



# Are my future needs considered in Family Law property settlements?

**Author:** [Mona Emera](#)

**Email:** [mona@emerafamilylaw.com.au](mailto:mona@emerafamilylaw.com.au)

**Date:** Monday May 3, 2021

Negotiating and finalising the division of assets, commonly called property settlement, can happen at any time after separation. The law is almost the same whether you're married or separating from your de facto partner. In this blog, we will look at how the future needs of both parties are considered during property settlement negotiations.

## It's important to consider your future needs when negotiating property settlement

Often, future needs play an important role in determining property settlements, especially where there are children involved and/or a significant difference in income and earning capacity.

There is a [stepped approach in determining a property settlement](#). These steps are:

1. Whether it is just and equitable to make any property adjustment orders. The answer here is usually yes.
2. Secondly, we need to determine the value of the assets, liabilities and financial resources.
3. Next, we assess each party's contributions to the property pool.
4. We then look at whether either party might be entitled to an adjustment in their favour, based on their circumstances. This is the "future needs" consideration."
5. Finally, we assess who should receive what property as a result of these factors.

# Property distribution adjustments for future needs

Sometimes an adjustment is made to the property distribution to take into account future needs of a party. This is commonly known as a section 75(2) adjustment or a section 90SF adjustment in the case of a de facto relationship.

Some, but not all, of the relevant considerations for future needs, include:

- the age and health of the parties;
- the income, property and financial resources of each of the parties;
- the capacity of each of the parties to work;
- whether either party is caring for children of the relationship under 18;
- the duration of the relationship and the extent to which it has affected the income earning capabilities of the parties;
- the responsibilities of either party to support another person;
- the desire of the party to continue in the capacity as homemaker and parent;
- a standard of living that in, all the circumstances is reasonable, where the parties have separated;
- if either party is cohabiting with another person, the financial circumstances relating to that cohabitation

Generally, the party who will be financially disadvantaged in the future due to the above factors will receive an adjustment in their favour. The idea is to make sure that the party looking after the children (and generally therefore not able to earn as much), receives a fair settlement to help them into the future. Depending on the other factors, including financial and non-financial contributions to the relationship, they may receive more of the assets overall.

In all cases, it's important to get legal advice early to protect your financial future. Contrary to popular belief there is no automatic 70/30 split if there are children. All factors, including contributions, need to be viewed as a whole and the agreement needs to be just and equitable. Every case is different and will depend on the specific circumstances of each party and each relationship.

Knowing where you stand and what your entitlements are can put you in a good position to negotiate with your partner and help you to make good decisions early.

## Get help

If you require assistance negotiating a fair and equitable property settlement after separation, or if you're experiencing any other family law issues, feel free to get in touch directly with [today's blog writer, Mona Emera](#).

---

*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.*