent for the solicitor to prepare some short written submissions to summarise the agreed and disputed facts and to forward this to the Court prior to the Conciliation Conference. It is useful for the Registrar to have a concise written submission from you on behalf of your client before the Conference so that the Registrar is well aware of what arguments you are running.
6. Prior to the Conference, it is also important that you have given some consideration to the types and terms of Orders that might be drafted and signed by your client. In the event that the matter should settle you should perhaps take up some draft Orders or at least have in your mind specifics of these Orders so that if an agreement is reached the matter can be settled immediately.
7. Once again you should have provided your client with an update as to costs and estimates as to ongoing costs.

Once again, it is important that you prepare your client for the Conciliation Conference. Inform the client both verbally and in writing about the process of the Conference and you certainly need to prepare your client more for the settlement negotiations. It may be useful to discuss with your client the best case and worst case scenario for them and have a bottom line figure in mind at which they will settle. It is easier to give the client the bad news about a lower settlement figure well prior to the Conference rather than try to talk a client into settling at the Conference.

Conduct yourself in a civil manner before the Registrar and your opponent at the Conciliation Conference. Put your case clearly and succinctly. Outline what your client says are the assets and liabilities available for division. Outline what you say the contributions should be assessed at. Give precise and succinct reasons backing up your submissions. Highlight any relevant Section 75(2) factors in the case and how they impact upon your client.

Before attending the Conference, it is often useful to sit down and look at the various settlement options available to your client. Consider these options in the light of the costs that your client has incurred to date and the ongoing costs that they will incur if the matter goes to a contested Trial. It will often surprise you (especially in smaller property cases) how 5% here or there is worth giving up at a Conciliation Conference compared to the extra costs of proceeding to a Trial.

At all times, encourage your client to look at settlement options from their own perspective and interests. Clients will often focus on what the other party is getting/saying/doing/not doing, etc. That is all negative and it is important to have your client focus on what they get out of the settlement rather than worry about what the other person may think they get out of their own settlement.

## **ISSUE OF TRIAL NOTICE – PRE-TRIAL**

If your matter is not settled at the Conciliation Conference then naturally it still can settle at any time before a Trial. However, if despite your best endeavours the matter has not settled at the Conciliation Conference then your matter may be one of those few that does proceed to a contested Trial.

Parties are supposed to receive a Trial Notice at the conclusion of an unsuccessful Conciliation Conference. However, due to delays in the system a Pre Trial Mention date is often now held on a date some time after the Conciliation Conference. At the Pre Trial Mention a Trial Notice is issued.

Before a Trial Notice is issued it is important that you consider more specifically the outstanding disputes and evidence that still needs to be gathered by your client and presented to the Court. It may be an appropriate time (if you haven't done so already) to brief your Barrister and confer with your Barrister to get their feedback as to matters relating to: -

1. The expected length of the Trial.
2. The nature and type of evidence required.
3. Relevant documents to still be discovered and perhaps tendered at Trial.

In relation to the issuing of the Trial Notice you should prepare your own draft Trial Plan addressing the following matters:

1. What are the outstanding issues in relation to the identification of property and valuation? For example, do you need to do any updated valuations? Do you need to now get some registered valuations rather than appraisals, etc?
2. Are there any outstanding issues in relation to discovery and inspection of documents? Has the other party provided you with all documents you have requested? If not, consider asking for a direction in the Trial Notice for specific discovery of documents or liberty to bring on an Application for specific discovery.
3. Consider asking for a direction for the issuing of any relevant Subpoenae for the attendance of witnesses to give evidence and/or production of documents. In considering this be aware of the provisions under Order 20 Rule 7 relating to third party discovery in the Brisbane Family Court Registry, for parties to file an Application for discovery against third parties rather than Subpoena third parties for production of documents.
4. Consider which witnesses you will require (besides your client) to present the evidence in your case. Consider carefully of what relevance is the evidence to be presented by each of these witnesses and how it impacts upon your client's matter. Consider carefully the nature and length of evidence that each of these witnesses will provide.
5. Carefully consider (with assistance of Counsel) the overall expected length of the Trial.
6. Consider any other important procedural matters including making any relevant Applications for evidence to be given by way of video link up (eg. in respect of overseas witnesses, etc).



7. Consider seeking any directions for the delivering of Requests for Answers to Specific Questions to the other side (usually consult Counsel as to whether this is appropriate in your particular case).

By the time a Trial Notice is issued you should be well on top of your own client's case and have made substantial efforts to try and settle the matter.

It is important to remember that after the issue of a Trial Notice your client will incur considerable costs in the preparation of evidence for Trial.

It is therefore an opportune time to revise/update and to file your client's best Offer of Settlement at this stage. An Offer of Settlement can be contained in a Form 60 (or correspondence) and you should have Counsel settle the Offer of Settlement.

The Offer of Settlement should be filed and served as soon as possible and before any substantial costs are incurred in the drafting and filing of material for Trial.

In addition to the above matters it is also worth considering the use of Notices to Admit Facts. If there is a dispute as to valuation but the other side for instance has not filed any valuation evidence by this stage it may be useful for you to serve a formal notice asking them to admit the value as contained in your client's valuations.

In preparing your client's Affidavit of Evidence in Chief for the property Trial the following points are important: -

- It is extremely helpful to plan and draft an outline of your Affidavit. The outline should contain all of the proposed headings and bullet points under which you will draft the various parts of evidence to be presented by your client. For example, an Affidavit in a simple property case where you are acting for the Wife may have the following structure and contain the following headings: -
  - Brief Relevant Facts and History of Marriage
  - Current Assets, Liabilities and Financial Resources
  - Initial Contributions at the Commencement of Cohabitation
  - Relevant Contributions made by the Wife prior to the Birth of the Children in \_\_\_\_
  - Relevant Contributions made by the Wife after the Children's Birth up to and including the Wife's Permanent Return to Work in or around \_\_\_\_
  - Wife's Contributions from \_\_\_\_ through to the Date of Separation
  - Wife's Relevant Contributions after Separation to the Current Date
  - Relevant Section 75(2) Factors and Other Matters
  - Orders Sought by Wife
- The above is only a brief example of the types of headings that you can include in your Affidavit. In each matter consider what are the key aspects and time periods for contributions. Dedicate more detail in your Affidavit to those parts of the evidence that you know to be in dispute. For example, if there is a dispute as to the nature and extent of

each party's initial financial contributions at the commencement of the relationship then you may need to be more specific in your evidence about this issue.

- Once you have prepared the outline and structure for your Affidavit then commence drafting the evidence to be presented by your client under each of these headings.
- After you have completed the first draft of the Affidavit then it is important to critically look at how you have drafted the evidence. Consider matters such as whether the evidence is in admissible form and whether it is relevant. If inexperienced, seek a senior practitioner in your office to look at the evidence and/or the Barrister in your matter to settle the evidence.
- It is extremely important that your evidence be presented in a very concise, structured and admissible form. Judges read many Affidavits every day. You want your Affidavit to be easy to read and to understand. You do not want your Affidavit being full of mistakes and inadmissible evidence that will only cause frustration to a Judicial Officer.
- Similarly, you should put same amount of care into the preparation of the Affidavits of witnesses on behalf of your client. It is important to critically assess the evidence being provided by your client's witnesses. Ask yourself whether the evidence is relevant and does it add anything to your own client's evidence. If the issue, about which the witness is giving evidence, is not in dispute then why file it? Look to use Affidavits from witnesses where there are areas of dispute and the witness can add some information from their own knowledge that corroborates your client's claim. For example, there may be a dispute between the parties as to the extent and nature of labour performed by the Wife's Father upon the construction of the former matrimonial home. Naturally, if the Wife's Father is able to give specific evidence about what he did and when and how, etc, then that evidence should be spelt out and detailed in an Affidavit by the Wife's Father.
- Ensure that your client's financial circumstances are up to date and if necessary file an updated Form 17 Financial Statement. Remember that your client has a duty to continue to disclose all relevant matters pertaining to their financial affairs up to and including the completion of the Trial. Your client's obligation to discover and provide relevant updated financial information is an ongoing obligation and does not require ongoing Court Orders.
- Consider carefully what documents you may need to tender at the hearing to support your client's claim or evidence. It is cumbersome to annex voluminous documents to your client's Affidavit. Instead, simply consider referring to the documents in the Affidavit and indicate in the Affidavit that the documents will be tendered at Trial. Make sure that you inform the other side well in advance of the documents that you intend to tender and ascertain whether there is any objection to such tendering, prior to the Trial.
- Ensure that you provide any relevant notices for witnesses (from the other side) to attend Court for the purpose of cross-examination. Do not presume that the other party will necessarily have all their witnesses there. You have to formally ask them to be present to cross-examine them.
- Ensure that you have complied with all Case Management Guideline Directions and in particular the filing of the Case Summary Document well prior to the commencement of Trial. It is suggested that this document be prepared and you file it at least seven (7) days prior to the Trial, rather than filing it at the last minute.
- It is also suggested that you prepare (with the assistance of Counsel) detailed draft Minutes of Orders to hand up at the Trial, together with a more detailed written outline and/or written submissions for the Trial.

- It is important to make sure that you prepare your client for Trial. Even though the client has probably had a couple of appearances in Court by now they will often be extremely nervous and uncertain about the whole process and procedure. Some of the following points may help:
  - Provide a detailed written explanation to the client about what is occurring and the processes of Pre-Trial preparation;
  - Have a conference with the client and explain to them shortly after the issuing of the Trial Notice what must be prepared and what is going to occur;
  - Involve your client in meetings with your Barrister in preparation for Trial;
  - Inform your client about what occurs at a Trial. Provide a written information sheet to them as to what will occur and in addition have a conference with the client to discuss what will actually physically occur on the day, etc;
  - Talk to your client in a general sense and provide guidance about how they should speak in the witness box. Inform the client that it is extremely important for them to listen carefully to questions that are asked. Tell clients it is important to answer questions succinctly and precisely (if they don't understand the question, tell them to ask the Barrister to repeat it). Involve the Barrister in a conference with the client to discuss general issues regarding the giving of evidence and demeanor in Court;
  - It is extremely useful to actually take clients up to the Family Court and let them sit in and watch a Trial and understand the process. This often calms their nerves and lets them see first hand how the Trial process operates.
  - Suggest to the client that they have a close family member or friend there for support. However, it is often unhelpful for a client to bring a whole crowd of relatives and friends along to Court.

## **WORKING WITH YOUR BARRISTER IN A PROPERTY MATTER**

As outlined previously, it is important to establish a good working relationship with your Barrister and also to involve your Barrister from a very early stage in the property settlement negotiations.

There are a good number of Barristers who specialise at the bar solely in Family Law. The expertise of these Barristers is not confined to actually appearing in Court as advocates for clients.

In fact, due to the large number settlements of matters in the Family Court, Barristers gain considerable exposure and experience in areas of negotiation and tactical considerations regarding the running of property settlement matters.

Once you have initially obtained all relevant instructions from your client and before providing a more detailed advice to your client, you might wish to consider whether you should have a conference and seek a second opinion from a well respected Barrister in Family Law. This may especially be the case if you are a junior practitioner and have no senior practitioners around and/or there are unusual or difficult matters involved in your case.

However, you should not blindly brief a Barrister for an opinion in every matter. You need to develop your own skills as a Family Law practitioner and become an expert at knowing what the law is and how it applies to the facts in your particular case.

However, there are many cases where there are one or two or even more difficult issues in a property settlement matter. The ability to have a conference and receive some input from another viewpoint is often invaluable.

In any event, it is still recommended that you involve a Barrister at the very least after the Conciliation Conference and prior to the issuing of a Trial Notice. Obviously, if the matter has not settled after a Conciliation Conference and there are some prospects that it will go to Trial, you should then look to have more involvement from your Barrister.

The Barrister's input should be sought on some of the following matters: -

1. The nature and type of evidence to be presented. The Barrister should settle any draft Affidavits and provide feedback on material.
2. Evidentiary matters – the Barrister should consider what further evidence needs to be obtained (production of documents, etc) to advance your client's case.
3. Tactical considerations – for example the filing of a further Offer, the making of an Application to force discovery, etc.

The Barrister's involvement at this early stage is essential. If a matter goes to Trial then the Barrister is going to be the one standing on his or her feet for 1, 2, 3 or even more days presenting the arguments and running the case. Therefore, it make sense to have your Barrister involved at an early stage so as to get a feel for, and have their input into, running the case.

It also helps a client gain confidence by getting to know the Barrister and vice versa. A teamwork approach is essential and can only be enhanced by working closely with your Barrister.

During the Trial, it is important to continue to work closely with the Barrister. You should be well prepared, have all documentation and material indexed and marked and have discussed previously with your Barrister the areas of cross-examination that are going to be embarked upon. Any documents that need to be tendered should be separated and identified easily.

During the Trial proceedings ensure that you take detailed written notes of all evidence that is given and matters that are said. Assist your Barrister by having documentation readily open and available for them as they require.

During lunch breaks or the end of each day it is also useful to confer further with Counsel to assess the evidence that has been given and also to look at further evidence and cross-examination that may be necessary for the next day. Also, you may be able to assist the Barrister with further research of cases and other work in preparation for their written or oral submissions at the end of the Trial.

## **MANAGING A CLIENT THROUGH A PROPERTY SETTLEMENT MATTER**

Some important matters to keep in mind when acting for a client throughout a property settlement matter can be summarised as follows: -

### 1. At all times keep in perspective the fact that property settlement is a commercial matter

You need to maintain a focus on the commercial realities of the problem you are dealing with. Your client will often be full of emotion. At times your client may provide you with irrational instructions. At times your client may be focused on things that are not relevant to the issues in dispute. You need to maintain empathy with your client but at the same time try to get them to focus on the dollars and cents. For example, you may receive a letter from the other solicitors which contains some inflammatory and unnecessary assertions about your client's personal conduct. A lot of it may be irrelevant to the issues in dispute. However, the letter may contain a proposal for settlement.

It is likely that your client may be upset by the letter and will instruct you to reject the offer. Despite this, you should consider the offer carefully and make an independent and objective judgement about the financial consequences of the offer and as to whether your client should accept it or not, regardless of the motives behind the offer.

Maintaining your objective commercial focus in a matter is imperative in getting your client a good effective result.

A practitioner who always does what a client says or wants is a bad practitioner. Whilst clients may like them because they tell them what they want to hear, that practitioner will inevitably have clients who are disappointed with the result.

### 2. Communicate regularly and openly with your client

Remember that Family Court disputes are often the first time that a lot of clients have encountered the legal profession. Not only are they going through a matrimonial breakdown but also are often scared, intimidated or uncertain about the legal process. You need to continually communicate with your clients to reassure them, and to give them more information that what you feel may even be necessary. In my opinion, it is never possible to overload a Family Law client with information. Whilst you don't have to ring them everyday, you should write to them regularly keeping them informed about communications from the other side and be prompt and efficient in your dealings with your client. If you are unavailable to talk to your client when they ring then make sure that another solicitor or even your secretary is there to answer their queries. A lot of the time Family Law clients ring for very minor things (for example, checking whether the other party has responded to your recent letter). Whilst these things seem minor to us they often are causing a great deal of anxiety to a client waiting at home to be informed as to what is happening.

### 3. Educate your client

Nowadays, it is a fallacy that clients simply blindly believe what lawyers tell them and should be grateful for us in parting our wisdom upon them. Many clients today are very intelligent and if they don't know a bit about Family Law then they'll at least want to know and understand the process and the reasons for why things occur. Don't treat your client like a fool. Educate your client. It is not too difficult to explain the 3-step process in a property settlement. Produce an Information Sheet or something to hand the client which summarises the law. The more you educate your clients about the process and the

law the more they'll understand why you are advising them to do certain things. Even if the client doesn't like the eventual outcome they'll at least say "*My lawyer was good. He/she really knew what they were talking about and told me everything about the law*".

4. Be an expert

If you wish to seriously practice in Family Law then you must understand that it is a specialist area. As such, if you intend to practice substantially in Family Law you should make yourself an expert in the area. Don't expect other people to educate you. Read the CCH and Butterworths annotated text. Read cases as they come out each year. Attend seminars and conferences.

It is only by developing your own knowledge and expertise can you then display the confidence and assurance that clients expect from a Family Law expert. The more knowledgeable you become then the more confident you are in providing advice to clients.

5. Prepare, plan and do the job properly

To be able to manage your client properly through a Family Law property settlement you need to be able to do a good job properly with adequate planning and care. If you are a practitioner who is continually rushing jobs (for example filing material late or handing up material at the Trial) then your client will not be satisfied. Not only will you produce a better quality job but you will have a happier client if you continually plan and do things on time. Make sure that you put care and effort into drafting an Affidavit. It is better that the Affidavit costs the client a few more dollars in your time rather than it be a sloppy, rushed job. By doing carefully planned and high quality work you will be surprised at how content clients are with the service you provide.

6. Remove all your emotions

Family Law is often a very emotional and challenging area to work in. It is impossible at times to remove all of your emotions nor to feel something for your client or the children involved. However, as a practitioner you will only cause a disservice to your client if you allow your emotions about a matter to interfere with the legal advice you are providing. At all times remember that there are two (2) parties to the breakdown of the marriage. You should reality test your client at all times. If they say something that does not sound right to you, then don't be afraid to ask them for further clarification. You don't have to call your client a liar but you can subtly explore areas in their instructions that cause you concern.

Being able to effectively manage your client and keep your emotions out of it is a difficult matter. You will continually learn things as you act in Family Law matters. Maintaining focus on the issues in dispute and providing objective advice to your client can still be done in a very strong and supportive manner without the client feeling they are being abandoned.

Do the job properly and make sure that you don't act as a postbox for your client or a mere mouthpiece.

7. Be proactive

Always be prepared and look to do things in advance of your opponent. Don't wait for an offer to be served on you, draft an offer and talk to your client, file and serve the offer.

Don't wait for the other side to escalate negotiations. Take the action yourself on behalf of your client.

8. Client care

Be active and concerned about your client at all times. Get feedback from them regularly about how they are feeling. Often, it is easier to have your secretary or someone else in the office ring clients at occasional intervals to get their objective feedback about how they are handling the process. This will give you some good feedback during a matter about what you might be doing right or wrong. Don't wait until a matter is over before asking a client how they felt about your services. Often, clients who aren't happy will not tell you but you can be guaranteed they will tell lots of their friends afterwards that they weren't happy. Similarly, clients who have their concerns addressed during the matter will often end up happier clients and that means telling all their friends about what a good professional job you did as their lawyer.



**LEGAL WISE SEMINARS – FAMILY LAW BASICS- PROPERTY SETTLEMENT**

**WORKSHOP PROBLEMS – PROPERTY SETTLEMENT**

**Problem 1**

Mary and John commenced living together in 1995. They were married in 1997 and separated on the 1<sup>st</sup> January 2002. There are no children of the marriage. Mary is 32 years old and has no formal qualifications. During the marriage she worked in John's business enterprises as an administrative assistant. John is 40 years of age and runs his own business and employs 300 people.

At the commencement of cohabitation Mary had no assets and John's assets were valued conservatively at about \$5 million.

Assume that during the relationship John worked full time in the business and Mary also worked assisting John as an administrative assistant and also attended to the care and upkeep of the matrimonial home. John also had two children from a previous relationship aged 6 and 8 who visited every second weekend at the home and every Wednesday night and also half the holidays.

Assume that the net value of all assets (including John's business interests) is worth approximately \$10 million today.

Advise Mary of her entitlements.

**Problem 2**

**Mary and John were married for 30 years. They only recently separated. There are three adult children of the marriage who are now all self supporting. Mary is 58 years of age and has not been in the workforce for over 30 years. John is 60 years of age and is a bank manager and earns approximately \$60,000 per annum. He intends to retire at age 65.**

John and Mary's assets consist of the former matrimonial home worth \$500,000 (unencumbered) and John's accumulation superannuation fund worth approximately \$200,000.

About five years ago, John received an inheritance from his Mother of \$300,000. This inheritance was used to discharge the mortgage on the home.

Advise Mary of her entitlements

Would your advice be any different if you assume that John received his inheritance 25 years ago?

### **Problem 3**

Mary and John have been married for 18 years. They only recently separated. There are three children of the marriage aged 11,14 and 16 who reside with Mary. Mary is 45 years of age and in good health. John is 50 years of age and has recently retired. John has had serious health problems including a stroke three years ago and also a bad back which he suffered from all his life. He is able to care for himself but unable to reenter to the workforce.

Mary runs a successful consultancy business together with her two sisters. The business is conducted through a family trust. Mary's two sisters haven't actively worked in the business for the last 5 or 6 years. Mary was the brains behind the business. She started the business and is responsible for its extensive client base today. Her sisters are only ever involved in the administration side of the business and now employed elsewhere.

The value of the business is estimated to be conservatively worth about \$5 million.

Besides the assets of the Trust and the business conducted in the Trust, the other assets of Mary and John amount to approximately \$1 million (net).

What enquiries do you need to make and what matters are relevant in ascertaining and then advising John as to his entitlements?

# **FAMILY LAW BASICS**

## **Property Law**

1. A brief overview of the law relating to property settlement;
  - (a) Legislation;
  - (b) The three step process;
2. Taking Initial Instructions from a client;
  - (a) The initial interview;
  - (b) Gathering of information.
3. Running an effective property matter;
  - (a) Assessing and testing client's instructions;
  - (b) Planing strategy and tactics;
  - (c) Negotiate or Litigate?.
4. Settling a matter
  - (a) Consent Orders;
  - (b) Binding Financial Agreement.
5. Court Proceedings
  - (a) Initiating material;
  - (b) Interim Hearings;
  - (c) Case Conferences;
  - (d) Conciliation Conferences;
  - (e) Pre Trial Conference;
  - (f) Trial Preparation;
  - (g) Briefing Counsel;
  - (h) Appearing at Trial.
6. Relevant procedures and Rules for Court proceedings;
  - (a) Discovery and Inspection;
  - (b) Use of Subpoenas;
  - (c) Notices to Admit facts;

- (d) Request for Answers to Specific Questions;
  - (e) Witnesses;
  - (f) Evidentiary matters.
7. Appearing in Court;
    - (a) Interim Hearings;
    - (b) At Trial.
  8. Managing a client through property settlement proceedings;
    - (a) How to effectively communicate with clients – what they want to know;
    - (b) Keeping client's informed.
    - (c) Your role and duties to the client and to Court;
    - (d) How to have a happy client at the end of your matter.

### **Children's Issues**

1. An Overview of the law relating to children's matters;
  - (a) Parental responsibility;
  - (b) Residency and contact Orders;
  - (c) Specific Issues;
2. Initial Interviews with clients re children's issues
  - (a) Gathering important information;
  - (b) What questions to ask;
  - (c) Handling your client's expectations.
3. How to run a children's dispute file
  - (a) Planning a strategic considerations;
  - (b) Reality testing client;
  - (c) Negotiating, to negotiate or Litigate;
  - (d) The use of counselors, psychiatrists/ social workers and other health professionals;
4. Running a children's matter in Court
  - (a) Initiating Applications;
  - (b) Interim Hearings;

- (c) Case Conferences;
  - (d) Family Reports;
  - (e) Child Representation;
  - (f) Preparing for Trial;
  - (g) Trial procedures.
5. Relevant Rules and Procedures for Court proceedings
- (a) Discovery and inspection;
  - (b) Evidentiary considerations;
  - (c) Use of Subpoenas;
  - (d) Other procedural matters.
6. Conducting a Trial
- (a) Preparation and planning;
  - (b) Selecting and briefing the appropriate Barrister;
  - (c) The presentation of a case in evidence at Trial.
7. How to manage a client in a child dispute
- (a) How to effectively communicate with clients – what they want to know;
  - (b) Keeping client's informed.
  - (c) Your role and duties to the client and to Court;
  - (d) How to have a happy client at the end of your matter.

## ANNEXURE "A"

### FINANCIAL SUMMARY DOCUMENT

#### 1. INCOME

Please provide estimates of your weekly income from all sources together with an estimate (if you know) of your spouses weekly income from all sources.

<b>Income Type</b>	<b>Your Weekly Income</b>	<b>Estimated Weekly Income of your spouse/former partner</b>
Income from Employment (ie gross salary)		
Income from Child Support		
Income from Spousal Maintenance Payments		
Income from interest (eg bank accounts/investments)		
Income from dividends (ie from shares)		
Income from any other source ( <b>include income by way of drawings from business or distributions from trusts – please specify as to what the income relates to</b> )		

#### 2. BENEFITS FROM EMPLOYMENT

Please detail any benefits that you receive from employment (eg motor vehicle, phone expenses etc) and the estimated weekly value of such benefits and also provide similar details for your spouse/former partner.

<b>Nature of Benefits from Employment</b>	<b>Your Weekly Benefits</b>	<b>Your Spouse/Former Partners Estimated Weekly Benefits</b>

Nature of Benefits from Employment	Your Weekly Benefits	Your Spouse/Former Partners Estimated Weekly Benefits

**3. OTHER MEMBERS OF YOUR HOUSEHOLD**

Please provide details as to any other members of your household and/or your spouse/former partners household. Please provide details of the age of such members and if you are aware the estimated income of such members. (Note this information may seem intrusive, but it is necessary to be included on court documents filed for property settlement and for consent orders. Please provide details).

**4. WEEKLY EXPENDITURE**

Please provide estimated weekly details as to relevant fixed and variable expenses. Note – only include your estimated weekly current expenditure. If some major expenses (such as mortgage on home) is paid by your former partner/spouse, please make a note of same.

Type of Expense	Particulars	Estimated Weekly Amount Paid by You
<b>Income tax</b>		
<b>Superannuation</b>	<b>Name of fund: -</b>	
<b>Union fees</b>	<b>Name of payer:-</b>	
<b>Mortgage installments</b>	<b>Name of lender:-</b>	
<b>Rent</b>	<b>Landlord:-</b>	
<b>Other mortgage installments</b>	<b>Name of Lender:-</b>	
<b>Rates, unit levies</b>		
<b>Life Assurance Premiums</b>	<b>Type of policy:-</b> <b>Policy No:-</b> <b>Name of assurer:-</b>	
<b>Life Insurance Premiums</b>	<b>Type of policy:-</b> <b>Policy No:-</b> <b>Name of insurer:-</b>	

Type of Expense	Particulars	Estimated Weekly Amount Paid by You
<b>Health Insurance Premiums</b>		
<b>School fees and levies</b>		
<b>Higher payments</b>	<b>purchase/lease</b> <b>Make:-</b> <b>Model:-</b> <b>Name of company:-</b>	
<b>Loan repayments</b>	<b>Name of lender:-</b>	
<b>Minimum Credit Card Payments</b>	<b>Card type;-</b> <b>Minimum payment:-</b> <b>Name as it appears on card:-</b>  <b>Name of company:-</b>	
<b>Maintenance payments/child support</b>	<b>Name of child:-</b>  <b>Details of order or assessment:-</b>	
<b>Food</b>		
<b>Household supplies</b>		
<b>House repairs</b>		
<b>Gas</b>		
<b>Electricity</b>		
<b>Heating fuel</b>		
<b>Telephone</b>		
<b>Car:</b> <b>Petrol;</b> <b>Registration;</b> <b>Maintenance;</b>		



Type of Expense	Particulars	Estimated Weekly Amount Paid by You
<b>Insurance;</b>		
<b>Fares/car parking;</b>		
<b>Clothing and shoes</b>		
<b>Pocket money</b>		
<b>Child minding</b>		
<b>Medical and dental</b>		
<b>Entertainment/hobbies</b>		
<b>Holidays</b>		
<b>Education expenses (in addition to school fees)</b>		
<b>Chemist/pharmaceutical expenses</b>		
<b>Gardening/lawn mowing</b>		
<b>Cleaning – house/pool</b>		
<b>Repairs – furnishing/appliances</b>		
<b>Drycleaning</b>		
<b>Books and periodicals</b>		
<b>Gifts</b>		
<b>Hairdressing/toiletries</b>		
<b>Other necessary commitments/expenses</b>		

## 5. ASSETS

### 5.1. Property

**Please fill out the schedule below detailing all items of property to the best of your knowledge that you and your spouse/partner have an interest in (when we ask the question “Owner” this usually requires a response being either yourself or your spouse/former partner):**

Property	Particulars of Property	Estimated Current Value
<b>Home</b>	<b>Full names of owners:-</b>  <b>Address of property:-</b>	
<b>Other real estate properties</b>	<b>Full names of owners:-</b>  <b>Address of property:-</b>	
<b>Funds in bank, building societies, credit unions or other financial institutions</b>	<b>Name of bank/building society/credit union:-</b>  <b>Account No:-</b>  <b>Account owner:-</b>	
<b>Investments including shares in public</b>	<b>Type of investment:-</b>  <b>No. of shares held:-</b>  <b>Owner of investment:-</b>	
<b>Life Assurance policies</b>	<b>Type of policy:-</b>  <b>Policy No:-</b>  <b>Name of assurer:-</b>  <b>Owner of policy:-</b>	
<b>Motor vehicles</b>	<b>Year:-</b>  <b>Make:-</b>  <b>Model:-</b>  <b>Registration No.:-</b>  <b>Owner:-</b>	
<b>Shares in private companies (eg any business</b>	<b>Name of company:-</b>	

Property	Particulars of Property	Estimated Current Value
<b>interests of you or former partner)</b>	<b>No. of shares held:-</b> <b>Owner of shares:-</b>	
<b>Interest in any partnership business</b>	<b>Name of partnership:-</b>  <b>Percentage held in partnership:-</b> <b>Owner of interest:-</b>	
<b>Furniture and chattels</b>	<b>Location of furniture/chattels:-</b>  <b>Owner of furniture/chattels:-</b> of	
<b>Jewellery</b>	<b>Type of jewellery:-</b>  <b>Owner of jewellery:-</b>	
<b>Other personal assets (including artwork etc)</b>	<b>Nature of personal chattel:-</b>  <b>Owner of chattel:-</b>	
<b>Interest in any trust (eg family trust) or deceased estate</b>	<b>Name of trust/estate:-</b>  <b>Name of trustee:-</b>  <b>Type of trust:-</b>	
<b>Superannuation</b>	<b>Name of superannuation fund:-</b>  <b>Owner of fund:-</b>	

Property	Particulars of Property	Estimated Current Value
<p>* Note – superannuation is extremely complex and important in matrimonial proceedings. It is necessary for you to fully detail all funds that you and your former partner/spouse have an interest in. Please forward copies of most recent statements from your superannuation fund so we can properly advise you as to what value to include for your superannuation.</p>		
<p><b>Any other assets</b> (Please include any other assets that either you have or you believe your spouse/former partner may have which you have not included above. Provide particulars and estimated values)</p>		

#### 6. LIABILITIES

Do a similar exercise for liabilities as you have just done for property. Provide details of all debts that you have and also to the best of your knowledge, all debts that your spouse/former partner has.

Type of Liability	Particulars of Liability	Estimated Amount Owing
<b>Mortgage on home</b>	<p><b>Address of home:-</b></p> <p><b>Name of lender:-</b></p> <p><b>Owner:-</b></p>	
<b>Other mortgages</b>	<p><b>Address of property:-</b></p> <p><b>Name of lender:-</b></p> <p><b>Owner:-</b></p>	
<b>Income tax</b>	<p><b>Total income assessed:-</b></p> <p><b>Due date for payment:-</b></p> <p><b>Details of any appeals</b></p>	

	<p><b>against your assessment:-</b></p> <p><b>Owner:-</b></p>	
<b>Overdraft</b>	<b>Owner:-</b>	
<b>Credit Cards</b>	<p><b>Card type:-</b></p> <p><b>Card limit:-</b></p> <p><b>Name as appears on card:-</b></p> <p><b>Owner:-</b></p>	
<b>Higher purchase/lease</b>	<p><b>Lender:-</b></p> <p><b>Payments to be made:-</b></p> <p><b>Expiry date;-</b></p> <p><b>Owner:-</b></p>	
<p><b>Other personal liabilities</b>  (include any other liabilities that you have and/or you believe your spouse/former partner and provide relevant details)</p>	<p><b>Specify:-</b></p> <p><b>Owner:-</b></p>	

## ANNEXURE “B”

### FAMILY LAW QUESTIONNAIRE

#### GENERAL INFORMATION

1. Your full name, date of birth and place of birth;
2. Your partner/spouse full name, date of birth and place of birth;
3. Date of commencement of cohabitation;
4. Date and place of marriage;
5. Date of separation;
6. Are you an Australian Citizen?;
7. Is your spouse/partner an Australian Citizen?;
8. Are there any children of your relationship? If so please provide their full names and dates of birth and place of birth;
9. With whom are the children currently living with?;
10. If there are any other children of yourself and/or your spouse/partner (note being children of the relationship) please provide their full names, dates of birth and with whom they are currently residing with;
11. What is your current occupation and income?;
12. What is your former spouse/partners current occupation and income?;
13. What is your current residential address?;
14. What is your spouse/partners current residential address?;
15. Are there any Domestic Violence Orders in place? If so, please provide details;
16. Are there any Orders or Agreement concerning property and/or children’s issues between you and your former spouse/partner in place? If so, please provide details (and attach copies of Orders/Agreements if applicable).

#### 1. PROPERTY SETTLEMENT ISSUES

##### 1.1. Step 1 – Identifying all Relevant Assets and Liabilities

Please complete the **attached** financial summary document to the best of your ability and return this with the questionnaire. This will form the basis of our further advice and queries to you and preparation of future documents.

The **attached** financial summary relates to the current day value of assets and liabilities. If at the date of separation there were significant differences in the nature and value of various assets and liabilities, then please provide those details (eg if your partner had a bank account with \$20,000 in it at separation, but it is now nil, then those details should be provided to us).

Have a look at the financial summary schedule that you have just completed. Is there anything unusual that you think you should make us aware of in relation to the figures you have provided. If so, please provide details below.

1. Please describe the nature and value of any assets and liabilities that both you and your spouse had when you started living together;
2. From the date you started living together until today's date, please provide a chronological history of the following matters:
  - (a) Provide a brief chronological history of your partners working history including places worked at relevant times and appropriate incomes;
  - (b) Provide a brief history of your working history including places worked at relevant times and approximate income;
  - (c) Provide a brief history of places you both lived at together during your marriage and which state;
  - (d) Provide a brief history of all relevant real estate that was purchased and sold during your relationship. In relation to each piece of real estate provide details (as best you can recall) as to:
    - i) When the property was purchased;
    - ii) How much it was purchased for;
    - iii) Where the purchase monies were obtained from; and
    - iv) What the property was sold for and how the sale proceeds were dispensed;
3. Provide a brief general history about the arrangements between you and your spouse as to both of your working careers and financial contributions (eg provide details as to whether one of your was a primary bread winner and the other one primarily looked after the children etc);
4. Provide a brief history of any applicable child rearing and caring arrangements between you and your spouse during the marriage;
5. Did you or your spouse further or advance your career and future earning capacity during the marriage? If so, provide details;
6. Did either spouse make any sacrifices in relation to their career and future earning capacity during the marriage? If so, provide details;
7. Did either spouse have any special ability or skill that made a significant difference in the accumulation of assets/wealth during the relationship? If so, provide particulars (eg entrepreneurial business skills);

8. Did either spouse contribute to another spouse's children (from a different relationship) during the marriage? If so, provide details?
9. If there are any children of the relationship, were there any special needs of the children (physical, emotional or mental) that required extra assistance or care by the parties during the relationship, If so, please provide particulars;
10. Did either spouse receive any significant inheritances or gifts from other family members during the relationship? If so, provide particulars as to:
  - (a) The nature and size of such inheritance/gift;
  - (b) How such monies were applied and when such inheritance/gift was received;
11. If either you or your spouse have any interest in any business (whether operated through a company trust/partnership etc) then please provide the following relevant details in relation to such business interests:
  - (a) When was the business interest acquired and for how much?
  - (b) How was the purchase price funded?
  - (c) What is the business? Provide brief details as to the nature and functioning of the business operations;
  - (d) Are you and your spouse key people in the business? Please define your roles?
  - (e) Is the business operated through a company/trust/partnership? Please provide details;
  - (f) If you have provided an estimate of the value of the business in the attached Financial Summary, how did you estimate that value? Please provide details;
12. Since separation please provide the following details:
  - (a) Where have you continued to live;
  - (b) Where has your spouse lived;
  - (c) What have been the financial arrangements in relation to meeting mortgage costs on any relevant properties etc;
  - (d) What have been the arrangements for the care of any children (if applicable) since separation. Provide details as to who the children are primarily living with and how often they see the other parent;
  - (e) Is child support being paid by you or are you receiving child support. If so, how much;



- (f) Please describe any other financial contributions that either you or your spouse made during your relationship (either financial or non financial or in relation to the children) that are not covered above and that you think may be relevant. Please provide details.

**1.2. Other Relevant Factors**

- 1.2.1. Please outline your current earning capacity and potential future earning capacity. At what age do you intend to retire?
- 1.2.2. Please outline your spouse's current earning capacity and potential earning capacity. At what age do you think your spouse will continue to work till?
- 1.2.3. Please describe your current health. If you have any health problems, please provide details as to what they are and how they impact their earning capacity/lifestyle;
- 1.2.4. Please describe the health of your spouse. If they have health problems please describe them and whether they impact their earning capacity/lifestyle;
- 1.2.5. Do you expect the current arrangements for the children's care to remain in place (if applicable);
- 1.2.6. Are there any specific items of property that you wish to retain as part of the property settlement? Please specify.