

WHAT'S IT WORTH? - DETERMINING VALUE

Property Settlements essentially involve 4 steps, as outlined in our June article, "The How-to' of Property Settlement". The first step requires all the property of the separated spouses to be valued - this is often the most challenging. The relevant value for property is its fair market value.

There are various different items that may require valuing in a property settlement, including real estate, furniture, superannuation etc. Often the concepts of valuing these items are different and as the *Family Law Act* does not set out mathematical guidelines, challenges may arise.

Here are some tips when considering common asset types:

REAL ESTATE:

When valuing real estate, such as the matrimonial home or an investment property, the key word to remember is "negotiate". Often a common mistake people make in a property settlement is to jump straight into obtaining a valuation (from a Registered Valuer). The problem with this is that once a valuation has been obtained, the value is all but "set in stone" and this can make ongoing negotiations difficult, particularly if one spouse believes the value is incorrect or has since changed.

Ideally, you should look at trying to negotiate an estimate of what the property may be worth before locking in the value, by obtaining a valuation. By negotiating, it is up to the parties to decide what the property is worth and if an agreement is reached, the Court will rarely interfere with that.

Furthermore, if negotiations are not initially successful, a Real Estate Agent appraisal (usually free) can be obtained. If a few appraisals are obtained, an average can be obtained. This may assist negotiations regarding "value" and avoid the time and cost of a valuation being obtained.

FURNITURE AND CONTENTS:

The furniture and contents of a home is often mistakenly valued for its insurance value. In Family Law Property Settlements, furniture and contents are valued on a second-hand dealer basis. The contents of the average home, including furniture and white goods (excluding antiques and collections) is usually approximately \$10,000.

SUPERANNUATION

For married and defacto couples negotiating Property Settlement, superannuation funds can be split and rolled over. The split can be in any percentage (i.e. 80/20, 70/30, 60/40, etc.), it need not be a 50/50 split, but it can be if the parties decide upon this.

There are different types of superannuation funds, including accumulation funds and defined benefit funds. Their method of valuation is different.

For complex superannuation funds, private superannuation funds or funds in the payment phase, it is recommended an Accountant be engaged to determine the value of the fund in accordance with Family Law formulas.

PROPERTY SETTLEMENTS:

Once the process of attributing values to all property is complete, the other steps of a property settlement can be considered. The moral of the story is that considering values is not straight forward and legal advice should be obtained.