

THE 'HOW-TO' OF PROPERTY SETTLEMENT

June, 2009

Since 1 March 2009, property settlements for de facto and married couples is now governed by the *Family Law Act*. Under the Family Law Act there are a number of factors which must be taken into account when determining a property settlement. The Court has stated that it is a four step process that must be followed, which includes:-

- (i) Firstly: to identify and value all of the property owned by the parties, including property held by both parties and also any property owned separately by each party.
- (ii) Secondly: to look back over the relationship and evaluate the contributions of both spouses. This includes financial contributions, non-financial contributions and also contributions as a parent or homemaker.
- (iii) Thirdly: to look ahead and take into consideration the factors affecting the future needs of each party. The matters that are to be taken into account include:
 - (a) The age and state of health of each of the parties;
 - (b) Whether either party has the care and control of the children of the relationship under the age of 18 years;
 - (c) The standard of living which is reasonable;
 - (d) The income, property and financial resources of each spouse and the physical and mental capacity of each for appropriate gainful employment;
 - (e) The duration of the relationship and the extent to which it has affected the earning capacity of either party;
 - (f) The need to protect a party who wishes to continue that party's role as a parent;
 - (g) Any other fact or circumstance which could reasonably be taken into account.
- (iv) Fourthly: to determine whether the proposed division is "just and equitable". The percentage assessment is reviewed with any further adjustment considered necessary to achieve a fair and equitable distribution.

Everyone's situation is different and it is of no assistance to rely on an outcome that friend or family member may have achieved in relation to their property settlement, as their circumstances will be different to your own. Also, Family Law has undergone many changes over just a short period of time and it is more than likely that the Law, the procedure, the terminology and possibly even the Court, have all changed from the time that someone else's situation has been resolved.

The steps involved in reaching a property settlement and the factors which are considered are varied and complex. We suggest that if you are considering, separating or have recently separated, that you get Specialist Family Law advice, as soon as possible. For a fixed-fee initial appointment, call us on (07) 3221 4300.

