

Top 5 tips for an amicable property settlement

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After separation, whether married or in a de facto relationship, at some point you will need to finalise property settlement. Direct negotiations with your former partner are not always possible and may not be appropriate in all cases, such as where there has been a history of family violence. However, where you can negotiate an amicable, out-of-court settlement, it can save you a lot of time, frustration and money.

The following tips will assist with the negotiation process.

1. Be informed

Although the prospect of seeking legal advice shortly after separation may seem daunting, it's important to get advice early in order to understand how the law works and where you stand.

If cost is an issue, find lawyers who offer a free initial meeting. Knowing where you stand legally and entering the process fully informed, is important because you can start to think about what a fair settlement looks like and how you will get there.

Get financial advice too. Talk to your bank or a broker about your capacity to borrow and talk to your accountant about what your needs are and how you might achieve that.

Also, what you may want out of property settlement and want the law says may be different. You can find some further information about this in our blog, "How are assets divided after separation or divorce?"

2. Set realistic expectations

When determining what is fair in your case, it is important to remember that each case is different. Do not compare your case to that of a family member or friend who has been through the property settlement process before.
Consider your end goal and take the necessary steps (including speaking with professionals like lawyers and financial advisers) to establish whether this is a viable option for you. For example, if you want to retain the family home, can you take over the existing loan and pay your partner out? There is little point in spending months negotiating towards an outcome that cannot be achieved.

Set achievable time frames so that you both know where you stand and can plan ahead.

Prolonging or delaying the property settlement process can cause tension particularly where one party is in a better position than the other. For example, one party may be forced to live in temporary accommodation until the property settlement is resolved.

You may also need to consider if you both need to continue to live under the same roof while separated, prior to finalising your property settlement.

3. Be civil and respectful

Not all separations are a result of wrongdoings. Sometimes a relationship simply runs its course and the parties are better off apart. However, high conflict situations inevitably arise from time to time making it difficult to negotiate respectfully.

It is important to keep the following in mind when negotiating in a high conflict situation.

Don’t allocate blame

The reason behind a relationship breakdown is not relevant when considering how assets and liabilities are to be divided following separation.

Removing the allocation of blame will reduce any feelings of resentment and enable you to take control of the property settlement negotiations.

Communicate in writing

It is important to choose the line of communication that works best for you and your former partner. Text or email is generally best in emotionally charged situations.

Communicating in writing allows you to structure your thoughts in a clear and precise way and allows your partner time to digest your words before responding.

Don’t involve the children

If you and your former partner are attempting to negotiate both a property settlement and parenting arrangements at the same time, it is likely that the two will overlap.

For example, if one party has full-time care of the children of the relationship, that party may be entitled to a larger percentage of the assets.

However, it is important that you do not use time with the children as a way to achieve a more favourable property settlement.

Remaining civil and respectful during the negotiation process will assist in reaching an amicable property settlement. It will also help set a strong foundation for future communications such as attending a school event together or celebrating a mutual friend's birthday!

4. Look after yourself

It is important to look after yourself following a separation and to make sure that you have a positive support network.

- Eat well and try to rest and exercise where you can. We understand that this is easier said than done, particularly if you have children to take care of. However, self-care is essential to the wellbeing of both you and your children.
- Don't be afraid to talk to family or close friends about how you are feeling before making decisions (avoid involving mutual friends where possible). This will stop you from making emotionally charged decisions during the negotiation process.

If you do not have a support network available to you or are experiencing family violence there are support services available to you. Contact us for a list of these services.

5. Focus on the future

When attempting to reach an amicable property settlement it is important to focus on the future and what is important to you in the long term.

Compromising on smaller issues, such as who gets to keep the television, will have a positive effect on the ongoing relationship between you and your former partner. This is particularly important if you have children and will be required to co-parent for the foreseeable future.

You should avoid any behaviour that is likely to cause tension such as withdrawing funds from a joint bank account without informing your former partner. If you do need to withdraw funds you should withdraw a reasonable amount and keep a record of how these funds are spent.

Finally, consider the cost of court proceedings if you unable to negotiate your property settlement.

Reaching an amicable property settlement will save you thousands of dollars which would otherwise be spent on court proceedings. If the sum you are arguing over is less than the cost of court proceedings, meet in the middle. Both you and your partner will benefit financially from this decision.

Make your agreement legal

If you have reached an amicable property settlement, it's important to make sure that what you have both agreed to is legal.

If the agreement is not formalised in the right way, it remains open for either party to make a claim for property settlement against the other in the future, even after a time limit has expired.

Get help

If you've tried the above tips but have been unable to reach a property settlement you may need to consider other options such as lawyer-assisted negotiations or mediation (with or without lawyers).

Get in touch with one of our family lawyers for a free initial discussion to find out the most appropriate and cost-effective option for you.

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.